

**MEDINA TOWNSHIP
ZONING BOARD OF APPEALS
PUBLIC HEARING
FEBRUARY 19, 2020**

Vice Chairman (VC) Blakemore called the public hearing of the Medina Township Board of Zoning Board of Appeals to order at 7:00 p.m. Permanent Board members Blakemore, Watts, Gray and were in attendance. Alternate member Chris Greene was also present. Permanent board members West and Morel were absent.

Secretary Ferencz stated for the record that there was not a full Board present this evening; there are only 4 members present. Therefore, a tie vote is a no vote. She then asked each applicant present if they wanted to move forward this evening or wait for their variance request to be heard when there was a full 5-member board sitting. Both applicants stated they wanted to move forward with their variance requests this evening.

Hurst variance request-4161 Mallard Bay

Secretary Ferencz read the application into the record. The applicant is Kevin Hurst. Address of the property requiring the variance - 4161 Mallard Bay. Present Zoning-UR-PUD. Previous variance request(s) - No.

Variance being requested & Explanation of Requested Variances:

Section 403.3.D-Minimum 50 Front Setback; at 27.37 ft. Section 403.3E; Minimum 15 ft. Side yard setback; at 10 ft. Requesting a 22.63 ft. variance for front yard setback and 5 ft. sideline. Requesting a 5 ft. variance.

One half of back yard has significant sloping due to the wetlands. The slope and wetness of the wetlands conservation side of the yard is not feasible for a shed. The remaining dryer and flat/level section of the yard is left and allowing us the 5' variance will leave us with more usable yard.

Reasons and Explanation for the variance requests:

This lot has an unusual shape and large portion of property size is located in the pond. Without a variance we didn't feel a home can be built on the property that meets the applicable requirements. We are requesting a front and left side variance to build a ranch style home for my family. My family has made multiple design concessions to aid in the amount of variance requirements.

The applicant, Mr. Kevin Hurst was sworn in. He stated the reason for his variance request is that he wants to remain in the same school district. Currently he resides on Pine Lake Dr. Mr. Hurst stated his family would like to downsize their home but still maintain privacy and remain in the Township. Mr. Hurst continued that he bought

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the property in question in good faith that it could be built on and that is why he is before the Board to seek relief from the code this evening.

VC Blakemore asked about the aerial photo submitted as part of the application. Mr. Hurst responded that is the street that he lives on and there was a similar house built Lehotan property (4490 Pine Lake Dr.) with regards to the curvature of the road and being on the water.

Mr. Greene stated on the application it states previous variance request none. Mr. Hurst stated that was correct. He personally did not request a previous variance; but there was a previous variance request made by someone else for this property.

VC Blakemore asked if there was a picture of the lot in question as part of the application. Mr. Hurst stated yes and showed VC Blakemore a topo map of the property with the house he was proposing to build imposed on top of the drawing.

Mr. Greene asked why Mr. Hurst submitted the minutes from the Lehotan variance request. Mr. Hurst stated the reason he submitted it was because the Board was different then and he wanted to make this board aware of what was approved for the Lehotan variance. Mr. Hurst stated he was comparing his lot to the Lehotan property, which were to him very similar and would ask for the same relief the Board gave to that request.

VC Blakemore asked if the side yard variance request was because if the house were moved 5 ft. over then you would not have to request more in the front? Mr. Hurst answered that was correct.

Attorney for the applicant, Mr. Bill Gerstenslager addressed the Board. He stated that Schumacher Homes came up with the drawing to balance the variance requests as best as possible and center the house on what available land there was on the lot. The side yard variance is for 10 ft. to be 5 ft. away from the side property line; that way you get the 27 ft. from the road.

Mr. Walt Myers from Schumacher homes was sworn in. He stated the drawing that were rendered by them was for the home Mr. Hurst wants to build on that property was designed several times to minimize the impact of the variances requested. One of the difficulties is that the rear setback is from the existing lake. We were trying to balance the size of the house...VC Chair Blakemore asked about the part on the drawing were it appears the house jets out...Mr. Myers stated to make it flush would make that area a very small bedroom.

Mr. Hurst stated the 30 ft. setback from the lake was mandatory.

