

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
NOVEMBER 19, 2008**

Chair Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:30 p.m. Permanent Board members Morel, Dufala, Karson and Becker were present. Mr. William west was absent. Alternate Board member John Bostwick sat in for a full Board. Alternate Board member Steve Euse was also present. Chair Morel introduced the Board members and explained proceedings for the public hearing.

Clear Channel Outdoor-Billboard Sign variance request- 3105 Medina Rd.

Secretary Ferencz stated that she did not bring the file this evening as it was placed in another location due to the move she and her family had to make as a result of the fire that took place at her residence. However she did state for the record that the legal ad was placed in the Gazette newspaper and the applicant, property owner and contiguous property owners were notified.

Secretary Ferencz read the application. The applicant is Clear Channel Outdoor-Scott Rowland and David Yale. Interest in property-lease for advertising structure. Owner of the property is 3105 Medina LLC-Mr. Glenn Cooper. The street address requiring the variance: 3105 Medina Rd. Medina, Ohio 44256. Present Zoning: General Business. The variance requested: Requesting a 280-ft. variance from the Goddard School to the proposed billboard site. Current distance from the Goddard school to site is 720 ft. Section 605 G. of the Zoning Resolution regulates the distance by 1,000 ft.

The reasons for the variance request.

- A. Strict application of the provision of the Resolution causes practical difficulties and results in unnecessary hardship by denying constitutional and property rights to applicant.
- B. No exceptional circumstances or conditions apply to this property.

Also attached was a letter dated June 4, 2008 from Mr. Glenn Cooper, managing member of 3105 Medina LLC (property owner) giving authorization to Clear Channel Outdoor to represent the variance request. (See file).

The applicant, Mr. David Yale from Clear Channel Outdoor was sworn in. Mr. Yale passed out a packet of information on the site and variance request of an outdoor advertising display (billboard). The property would be placed on the site occupied by Denny's Restaurant located on the north side of Rt. 18. The billboard would read east and west to Rt. 18. The proposal is for the east face of the billboard which westbound traffic would see to be digital. The other side would be an ordinary billboard with a vinyl message placed on it. Mr. Yale stated that the property owner wants this billboard to be built as well as Clear Channel Outdoor. One of the most important issues is the property owner's 5th amendment property rights to erect this billboard on his land.

First, Mr. Yale testified that in the State regulations regarding billboards, the State requires the distance of this type of outdoor advertising to be located 500 ft. from a school. Mr. Bostwick asked what regulations that referenced. Mr. Yale responded since the State regulations call for a spacing of a billboard to be 500 ft. from a school and the Township regulation calls for a 1,000 ft. we feel the Township has gone beyond what State law requires. Mr. Yale stated looking at the variance request, we are well beyond the 500-ft. with the proposed location of the sign to be 722 ft. from the Goddard School.

Second, the Goddard School is located in another Township. Mr. Yale stated we feel if Medina Township regulated the 1000 ft. from a school, and the school is not even located in Medina Township, it would reach beyond the Township's authority.

Third, the distance requirement in the Zoning Resolution and State regulations calls for a 1,000 ft. distance from a public school and they did not feel the Goddard School was a school but a daycare facility, which then is a commercial business located in a commercial district.

Fourth, if you look at the physical location of the school, there is a McDonalds between the proposed billboard site and the Goddard School. Mr. Yale stated if you actually went to the school site you would not even see the billboard as McDonalds blocks the visibility plus it is across a wide highway i.e. Rt. 18.

Mr. Yale stated that regarding the technology that they would utilize for the billboard it would be digital in nature. The Zoning Resolution states that no sign shall move or flash. Mr. Yale continued that the message on a digital billboard does not move. It is a 100% static message that the State regulations require. The billboard changes copy every 8 seconds. The old method of changing a billboard was to remove the vinyl message and put up a new vinyl message. With the advancements of technology digital is just another way to change the copy. This is a lot more efficient in nature. The technology is moving to digital. We have built 10 digitals in Cleveland and 6 in Akron. We found that people like them. We have had city planners who do not like outdoor advertising displays like this product and see it as the future technology for such signs. They feel it gives the city life and is cutting edge technology. Advertisers who never would have considered using a standard billboard like this technology as well.

