

**MEDINA TOWNSHIP
ZONING BOARD OF APPEALS
PUBLIC HEARING
April 21, 2021**

Chair Blakemore called the public hearing of the Medina Township Board of Zoning Board of Appeals to order at 7:00 p.m. Permanent members Blakemore, Morel, Gray, Payne and Greene were in attendance. Alternates Watts and Wirtz were absent.

Modwash Car Wash-4160 Pearl Rd. confirmation of previously approved variance request-4160 Pearl Rd.

Secretary Ferencz read the application into the record. The applicant is Mr. Ryan Slattery-Hutton Medina OH St. LLC on behalf of the property owner, WMD Real Estate LLC. The street address requiring the variance is 4160 Pearl Rd. Present Zoning: BI. Previous variance requests: Building Setbacks.

Re: Modwash Car Wash Variance Submittal

To Whom It May Concern:

The proposed project is an automated car wash located at 4160 Pearl Rd in Medina Township, ("Property"). The predecessor-in-interest to the current applicant, Hutton Medina OH ST, LLV previously requested a variance for the same Property as it relates to the following requirement:

1. Minimum Lot Width and Frontage (Article IV, Section 406.3.A & 406.3.B.)

The previous Variance Approval

The Zoning Resolution ("Resolution") requirement for minimum lot width and frontage for the B0I zoning district is 150' at the building setback line and 150' at the ROW line. Proper to the Ohio Department of Transportation ("ODOT") right of way ("ROW") dedication, the total lot frontage was 300.93' and could have been split into two lots

Sincerely,
Jake Simko, E.I.
Berry Engineers, OOC

Secretary Ferencz then read the following:

Letter to Zoning Elaine Ridgely dated April 2, 2021

Re: Request for clarification concerning area variance granted August 19, 2020 for 4160 Pearl Rd.

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Dear Ms. Ridgely:

The undersigned and the law firm of Tucker Ellis LLP represented Hutton Medina OH ST, LLC (“Hutton”), the assignee of a purchase agreement acquire for the above referenced property (“Property”) and authorized agent of the owner. Under Ohio Revised Code Section 519.16 and Township Zoning Resolution (“Resolution”) Section 901 and 902, as zoning inspector you are charged with administering and enforcing the Resolution. I am writing to request written clarification from you as to whether a re-application for the frontage/lot width variance granted for the Property on August 19, 2020 is necessary. For the reasons set forth below, I submit to you that it is unnecessary and improper.

Previously, Hutton’s predecessor-in-interest, Hutton 17, LLC, applied to the Board of Zoning Appeals (“BZA”) for a five foot variance from the Resolution’s minimum lot width and frontage requirement for the B-1 zoning district where the Property is located. This variance was to accommodate a future lot split of the Property. The specific lot split and site plan, both of which are subject to separate administrative processes, were not before the BZA. What was before the BZA was a five-foot variance from the minimum lot width and frontage for the accommodation of a lot split.

At its August 19, 2020 meeting, BZA unanimously vote to grant “(a) 5 ft. minimum front yard width and frontage variance for the accommodation of a lot split (Article IV, Section 406.3A & 406.3B).” As reflected in the meeting minutes, the variance was granted to the Property, not a particular future subdivided lot. Additionally, the variance was not conditioned in any matter upon a particular site plan or lot split plat.

Hutton had to immaterially modify the lot split of the Property by moving the lot-split line 10 ft. to the south. The only difference is that instead of the proposed northerly subplot having frontage less than 150 ft., it is the proposed southerly subplot that has frontage less than 150 feet. The variance, however, was granted to the Property to accommodate the lot split, and it still applies to accommodate this lot split. Notwithstanding the foregoing, it was suggested by Township officials that Hutton would need to reapply for the area variance given this slight change in the lot split line.

Reapplication is unnecessary and improper under Ohio Law. A variance is not personal to the property owner, but runs with the land. *Garrett v. Richfield Twp.*, 45 Ohio App.2d 285, 287, 344 N.E.2d 154, 154 (9th Dist. 1973). According to the Ohio Supreme Court, the doctrine of res judicata applies to BZA decisions to grant or deny variances. *Set Prod., Inc. v. Bainbridge Twp. Bd. Of Zoning Appeals* 31 Ohio St. 3d 260, 261, 510 N.E. 2d 373, 375 (1987). The doctrine of res judicata holds that once a variance is granted, such decision and associated findings cannot be revisited absent a substantial and material change in circumstances that relate to the unnecessary hardship/practical difficulties that necessitated the variance in the first place. Id; see also, *Rossow v. City of Ravenna*, 2002-Ohio-1476, #2 (11th Dist.).

