

**MEDINA TOWNSHIP  
BOARD OF ZONING COMMISSIONERS  
REGULAR MEETING  
December 20, 2016**

Chairperson Alliss Strogin called the regular meeting of the Medina Township Board of Zoning Commissioners to order at 7:02 p.m. Permanent Board members Overmyer, Apana, Traynor and Strogin were in attendance. Borrer was absent. Alternate member Richard Marco Sr. sat in for a full Board. Alternate member Chuck Johnson was absent.

Mr. Apana made a motion to approve the November 15, 2016 meeting minutes as amended. It was seconded by Mr. Overmyer.

ROLL CALL-Apana-yes, Overmyer-yes, Marco Sr., -abstain (not present at meeting), Traynor-yes, Strogin-yes.

Chair Strogin stated for the record, that the Zoning Commission was a recommending board only, and that all site plans before the Commission this evening would need to obtain final approval from the Board of Trustees. The next meeting of the Trustees will take place on January 3, 2017 at 6:00 p.m.

**TABLED ITEMS**

**Weymouth Community Church-3398 Old Weymouth Rd.**

Secretary Ferencz stated a letter was received from Mr. Wilson from Rolling, Hocevar asking for this agenda item to be tabled again.

Mr. Overmyer made a motion to table the proposed addition for Weymouth Community Church located at 3398 Old Weymouth Rd. as presented. It was seconded by Mr. Marco Sr.

ROLL CALL-Overmyer-yes, Marco Sr.-yes, Apana-yes, Traynor-yes, Strogin-yes.

**SITE PLANS**

**Akron Children's Hospital-3443 Medina Rd.**

Mr. Kevin O'Malia from MPG Architects, Inc. represented Akron Children's Hospital. He stated Akron Children's Hospital just signed a lease with Children's Hospital Medical Center of Akron for the property at 3443 Medina Rd. Mr. O'Malia stated they would be renovating an existing outpatient office to another outpatient office and expanding into an empty shell space. He commented that 1/3 of the building is empty shell space. Mr. O'Malia added there would be 4-5 different practices of medicine in this space. No signage is being requested at this time.

Mr. Overmyer made a motion to approve the change of use for Akron's Children's Hospital to be located at 3443 Medina Rd. Suite #108 as presented. It was second by Mr. Traynor.

ROLL CALL- -Overmyer-yes, Traynor-yes, Marco Sr.-yes, Apana-yes, Strogin-yes.

**Harley Davidson-3053 Eastpointe Dr.**

Ms. Jessica Ruff from Ruff Neon Signs represented Harley Davidson. She stated Harley Davidson wanted to change the name from Century Harley Davidson to Stinger Harley Davidson. The two logos would stay. The size of the sign would remain the same just a change in name.

Mr. Apana made a motion to approve a new wall sign (name change) for Stinger Harley Davidson not to exceed 63.03 sq. ft. as presented. It was seconded by Mr. Traynor.

ROLL CALL-Apana-yes, Traynor-yes, Overmyer-yes, Marco Sr.-yes, Strogin-yes.

**North Gateway Tire-4001 Pearl Rd.**

Mr. Thomas Cardone from Frantz Ward LLP, represented Dunlap and Kyle the owners of the property. Mr. Jeff Hill owner of North Gateway Tire was also present. Mr. Cardone stated this actually is not a change of use, but a site plan submitted as a result of the ODOT road-widening project of Rt. 42 (Pearl Rd.) The road right of way has been moved closer to the property line.

Chair Strogin stated the Zoning Commission reviews site plans to see if a site plan meets the zoning requirements and this site plan does not. She added the BZA is knowledgeable about the widening of Rt. 42 and the subsequent non-compliance of the zoning code as a result of the actions by ODOT. However she commented, that she was confused by the submission of a variance request to the Board of Zoning Appeals.

Mr. Cardone stated when he talked to Elaine Ridgely, Zoning Inspector, he thought they could submit the variance application, knowing the potential for variance requests, and get on that Board's next meeting. It did not work out that way so they are here for a revised site plan application. Mr. Cardone added that the variance application has been withdrawn at this time to see what variances would actually be required per the actions of the Zoning Commission this evening.

Mr. Cardone stated the resolution that was passed by the Township and ODOT appears to be what is at issue this evening. The site plan presented this evening identifies the changes that are a direct effect of the actions of the State. The resolution provided for a moratorium of enforcement of the requirements of the Zoning Resolution as a result of the actions by ODOT. He continued that the landscaping buffer, setback from the right of way to the building and parking were not going to be enforced so variances might not

even be required. Mr. Cardone added, this was the reason they filed both applications so they could hear what the Zoning Commission had to say and move forward accordingly.

Chair Strogin responded if the property owner does not care about the label of pre-existing non-conforming use; the Commission would not do anything. She added if you want to get rid of that distinction so you have a clean, legal lot; the only way to do that would be to go through the BZA variance hearing procedure and to get that board to grant variances where this property no longer meets the zoning requirements.

Mr. Cardone responded, it was his understanding that no matter what; the Township wants a site plan showing the exact placement of the building as a result of the taking by ODOT. Chair Strogin answered, yes, it has to be on record as to the location of the property and placement of the building.

Mr. Cardone then stated, should the site plan be approved; we can still elect to submit a variance application at a later date to address the pre-existing, non-conforming use label. On the other hand, if the site plan were rejected; notwithstanding the resolution, they would be compelled to apply for variances.

