

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
OCTOBER 21, 2009**

Chair Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:38 p.m. Board members West, Morel and Becker were present. Permanent Board members Karson and DeMichael were absent. Alternate members Steve Euse and Linda De Hoff sat in for a full Board. Chair Morel introduced the Board members and explained the public hearing procedure to those present.

Variance Requests

Wal-Mart variance request-4141 Pearl Rd.

Chair Morel reviewed the application. The applicant was Mr. Russell Henestofel from EMH & T Inc. representing Wal-Mart. The property requiring the variance-4141 Pearl Rd. Present Zoning-BI. Previous Requests-Yes. Variation Requested: Section 505.D. Light Pole Height-. In 1992 a variance was granted to allow a light pole height of 40'. We are requesting a variance for the maximum light pole height of 42' to allow use of the installed light poles on site.

The reason for the variance request: Due to an error that occurred during ordering of material 39' light poles were delivered and installed on site. All site lighting currently onsite consists of a 39' pole on a 3' base. We request a variance to the provisions of Section 505D. to allow use of the installed 42' high light pole and base. An exceptional circumstance would apply to this property if a pole was struck or damaged since a replacement light pole could take about 12 weeks to order the special size and be delivered onsite which would be a safety issue in the area of the missing light pole. The replacement time of damaged light poles onsite would be greatly reduced if the standard in stock Wal-Mart light poles (42' high) are used. The granting of the variance will not be detrimental to the public interest or to property or improvement. The installed lights are only 2' higher than the previously approved variance for 40' lights and it is our understanding that the adjacent property has existing site lighting greater than 41' in height.

The applicant, Mr. Russell Henestofel was sworn in. He apologized for having to come back before this Board to request another variance. He stated that the contractor was just responsible for installing the light poles. Wal-Mart was responsible for the order and the order was placed at Wal-Mart's standard light pole height of 42 ft.

Mr. Henestofel stated the Wal-Mart site was built in 1992. There use to be 20 light poles on the site and they were removed due to their age. A lot of those lights were 4 headed lights and they have been replaced with 2 headed lights. Previously before the improvements were made to the site there were floodlights that shined on the building. Those lights have been removed as well. Once Wal-Mart remodels a site it is with the

intent to make it last 15-20 yrs. To ensure in five years contractors would not have to go back and replace various light poles on the site.

Mr. Henestofel continued the light pole grid has been changed a bit as well. The grid is now every two bases at the front of the building (that was how the floodlights were able to be removed) and every three bases in the parking lot area. One light pole has been added making the total 21 light poles with the additional parking spaces that were added on the site. Mr. West asked what was the height of the building? Mr. Henestofel stated he believed the peak was just less than 35 ft.

Mrs. Strogin, Chair of the Zoning Commission was sworn in. She stated the height of the building was 35 ft. at the threshold but the peak could go up an additional 15 ft. because that was not occupied.

Mr. West asked where the light poles would be located? Mr. Henestofel stated adjacent to the Kohl's Dept. store property. Mr. West asked if Kohl's had received a variance for the height of their light poles? Mrs. Strogin stated on 1/4/95, Kohl's was granted a variance for 40' tall light poles.

Mr. West asked if the original order for the light poles was for 37 ft.? Mr. Henestofel stated that was correct and that was called out in the construction documents he had. The contractor just installs the light poles. Wal-Mart was the one that ordered the poles.

Chair Morel asked what was the zoning code for the height of light poles? It was stated 20 ft. Mr. Henestofel stated that pole height would be difficult to comply with regarding a complex as big as Wal-Mart. Chair Morel continued that the Wal-Mart property has been granted numerous variances. Therefore the variance request this evening for the height of the light poles was 50-100% depending on how one looked at it. This variance request is substantial. Chair Morel continued that obviously a mistake was made and he appreciated that Wal-Mart has come before the Township trying to rectify the situation but again it was a substantial variance request.