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Here, there has been no substantial change in circumstances that relate to the practical difficulties and hardship the lot width/ frontage requirements imposed on the Property due to the taking by the Ohio Departments of Transportation. There has been no change that is relevant to the BZA's findings that the five-foot area variance granted to the Property was proper under the "Duncan" factors. As reflected in the minutes, the variance was not granted for a specific proposed lot. It was not conditioned in any way on a specific site plan. Consequently, reapplication for the same five-foot lot width/frontage variance is unnecessary and improper under Ohio law.

Please review and advise in writing as to whether the Township will require Hutton to proceed to reapply for the same five-foot lot width/frontage variance that was previously granted on August 19, 2020. Unfortunately, continued delays in this process are causing damages to Hutton, so the Township's cooperation is greatly appreciated. I look forward to your response.

Thank You.
Anthony R. Vacanti

Mr. Vacanti, land use counsel from Tucker and Ellis LLP, was present to represent the applicant and addressed the Board. He stated with him tonight was Mr. Slattery, the authorized representative of the applicant and a licensed engineer; and Mr. Troy Gerspacher broker on the sale of this property. All three gentlemen were sworn in individually.

Mr. Vacanti then handed out copies of the Board's August 19, 2020 hearing where the Board unanimously approved this variance request as well as a letter to the Zoning Inspector stating they felt the variance request was unnecessary but they were willing to work with and cooperate with the Township.

Mr. Vacanti began by stating they were basically asking for the same variance for the vacant piece of property located at 4160 Pearl Rd. that was granted at the Board's August 19, 2020 hearing. It's for the same use (carwash) but the only difference is originally the carwash was going to be located on the southerly proposed subplot and now it is proposed to be located on the northerly proposed subplot. The five-foot variance is the same request but now will be for the northerly proposed subplot.

Mr. Vacanti continued it is their position that a concept called administrative res judicata applies to this situation; and that a quasi-judicial board like the BZA decides on an issue, by general facts and circumstances like this Board did in August 2020. At that hearing, you found there was unnecessary hardship and practical difficulties in granting the five ft. variance on the same property before it was subdivided. That decision is binding on future property owners as well as future boards as a variance runs with the land. It is our position this matter has already been decided and the variance was granted for the five ft. We have been requested ,and with an abundance of caution; are requesting the same

exact five ft. variance with a slight immaterial modification. Instead of the proposed property line being for the south portion of the property it is for the north.

Mr. Vacanti added variances are granted for unique situations and there definitely is one on this property. Before the Pearl Rd. widening, the property in question had enough frontage (300 ft.) to complete a lot split without a variance. As a result of ODOT moving the road right of way closer to the property, we lost some of that frontage so now we are just under the 300 ft. so that is why we need a variance to accommodate the lot split. During these eminent domain proceedings along the Pearl Rd. corridor, the Township promised the property owners along the corridor to work with them as they were aware this would cause a hardship for them and that variances would need to be granted. We are here to ask for that cooperation.

Mr. Vacanti concluded that he would like to run through some of the Duncan Factors before he turned the hearing over to others who would be testifying this evening.

Will the property yield a reasonable return or whether there is a beneficial use without the variance?

The Board already stated without the variance it would not. This variance will allow a beneficial use of the entire property.

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 answer is no. The 145 ft. frontage actually pertains to many of the properties up and down this corridor. The property at 1235 N. Court has less than the 150 ft., 3955 Pearl Rd. 3916 Pearl Rd., 3990 Pearl etc. are all properties that exist that have less than 150 ft. of frontage. Therefore, the character of the area will not be changed as these are all in the intense business district.

Mr. Greene asked if the properties just mentioned had variances granted? Mr. Vacanti stated he did not know; he was referring to the character of the area. He added his point is we are consistent with the character of the area. It will not be an eyesore or look like a disfigured lot.

Is the variance substantial?

It's a 3% variance. There is case law that states anything less than a 25% variance is appropriate.

Will the granting of the variance adversely affect the delivery of governmental services? If you look the Medina Township Comprehensive Plan, it states water supplies are adequate for future development, so that will not be an issue here. It also identifies that the Pearl Rd. corridor is one of the only areas that has sewer so again there would be no negative impact of governmental services.

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Did the property owner purchase the property with the knowledge of the zoning restrictions?

