

RESOLUTION
GRANTING
APPEAL NO. 2015-04

WHEREAS, McGill Smith Punshon, 3700 Park 42 Drive, Suite 190B, Cincinnati, OH 45241, appellant, on July 6, 2015 filed Appeal No. 2015-04 with the Symmes Township Board of Zoning Appeals under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 105.1, 105.5, 328.1-3, 346.2 and 141 of said Resolution as applied to the property at 8675 East Kemper Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on July 6, 2015, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of new buildings and site improvements with less parking and rear yard setback than required; and

WHEREAS, said Zoning Inspector, on July 6, 2015, 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 August 3, 2015, 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 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" Residence District (with Subservient Retail); and

WHEREAS, Section 105.1 provides, in relevant part, that the minimum setback for buildings shall be fifty (50) feet for rear yards;

WHEREAS, Section 105.5 provides, in relevant part, that buffer yards and streetscape plantings be required;

WHEREAS, Section 328.1-3 provides, in relevant part, a boundary buffer of twenty-five (25) feet shall be required along abutting residential districts or residential use property. Such buffer shall have a minimum of four and one-half (4.5) canopy trees and ten (10) shrubs per one hundred (100) linear feet of boundary buffer required;

WHEREAS, Section 346.2 provides, in relevant part, no fence or wall located in the rear yard shall be built to a height greater than six (6) feet above grade;

WHEREAS, Section 141 provides, in relevant part, that recreation facilities open to the public for a fee shall have one parking space for each fifty (50) square feet of pool area, eight (8) spaces for each indoor tennis court and five (5) spaces for each outdoor tennis court;

WHEREAS, according to testimony offered at the public hearing, the applicant was granted a variance by the Board of Zoning Appeals in 2014 to construct new buildings and make site improvements with less parking and rear yard setback than required. However, a zoning certificate was not obtained within the required timeframe and no work was done so the variance expired. The plans have since been modified and a new variance is required; and

WHEREAS, according to further testimony offered at the public hearing, the property is located west of the intersection of East Kemper Road and Pemmican Drive; and

WHEREAS, according to testimony offered at the public hearing, the applicant has proposed to redevelop the courtyard area between the L-shaped main club building currently occupied by an outer row of six (6) tennis courts and inner row of five (5) tennis courts with a one thousand seven hundred thirty (1,730) square foot outdoor pool and building; and

WHEREAS, according to further testimony offered at the public hearing, the outer row of courts would consist of five (5) relocated "hydro" tennis courts and an outdoor seating area

with a pool building housing concessions, locker rooms and auxiliary rooms to also serve as a southern entrance between the courts and main building. A storage shed has been proposed at the western end of the outer row of courts along the walkway and court fencing; and

WHEREAS, according to further testimony offered at the public hearing, the inner row of courts would consist of three (3) “hydro” courts and a twenty-five (25) meter-wide swimming pool with six (6) lap lanes, diving well, slide landing area and kids pool. To the east of the pool would be a baby pool and adult area with pool bar; and

WHEREAS, according to further testimony offered at the public hearing, five (5) clay tennis court will be relocated to the outer row and include a covered pergola, seating area, concessions, locker room, play area, and auxiliary rooms to serve the new pool which will be located between the courts and main building; and

WHEREAS, according to further testimony offered at the public hearing, gated access would be provided through the site from the adjacent off-site parking area to the west as well as from the covered sidewalk along the south side of the existing club building; and

WHEREAS, according to further testimony offered at the public hearing, a streetscape buffer has been proposed along the East Kemper frontage; and

WHEREAS, according to further testimony offered at the public hearing, no improvements have been proposed to the main club building; and

WHEREAS, according to further testimony offered at the public hearing, the setback requirements for the existing club building do not comply with the Zoning regulations. The building is setback seventeen point four (17.4) feet from the southern property line. None of the improvements will encroach into this area; and

WHEREAS, according to further testimony offered at the public hearing, the existing building and southern parking lot do not comply with the Zoning requirements due to a walkway along the south side of the building setting the parking lot back only fifteen (15) feet. There is an existing row of canopy trees along the southern façade of the building that provides buffering and shade for the walkway and building between the apartments to the south; and

WHEREAS, according to further testimony offered at the public hearing, the existing tennis court chain link fencing and wind screen would be relocated around the five (5) relocated clay tennis courts along the southern boundary. With the relocation of the outer row of clay tennis courts this fencing would be moved from fifteen (15) feet off the southern property line up to five (5) feet from the southern property line. The existing fencing appears tall when viewed from the property line and moving the fencing closer to the property line may increase its intensity. It is suggested that the fencing be screened with buffer yard plantings to mitigate the height of the fences; and

WHEREAS, according to further testimony offered at the public hearing, the site currently has one hundred twenty four (124) available parking spaces. With the proposed redevelopment of the site a total of two hundred nine (209) would be required. A shared parking agreement has been obtained from the shopping center to the west for fifty six (56) additional spaces which would allow the site to provide one hundred eighty (180) parking spaces. Since the pool and outdoor tennis courts are not utilized during the winter months, parking should be adequate; and

WHEREAS, 184.6 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 Sections 105.1, 105.5, 328.1-3, 346.2 and 141 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; and

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 Sections 105.1, 105.5, 328.1-3, 346.2 and 141 of the Zoning Resolution in accordance with the authority granted in 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 Sections 105.1, 105.5, 328.1-3, 346.2 and 141, 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 proposed improvements shall not be relocated or enlarged without the approval of this Board;
2. That, the proposed improvements remain exactly as shown on the plats and plans submitted to this Board;
3. That, the proposed improvements be maintained in a satisfactory condition at all times;
4. That, the proposed improvements comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
5. That, the Zoning Certificate and Building permit (if required) for the proposed improvements be obtained and all work be completed within two (2) years 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. Flagel – “absent,” Ms. Harlow – “aye”, Mr. Havill – “absent”, Mr. Misrach – “aye”, Mr. Ruehlmann – “aye”, Mr. Wolfe – “nay”.

APPROVED: AUGUST 3, 2015

Phil Beck
Township Zoning Inspector

Donald Misrach, Chairperson