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Mr. Greene asked about the statement on the application that reads, "Without a variance we didn't feel a home can be built on the property..." Does that mean a single-family home? Mr. Myers stated he did not believe anything could be built on the lot without variances because of the footprint of the lot.

VC Blakemore asked the square footage of the proposed home? Mr. Hurt responded 1900 sq. ft.

Mr. Greene stated in the Lehotan variance they went to the HOA first with a letter from them saying they were in agreement with the variance requests. Mr. Gerstenslager interjected there is no HOA in Whispering Woods, which is where Mr. Hurst wants to build. Mr. Greene then asked if there were any letters from the residents in Whispering Woods submitted in support of this variance request. Mr. Gerstenslager said no there was not.

Mr. Greene asked if Mr. Hurst went to the developer with his plan. Mr. Hurst stated he bought the property from the developer who retired. Mr. Hurst stated he gave a low number for the property but the realtor said the developer was 85 yrs. old liquidating assets and therefore accepted the offer.

Ms. Gray asked about the 10 ft. easement. Mr. Myers stated that's what they understand is recorded on that lot.

Mr. Bob Gerbarich (4235 Mallard Bay) was sworn in. He stated when Deer Lake Subdivision was built behind him the neighbors sold a house they were told it was worth \$40,000 less because of phase 3 in Deer Lake. We just got a \$66,000 increase from the County Auditor on the value of our home. They won't give you any consideration even though it is worth less. I've got to believe that the house next door to the lot in question would be worth considerably less if you allow Mr. Hurst to build his house. Even though I feel for Mr. Hurst, anyone who looked at that lot had to wonder if the lot was even big enough to build a house on.

Ms. Ann Adkins (4171 Mallard Bay) was sworn in. She stated her property was the one that would be the most impacted if the variance were granted. I am here today to respectfully ask the Board to decline the variance request for the following reasons:

1. When we purchased our home 14 yrs. ago, it included the deed restrictions that we had to follow as a homeowner in Whispering Woods. We later understood that the homes on Mallard Bay had more restrictions than the other phases and that in order to maintain consistency of our real estate we had to follow the rules, including the property restrictions that are being requested here today.
2. The deed restrictions gave us security that there would be consistency of home style, square footage, land approach etc. The deed restrictions supported our decision to invest in this property and purchase the home.

3. The variance requests impact my property. While the 5 ft. side yard variance might not seem like a big deal to others, the variance limits the proximity of the home to my property and takes away a buffer between the homes.
4. The 22.63 feet variance request from the frontage is a big deal. All of the homes in Whispering Woods, regardless of phase, have met the frontage variance request. No exceptions have been made to allow for consistency throughout the entire neighborhood. I don't see how an exception can be made to one of the remaining properties in the development when everyone else has abided by the restrictions.
5. If a frontage variance would be granted, it would negatively impact the aesthetics of our street. The home would jut out in front of all the other properties and it would be the first home you would see as you round the lake, blocking the view. It could also impact my investment and assets by bringing home values down.

For these reasons, I respectfully request that the Medina Township Zoning Board decline the variance requests brought forth today.

Thank you for notifying me of this meeting and having the opportunity to share my point of view.

Joe Kovarik (4178 Mallard Bay) was sworn in. He stated he lived across the street from the lot in question. Mr. Kovarik stated that he agreed with Ms. Adkins statements. Before he built his house he read the deed restrictions and met with the builder, Mr. Hudak before he proceeded with the purchase of the lot and the construction of the home. Mr. Kovarik produced print outs from Zillow showing the layout of the subdivision as well as the estimated cost of each home. He added everyone had side load garages and didn't see how this house could meet that requirement. Mr. Kovarik said whenever he saw someone looking at that lot he told them to do their diligence to see if it could even be built on. That is why this lot has never sold.

Paul Karla (4160 Mallard Bay) was sworn in. He stated he was Joe Kovarik neighbor. He said this was not the first time he has been to a public hearing regarding variance requests on this property. Prior to this request, there was a gentleman who wanted to buy the property and tried to get variances granted before he agreed to buy the property. The variances were not granted and the gentleman did not purchase the property. Mr. Hurst has already purchased the property. Mr. Karla stated he has lived here for 20+ years and abided by all the deed restrictions. The deed restrictions require a single story home to be a minimum of 2,000 sq. ft. One also had to have a 2½ car side load garage. All of us here this evening have no idea what Mr. Hurst is proposing to build. The setback from the street is ridiculous in his opinion. It's way too close. It's the first thing you would see when you turned around the corner. Where would the driveway be placed? The deed restrictions state

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it has to be a side-loading garage. Probably for appeal purposes where you don't have to view what's inside everyone's garage as you do with a front loading garage.

