

ETNA TOWNSHIP BOARD OF ZONING APPEALS

Applications for Appeals to the Stop Work : Zoning Appeal Nos. 3778 and 3779
Order and Notice of Violation by The :
Pataskala Banking Company :

FINAL ORDER

The Etna Township Board of Zoning Appeals held an Adjudicatory Hearing on October 24, 2006, at 7:00 p.m. at the Etna Township Hall.

The purpose of the hearing was to consider two appeals of the Zoning Inspector’s decisions submitted by Scott Hayes representing The Pataskala Banking Company. The purpose of the first appeal is for the issuance of a stop work order on the property commonly known as Reserve B, Cumberland Trails located next to 9038 Hazelton-Etna Road, Pataskala, Ohio. The purpose of the second appeal is for the issuance of a notice of violation on the property commonly known as Reserve B, Cumberland Trails located next to 9038 Hazelton-Etna Road, Pataskala, Ohio.

A motion was made to deny both appeals as pursuant to Section 300 of the Etna Township Zoning Resolution stating that “no building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefore, issued by the Zoning Inspector.” Therefore, the stop work order is upheld as well as the notice of violation. Jeff Johnson seconded. Roll call: Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; Jeff Johnson, yes. Passed 5-0.

It is the order of the Etna Township Board of Zoning Appeals that both appeals are denied.

Findings of Fact

On September 21, 2006, Applicant began to excavate a portion of land located at the northwest corner of Trail East Road and Hazelton-Etna Road (State Route 310) (“the Open Space Parcel”) so that it could construct an access road from the Applicant’s property located at 9038 Hazelton-Etna Road (“the Bank Parcel”) to Trail East Road. Although Applicant has a permit to construct a building on the Bank Parcel, that permit was limited to the Bank Parcel and did not authorize any construction or change of use of the Open Space Parcel. The Applicant never requested and never received a permit from the Etna Township Zoning Inspector to construct an access road over the Open Space Parcel.

On September 21, 2006, the Etna Township Zoning Inspector issued a Stop Work Order, which stated that Applicant’s actions were in violation of Article 3 Section 300 of the Etna Township Zoning Resolution. On September 25, 2006, the Etna Township Zoning Inspector issued a Notice of Violation to Phil Mead, d/b/a Pataskala Banking Company, which notified the

Applicant that the work that occurred on the Open Space Parcel violated Section 300 of the Etna Township Zoning Resolution.

On October 6, 2006, Applicant filed Zoning Appeal Number 3778 regarding the Stop Work Order and Zoning Appeal Number 3779 regarding the Notice of Violation. On October 24, 2006, this Board received evidence and heard testimony regarding whether the Zoning Inspector's Stop Work Order and Notice of Violation were properly issued. At the hearing, the Applicant questioned the Township's authority over the Open Space Parcel, the zoning of the Open Space Parcel, and the private restrictions over the Open Space Parcel. In response, Etna Township testified that the Applicant failed to obtain (nor did it request) a permit from the Etna Township Zoning Inspector to construct an access road over the Open Space Parcel.

Based upon the evidence submitted and the testimony given, this Board finds that the Applicant failed to obtain a permit before it began constructing an access road on the Open Space Parcel.

Conclusions of Law

At the hearing, the Applicant argued that the Zoning Inspector did not have the authority to issue the September 21, 2006 Stop Work Order and the September 25, 2006 Notice of Violation because the Township did not have authority to permit or prohibit the construction of the access road across the Open Space Parcel because the access road is a "street." Instead, the Applicant argued that the construction of the access road was a matter under the jurisdiction of Licking County.

Because Zoning Appeal Number 3778 alleges that the Zoning Inspector acted improperly in issuing the September 21, 2006 Stop Work Order and Zoning Appeal Number 3779 alleges that the Zoning Inspector acted improperly in issuing the September 25, 2006 Notice of Violation, this Board has authority to hear and decide the appeals. Section 507 of the Etna Township Zoning Resolution authorizes this Board to "hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, or determination made by the zoning inspector." Also, this Board may "reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the zoning inspector from whom the appeal is taken." Etna Township Zoning Resolution, at Section 507. However, any action that this Board takes in respect to the appeals

must be in conformity with the terms of the Etna Township Zoning Resolution. Id. That is why this Board must affirm the Zoning Inspector's September 21, 2006 Stop Work Order and the September 25, 2006 Notice of Violation.

Section 300 of the Etna Township Zoning Resolution prohibits the construction of structures and the change of use of land if a permit has not been issued by the Zoning Inspector.

It specifically states the following:

No building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefore, issued by the zoning inspector.