Again Mr. Yale stated the message is static. The copy will change every 8 seconds which is faster than the human eye can comprehend.

Chair Morel read the State Regulation which read, "No advertising device outside a municipal corporation shall be located within 500 ft. of any visible or publically owned, controlled or maintained safety rest area, parkland, garden, forest preserve, picnic ground, playground, swimming beach, elementary or secondary school playground or scenic area that is visible from or whose property boundaries front the main traveled way."

Chair Morel stated the Medina Township Zoning Resolution Section 605 G. reads, “such a sign is permitted on industrial, commercial and accepted agricultural zoned land and shall require a zoning certificate...No such sign shall be located closer than 1,000 ft. to a dwelling. Nor shall any such sign be permitted located closer than 1,000 ft. to a public park, public or parochial school, library, church, hospital or similar institution...”

Chair Morel asked, what is a dwelling? Mrs. Karson stated she thought it would be classified as where someone lives. Mr. Becker stated he believed it would define as where someone spends time. A school is a dwelling and kids spend all day in school. Mr. Becker stated he also believed the Goddard School was a certified institution.

Chair Morel stated regarding the Township regulation versus the State, the Township has the right to make the code more restrictive than the State an example is the Township’s code on building next to an oil head. The Township’s regulation is 300 ft. and the State’s is 100 ft. It is pretty common for the Township to have regulations stricter than general State law.

Mr. Dufala brought up the question of having another structure on the same parcel. If you allow one more than why not five? We already have a building (Denny’s Restaurant) on the parcel and now they want to add another structure consisting of a billboard. Where does one draw the line as to if this is allowed and if so how many would be permitted? Chair Morel stated the Board needed to be compelled this is a minor change i.e. not substantial, that it would not change the essential character of the neighborhood, and that it would not interfere with the delivery of governmental services which ultimately are the Duncan Factors. One of the main factors is the property is currently being used with a business on it. We have to determine that this is a hardship or practical difficulties for the applicant to be able to erect a billboard on the property.

Mr. Yale stated that in the last few weeks an Appellate Court Decision has come out of Portage County dealing with billboards. What the decision basically said that Franklin Township which is located near the City of Kent had to permit a billboard in a commercial zone. There were no factors at all related as to whether there was another business already operating in the commercial zone. The Court of Common Pleas sided with the Township but the Appellate Court reversed that decision. Ohio law permits billboards in commercial and industrial zones so the result was that Franklin Township was now required to issue a billboard permit in a commercial zone. This also gets into the 5th amendment property rights of the land owner and what is permitted by State law.

Mr. Bostwick asked what the reference was to the State Law that permits a digital sign and for the message to be static and change every 8 seconds. Mr. Yale stated it was Chapter 5501 Administrative Code where it talks about multiple message advertising devices.

Mr. Dufala stated he felt that changing a message every 8 seconds was flashing. He added that if the message was changed once a month or once a year like the vinyl billboard I would say no but with a digital billboard the message changing every 8 seconds and with a different arrangement of colors and that is flashing.

Mrs. Strogin, Zoning Commission Chair was sworn in. She stated she noticed the packet Mr. Yale passed out this evening did not have the letter from the Goddard School. She read the letter, which in sum stated the Goddard School is a State licensed school. (See file). She added that this issue has been discussed with the County Pros. Office and they concurred the Goddard School is a school.

Regarding the issue of regulations, State Regulations are minimum requirements and the Township has the authority to expand on further requirements such as the distance a billboard could be from a school. She continued that the lawsuit Mr. Yale referred to, Franklin Township banned all billboards in their commercial districts. Medina Township does not ban billboards in the commercial district as long as they meet the guidelines for such a sign. Therefore that lawsuit was irrelevant.

Another issue was that the Goddard School was located in another Township. Mrs. Strogin stated that there was no reference in the code that the school had to be located in the Township but just that such a sign should not be located closer than 1,000 ft. from a school. If you just restrict it to the Township boundaries you could have a school on this side and a sign right next to it which would not be logical. Therefore I don't feel that argument is valid.

