

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
September 17, 2014**

Chairperson Ed Morel called the public hearing of the Board of Zoning Appeals to order at 7:31pm. The sitting Board this evening consisted of Cary Blakemore, Robin Gray, Ed Morel, Mike Stopa and William West. Secretary Laurie Shoemaker was also in attendance. The Board members were introduced and Chair Morel explained the procedure to all those present.

VARIANCE REQUESTS

Tony Cerny, Fenn Crossings Plaza 3823-3851 Pearl Road, Medina OH

Chair Morel reviewed the application and asked Secretary Shoemaker to read the request into the record.

Applicant: Architectural Design Studios Inc., 620 E. Smith Road, Medina OH 44256

Owner of property: Gowe Leasing, LTD, 620 E. Smith Road, Medina OH 44256

Present Zoning: Intense Business.

Previous Variances requested: no

Variance requested: (see attached letter)

In regards to the above referenced project, we are submitting several drawings provided to us by the Ohio Department of Transportation (ODOT) which reflect work proposed by ODOT involving improvements to the intersection of Pearl Road and Fenn Road. The drawings show areas of a proposed Take by ODOT along Fenn Road and Pearl Road. The expansion of the right-of-ways as a result of the Take will result in the noncompliance with several Township Zoning Regulations and will bring the existing site plan into nonconformance in the following ways:

The Reason:

1. Pearl Road
 - a. The ROW will extend into the existing parking lot. ODOT will remove paving in the ROW which alters the size of existing spaces. Some spaces will be lost. The extent of the impact is dependent on how the Board addresses the landscape buffer.
 - b. The expansion of the ROW results in the complete elimination of the landscaping strip between the ROW and the current parking lot. If a full 20' landscape strip is to be maintained, then significant parking will be lost.

2. Fenn Road

- a. The Take along this road varies. The impact is similar to the impact on Pearl. The new location of the ROW at the building will be approximately at the face of the existing building, resulting in a zero setback for the building.
- b. There will be no landscaping strip to the north at the completion of the Take for the entire length and the aisle of the row of parking to the north will be reduced from 24' to 18' requiring a reconfiguration and loss of parking in this row.
- c. The overall number of parking spaces will be decreased. The extent of the loss of parking is dependent on how the Board rules regarding the 20' landscape strip.

3. Identification Signage

- a. The existing Fenn Crossings identification sign currently has a setback of 20' from the right of way. At the completion of ODOT's Take, the ROW will have shifted east, and the setback for the sign will be approximately 3', making the sign noncompliant. ODOT will not compensate for the relocation of the sign unless a variance to keep the sign in its current location is denied.

At this point, the owner is in negotiations with ODOT on the compensation for the Take. The extent of improvements that will be necessary is unknown and is pending any resolution from the Medina Township BZA and the impact any such resolution will have on the site design. Below is an outline of the proposed variances and implication of the Board's various options for a resolution.

- I. Identification sign, Section 605C – This section requires the sign to be set back from the ROW by 20'. The sign is currently 20' from the ROW, but the setback will be reduced to 3' with the Take. To avoid any impact with the sign, the BZA would need to grant a variance of 17' (85%).
 - A. The sign in question cannot be lifted and moved. The sign panel can be relocated, but the supporting structure is constructed of masonry, framing, and EIFS on a concrete foundation. Any relief from the 20' setback other than the full 17' as noted will require the sign to be relocated.
 - B. As part of the work, ODOT intends to relocate the drive onto Pearl, to the south of the current location and away from the current sign.
 - C. If the full 17' variance is not granted by the BZA for the sign to remain currently constructed, the owner will request ODOT relocate the sign the full 20' off the ROW. This would result in no variance being required.
- II. Landscaping Requirements, Section 306 J 3(a) – This section requires a minimum 20' landscaping area between the ROW and the parking. With the Take on both Fenn and Pearl, the ROW will extend into the existing parking lot. ODOT will remove all paving within the ROW leaving the parking with no landscaping setback and resulting in parking spaces and drives smaller than the required size.