Previously this restriction did not even apply because the ODOT road widening had not even occurred. Yes, now my client is aware of this and that is why we are before the Board this evening. The variance is a result of ODOT's actions and the owner should not be punished for that.

Whether the problem can be solved by some other manner other than the granting of the variance?

The Board decided on August 19, 2020 that the answer is no so we ask that the Board find that reasoning again.

Whether the granting of the variance will uphold the spirit and intent of the Zoning Resolution?

We submit that it has. Article 1 of the Zoning Resolution states "to encourage the use of lands according to their character and property values." This is the most intensive business district; it allows for this type of use. It is consistent with allowing this vacant land to be developed. If you look at the Comprehensive Plan, it outlines the goals and purposes; and part of that is to encourage commercial use of the vacant properties along Pearl Rd. This will not be able to happen for this vacant property unless a variance is granted.

Mr. Gerspacher, president of Gerspacher Real Estate addressed the Board. He stated he has been in the real estate business for over 20 yrs. I have leased and sold properties all over Medina County. It appears the commercial property along the Pearl Rd. corridor from Brunswick down to North Court, has a 30-40% vacancy rate. It has been a struggle to attract users and this property is no different. I've had this listing for 4 yrs. now. This is the third developer that has tried to make something happen at this location. The ODOT taking and the complexity of access has made things difficult for development at this location. I know the Township wanted to see the proposed restaurant locate on the southerly portion of the property but the taking by ODOT made it impossible for that to happen. No one is going to operate a car dealership in that location. Nor would the Township want one there. The majority of car dealerships locate near the highway. Mr. Gerspacher stated he agreed with Mr. Vacanti's dissertation and the fact that the five ft. variance is not unreasonable nor will it have a negative impact on the balance of the property.

Mr. Slattery from Hutton 17 St. LLC then addressed the Board. He stated that the plan before the Board is the plan that complies with the February 2021 hearing with the variances that were granted then. He added he concurred with the presentation by Mr. Vacanti and would answer any questions the Board may have on this development.

Ms. Ventura (3833 Worchester Lane) was sworn in. She stated it was her understanding a lot cannot be subdivided without a variance. Mr. Blakemore stated this lot cannot be

subdivided without a variance because the minimum frontage is 150 ft. She asked why is the Township even doing this? Why can't they buy the entire lot and put the carwash on it.

Mr. Blakemore stated this Board is here to consider the request before us. Why they do or don't want to do that or why ODOT did what they did and made the frontage smaller is not our concern. By subdividing the lot, it does not meet the frontage requirement so that is what we are to consider this evening.

Ms. Ventura continued, can't they buy the lot as is? Mr. Blakemore stated the Board is to hear what is before them and that is the request for a 5 ft. variance. Ms. Ventura stated it seemed to her they don't want to split the lot 50/50 they want to cherry-pick what lot they want to develop on.

Mr. Blakemore responded they want to do a lot split. One lot will have 150 ft. and the other would need a 5 ft. variance. Ms. Ventura stated then one lot would be substandard. Mr. Blakemore responded that is the reason for this Board and to determine if a variance should be granted. Ms. Ventura stated as a resident she would ask that the variance not be granted.

Dana Johnson (3298 Foskett) was sworn in. She stated she drives this area often and was super excited that something was going to be developed on the property. She added she understood this property has been hard to sell. She commented that she would like to locate her business there as it would be a perfect location for it but at the price point as it was not within her budget.

Ms. Johnson then asked if that was the reason for the hardship, the price point. She also commented on the difficulty of access to the businesses in that location. She added it seems to her that the same reason the carwash doesn't want to locate on the other portion of the lot is going to make it a worse parcel to sell. She concluded that she wished the carwash would locate originally were going to and then maybe reduce the price point for the other location and maybe it would be easier to sell. Maybe that was why the board granted the variance for the south lot as it would make full use of the property. Now if this variance is granted for the north portion the use of the property would be half.

Mr. Gerspacher responded regarding the price point, that access is everything. The reason the restaurant is not going in is because ODOT denied a right out access. The owner of this property paid a price point 20 yrs. ago and because of the actions of ODOT, they devalued the access to the parcel. That is why many uses have been limited to even consider locating on the property.

Mr. Vacanti stated he would like to address the Board. Mr. Morel interjected that Ms. Strogen has her hand up and wants to address the Board. Mr. Blakemore stated the Board does not have to ask Ms. Strogen anything at this time. She is here as the Chairperson of

the Zoning Commission. Ms. Ventura interjected she liked to hear Ms. Strogin. Mr. Morel stated Ms. Strogin is here as a resident.

