

RESOLUTION  
GRANTING  
APPEAL NO. 2014-12

WHEREAS, McBride, Dale Clarion, 5725 Dragon Way, Suite 220, Cincinnati, OH 45230, appellant, on August 4, 2014 filed Appeal No. 2014-12 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Board of Zoning Appeals Case No. 2000-20 and Section 104.1 of said Resolution as applied to the property at 11397 Montgomery Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on August 4, 2014, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for a parking variance to support proposed tenant expansion and parking lot modifications; and

WHEREAS, said Zoning Inspector, on August 4, 2014, acting upon said application and the plats and plans submitted, refused to issue said Certificate, his reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, a public hearing was held on said appeal on September 8, 2014, notice of such hearing was given by first class mail to parties of interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of said hearing in accordance with Section 519.15 of the Ohio Revised Code; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "E" Residence District (with Subservient Retail); and

WHEREAS, Section 104.1 provides, in relevant part, there shall be a front yard having a depth of not less than fifty (50) feet; and

WHEREAS, Section 141 provides, in relevant part, there shall be one parking space for each two hundred twenty-two (222) square feet for shopping centers, one (1) parking space for each one hundred (100) square feet of floor area for restaurants and one (1) space for a transaction plus five (5) stacking spaces per lane for a drive-through facility; and

WHEREAS, according to testimony offered at the public hearing, the applicant is requesting approval to construct a new drive-thru lane and outdoor seating areas for the existing Harpers Corner retail shopping center with modifications to the existing parking lot and trash handling areas that would necessitate an additional front yard setback variance and a parking variance for fewer spaces than required; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the west side of Montgomery Road at the southwest corner of the intersection of Montgomery Road and East Kemper Road; and

WHEREAS, according to testimony offered at the public hearing, the applicant has requested approval to construct a new drive-thru facility and outdoor seating area for the existing Starbucks Coffee tenant at the south end of the existing retail center; and

WHEREAS, according to further testimony offered at the public hearing, an existing outdoor seating area for the Panera Bread tenant at the north end of the building was constructed without obtaining a zoning permit; and

WHEREAS, according to further testimony offered at the public hearing, the existing dumpster to the rear of the Harpers Corner building would be moved onto adjacent property to allow the construction of six (6) additional spaces and provide room for the required stacking spaces for the proposed drive-thru lane; and

WHEREAS, according to further testimony offered at the public hearing, the shopping center was damaged by a tornado in 1999. In 2000 the owner of the center proposed to rebuild and expand the size of the center increasing the need for a number of setback and parking variances; and

WHEREAS, according to further testimony offered at the public hearing, one of the parking variances approved by the Board of Zoning Appeals in 2000 as part of Case 2000-20 required additional parking spaces and a shared parking agreement between the subject site and Harpers Station; and

WHEREAS, according to further testimony offered at the public hearing, the additional parking spaces were never constructed and the shared parking agreement is no longer in effect; and

WHEREAS, according to further testimony offered at the public hearing, a new parking agreement will be executed and recorded with the adjacent Harpers Station property owner to provide a minimum of fifty six (56) spaces for exclusive use by the subject site unless the subject site is consolidated with the adjacent Harpers Station property, which negates the need for a parking variance to Section 141 of the Zoning Resolution; and

WHEREAS, according to further testimony offered at the public hearing, the applicant believes that customers utilizing a drive-thru especially during peak morning hours will reduce the need for additional parking on site; and

WHEREAS, according to further testimony offered at the public hearing, the traffic pattern behind the retail center for the proposed drive-thru would be feasible with a driveway width of twenty two point five (22.5) feet but that the aisle could be widened to twenty-four (24) feet to comply with the Zoning Resolution; and

WHEREAS, according to further testimony offered at the public hearing, part of the proposed improvement would extend beyond the property line of the subject site and onto the adjacent property which is part of an "EE" Planned Residence (Retail) district and can only be approved by the Symmes Township Zoning Commission; and

WHEREAS, according to further testimony offered at the public hearing, all existing landscaping on the site will be retained with no other landscaping required; and

