

RESOLUTION  
GRANTING  
APPEAL NO. 2015-03

WHEREAS, Jeff Probst, Blooms & Berries Farm Market, 9669 S. St. Rt. 48, Loveland, OH 45140, appellant, on May 4, 2015 filed Appeal No. 2015-03 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 transient vendor sales at the property located at 10910 Loveland Madeira Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, a public hearing was held on said appeal on June 1, 2015, notice of such 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 "F" Light Industrial 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, the applicant is proposing to locate a roadside produce and flower stand on the site from June 15<sup>th</sup> through September 30<sup>th</sup> annually; and

WHEREAS, according to further testimony offered at the public hearing, the site is located on the south side of Loveland Madeira Road, east of Twightwee Road; and

WHEREAS, according to further testimony offered at the public hearing, the sales area will be located at the front of the site in an eight hundred (800) square-foot tent setback fifteen (15) feet from the right of way. Access would be provided through existing driveways off of Twightwee Road to the west and through the existing commercial parking lot to the east. Parking would be provided on the existing gravel areas surrounding the tent location; and

WHEREAS, according to further testimony offered at the public hearing, signage would consist of one main thirty two (32) square-foot sign near the tent location along Loveland Madeira Road and two sixteen (16) square-foot banners located at either end of the display area; and

WHEREAS, according to further testimony offered at the public hearing, Section 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 temporary sales activity is located in an "F" Light Industrial District which is permitted as of right within this district. The proposed temporary sales area is consistent with the locations of previously approved temporary sales on the site. This location would not have a negative impact on the neighborhood provided that it is maintained in a clean and orderly manner.
- b. Size of the Business – The location of an eight hundred (800) square-foot tent and plant sales stands in the center of the site along the roadway would allow for more than adequate vehicular circulation and parking on site. The size of the proposed business is much smaller than the uses

previously approved on the site for sales of mulch and other landscape materials in addition to produce and flower sales.

- c. Location and Intensity of Display – The location and display area would be located near the center of the site and the intensity of the sales area would be very low in comparison to the overall size of the site.
- d. Parking Adequacy – The site provides more than adequate space for parking. The gravel areas surrounding the display area would provide ample parking.
- e. Hours of Operation - The hours of operation would be between 9:00 a.m. to 7:00 p.m.
- f. Noise - There is no loudspeaker system; the site is located in an industrial and commercial corridor so there should be no issues with noise;
- g. Access and Traffic Impact - There are no changes to the circulation pattern that was approved in the previous cases. The use does not have direct access to Loveland Madeira Road and there would be no negative impact on the major thoroughfare.
- h. Duration of Business - The applicant is proposing to operate on the site from June 15<sup>th</sup> through September 30<sup>th</sup> annually. The definition of "Transient Vendor", identified in Chapter 31.3-22(A) is a person who opens a temporary place of business for the sale of goods. There are no parameters on the duration of the activity that determines if it is "temporary". The current proposal for three and one half (3 ½) months would qualify as temporary and would be appropriate on the site.
- i. Compatibility with Adjacent Uses - All of the adjacent properties on the south side of Loveland Madeira Road are zoned and used for commercial or industrial activities. The properties on the north side of Loveland Madeira Road are zoned residential but are vacant and the properties have steep slopes. The Symmes Township Land Use Plan designates these properties to the north for Neighborhood Retail. Therefore, the request for temporary sales would be compatible with the surrounding land uses.

WHEREAS, Section 381, empowers this Board to approve by resolution those uses listed as conditional uses; and

WHEREAS, Section 383.6 provides that the Board shall approve the conditional use, approve the conditional use subject to further specified approvals or modifications necessary to achieve full compliance with all standards, or disapprove the conditional use; and

WHEREAS, it is the consensus of this 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 moves to approve the Conditional Use for the property located at 10910 Loveland Madeira Road as per the plans submitted in accordance with the authority granted in Section 381 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, the temporary sale of produce and flowers, including all tents, signs, and banners, shall be permitted on the site from June 15<sup>th</sup> through September 30<sup>th</sup> annually;
2. That, the tent for the temporary sale of produce and flowers shall not exceed twenty feet (20') by forty feet (40') or eight hundred (800) square-feet;
3. That, the temporary sale of produce and flowers shall be permitted a maximum of one thirty two (32) square-foot sign and two sixteen (16) square-foot banners on site;
4. That, the site for the temporary sale of produce and flowers shall be kept clean and orderly during the duration of the sales period;
5. That, the hours of operation for the temporary sale of produce and flowers shall only be between the hours of 9:00 a.m. to 7:00 p.m. daily seven (7) days a week;
6. That, the temporary sale of produce and flowers comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
7. That, the proposed temporary sale of produce and flowers not be relocated or enlarged without the approval of this Board;
8. That, a Conditional Use Zoning Certificate for the temporary sale of produce and flowers shall be obtained within thirty (30) days of the start of each season;
9. That, the Conditional Use for the temporary sale of produce and flowers be reviewed every five (5) years by this Board.

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 1st day of June 2015.

Mr. Flagel – “aye”, Mr. Havill – “aye”, Mr. Misrach – “aye”, Mr. Ruehlmann – “aye”, Mr. Wolfe – “aye”.

APPROVED: JUNE 1, 2015

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Phil Beck  
Township Zoning Inspector

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Todd Flagel, Board Chairperson