

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JEFFERY SIMMONS, ET AL.,	:	JUDGES:
	:	
Appellees	:	Hon. W. Scott Gwin, P.J.
	:	Hon. John W. Wise, J.
-vs-	:	Hon. Craig R. Baldwin, J.
	:	
DENNIS D. FULK, P.S. PLAIN TOWNSHIP	:	Case No. 2014CA00064
ZONING INSPECTOR, ET AL.,	:	
	:	
Appellants	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of Common Pleas, Case No. 2013CV02545

JUDGMENT: Dismissed

DATE OF JUDGMENT: November 3, 2014

APPEARANCES:

For Appellees

JOHN L. JUERGENSON
John L. Juergensen Co., LPA
Washington Square Office Park
6545 Market Avenue North
North Canton, OH 44721

For Appellants

Dennis D. Fulk, P.S. Plain Township
Zoning Inspector and the Plain
Township Board of Zoning Appeals

JAMES F. MATHEWS
Baker, Dublikar, Beck, Wiley & Mathews
400 South Main Street
North Canton, OH 44720

For Easton Village Company, LLC

JOHN J. RAMBACHER
Winkhart, Rambacher & Griffin
825 South Main Street
North Canton, OH 44720

Baldwin, J.

{¶1} Appellants Plain Township Board of Zoning Appeals (hereinafter “BZA”), Dennis D. Fulk, P.S. Plain Township Zoning Inspector and Easton Village Company, LLC appeal a judgment of the Stark County Common Pleas Court granting a stay of its decision pending appeal to appellees Jeffrey Simmons, Nancy Locke, Dean Mohler, Cynthia Mohler, Robert Ernst, Trustee, and Sharon Ernst, Trustee.

STATEMENT OF FACTS AND CASE

{¶2} On August 5, 2013, James J. Ptacek of Larsen Architects requested two conditional use permits with respect to property located at 6300-6306, Market Avenue North, in Plain Township. The requests were submitted to the BZA. Larsen sought to build a McDonald’s restaurant with an accompanying drive-thru on property owned by appellant Easton, located on the corner of Market Avenue North and Grove Street, near the intersection of Maple Street/Easton Avenue and Market Avenue North, and across the street from Walsh College. The lot is zoned B-1 Neighborhood Business District, and it abuts an R-1 Single Family Residential District. Appellees are residential home owners on Grove Street.

{¶3} The property in question has a previously existing small strip plaza which includes several business: Samantha’s Restaurant, Italo’s Pizza, Ferrell Pools & Spas, Edward Jones, and the Bead Boutique. The strip plaza has been located on the property for over 30 years. An abandoned bank building which had a drive-thru is also located on the property. The bank building and part of the strip mall would be demolished to construct the McDonald’s. Construction of the McDonald’s requires the

granting of a conditional use permit for the property to be designated as a planned commercial complex, as well as a conditional use permit for operation of a drive-thru.

{¶4} The BZA held a hearing on September 4, 2013. Following the hearing, the conditional use permits were approved. Appellees filed an appeal to the Stark County Common Pleas Court. The court found that the decision of the BZA was supported by the testimony and by BZA's interpretation of the Plain Township Zoning Resolution. Appellees then filed an appeal of that decision to this Court (Stark App. No. 2014CA00041).

{¶5} On April 3, 2014, the trial court stayed its judgment and the September 4, 2014, decision of the BZA pending appeal to this Court. Appellants filed an appeal from the judgment of stay, assigning a single error:

{¶6} "THE TRIAL COURT ERRED WHEN IT ENTERED A STAY INASMUCH AS THE ZONING PERMITS WHICH WERE THE SUBJECT OF THE STAY HAD ALREADY BEEN ISSUED AND WERE OUTSTANDING."

{¶7} The trial court issued the stay that is the subject of the instant appeal pending appeal of the underlying judgment to this Court. This appeal is rendered moot by our decision on the merits of the underlying appeal in Stark App. No. 2014CA00041. The instant appeal is accordingly dismissed. Costs are assessed to appellants.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.