

**MEDINA TOWNSHIP
ZONING BOARD OF APPEALS
ORGANIZATIONAL/PUBLIC HEARING
FEBRUARY 15, 2017**

Acting Vice Chairperson Carey Blakemore called the organizational meeting of the Medina Township Board of Zoning Commissioners to order at 7:30 p.m. Secretary Ferencz was absent. Township Secretary Cecilia Goe was present. Permanent Board members Blakemore, West, Stopa, and Gray were in attendance. Ed Morel was absent. Alternate member Payne sat in for a full Board. Alternate member Williams was absent.

ORGANIZATIONAL MEETING

Election of Officers

Nominations were called for Chairperson.

Mr. West made a motion to nominate Ed Morel as Chairperson of the Board of Zoning Appeals for the calendar year 2017. It was second by Mr. Stopa. The nominations were closed.

ROLL CALL-West-yes, Stopa-yes, Blakemore-yes, Gray-yes, Payne-yes.

Mr. Stopa made a motion to nominate Carey Blakemore as Vice Chairperson of the Board of Zoning Appeals for the calendar year 2017. It was second by Mr. Payne. The nominations were closed.

ROLL CALL-Stopa-yes, Payne-yes, West-yes, Gray-yes, Blakemore-yes.

Set hearing dates/Confirm hearing posting

The Commission stated they would continue to meet on the 3rd Wednesday of the month at 7:30. Posting of the meeting would be placed on the Town Hall marquee, website and The Gazette accordingly.

The organizational meeting was closed at 7:32 p.m.

PUBLIC HEARING

Vice Chairperson Blakemore called the public hearing of the Medina Township Zoning Board of Appeals to order at 7:32 p.m. He explained the procedures of the hearing.

North Gateway Tire-4001 Pearl Rd.

Vice Chairperson Blakemore read the application into the record. The applicant was Dunlap & Kyle Co. Inc. Address of the property requiring the variance-4001 Pearl Rd. Present Zoning-BI. Previous variance request-Exhibit A. Based upon discussions with the Township Zoning Office, the attached Exhibit A includes information about prior zoning requests.

Variance being requested & Explanation of Requested Variances:

1. Section 406.3-10 ft. Front yard variance on west property line (80' required, 70' proposed)
 - A. The strict application of the Zoning Resolution will result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Resolution because requiring an 80' front yard require demolition of the existing structure.
 - B. Exceptional circumstances or conditions apply to this property that do not generally apply to others in the same district include, without limitation, this issue was created by an involuntary taking by ODOT.
 - C. The requested variance is not detrimental to the public interest and/or to property or improvements in such district and will not materially impair the purpose of the Zoning Resolution because (i) the right of way line is being moved but the roadway is not being moved to the full extent of the right of way, therefore, a grassy are/or "pedestrian area" remains between the property line and the roadway leaving an additional "effective" buffer area; and (ii) the proposed yard area and building setback are consistent with other properties in affected by eminent domain and existing structures along U.S. 42 in the same area.
- ii. Section 502A-1' variance on width of all parking spaces (10' required; 9' existing/proposed)
 - A. The strict application of the provision of the Resolution result in practical difficulties or unnecessary hardship that are inconsistent with the general purpose and intent of the Resolution because requiring 10' parking spaces would substantially limit the total number of parking spaces on the property, effectively changing the use of the property from the existing use, which has been in place for decades, and/or require substantial expense to restripe the parking lot.
 - B. What exceptional circumstances or conditions apply to this property that do not generally apply to others in the same district? Without limitation, the property has been utilized in its current use for decades (predating the Zoning Resolution), and the available space for parking is limited.
 - C. The requested variance will not be detrimental to the public interest or to property or improvements in such district and will not materially impair the purpose of the Resolution because the proposed 9' parking spaces are sufficient to service all vehicles and are not used in a manner that overloads the parking area. The parking spaces are not used for storage, rather they are utilized for transient customers.
- iii. Section 504B-Landscape Buffer Between Parking and Road (Current 24.8' grass only; Proposed 12.8' grass only); Note proposed ROW allows limited buffer to parking area

- A. The strict application of the zoning resolution will result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Resolution because the required buffer may necessitate removal of parking area and limited internal circuitry of the property.
- B. Exceptional circumstances include, without limitation, any limited buffer area is caused by an involuntary taking by ODOT.
- C. The requested variance is not detrimental to the public interest and/or to property or improvements in such district and will not materially impair the purpose of the Zoning Resolution because (i) the right of way line is being moved in part, to add a sidewalk, therefore, grass area and/or pedestrian area remains between the property line and the road right of way leaving an “effective” buffer area; and (ii) the proposed buffer (including landscaping therein-i.e. grassy only) is consistent with other properties affected by the eminent domain and existing structures along U.S. 42 in the same area.

5. Additional “Global Considerations”:

- (i) The property will be unable to yield a reasonable return or beneficial use without the requested variances. As noted above, failure to grant the variances would likely require demolition of the structure and/or prohibit the property from being put to its current use.
- (ii) The variance requests are insubstantial. A buffer will remain between the property line and roadway, even though the right of way may come close to the property line/parking area. Other properties along U.S. 42 are affected to a greater degree than this property.
- (iii) The essential character of the neighborhood will not be altered, and no detriment will be suffered by adjoining property owners. In fact, granting these variances would bring the property line with the “post-eminent-domain: look and character of all U.S. 42 properties, including neighboring properties.
- (iv) The variance will not affect the delivery of governmental services. The failure to grant them will likely mean ODOT will return to its original site plan, which includes only one, narrowed entrance on the property. In light of traffic in the area and use of the property, Dunlap and Kyle feel strongly that the original plan (i.e. not granting the variance) would cause backups on U.S. 42 and may hinder police, fire and delivery of other governmental services.
- (v) Dunlap and Kyle purchased the property with the knowledge of all zoning restrictions and compiled-this variance request is due to an involuntary taking by ODOT.
- (vi) The use cannot be resolved by any means other than granting a variance. As noted above, requiring reconfiguration of the property and compliance with zoning would likely mean demolishing the structure and/or altering the existing use of the property.