Mrs. Strogin said that Mr. Yale mentioned that there was a billboard sign approved at this location in 2003 or 2004. That fact is true. It was for a conventional billboard and the permit was good for a year. The billboard was never constructed so the permit expired but the main point is that when the billboard was approved there was no school at the site. She concluded that Mr. Yale used the same arguments to have the Township Trustees overturn the recommendation of the Zoning Commission and the Trustees unanimously upheld the Zoning Commission decision. That is why the applicant is before the BZA this evening.

Mr. Bostwick asked Mrs. Strogin if she had a copy of the opinion of the Pros. Office. Mrs. Strogin stated no she did not, Zoning Inspector Ridgely spoke with Mr. Thorne from the Pros. Office.

ZI Ridgely was sworn in. She stated that she did speak with Mr. Thorne and they went back and forth over the issue. The Goddard School does teach kindergarten, which is elementary. The teachers are certified, licensed, degreed teachers.

Chair Morel stated the facts are the Zoning Resolution Section 605 G. which requires such a sign to be located at least 1,000 ft. from a school or similar institution and Mr. Yale is requesting a variance from the distance.

Mr. Bostwick stated the first issue is if the Goddard School is a school by the Township's code and the State regulations. Second, the question is if the Township can have stricter regulations and which takes precedence. Also if the Township code takes precedence does the State code fill in the blanks of things the Township code does not cover? He added he felt the Township needed a written opinion by the Prosecutor's Office.

Chair Morel stated the Township code states, "... Nor shall any such sign be permitted located closer than 1,000 ft. to a public park, public or parochial school, library, church, hospital or similar institution..." He added he thought everyone would agree the Goddard School would at least qualify as a "similar institution." Regarding the State code they mention elementary or secondary school playground with no mention of public or private. Chair Morel stated the Township's zoning is more restrictive than State law. We wouldn't need a zoning book if it wasn't. If there was no zoning, State law would take precedent as there were no governing factors. There are places like that but not our Township. The question the Board will have to answer is if the Goddard School is school or similar institution and is a 280-ft. variance appropriate. The Board members all agreed the Goddard School could at least be quantified as a similar institution.

ZI Ridgely stated that since the Township cannot control the content of a sign, she felt the code was written to protect school children from viewing the billboard which in turn could put any message or image on it because content cannot be controlled.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or can there be a beneficial use without the variance request? The Board stated yes there already is a beneficial use of the property with the location and operation of Denny's Restaurant on the site.
2. Is the variance substantial? The Board stated yes it is 25%.
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? Chair Morel stated it is a commercial district and there are tall signs in this district. They did not believe the essential character of the area would be significantly altered. The Board agreed.
4. Will the granting of the variance adversely affect the delivery of governmental services? The Board stated no.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated no, not for this particular use.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? That would be decided when each Board member votes.

Mr. Bostwick made a motion to approve a 280 ft. area variance (distance) from the 1,000 ft. requirement for a proposed billboard sign by Clear Channel Outdoor to be located at 3105 Medina Rd. per Section 605 G of the Medina Township Zoning Resolution. This sign will be located 720 ft. from a public school or similar institution. It was seconded by Mr. Dufala.

ROLL CALL-Bostwick-no, Dufala-no, Karson-no, Becker-no, Morel-no.

MISC.

Secretary Ferencz passed out a correction update to the Employee's Handbook to the Board members as well as information on zoning topics that were discussed at the OPC Conference held on November 14, 2008 in Westlake, Ohio.

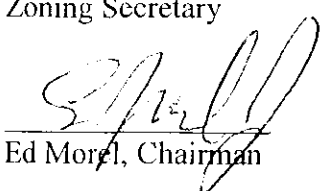
MINUTES

The approval of the BZA's September 17, 2008 meeting minutes had to be tabled as there was not a quorum of Board members present this evening that were at the September hearing.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 8:30 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


Ed Morel, Chairman