WHEREAS, according to further testimony offered at the public hearing, traffic will not be affected by vehicles utilizing the entrance/exit drive on Montgomery Road; and

WHEREAS, Section 184.6 of the Zoning Resolution empowers this Board to permit a variation in the yard requirements of any District where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographic or other conditions, provided such variations will not seriously affect any adjoining property or the general welfare; and

WHEREAS Section 185 provides, in exercising the above mentioned powers, the Board may reverse or affirm, wholly, or partly, or may modify the order requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the Officer from whom the appeal is taken; and

WHEREAS, it is the consensus of this Board, after careful consideration of all the facts, testimony, and evidence submitted, that the literal enforcement of the strict application of Board of Zoning Appeals Case No. 2000-20 and Section 104.1 of the Zoning Resolution will result in practical difficulties to the owners of the property in question; and

WHEREAS, the variation, in accordance with the following conditions, will not seriously affect any adjoining property owners or the general welfare.

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby grant a variance from the requirement of Section 104.1 of the Zoning Resolution in accordance with the authority granted in Section 184.6. Furthermore, the decision of the Zoning Inspector to deny the issuance of a zoning certificate for the reason that the application failed to comply with Board of Zoning Appeals Case No. 2000-20 and with Section 104.1 of the Zoning Resolution is affirmed, but in accordance with the authority of Section 185, the Board of Zoning Appeals, having granted a variance as stated above, hereby determines that a zoning certificate may be issued to the applicant consistent with the terms set forth in this Resolution; and

**SUBJECT TO THE FOLLOWING CONDITIONS:**

1. That, the setback for the northwest corner of the building be permitted no closer than forty-eight (48) feet from the right-of-way on East Kemper Road;
2. That, the required twenty (20) foot parking setback shall be reduced to zero (0) feet along the East Kemper Road and Montgomery Road frontages;
3. That, the proposed four hundred (400) square-foot outdoor seating area for Starbucks Coffee on the southeast corner of the building shall be permitted to be located forty-three (43) feet from the Montgomery Road right-of-way;
4. That, the existing five hundred (500) square-foot outdoor seating area for Panera Bread on the north side of the building shall be permitted to be located

forty-four (44) feet from the East Kemper Road right-of-way;

5. That, a parking agreement shall be executed and recorded with the adjacent Harpers Station property owner to provide a minimum of fifty-six (56) spaces for exclusive use by the subject site unless the subject site is consolidated with the adjacent Harpers Station property and that such agreement must be provided prior to the issuance of any further Zoning certificates;
6. That, all parking aisles on the property shall meet the width requirements of the Zoning Resolution;
7. That, all existing landscaping on the site shall be retained and shall be maintained at all times;
8. That, the approval of the requested variances and modification on the subject property is contingent upon approval of the associated off-site modifications on the Harpers Station property by the Symmes Township Zoning Commission within one year from the date of this approval, including the proposed sixteen (16) parking spaces, relocated dumpster and dumpster enclosure, and encroachment of the drive-thru lane on the adjacent property;
9. That, the drive-thru lane and all other site improvements shall be constructed and located exactly as shown on the plats and plans submitted to the Board;
10. That, the drive-thru lane and all other site improvements shall not be relocated or enlarged without the approval of this Board;
11. That, the drive-thru lane and all other site improvements comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
12. That, the Zoning Certificate and Building permit (if required) for the drive-thru lane and all other site improvements be obtained within six (6) months and all work be completed within one (1) year from the date of adoption of this Resolution;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

ADOPTED at a regularly scheduled meeting of the Symmes Township Board of Zoning Appeals in session this 8th day of September.

Mr. Fligel – “aye,” Ms. Harlow – “aye,” Mr. Havill – “absent,” Mr. Misrach – “aye,” Mr. Ruehlmann – “absent,” Mr. Wolfe – “aye”.

JOURNALIZED: SEPTEMBER 8, 2014

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Brian E. Elliff  
Township Zoning Inspector

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Ralph Wolfe, Chairperson