Id. at Section 300.

A "structure" is "[a]nything constructed or erected, the use of which requires location on the ground, or attachment to something having a fixed location on the ground." Id. at Article 2. A parcel's "use" is "[t]he specific purpose[] for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained." Id.

Here, the Applicant attempted to add or construct a "structure" to the Open Space Parcel. An access road is "anything constructed . . . the use of which requires location on the ground. . ."


When the Applicant began to construct the access road, it triggered the application of Section 300 of the Etna Township Zoning Resolution. It began to change the use of and to add a structure to the Open Space Parcel. Therefore, pursuant to Section 300, the Applicant was required to obtain a zoning permit. Yet the Applicant failed to obtain or even request a zoning permit from the Etna Township Zoning Inspector so that it could lawfully construct the access road on the Open Space Parcel. Accordingly, the Zoning Inspector properly issued the September 21, 2006 Stop Work Order and the September 25, 2006 Notice of Violation.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Board AFFIRMS the September 21, 2006 Stop Work Order and the September 25, 2006 Notice of Violation and DENIES Zoning Appeal Number 3778 and Zoning Appeal Number 3779.

IT IS SO ORDERED.

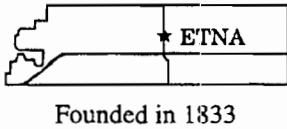

Frederick Cox


David Goll


Jeff Johnson


Cheri Rogers


Michelle Weber



Etna Township Board of Zoning Appeals

P.O. Box 188 Township Hall 740/927-7717 Fax 740/927-1699 Etna, Ohio 43018-0188

FINAL ORDER

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It is the order of the Etna Township Board of Zoning Appeals that both appeals are denied.

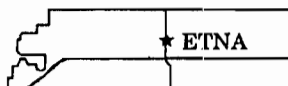

Frederick Cox


David Goll


Jeff Johnson


Cheri Rogers


Michelle Weber



Founded in 1833

Etna Township

Board of Zoning Appeals

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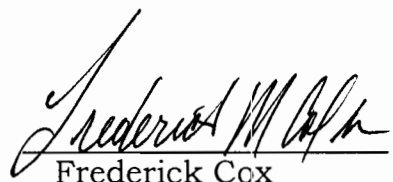
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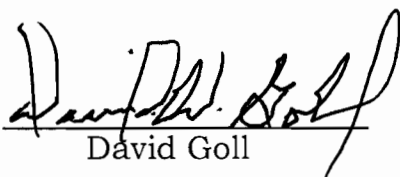
The Etna Township Board of Zoning Appeals held an Adjudicatory Hearing on October 24, 2006, at 7:00 p.m. at the Etna Township Hall.

This evening we will be considering a variance submitted by Scott Hayes for The Pataskala Banking Company. The purpose of the variance is to allow access to its project across the real property commonly known as Reserve B, Cumberland Trails located next to 9038 Hazelton-Etna Road, Pataskala, Ohio.

The variance is denied based on Section 513 Item C (Etna Township Zoning Resolution) "the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance." David Goll seconded. Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes; motion passes 5-0. The variance is denied.

It is the order of the Etna Township Board of Zoning Appeals that the variance be denied.

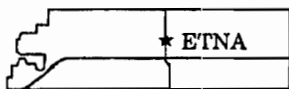

Frederick Cox


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Etna Township Board of Zoning Appeals

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FINAL ORDER



The Etna Township Board of Zoning Appeals held an Adjudicatory Hearing on October 24, 2006, at 7:00 p.m. at the Etna Township Hall.

The purpose of the hearing was to consider a variance submitted by Kessler Sign Company representing The Pataskala Banking Company. The variance is for a sign to be located on the property at 9038 Hazelton-Etna Road, Pataskala, Ohio.

A motion was made to approve the variance request with the condition that The Pataskala Banking Company is to send a letter to the Licking County Sheriff's Department, with a copy delivered to Etna Township, asking them to notify Pataskala Bank any time there is an Amber Alert posted. It is also a condition of the approval that a copy of The Licking County Sheriff's Department response to Pataskala Banking Company is forwarded to Etna Township. Finally, it is also a condition of this approval that the sign is to be turned off at 10:00 p.m. and not turned back on until 6:00 a.m. seven days a week. Cheri Rogers seconded the motion. Roll call: Michelle Weber, yes; David Goll, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. The motion passed 5-0.

It is the order of the Etna Township Board of Zoning Appeals that the variance is approved with the above conditions.

 _____ Frederick Cox	 _____ David Goll	 _____ Jeff Johnson
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 _____ Cheri Rogers	 _____ Michelle Weber
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