- A. Reconfiguration of the parking to maintain the full 20' landscaping strip results in significant loss of parking spaces. At the last tenant submission, parking provided was only a few spaces more than required. Loss of parking along the front will require the addition of parking in other areas on the site.
 - B. The extent of additional parking required is dependent on whether the BZA will grant any relief and to what extent. Based upon the extent of the relief, a new parking plan can be developed to reflect the approved setback. The greater the relief in setback granted by the Board, the fewer number of spaces that will be lost, resulting in us having to create fewer spaces in other locations.
 - C. The area of parking loss is in an area of the development that currently has limited parking and the additional loss of parking servicing the tenants at the north end will have a negative impact on the economic viability of these spaces.
 - D. If the Board were to grant relief from this section of the code and allow for a 5' landscape strip (15' variance), existing parking could be adjusted to angled parking, limiting the loss of parking in this area and maintaining more parking to service the tenants on the north end.
- III. Building Setback, Section 406.3C – This section requires the building to be set back 80' from the ROW. With the Take on Fenn Road, the building will be located on the ROW and there will be no setback. We request relief from this section of the code based upon the following.
- A. The need for the variance is the result of actions by ODOT and is not the result of any actions by the owner. ODOT has the authority to proceed with the Take without justification or approval from any other authority and the owner is without means to prevent this situation.
 - B. The building is existing and failure to grant relief would require the demolition of a significant portion of the building, if the building were to be brought into compliance. This would impose a significant hardship upon the owner.
 - C. Full relief from the section is the only way to address the nonconformance to building setback requirements.

In summary, we are requesting consideration and relief from the township's zoning requirements as follows:

1. 605 C, Identification Sign Setback – Requesting relief of 17' (85%) from the required 20'. If full relief is not granted, the sign will need to be relocated and no variance will be necessary.
2. 306 J 3 (a), Landscape Setback – Requesting relief from the 20' setback requirement to maintain adequate parking in the north end of the complex. Pending the extent of relief granted by the BZA, we will develop a revised parking layout incorporating all the necessary parking for submission and approval by the Zoning Board.

3. 406.3 C, Minimum Front Yard – Requesting relief from the 80' setback requirement from the ROW to the face of the existing building.

Chair Morel then swore in Tony Cerny, 620 East Smith Road, Medina. Mr. Cerny stated that when he first read the drawings he misread them so the reality is that number three, minimum front yard setback of Fenn road, can be withdrawn. Where he thought they were doing a Take, they are actually doing a utility easement. While they are taking all the landscaping and removing the parking from that area, they are not really changing the position of the right of way so the position of the right of way relative to the building is not changing. Chair Morel confirmed that the front of the building is still in compliance and Mr. Cerny agreed.

Chair Morel swore in Alliss Strogin, Zoning Commission Chair. Ms. Strogin stated that Mr. Cerny already had the application in and right now it's pre-existing, non-conforming as far as the setback. As long as he has the board in front of him, he may as well get a variance so he will no longer be non-conforming. Mr. Cerny said then he would be asking for a 70' variance for the existing building. Mr. Morel asked Ms. Strogin what the advantage would be and she said if the owner decides to sell.

Chair Morel suggested discussing that issue first. Mr. Blakemore made a motion to approve a variance for a 70' setback on Fenn Road side of an existing building located at 3823-3851 Pearl Road, Medina OH.

Chair Morel stated, for the record, this is a pre-existing, non-conforming building and they are cleaning up the paperwork if this property ever wants to change hands. The building has been there for many years and they are not approving a new building. Chair Morel then asked if there was any further discussion. Robin Gray wanted confirmation on what issue the board was discussing. Chair Morel explained this building predates the code, it's only 10 foot from the road. The board is not allowing him to extend the building, it's only for the existing structure to do some housecleaning.

The Board then reviewed 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 agreed 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 agreed 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 agreed yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board agreed no.
7. Whether the granting of the variance upholds the spirit and intent of the Zoning Resolution? The Board agreed yes.

Mr. Blakemore made a motion to approve a variance for a 70' setback on Fenn Road side of an existing building located at 3823-3851 Pearl Road, Medina OH. Bill West seconded the motion.

ROLL CALL– Blakemore – yes, West – yes, Gray – Yes, Stopa – yes, Morel – yes.

Ms. Strogin asked Mr. Cerny if ODOT planned on tearing out the landscaping. Mr. Cerny said that's what the plan shows but they are not widening the right of way on Fenn. It's part of the temporary construction Take in that they are taking the landscaping out and are taking hard surface areas and not restoring those.