- (vii) Granting the variance upholds the spirit and intent of the Zoning Resolution- the property will continue in a use authorized in the district and will match the character of other properties affected by eminent domain along U.S. 42.

Also attached was a letter dated January 27, 2017 by Mr. Thomas Cardone from the firm Frantz Ward Attorneys At Law which read,

RE: Dunlap & Kyle Co. Inc. /North Gateway Tire Co., Inc.
4001 Pearl Rd. Medina, OH 44256
Variance Request Due to Eminent Domain

Dear Sir or Ma'am:

I, along with Frantz Ward LLP, represent Dunlap & Kyle Co., and North Gateway Tire Co., Inc. in the above referenced matter. As you are aware, many of the property owners along U.S. 42/Pearl Rd. have been affected by a road expansion and access-improvement project being performed by the Ohio Department of Transportation. Dunlap and Kyle owns the property located at 4001 Pearl Rd. (the "Property"), at which North Gateway Tire operates its business. The Property has been adversely affected by ODOT's project. The effects of the project on the Property are more particularly detailed in the enclosed materials. In general however, a strip along the Property frontage is being taken by ODOT, narrowing the Property's landscape buffer and causing the right of way to move closer to the Property's parking are and the structure situated thereon. The Property's driveways are also being reconfigured.

On July 2, 2015, the Medina Township Trustees adopted Resolution No. 07077015-018 providing for a moratorium on enforcement of certain zoning requirements where nonconformities result from ODOT's taking of property along U.S. 42. The effect of the Resolution, however is unclear. For example, the Resolution may not be permanent, may not address all negative effects of eminent domain, includes a broad exemption and Township discretion, and may result in the Property becoming a legal non-conforming use, all of which may substantially affect use of the property or its value.

Dunlap & Kyle submitted a site plan application depicting the changed configuration of the Property after the taking. The Zoning Commission recommended denial of the site plan, and the Trustees accepted the Zoning Commission's recommendation. Accordingly pleas enclosed for Dunlap & Kyle's request for variances as supporting materials.
Thomas Cardone

Also attached was Exhibit A. Information Concerning Prior Variances: Minutes from the Board of Zoning Appeals November 8, 1995 meeting which stated, "There was a motion 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 the 104 sq. feet of signage on the south side of the building removed in lieu of pole/ground sign; in addition no zoning certificate is to be issued until aforementioned signage is removed. The motion was second by Ms. Karson. The motion carried.

And the site plan submitted to the zoning Commission at their meeting.

The applicant, Mr. Thomas Cardone from the law firm Frantz Ward was sworn in. He stated he was representing the property owner Dunlap and Kyle who own the property at 4001 Pearl Rd. where North Gateway Tire operates their business.

Mr. West asked if Mr. Cardone could explain variance request #3. Mr. Cardone stated it was his understanding that there is a landscaping requirement, not necessarily the width of the buffer but...if you look at 5045 B. in the Zoning Resolution it provides open, off street parking may be located in a required front yard provided a landscaped strip as required in each B District is located between the parking area and the street right of way; so we are just verifying we are compliant.

Alliss Strogin Chair of the Zoning Commission was sworn in. She stated a 20 ft. landscape strip is required. However with the taking by ODOT...this is just like the other businesses that have come before the Board due to the actions of the State. Ms. Strogin added that one does not count the grass in the road right of way as part of this buffer.

Mr. West responded, then we are talking about a 7.2' variance request? Mr. Cardone stated the variance request at some points is minimal (i.e. a ½ a foot). Again Mr. West asked, what exactly was the variance request for? Mr. Cardone stated the right of way line is not a straight line. Mr. West then asked Mr. Cardone, as attorney for the property owners, what is the amount of the variance being requested? Mr. Cardone responded a 20 ft. landscape buffer variance because the right of way line comes right up to the parking area. He added it was his understanding that the grass that is in the right of way between the road and the new property line cannot be counted as part of the buffer. Mr. West stated this is a 100% variance and it is substantial.

Vice Chair Blakemore asked how many parking spaces would be lost if variance #3 was not granted. Mr. Cardone stated without a 100% variance, all the parking spaces out by the street would be lost.

Mr. West asked the width of the existing parking spaces? Mr. Cardone answered 9 ft. Ms. Strogin interjected that she did not recall when the width was changed to 10 ft. and added the property owner does not want to be considered a pre-existing non-conforming use therefore that is why the variances are being requested this evening.

Hearing no further discussion by the Board, Mr. West made a motion to approve the following three variances for the property located at 4001 Pearl Rd. as follows:

1. A 10 ft. front yard depth setback variance on the west property line (Section 406.3);
2. A 1 ft. variance on the width of all off-street parking spaces (Section 502A);
3. A 20 ft. landscape buffer variance between the parking area and the road right of way (Section 504 B).

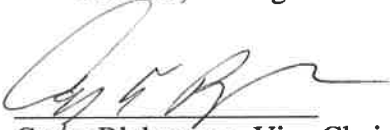
It was seconded by Mr. Payne.

ROLL CALL-West-yes, Payne-yes, Gray-yes, Stopa-yes, Blakemore-yes.

Having no further business before the Board, the hearing was officially adjourned at 7:58 p.m.

Respectfully Submitted,

Kim Ferencz, Zoning Secretary



Carey Blakemore, Vice Chairperson