

RESOLUTION
GRANTING
APPEAL NO. 2017-11

WHEREAS, Bayer Becker Inc., 6900 Tylersville Road, Suite A, Mason, OH 45040, appellant, on July 3, 2017, filed Appeal No. 2017-11 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Sections 104.1, 328.2-7 and 344.3 of said Resolution as applied to the property at 8969 Fields Ertel Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on July 3, 2017, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of a new McDonalds restaurant with parking and landscaping at the premises; and

WHEREAS, said Zoning Inspector, on July 3, 2017, acting upon said application and the plats and plans submitted, refused to issue said Certificate, the reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, a public hearing was scheduled for said appeal on August 7, 2017, 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 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 328.2-7 provides, in relevant part, that in any "E" District, a streetscape buffer of ten (10) feet shall be required. Such buffer shall be a minimum of one and one-half (1.5) canopy trees and twenty (20) shrubs per one hundred (100) linear feet of boundary buffer required; and

WHEREAS, Section 344.3 provides, in relevant part, that any fence or wall required under this section shall have a height no greater than seven (7) feet and not less than five (5) feet; and

WHEREAS, according to testimony offered at the public hearing, the applicant is proposing to demolish the existing McDonald's restaurant building and construct a new four thousand five hundred ninety (4,590) square foot restaurant building on the property with double drive thru lanes for rebranding purposes; and

WHEREAS, according to testimony offered at the public hearing, the property is located on the southeast corner of the intersection of Fields Ertel Road and Gregory Street. The development is accessed by two (2) existing driveways from Gregory Street and one (1) existing driveway from Fields Ertel Road; and

WHEREAS, according to further testimony offered at the public hearing, the parking lot would be reconfigured to include two (2) drive thru lanes and would include a total of fifty seven (57) parking spaces. A fifteen (15) foot variance is required to maintain the existing five (5) foot parking setback currently provided along Gregory Street due to a right-of-way acquisition for a road improvement project. The parking along Fields Ertel Road will be moved back to meet the required twenty (20) foot parking setback; and

WHEREAS, according to further testimony offered at the public hearing, a five (5) foot variance is required to the streetscape buffer area on Gregory Street due to the right-of-way acquisition for a road improvement project. The reduced setback would not negatively impact the growth of the proposed landscaping. Plantings have been proposed in islands within the parking area and along Governor's Way and Fields Ertel Road;

WHEREAS, according to further testimony offered at the public hearing, a one (1) foot variance is required for the dumpster screen height requirement to allow an eight (8) foot high dumpster enclosure attached to the rear of the proposed building. The enclosure would contain the same building materials and continue the line of the building. The trash handling area is proposed in the center of the site adjacent to the building; and

WHEREAS, according to further testimony offered at the public hearing, the existing freestanding pylon sign along Fields Ertel Road and the highway pylon sign on Gregory Street would remain; 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 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 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 104.1, 328.2-7 and 344.3 of the Zoning Resolution will result in practical difficulty to the appellant 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 104.1, 328.2-7 and 344.3 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, 328.2-7 and 344.3 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 parking area on Gregory Street shall not have a front yard depth of less than five (5) feet;
2. That, the streetscape buffer width on Gregory Street shall not have a buffer less than five (5) feet;
3. That, the dumpster screen attached to the proposed restaurant building shall not exceed a height greater than eight (8) feet;
4. That, the proposed restaurant building be constructed exactly as shown on the plats and plans submitted to this Board;
5. That, the proposed restaurant building not be relocated or enlarged without the approval of this Board;
6. That, the proposed restaurant building be maintained in a satisfactory condition at all times;
7. That, the proposed restaurant building comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
8. That, the Zoning Certificate and Building permit (if required) for the proposed restaurant building be obtained within six months (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 7th day of AUGUST 2017.

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Misrach – ‘aye’, Mr. Ruehlmann – ‘aye’ and Mr. Wolfe – ‘aye’.

APPROVED: AUGUST 7, 2017

Luanne C. Felter
Zoning Secretary

Donald Misrach, Board Chairperson