Mr. Becker asked if there were any other businesses/shopping complexes that had light poles taller than the 20-ft. requirement? Is the 20-ft. realistic today? Mrs. Strogin stated she did not think there have been that many light poles in the Township over the 20 ft. requirement but the Wal-Mart complex is large and there are exceptions that sometime need to be considered therefore the reason for the Board of Zoning Appeals.

Mr. Henestofel stated he built Easton Town Center. Those light poles were 20 ft. and they are every 60-ft. on center. The result is the higher the poles the less poles are needed. Mr. West asked about the light pollution as it pertained to Jefferson St.? Mr. Henestofel stated there were light shields along Jefferson.

Mr. Becker asked when Wal-Mart went to 39-ft. tall light poles? Mr. Henestofel stated probably about 6 yrs. ago. Wal-Mart uses three different vendors for the light poles dependent on the size of store that is being constructed or remodeled. If a standard pole size is used it could be replaced more timely and efficiently. Chair Morel stated that Wal-Mart had to have more than one light pole size because not every community would allow that light pole height. Mr. Henestofel stated that was correct and what was to be installed on this Wal-Mart site were 37 ft. light poles.

Chair Morel asked if there was anything in the minutes when the original variance request was granted that stated the logic the Board considered in granting the variance. Mrs. Strogan stated the BZA minutes from 1992 were not that detailed. Mr. Becker interjected that what he could recall is that the result of the higher light poles was that there would be fewer poles on the site. Chair Morel interjected that the grid is laid out for 40-ft. tall light poles. Mr. Henestofel stated that was correct.

Mr. Euse stated that as light pole technology changes the light poles are becoming higher. There will be fewer and fewer of the poles but they will cast more light. This may be something that the Township would have to consider in the future regarding the zoning regulations. Mr. Henestofel agreed and added that as LED lighting becomes more in use they have an issue with light spread. The higher those light poles are the better the function and less energy use. Mr. Becker asked what type of lighting the Wal-Mart poles are utilizing? Mr. Henestofel stated metal halo lighting.

Ms. DeHoff stated she agreed with Mr. Euse in that the Township might have to take a look at the zoning regulations regarding lighting in that the 20-ft. pole lighting might not prove to be adequate. Mrs. Strogan stated the 20 ft. light pole height for an average business is more than adequate. She added when you get a complex as large as Wal-Mart, K-Mart or Kohl's that 20 ft. may not be adequate but you don't want to write the zoning code for those few large projects. In those instances that is the purpose of the Board of Zoning Appeals to look at those unique cases and make decisions on a case by case basis.

Chair Morel stated the light grid was set up for 40 ft. and the BZA granted a variance previously for the light poles to be 40 ft. in height. That was a 100% variance. A mistake was made in the ordering and erection of the light poles by Wal-Mart. The question is do we want to correct the mistake or do we want to have the mistake corrected? Chair Morel stated there were 21 light poles and if it took \$500 a piece to replace them it would cost \$11,000 to do so. In the scope of the Wal-Mart project that cost was not substantial.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? Chair Morel stated 2 ft. on 40 ft. was not but it was actually 40 ft. on 20 ft. Therefore the variance request was very substantial.

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?
The Board stated no.
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 yes.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution and would substantial justice be done in granting the variance? Mr. West stated it was the property owner that brought the error to the Township's attention and not an error discovered by the Township in the measurement of the lightpoles. He added though he was leery of the statement it was an error in the ordering, but after hearing the testimony given this evening he now believed that to be true. Given those facts he was leaning toward the granting of the variance request. Chair Morel agreed with Mr. West's statements but again stated to rectify the situation was not a substantial cost in the overall cost of the Wal-Mart project. Chair Morel asked Mr. Henestofel for confirmation of the cost (labor) to replace the light poles with the 40' ft. light poles Wal-Mart was granted a variance for. Mr. Henestofel stated to do so would be an inconvenience to the customers. All the construction equipment was no longer on the site so it would have to be brought back in and areas roped off and the light poles replaced on a schedule. The labor cost of \$500 might not be realistic in having to mobilize different crews on different days.

Mr. Becker stated he agreed with Mr. West and felt Wal-Mart overall has done a good job remodeling this site to make it a superstore. He added he too was leaning toward granting the variance.

