

RESOLUTION

GRANTING

APPEAL NO. 2016-06

WHEREAS, Group A Architecture, Inc., 1100 Landmeier Road, Suite 202, Elk Grove Village, IL 60007, appellant, on June 6, 2016 filed Appeal No. 2016-06 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 104.1, 344.1, 105.1, 314.8 and 321.2-2(1) of said Resolution as applied to the property located at 12110 Mason Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on June 6, 2016, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a new Slim Chickens restaurant with less building, dumpster and sign setback than required; and

WHEREAS, said Zoning Inspector, on June 6, 2016, 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 July 11, 2016, 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 "E" Residence (with subservient retail) District; and

WHEREAS, Section 104.1 provides, in relevant part, that there shall be a front yard having a depth of not less than fifty (50) feet and parking areas shall be set back at least twenty (20) feet from the front lot line; and

WHEREAS, Section 344.1 provides, in relevant part, that dumpsters, trash handling areas and related screening, shall be located in compliance with the same minimum setbacks as a main building as determined by the zone district in which such structure is constructed; and

WHEREAS, Section 105.1 provides, in relevant part, that the minimum setback for buildings shall be fifty (50) feet for front yards, thirty (30) feet for side yards and fifty (50) feet for rear yards; and

WHEREAS, Section 314.8 provides, in relevant part, that no sign, except those authorized by a government agency, shall be located or shall be permitted in the traveled way or within a vision clearance area unless the combined total width is twelve (12) inches or less and the combined total depth is twelve (12) inches or less; and

WHEREAS, Section 321.2-2(1) provides, in relevant part, that no freestanding pole sign shall be closer than ten (10) feet to any right-of-way line; and

WHEREAS, according to testimony offered at the public hearing, the applicant is proposing to demolish the existing Pizza Tower restaurant building and construct a new two thousand seven hundred eighty five (2,785) square foot Slim Chickens restaurant on the site; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the east side of Mason Road, south of Governor's Way; and

WHEREAS, according to further testimony offered at the public hearing, the building would include a five hundred ten (510) square-foot covered outdoor seating area along the Governor's Way frontage and a drive thru on the east side of the building; and

WHEREAS, according to further testimony offered at the public hearing, a third access point from Governor's Way would be relocated from its current location to a point further west to provide increased setback from the property line to the east; and

WHEREAS, according to further testimony offered at the public hearing, the proposed building would be located thirty six (36) feet from the right-of-way line due to the placement of the covered patio. However, the porch like design of the outdoor seating area will separate the area from the main building and reduce the visual impact from the road; and

WHEREAS, according to further testimony offered at the public hearing, the proposed dumpster would be located twenty-five (25) feet from adjacent residents and placed within a stone enclosure and buffered by new landscaping and privacy fencing; and

WHEREAS, according to further testimony offered at the public hearing, a twenty (20) foot high, fifty (50) square-foot freestanding sign is proposed for the western driveway on the existing right-of-way. This location places the support pole in the vision clearance area. A viable alternative is to locate the sign further to the east in the streetscape buffer with the pole moved back to the edge of the parking aisle running parallel with Governor's Way; and

WHEREAS, according to further testimony offered at the public hearing, in order to provide privacy from the drive thru area for adjacent property owners a berm and privacy fence along the eastern property line is necessary. This would match the existing structure located behind the Golden Coral restaurant; and

WHEREAS, according to further testimony offered at the public hearing, there are other buildings surrounding the site that have been granted various setbacks that are not consistent; and

WHEREAS, Section 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 irregular shape of the lot, topographic or other conditions, provided such variation 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 determinations 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 104.1, 344.1, 105.1, and 321.2-2(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 requirements of Sections 104.1, 344.1, 105.1 and 321.2-2(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 Sections 104.1, 344.1, 105.1 and 321.2-2(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 the Resolution; and

SUBJECT TO THE FOLLOWING CONDITIONS:

1. That, the proposed restaurant building shall not be located any closer than thirty six (36) feet from the right-of-way line.

2. That, the freestanding sign for the proposed restaurant shall be permitted to have a zero (0) foot setback from the right-of-way of Governor's Way provided that the sign shall not be located within the required vision clearance area;
3. That, the dumpster for the proposed restaurant shall not be located any closer than twenty five (25) feet from the eastern property line;
4. That, a three (3) foot berm with a six (6) foot privacy fence on top of the berm shall be constructed along the eastern property line to provide privacy from adjacent residents and that the required landscaping shall be planted on the restaurant side of the fence;
5. That, the proposed restaurant shall be constructed and located exactly as shown on the plats and plans submitted to this Board;
6. That, the proposed restaurant shall comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
7. That, the Zoning Certificate and Building Permit, if required, for the proposed restaurant shall be obtained within sixty (90) days and all work be completed within one (1) year from the date of adoption of this Resolution;
8. That, the proposed restaurant shall not be relocated or enlarged without the approval of this Board;
9. That, the proposed restaurant shall be maintained in a satisfactory condition at all times;

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 11th day of July 2016.

Ms. Harlow – 'aye', Mr. Havill – 'aye', Mr. Misrach – 'aye', Mr. Ruehlmann – 'aye',
Mr. Wolfe – 'aye'

APPROVED: JULY 11, 2016

Luanne C. Felter
Zoning Secretary

D'Arcy Havill, Board Chairperson