Ms. Strogin was sworn in. She introduced herself as Chair of the Zoning Commission. Ms. Strogin stated the Zoning Commission and the zoning book does not recommend subdividing this lot for numerous reasons. First of all, the access is going to be a problem for the substandard lot with 145 ft. of frontage. Also, it has a 10,000 sq. ft. existing building on it as well as a 2,000 sq. ft. building. The carwash wants to move because they want the appropriate access. Once you slice the property and leave a substandard lot with poor access, the other two developers that have looked at that lot didn't want it so what makes you think once you split the lot someone is going to develop it. Also when you split a lot both pieces need to be legal. It's not legal unless you grant the variance. The price point is not item to be considered when decided whether to grant or deny the variance. What the owner paid for the lot 20 yrs. ago certainly has to be lower than what a lot in that area is going for today.

Ms. Strogin continued that because an individual business cannot afford to buy the entire lot because it was too expensive. Mr. Gerspacher and Mr. Slattery even stated at a previous meeting that one business could not buy the lot it would take two. The fact that the lot may be overpriced is not a reason to grant a variance because they cannot afford to buy the entire property. In terms of this being the same variance as requested before; that is not true. The northerly portion of the lot was given the 145 ft. of frontage not the southerly portion. You cannot flip flop those and that has been confirmed by the Prosecutor's Office.

Mr. Greene stated Ms. Strogin was giving a legal opinion. She is not an attorney and unauthorized practice of the law is expressly prohibited by the Ohio Supreme Court. Ms. Strogin interjected she was not acting as an attorney she was just reiterating what the County Prosecutor said.

Mr. Blakemore stated the Board did not have a legal opinion in front of them from the Prosecutor's Office therefore its hearsay. Ms. Strogin continued that this property is suited for one large retail or commercial use. Mr. Greene stated that was Ms. Strogin's opinion. Chair Blakemore slapped the gavel down and moved on with the rest of the hearing.

Mr. Greene then asked, Mr. Vacanti in your opinion, based on what you submitted to the Board, you could move forward with the process with no further action needed to be taken is that correct. Mr. Vacanti responded, regarding my letter to the zoning inspector, I spoke with her and was told my letter was forwarded to the Prosecutor's office, but I did not receive a response back from Prosecutor Lyons. Based on the case law in my letter I believe we can move forward but we would like a decision from the Township. If we disagree, then we would appeal that decision. I do, however, feel strongly that the Board speaks through their minutes. The journal entry of the Board does not condition or tie the

variance to a north lot or a south lot. It's tied to the property. Same facts and circumstances apply. There has not been a material change. All the hardships are the same. Variance are allowed under the zoning resolution and especially in a situation such as this, which has not been caused by the property owner but by the actions of ODOT. This is a prime situation for a variance. We will comply with all of ODOT's access requirements. The five ft. variance does not impact the access at all. For the record I do not believe this request is necessary. If we continue down this path my client will continue to incur damages if delayed or prevented from moving forward. Then we will be talking about a regulatory taking, which is not the course we would like to take. Mr. Vacanti concluded, with Mr. Gerspachers' experience in the real estate field, this property has sat vacant for 4 yrs. Economic viability is one of the factors for this Board to consider per *Duncan vs. Middlefield*.

Having 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 for four years it hasn't.
2. Is the variance substantial? The Board stated no.
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. The whole lot could be purchased and the carwash placed in the middle of the property.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The majority of the Board stated it would. Ms. Gray stated she had concerns about the other lot and if the variance were granted that portion would remain vacant. She then asked the other members how they felt about that.

Mr. Morel stated he didn't feel the Board was to rule on that. The Board had a hearing several years ago when ODOT came in and we got a bunch of sign variance requests because the taking by ODOT put some businesses signs too close to the right of way. It just so happens that this piece of property could be split before the actions of ODOT. The

property owner did not create his own hardship. Ms. Gray asked the other members if they have seen this situation before regarding this split and Mr. Morel responded yes, numerous times.

Mr. Payne made a motion to approve a 5 ft. minimum front yard width and frontage variance for the accommodation of a lot split (Article IV, Section 406.3A & 406.3.B) for the property located at 4160 Pearl Rd. It was seconded by Mr. Greene.
ROLL CALL-Payne-yes, Greene-yes, Gray-yes, Morel-yes, Blakemore-yes.

The variance request was granted.

Paytak

Paytak variance request-3730 Reserve Dr.