Mr. Marco Sr. asked, how can this board approve the site plan when it does not meet the requirements of the code? Chair Strogin asked Mr. Cardone, "Do you want to be a pre-existing non-conforming use or a legal lot? If you want to be a legal lot; this Board will turn down your site plan and you will have to go before the BZA. She added, if the BZA grants the variances; that will be the legal site plan. Chair Strogin added, if you want to be a pre-existing, non-conforming use, the Commission won't push, but if you want to be legal, then the Commission would have to deny the site plan and variances would have to be granted.

Mr. Cardone stated unfortunately, that decision was legally out of the property owner's hands. If we choose one over the other ODOT will not pay. They have not paid the client as of this time. Any resolution of this is dependent on what happens here this evening. For example, ODOT wanted to close one entrance entirely and configure another drive differently. We came to an agreement we can work this out with approval and ODOT said sure you can do what you want but we cannot say that's ok.

Mr. Marco Sr. again asked, which do you want - approval or disapproval of the site plan? Mr. Cardone said disapproval of the site plan by the Commission and approval of variances by the BZA. If the Commission approves the site plan then there would be no need to request variances. He continued that if the Commission would approve the site plan they could always come back and request variances if the property owner chooses not to be a pre-existing, non-conforming use.

The Commission agreed they could not approve a site plan that does not conform to the zoning code. Chair Strogin stated the agreement the Township has with ODOT is to basically permit the use without the requirement of variances. She continued the Township was not going to go to the businesses affected by the widening and say you no longer meet the zoning code requirements and have to comply with them. The reason was because the State was taking the land it was not the result of the actions of the business owner.

Mr. Marco Sr. stated, even with that said, the Commission could not approve the site plan because it does not conform to the zoning code notwithstanding the resolution. The resolution is that you can continue to operate and the Township will not enforce the code. Chair Strogin interjected, if you want to get rid of that pre-existing, non-conforming label then...Mr. Cardone interjected, that if that is the Township's position, they would take that up with ODOT and would go through the process to make sure that is not the "label" on this property. He added that ODOT takes a very different position saying in light of the resolution, there is no violation, and the Township should be able to approve the site plan.

Mr. Cardone continued that the best case scenario for us is for the Township to approve the site plan, and if the property owner wants to pursue the request of variances they can in order to have the pre-existing, non-conforming label removed. If the Commission approves the site plan, the property owner can go back to ODOT and say the site plan is approved but the Township takes the position that it is a pre-existing non-conforming use. Then we can go to an expert and say that pre-existing non-conforming use lowers the property value. If the property owner wants to build an addition and expand, the Township could require the variances in order for that to happen. Chair Strogin responded, if you had that distinction removed now, that point would be mute. Mr. Cardone said, if that is the Township's position, they would go through the variance process now; and as long as the variances are granted there would be no issue.

Mr. Cardone continued that he thought that the majority of the "issues" were already approved on a prior site plan, but he did not represent the property owner back then. Chair Strogin stated per the BZA minutes from their November 8, 1995 hearing, "There was a motion made by Mr. Morel to grant a variance allowing 51 parking spaces vs. 57 as requested in appropriate section; move to approve variance 10'6" in rear setback for southeast section as requested in appropriate section; move to have 104 sq. feet of signage on south side of building to be removed in lieu of pole/ground sign; in addition no zoning certificate is to be issued until aforementioned signage is removed."

Chair Strogin stated the only variance granted back then was for the amount of parking spaces. It appears the size of the spaces was 10 ft.

Mr. Marco Sr. asked if the appropriation action has been filed and a court date set. Mr. Cardone stated yes but the date keeps getting pushed back because we are in discussions with ODOT.

Mr. Marco Sr. stated the cleanest way to handle this is to disapprove the site plan and let the applicant proceed to the BZA if they chose to do so. The rest of the Commission agreed.

Trustee Jarrett who was present, was asked his opinion. Trustee Jarrett stated that the protocol is the Commission cannot approve something that does not meet the zoning code. The procedure would be to deny the site plan and let the applicant go through the variance process. This may provide leverage to the client to address ODOT accordingly. Chair Strogin stated that has been the practice the Commission has followed in such instances. She added the BZA is acutely aware of the actions of ODOT and the subsequent results placed upon the property owners due to the actions of ODOT.

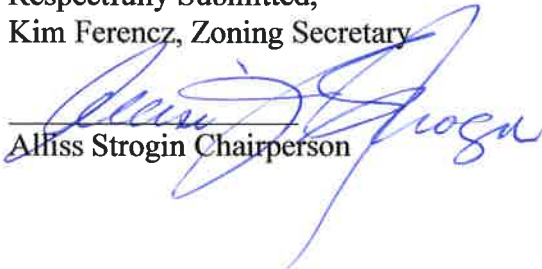
The Commission then went through the potential variances that would need to be requested. Mr. Cardone stated that he would appreciate if it were spelled out what variances would need to be requested in order for them to negotiate the costs involved in these variances requests and subsequent actions required by the property owner by the Township with ODOT.

Mr. Marco Sr. made a motion to deny the change of use for North Gateway Tire located at 4001 Medina Rd. as it was no longer in compliance of Section 406.3, Section 502.A and 504.B of the Medina Township Zoning Resolution as presented. It was seconded by Mr. Apana.

ROLL CALL-Marco Sr.-yes, Apana-yes, Overmyer-yes, Traynor-yes, Strogin-yes.

Having no further business before the Board, the meeting was officially adjourned at 8:08 p.m.

Respectfully Submitted,  
Kim Ferencz, Zoning Secretary

  
Alliss Strogin Chairperson