Chair Morel suggested discussing the sign next. The Township certainly does not want signs 3 feet of the right of way. The property owner is faced with ODOT taking part of his property and they are trying to move everything back and the BZA's job is to try to follow the rules make it as painless as possible for both parties. The owner has no choice, but we don't want signs stuck close to the right of way.

Ms. Strogin stated for the record, ODOT was not going to pay for the sign. She explained to ODOT at a meeting she had with them that the sign must be moved because ODOT is taking that property. Even though they are not physically taking the property the sign is on; taking 17 of the 20 feet will leave the sign 3 feet from the road and not in compliance with zoning regulations. She stated there will be a dozen properties or so that will have this same issue.

Mr. Cerny explained ODOT can do pretty much whatever they want. They hire an appraiser, and the appraiser goes to the businesses to negotiate an agreement to sign off on everything and pay a value for whatever they are given. The appraiser is trying to make the value as low as possible so they don't pay for many things the business owner will have to pay to conform to zoning regulations. Ultimately if ODOT doesn't feel like negotiating they don't have to, then it is up to the property owner to file in court that it was not a fair appraisal. Mr. Cerny has to show, during negotiations, they need to move the sign to get fair value. If the board turns the variance down, it does not make a difference from the cost standpoint. Even if a 10' variance was granted, he would still need to move the sign so he might as well move it 20' down by the new drive and make it conforming.

Mr. Cerny stated as far as the landscaping, he will have a landscaping island at the drive and the parking then would give them the 20' but now will not have that. Chair Morel pointed out Mr. Cerny was only asking for a variance on the north side on the landscaping. Mr. West said he was asking for both, although it was not stated in summary of his application. Ms. Stogin stated this is the reason he would benefit by asking for both variances for the landscaping and the sign.

Mr. Cerny said he is hoping to get a 10' variance on the sign. This will allow him, (depending on what happens with the landscape issue) where the drive is at, he will do a landscape island that will be at the end of the parking and he is hoping to get somewhat of a landscaping variance, not have the full 20', and if he can avoid the whole 20' he will have an island at the end of the parking where he can bury the sign. Chair Morel asked how much ODOT was taking along Pearl. Mr. Cerny said it is an irregular take that goes into the existing paving that is already there.

Mr. Cerny was pointing out different areas on the site plan and explaining that the yellow line is what they call temporary paving for construction purposes. The green is the permanent take. At a guess, there is approximately 20' between the new and old right of way. Mr. West stated there is some confusion as to the two variance requests that are still on the table and what happens to the signage variance request depending on what happens to the landscaping variance request. The board needs to know if Mr. Cerny gets the 15' variance on the landscaping, then where are you with the sign, or is it the reverse, the sign first. If it is a matter whether A. the parking is necessary and B. the slanting of the parking with a 5' landscaping variance becomes something you can do to salvage a significant amount of parking then he may entertain the 5' variance.

Mr. Cerny understood the issue and explained the current parking was already in violation. The landscaping is less than 20' but was preexisting. When ODOT does their Take, they will remove a portion of the existing parking spaces. So right now the parking conforms to the size requirements. There is a drive aisle of 24' and 19' is minimum to create a drive

aisle at their parking. ODOT is taking roughly three feet of that parking so it will reduce spaces from nineteen to sixteen which is technically a violation. There is no real way for him to correct that without tearing everything out. If he can change them to 90 degree spaces and go to angle parking at 45 degrees he could still keep a fair amount of parking and landscaping. You lose about 50% amount of the spaces when you go from 90 degrees to 45 degrees. Even after they do the right of way, there will still be grass in that area, he just needs a place to plant shrubs.

Chair Morel asked how many parking spots are needed for this building. Mr. Cerny said the last parking analysis said 150 spaces were needed and they had 152. Chair Morel asked how many he was going to lose and Mr. Cerny said it depends on what the board decides on the variance. ODOT is taking about 4' of paving out of the parking area. Ms. Gray asked about the utility take. Mr. Cerny explained he will lose the circulation drive with the utility take. Instead of 24' it will be 20'. ODOT will leave 10' utility space but no plants can be planted there.