Mr. Karla continued he was against the variance requests because the front corner of the house is too close to the street. The deed restrictions are going to be very problematic for Mr. Hurst even if the Board grants the variance as there are other requirements not related to zoning that Mr. Hurst would not be able to meet per the deed restrictions of the subdivision.

Kelly Riteco (4181 Mallard Bay) was sworn in. Ms. Riteco stated she had a copy of the declarations and covenants for the subdivision if the Board was interested in them. All of the residents from this subdivision here this evening had to adhere to them and so should Mr. Hurst if he wants to build in this subdivision.

Ed Popik (4230 Mallard Bay) was sworn in. He stated he knew the Township had regulations as to how far the house had to be setback from the street. With the corner of the proposed house so close to the street and there being no sidewalks is that not a safety concern. He added he just wanted to go on record with that comment. VC Blakemore stated people being on cell phones walking down the street was a safety concern as well.

Alliss Strogin Chair of the Zoning Commission was sworn in. She said comments were made about previous lawsuits. In 2006 there was a variance request for this particular lot and that request was only for a 10 ft. front yard setback. The Board concluded that the variance would be directly adverse to the spirit and intent of the zoning resolution by rewarding a developer for trying to maximize the number of lots and his profit by creating legal lots that are unbuildable rather than planning a development that is in harmony with the natural amenities, landscape, and topography of the total project. Allowing the developer to profit from poor planning would only encourage future developers to plan poorly, which the board finds to be specifically against the spirit and intent of the zoning resolution.

Ms. Strogin concluded that the end result is that the BZA turned it down, it went to court and the court upheld the decision of the BZA.

Mr. Gerstenslager attorney for the applicant addressed the Board. He stated there was testimony this evening that what Mr. Hurst was requesting was going to negatively impact their properties. While they are entitled to their opinion there has been no expert testimony given that is fact. As far as the previous lawsuit, that was a completely different house. Regarding the 2,000 sq. ft. single story requirement; my client came as close as they could to reach the 2,000 sq. ft. requirement. They tried to center it; shrink the size down, removed the proposed sunroom. They have made it as small as they can. Maybe the fact that the builder said it could be built on; that was what my client believed. We will leave the decision in the hands of the Board.

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Ms. Strogan stated the lot can be built on and meet the 2,000 sq. ft. minimum house requirements if a two-story house is built.

Mr. Hurst stated when going to two-story the requirements change. The square footage goes up drastically.

Greg Grandis (4221 Mallard Bay) was sworn in. He stated that the documents he had stated a single-story residence in this subdivision is 2,300 sq. ft. There is not a house in this subdivision that is under 2,500 sq. ft.

VC Blakemore stated that the declarations and covenants on the size of a house in this subdivision is not a zoning requirement therefore he appreciated that the declarations and covenants have been brought up but the Board does not consider them when looking at the variance request but only the regulations of the Township zoning regulations and the Duncan Factors.

Mr. Greene interjected that the UR District setback requirements per the Township Zoning Resolution are what the Board is to consider in granting or denying a variance request. The Township does not enforce deed restrictions. If the residents have a dispute with a property owner, then they would have to take that matter to court as members of the subdivision to enforce those regulations.

Hearing no further comments by the Board members, the Board considered the Duncan Factors:

1. Will the property yield a reasonable return or whether there is a beneficial use without the variance? The Board stated yes.
2. Is the variance substantial? The Board stated yes it is 50%.
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 yes.
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? The Board stated no.

Mr. Greene made a motion to deny the variance requests of Section and Section for the construction of a residence for the property located at 4161 Mallard Bay as presented.

It was seconded by Mr. Watts.

ROLL CALL-Greene-yes, Watts-yes, Gray-yes, Blakemore-yes.

The variance request was been denied.

Splash Car Wash variance request-4160 Pearl Rd.