Mr. Euse stated fewer poles were a better look than having numerous shorter light poles on the site. The average person was not going to notice the 2-ft. difference in pole height. He added he appreciated Wal-Mart coming forward with this error instead of the Township having to investigate the issue. Therefore he too was inclined to grant the variance.

Mrs. DeHoff stated when she read the application that Wal-Mart was already granted a variance from the zoning code for 40 ft. light poles and were now coming back to add additional height to the poles she was hesitant. However, after hearing the evidence she too felt the 2 additional feet in height was not going to be noticeable but added she did not want to set precedent in granting this variance. Chair Morel stated each case before the BZA was heard on an individual basis and no precedent would be set. Mrs. DeHoff then asked about the significance of the variance and the apparent granting of a variance on a variance. Mr. West interjected that was the issue he had but then it had to be taken into account that this is a new variance and has to be considered as such.

Secretary Ferencz stated a variance could not be granted on variance. Therefore the first variance would have to be rescinded and a new variance granted if that was the way the Board was going to proceed. Mr. West stated that would then make the existing poles in violation of the zoning code. Mrs. Stogin interjected that if the first variance was rescinded and a new variance granted it could be effective as of today's date but the new variance then would be for 22 ft. for the light poles to be 42 ft. in height.

Mr. West made a motion to rescind the 3/25/92 variance granted to Wal-Mart for a 20-ft. height variance for a maximum light pole height of 40 ft. and to grant a 22 ft. height variance for the maximum height of the light poles to be 42 ft. in height for Wal-Mart located at 4141 Pearl Rd. effective 10/21/09. It was seconded by Mr. Becker.

ROLL CALL-West, Becker-yes, DeHoff-yes, Euse-yes, Morel-yes.

The variance request has been granted.

yes

Meeting Minute Approval

The minutes to the Board's September 16, 2009 meeting could not be approved as there was not a quorum of those members present this evening.

MISC.

Secretary Ferencz gave out information on the 2009 APA Cleveland Planning and Zoning Workshop to be held on November 13, 2009 in Westlake.

Chair Morel asked about the zoning enforcement of the inflatables on Mr. Doraty's building for the last year. ZI Ridgely stated she was told to let the issue ride. The Board voiced their concern that if violations were sent to the Prosecutor's Office then the violation process should move forward. ZI Ridgely stated she was still taking pictures of the inflatables was told not to send anymore violations to Mr. Doraty and or the Prosecutor's Office. Mr. Becker asked who told ZI Ridgely to do that? ZI Ridgely stated the Trustees. Mr. Becker interjected now the Trustees have decided this violation was o.k. to let continue? ZI Ridgely stated the Trustees were to be working on the signage language and updating it and she was told to let the issue go per former Township Trustee Rita Holt.

Mr. West asked if that opinion was still applicable with the current Board of Trustees? What about the violations that were sitting in the Pros. Office currently? Trustee Stopa responded, they are still there. Mr. West asked if those violations were being ignored by the Pros. Office? ZI Ridgely stated she did not know. Trustee Stopa stated he was appointed Trustee in August, he called the Pros. Office about the inflatables and was told that the violations were still on the Pros. Office desk.

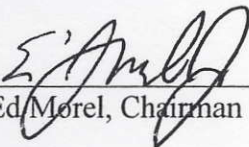
Chair Morel then asked about the Plumbing Business on Pearl Rd. across from Bunker Hill. The BZA granted a variance for them to build a new building but the old building had to be torn down and asked if that had been completed? ZI Ridgely stated that new

building has not been completed yet. The old building was required to be removed 6 months after the completion of the new building. She added she believed that building was still going through fire inspections, etc. Chair Morel asked if the owner was occupying the building? He added he could pretty much bet there were items in the building and the building then would not be finished anytime soon. Chair Morel continued that part of the approval was that the owner was also supposed to clean up the property as well. If this is going to be ignored...ZI Ridgely stated she would follow up and report back to the Board accordingly.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 8:15 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


Ed Morel, Chairman