Chair Morel pointed out Fenn road side is pretty much shot, but on Pearl road, the building is 10' from the right of way, there is no room for anything but he would like to keep the largest part of the frontage as nice as possible along Pearl. Mr. Cerny stated he would like to keep as much parking as possible. He would rather go with a 30 degree angle and keep the main spaces at the north end, which is where he needs it. He can do a lot with five feet of landscaping and will give him more room to work in developing parking spaces that still meets the townships size requirements.

Mr. West asked where the entrance was going to be and Mr. Cerny showed the board on the site plan it will be located on Pearl, near the credit union. Ms. Stogin pointed out another issue, that hasn't been brought up, was the out-lot on the property that will have to have its own parking. Chair Morel asked if he was looking to take this over developed property and create another lot. Mr. Cerny explained Mr. Gowe is particular about who he leases to and there is no current plan to build on that lot but needs to show it's of value, and at this point, ODOT is not looking at that out lot with any value.

Chair Morel stated that everybody wants the desirable spots but it's not Mr. Cerny's problem the state is taking frontage, but it's not the townships problem that the dense businesses are in one spot. Mr. Cerny pointed out that the goal is to make the building economically viable and that's a good thing for not only Mr. Gowe but the community as well and that should be taken into consideration. Mr. West stated the variance requests need to be clear so it will help the board make a decision. To make things clear, Mr. West asked Mr. Cerny if he was granted a 15' variance on the lawn, what is the variance requested for the sign. Mr. Cerny stated 10' and he would make the sign work. He said he

will come back with a finished site plan depending on the variance and the negotiations with ODOT.

Chair Morel had a concern that if Mr. Cerny gets 5 feet then all the businesses on Pearl will expect the same. The Township looks good now with the setbacks and landscaping and he doesn't want to see that go away. He asked Mr. Cerny if he lost the entrance on Fenn, is there opportunity for parking spots there? Mr. Cerny said ODOT is looking to Take that entrance and would not leave any more room for parking. Mr. Gowe is fighting to keep the entrance but he doesn't know the result of the negotiations yet. Ms. Strogin stated that ODOT is trying to close many of the driveways on Pearl road.

Mr. Blakemore stated, for the record, the board has two variances to decide on, the lawn and the sign. Chair Morel confirmed. Mr. West suggested 5' variance on Fenn Road and a 10' variance on Pearl. Mr. West asked where the sign was now and Chair Morel said it was 20' off the right of way. Mr. West stated, for the record, it's the type of sign that if you move it a foot, the cost will be the same as if you moved it 20'.

The Board then discussed the Duncan Factors.

1. Will the property yield a reasonable return or whether there is a beneficial use without the variance? The Board stated no.
2. Is the variance substantial? Chair Morel stated if it's a 10' variance, that's 50%. If it's a 5' variance its 75%.
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 agreed yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The board agreed it's not practical.
7. Whether the granting of the variance upholds the spirit and intent of the Zoning Resolution? Chair Morel pointed out the State is taking 20' and the board is giving him 10' back. He believes Mr. Cerny will make it work with a 10'

variance because if a 15' variance was granted, the whole strip would expect the same.

Mr. Cerny stated, for the record, Mr. Gowe is trying to do the best he can to stay alive and does not want the building to become vacant and in shambles. They have spent a lot of money to make it look nice. Mr. Gowe cares about the community and wants to keep the building a very viable space.

Chair Morel stated he could support a 10' variance to avoid the whole strip having no landscaping. The board agreed to the 10' variance all the way around and 10' on the sign.

Chair Morel called for a motion. Mr. West made a motion to grant a 10' landscape depth variance to the setback to apply on Fenn Road and Pearl Road. Mike Stopa seconded the motion.

ROLL CALL – West – yes, Stopa – yes, Blakemore – yes, Gray – yes, Morel - yes

Chair Morel called for a motion for the sign. Cary Blakemore made a motion to approve a 10' setback variance for the ID sign located at 2823-3851 Pearl Road. Robin Gray seconded the motion.

ROLL CALL – Blakemore – yes, Gray – yes, Stopa – yes, West – yes, Morel - yes


Minutes

The July 16, 2014 and the August 20, 2014 Organizational meeting minutes were approved as submitted.

Having no further business before the Board, the meeting of the Board of Zoning Appeals was officially adjourned at 9:35pm.

Respectfully Submitted,

Laurie Shoemaker
Zoning Secretary



Ed Morel, Chairman
MIKE STOPA VICE-CHAIR

10/15/14

Date