Secretary Ferencz read the application into the record. The applicant is Mr. Anthony Cerny, Architectural Design Studios on behalf of the owner WMD Real Estate LLC. Present zoning is BI. Previous variance requests - none.

Reasons and Explanation for the variance requests:

The existing development is currently non-compliant with township zoning requirements. With the redevelopment of the of the lot by Splash, the lot will be brought into full compliance with township requirements with the exception of the side yard setback for the canopy, resulting in a substantial enhancement for the community. A significant improvement will be the establishment of a 20' landscape buffer strip along Pearl Road.

Splash Car Washes are very attractive structures composed of a fabricated steel frame, finished in blue with masonry walls, aluminum panel trim and a curved clear blue polycarbonate roof. The buildings are attractively landscaped and well maintained. We have included photos of their existing facilities in Fairlawn for reference.

In developing the proposed site plan, there are several limiting factors that we must consider. First is to address access to the site. The entrance drive is located, based upon ODOT requirements, to be directly across from the drive servicing Wal-Mart. This limits us to some degree on how we can lay out the site. The next issue is the length of the structure. Splash utilizes a wash system consisting of equipment that requires a tunnel length of 175', not including the overhangs at the entrance and exit of the tunnel. In developing traffic flow on this site or any site, the flow of traffic needs to be counter clockwise. The purpose of this is to limit cross traffic on site, facilitating safe flow of traffic from Pearl Road onto the site and circulation on site. The next issue is adequate stack space for vehicles to prevent the backing up of vehicles out into traffic.

In this site plan, we have organized the stack lanes across the west side of the property because this provides for the greatest amount of stack space. We have purposely held the drive back from the west property line to allow for extra landscaping to try and screen the junk being stored on the adjoining property. With the stack lanes extending the full width of the property, we achieve the greatest amount of vehicle stack.

Entrance and exit from the tunnel is critical to keep the flow of vehicles going smoothly. There are three cashier stations that control the flow of traffic into a single lane that enters the car wash.

The inside turn radius of 20' is the minimum we find to be acceptable to allow people to easily move through the turn. ODOT utilizes an inside turn radius of 25', so we are a little tighter than that. After the turn, there needs to be a section of straight drive to get the vehicles straight before they enter into the tunnels. In this case, we have about 22', 2' less than the 24' we typically consider to be a minimum. We have a similar issue on the exit. The vehicle needs to exit straight from the tunnel before turning. After exiting, the vehicle needs to turn left into the south lane without impacting incoming traffic. We feel the building does fit across the width, but we are at a minimum to provide for safe traffic flow into and out of the tunnel.

The canopy over the cashier stations provides weather protection (especially sun) for the customers using the cashier equipment. The canopy is very similar in character to a typical gas station canopy. It consists of tubular columns supporting a roof structure above. In the site plan we have developed, the canopy will be off of the south property line, requiring an 18' variance from the 25' setback requirement. The length of the canopy along the south property line is 18'.

In evaluating the merits of this request, we offer the following for the board to consider.

1. This structure is very similar to a gas station canopy, both in purpose and appearance. The township has granted many variances in the past allowing canopies in the front yard setback. This canopy is in the side yard, screened from view by both the Splash Car Wash and the development to the south.
2. The structure is open on the sides with only a roof and does not create a solid element within the setback. Note that the existing site has a large block structure within the side and rear setback that will be removed as part of this redevelopment.
3. The structure is only 18' long within the setback area. Under the township's zoning, a structure could be placed at 25' from this south property line and run a distance of over 200'. The canopy encroachment has far less of an impact than if a structure were placed at the setback and constructed the full allowable length.

1. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.

The need for the variance is specific to the owner's intended use for the property. The property can be developed without the variance, but the variance provides for better utilization of the property that benefits both the business and the community by providing for a greater amount of vehicle stack space.

2. Whether the variance is substantial.

We believe the requested relief is not substantial. While the building setback is 25' and the request is to allow for a setback of 7', which might be considered substantial, the 7' is only for a distance of 18' and it is with an open structure. This structure with a 7' setback is far less intrusive than a typical building would be at a 25' setback running the length of 200'. From this perspective, we do not believe the request represents a substantial variance. Additionally, this proposed redevelopment will result in the removal of another structure that does not conform with the setback.

3. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment".

Granting of the variances will not alter the essential character of the area and will not result in adjoining properties suffering substantial detriment. The proposed variances will not have a significant impact on the character especially since similar canopy structures in the area have received similar variances. From the public's perspective, the reduced setback will not be apparent.

4. Whether the variance would adversely affect the delivery of governmental services.

Granting of the variances will not adversely affect the delivery of government services. The granting of relief for these issues has no direct impact on the delivery of any public services to this site or the adjoining parcels.

5. Whether the property owner purchased the property with knowledge of the zoning restrictions.

The developer for the car wash has knowledge of the setback requirements and has conditioned the purchase of the property on township approval of the proposed plan. The developer may elect not to proceed with the purchase, should the variance not be granted.

6. Whether the problem can be solved by some manner other than the granting of a variance.

As noted in question 1 above, the positioning of the canopy is based upon how best to utilize the site and obtain the most vehicle stack space to service the car wash. Providing adequate stack space is important to the efficient operation of the car wash and to eliminate the potential for vehicles to be stacked out to Pearl Road. The tunnel wash systems are capable of serving 100 plus cars an hour, so experience has shown that the stack lanes can be quite long since the lines move fairly fast. It is important to have adequate stack space at the pay stations.

7. Whether the variance preserves the "spirit and intent" of the zoning requirements and whether "substantial justice" would be done by granting the variance.

Within the district, without consideration of older structures that violate setback, there are two other facilities with canopies that are placed within the setback. The canopy for the car wash is similar in character and purpose. The canopy is placed so as to effectively utilize the site, which is consistent with how the gas station canopies are placed. The granting of this variances does preserve the "Spirit and Intent" of the zoning code and "Substantial Justice" will be done in providing the owner with relief.

The applicant Tony Cerny from Architectural Design Studios was sworn in. He stated he was present this evening to represent his client who wants to build a car

wash. This client also has several other car washes he has built. This is a very tight site to put a car wash on because preferably the tunnel would run from east to west but because of the setback requirements the tunnel would run north and south. We were looking for the easiest way for traffic flow which always runs counter clock wise to avoid cross traffic between cars and pedestrians. Mr. Cerny added that this type of car wash can wash 120 cars an hour so the stacking lane can get pretty long. The reason for the variance request is because the car wash has a canopy element that goes over the top of the pay stations.

Mr. Greene stated the request is for the setback to be 7 ft. from the property line for a distance of 18 ft. Mr. Cerny stated the placement of the pay stations and therefore the canopy had to be located as close as they can to the entrance of the tunnel itself. The canopy would be setback 18 ft. and the setback requirement is 25 ft. setback variance request.

VC Blakemore asked how far the building would be from the property line. Mr. Cerny stated approximately 50 ft. He then asked what was located to the south to which Mr. Cerny answered the Five Guys retail strip. Mr. Cerny stated he felt what he was proposing would be a tremendous enhancement to the lot itself and a substantial improvement to the property in general.

Hearing no further comments by the Board members, the Board considered the Duncan Factors:

1. Will the property yield a reasonable return or whether there is a beneficial use without the variance? The Board stated yes.
2. Is the variance substantial? The Board stated yes.
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? The Board stated yes.

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Ms. Strogin stated if there is a landscaping requirement and if the Board grants the variance, Mr. Cerny will not be able to meet the 25 ft. landscaping setback with the canopy and tunnel placement. She stated she just brought it up for the Board to consider.

VC Blakemore asked how far the canopy would be from the road? Mr. Cerny stated 175-180 ft.

Mr. Greene made a motion to approve an 18 ft. side yard setback variance from Section 406.3.D.1B) 1. for the construction of a car wash with canopy over the pay station for the property located at 4160 Pearl Rd. as presented. It was seconded by Ms. Gray.

ROLL CALL-Greene-yes, Gray-yes, Watts-yes, Blakemore-yes.

The variance was granted.

The minutes to the Boards organizational/public hearing for January 15, 2020 were approved as written.

Having no further business before the Board, the meeting was adjourned at 7:56 p.m.

Respectfully Submitted,

Kim Ferencz, Zoning Secretary

Ed Morel, Chairperson



Cary Blakemore