

RESOLUTION

GRANTING

APPEAL NO. 2015-02

WHEREAS, Brian Heikkinen, W6260 Camp Rice Point Road, Tomahawk, WI 54487, appellant, on January 12, 2015, filed Appeal No. 2015-02 with the Symmes Township Board of Zoning Appeals under Section 383.1 of the Zoning Resolution, requesting that a conditional use be approved to permit the continuation of transient vendor sales for the property located at 12085 Montgomery Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, a public hearing was held on said appeal on March 2, 2015, notice of which hearing was given by first class mail to parties in 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 303.15 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" Retail Business District; and

WHEREAS, Article XXXV provides, in part, that the operation of a transient vendor is permitted as a Conditional Use provided that the temporary business activity is properly integrated in the overall neighborhood and that said use shall be evaluated by the Board of Zoning Appeals on an individual basis; and

WHEREAS, Section 394 provides for the specific findings of fact pertaining to a special zoning certificate for a Transient Vendor; and

WHEREAS, according to testimony offered at the public hearing, transient vendor sale of Christmas trees was approved by the Symmes Township Board of Zoning Appeals in 2000 with a condition that the applicant return to the Board after five (5) years to renew the conditional use to allow the Board to review any negative impacts of the use on the surrounding properties. The applicant applied for this renewal in 2005 and was granted an extension of the use by the Board for ten (10) years as part of case 2005-10. The applicant is now requesting approval of an extension to the transient vendor permit for an additional ten (10) years; and

WHEREAS, the subject property is located on the northwest side of Montgomery Road, northeast of Union Cemetery Road and currently operates as Ed's Feed & Seed; and

WHEREAS, according to further testimony offered at the public hearing, Sections 394 in Article XXXV, Conditional Uses, requires that a Transient Vendor only be authorized after the Board makes specific findings of fact, based upon evidence presented, that the temporary business activity is properly integrated in the overall neighborhood related to each of the following factors:

- a. Location of Sales –The tree sales area would continue to be located in front and to the rear of the existing commercial building. This area is used for the sale of materials and plants for the primary tenant during the spring, summer and fall seasons but is primarily vacant during the winter months.
- b. Size of the Business – The size of the Christmas tree sales would be no larger than the plant and material sales area of the primary tenant during the spring, summer and fall seasons;
- c. Location and Intensity of the Display Goods – The location and intensity of the tree sales area fits well into the overall site and would not be too intense for the overall flow and usability of the site;
- d. Parking Adequacy – The existing parking lot will not be used as a tree sales area. Therefore, the parking situation would be the same as the other months;

- e. Hours of Operation – The hours of operation were restricted to no later than 8:00 p.m. as part of the previous approval and there have been no complaints;
- f. Noise – There is very little potential for noise impacts on adjacent properties from this type of use. The noise would be no more than what is currently generated by the primary tenant;
- g. Access and Traffic Impact – The proposed use has access to Montgomery Road. The traffic generated by the proposed temporary tree sales would be no greater than the traffic from the primary tenant of the property;
- h. Duration of the Business – The duration of the temporary tree sales would continue to be between November 25th and December 21st annually;
- i. Compatibility with Adjacent Uses – The subject site is surrounded on all sides by other retail and office uses;

WHEREAS, according to further testimony offered at the public hearing, there have been no complaints from the abutting properties or residents of Symmes Township and the applicant has maintained the proper setbacks and signage regulations; and

WHEREAS, it is the consensus of the Board, after careful consideration of all the facts, testimony, and evidence submitted, that approval of the requested Conditional Use is appropriate at this particular location and in the particular matter proposed in that the proposed plan complies with the standards and conditions set forth in Article XXXV of the Zoning Resolution; and

NOW THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby grant a Conditional Use in accordance with the authority in Section 394 and does hereby determine that a Conditional Use and 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, a Conditional Use and Zoning Certificate shall be issued wholly to Brian Heikkinen for the location at 12085 Montgomery Road and be non-transferrable;
2. That, issuance of a Conditional Use and Zoning Certificate shall be valid for a ten (10) year period, starting with the year 2015 and ending with the year 2024 and shall be renewable for another ten (10) years provided no complaints have been received;
3. That, the issuance of a Conditional Use and Zoning Certificate shall be granted only if the existing business is owned and operated by Ed Davis;
4. That, the Conditional Use and Zoning Certificate shall be applicable for the sale of Christmas trees from November 25th through December 21st of each year;
5. That, the hours of operations be no later than 8:00 p.m.;
6. That, Christmas trees are stored in the areas designated on the submitted plan; and
7. That, no additional signage is permitted for this temporary usage.

BE IT FURTHER RESOLVED, that all 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 2nd day of March 2015.

Mr. Flagel – “aye”, Mr. Havill – “aye”, and Ms. Harlow – “aye”.

APPROVED: March 2, 2015

Luanne Felter, Zoning Secretary

Todd Flagel, Board Chairperson