Secretary Ferencz read the application into the record. The applicant is James Patyak. The street address requesting the variance is 3730 Reserve Dr. Present zoning-UR. Previous variance requests-None. Section number of the variance requests and reasons for the request. Section 403.3G Minimum Rear yard setback-15 ft. Allow for deck structure to be built passed 15 ft. rear property line setback requirement. Deck will be located 7' from property line. Requesting 8' variance. Allowing for the variance would give the contractor room to build a view deck structure for homeowner while minimizing excavation on the rear bank of the property, which in turn eliminates excess disruption of soil and minimizing increase of a more rapid erosion rate of the bank.

There was also a letter dated Nov. 5, 2020 from Robert Wieler, the Architectural Review Committee Chairman of the Reserve of Medina HOA, which read,

Dear Sam,

The Reserve of Medina HOA has reviewed and approved the plans for the proposed deck repair and resurfacing at 3730 Reserve Dr. that you have submitted. The plans as shown the following, meet the general guidelines set forth in the Reserve Of Medina HOA covenants that include repairing the structure treated with pine and resurfacing with composite decking. This deck plan is within the 25 ft. side setbacks.

Note that this lot backs onto Lake Medina. Medina Parks and Medina County have additional requirements on property abutting Lake Medina. It is your responsibility to obtain their approval.

Thanks for being patient and for providing proper documentation to the Design Review Committee and HOA Board. We truly appreciate your efforts in maintaining the high standards of construction and property maintenance here in the Reserve.

There was also another letter from Nathan Eppink, Director of the Medina County Park District to the Zoning Inspector dated December 17, 2020 which read,

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Dear Elaine,

You and I have talked a number of times this year about zoning and setbacks in the Township specific to the HOA adjacent to Lake Medina. I know you've talked with contractor Sam Young quite a bit too.

Earlier this week, Sam called to describe to me concerns he has regarding a clients project in The Reserve of Medina. He said building close to the rear property line than the established setback allows will limit excavation, which could help prevent erosion. In this instance, Medina County Park District supports Sam's efforts to obtain a variance from the Township.

The applicant, Mr. James Patyak was sworn in. He said Mr. Sam Young, the contractor he has hired to construct the deck, would be speaking for him this evening. Chair Blakemore then swore in Mr. Young.

Mr. Young stated we are before the Board this evening to request an 8 ft. variance to construct a viewing deck from the rear property line. There is a very steep rear bank which is being held together now by a few trees root system. In order for us to comply with the 15 ft. rear yard setback, we would need to remove a minimum of 5 ft. from the top of that bank which would include removing those trees and what would be left was just loose soil. The bank would be diminished after that. After speaking with Nat he did not want any private docks going out into Lake Medina and that is not what we are doing. We just want to build a viewing deck. There has been an overflow installed in the lake. There currently is a deck there now and is not disrupting the lake.

Mr. Greene stated the letter from Mr. Weiler mentions repairing something that's there. Is this an old letter? Mr. Young stated it could be and added he got a bunch of mixed emotions from Mr. Weiler. He is the HOA Chairman and he could not address the building of the deck and that was why he was referred to the Medina County Park District. The HOA does have color regulations and we are using a brown composite, which could be what Mr. Weiler was talking about.

Ms. Gray stated she noticed the letter was not signed by Mr. Weiler. Mr. Young stated he printed off what Mr. Weiler emailed to him. Mr. Morel stated even if we grant a variance, if the HOA does not allow decks then Mr. Paytak could not build the deck.

Mr. Morel asked if this would be a freestanding deck? Mr. Young stated yes but we are going to brace it to the bank. There is a thick line of cover (bushes) along the bank itself so as not to cause site issues for the neighbors. It would be a 10x10 deck so it is modest in size.

Mr. Morel stated he could support this variance though it was substantial as the deck structure was modest in size. Also it helps when there is support from those who own the lake by the letter written by the park district.

Having 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, but the result was soil erosion.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

Mr. Morel made a motion to grant a 8 ft. rear yard setback variance for the construction of a 10x10 deck 7 ft. from the rear property line for the property located at 3730 Reserve Dr. as presented. It was seconded by Ms. Gray.

ROLL CALL-Morel-yes, Gray-yes, Payne-yes, Greene-yes, Blakemore-yes.

The variance request was approved. The Board approved their March 17, 2021 minutes as amended.

Having no other business before the Board, the hearing was adjourned at 8:04 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


ED MOREL VICE Chairman


5/19/2021