

Etna Township Board of Zoning Appeals

Held

January 23,

2007 19

ADJUDICATORY HEARING

The adjudicatory hearing was called to order by Chairman Goll at 7:06 p.m. on January 23, 2007 at the Etna Township Hall. The meeting was audio and video taped for township records. Mrs. Weber, Mr. Cox, Mr. Goll, Mrs. Rogers, Mr. Johnson, and clerk Laura Brown were present.

The purpose of this hearing is concerning an appeal of the Zoning Inspector's decision regarding the interpretation of motion flags not banners filled by Terry Carpenter at 8520 East Main Street, Reynoldsburg, OH 43068.

Chairman Goll explained the process and the principles who wanted to testify and present evidence were sworn in all other witnesses will be sworn in as they give their testimony. Terry Carpenter and Stan Robinson were sworn in.

Terry Carpenter stated he has owned Reynoldsburg Motor Car for fourteen years and has had the motion flags for around twelve years. He replaces the flags every ninety days because of the wear from weather. Mr. Robinson, Zoning Inspector, asked that he remove the banners. He removed a banner that had car facts on it. What he has is motion flags. He does not call it a banner. He submitted as **Exhibit 1 SID Savage Auto Dealer Supply, Inc. catalog and referenced page 16.**

Stan Robinson, Etna Township Zoning Inspector, stated Terry Carpenter had six banners on his property. He stated that he send Mr. Carpenter a notice of violation on November 21, 2006 stating he has 2 certified preowned, sale, welcome, and carfax banners that are in violation of Section 1202 General Requirements for all Signs and Districts and Section 1210 Abandoned Signs. He determines that anything flexible is a banner.

Terry Carpenter explained that the flag is secured at the top and bottom and swivel 360 degrees on the pole in the wind. There are four of the flags in the front and one in the back. He is not aware of any complaints on his flags.

Terry Carpenter verified that the banner that read carfax has been removed. He changes the flags quarterly and in the winter he does not even display the flags. They are made out of a flag material. Rick Cox stated he considers these a flag and not a banner.

Stan Robinson stated there is a 20 foot set back requirement for signs and it may become an issue at some point but it is not an issue tonight. Terry Carpenter stated he did not want to move his sign.

Terry Carpenter stated he keeps his lot clean and first class. He has been nominated twice in the State of Ohio for quality dealer of the year award in the past three years.

Rick Cox moved to close the hearing at 7:20 p.m. Cheri Rogers seconded. Passed 5-0.

Rick Cox stated it is a permanent fixture and is not a temporary banner. He wants it to be clear of the definition of a flag to a banner.

Jeff Johnson stated the intent of Section 1200 is to promote public health welfare and safety. The intent is to protect property values and create a more attractive economic and business climate, and to enhance and protect the physical appearance of the community. He feels that he follows the intent.

David Goll was concerned that the car lot did not change the flags. It was decided they would be in violation at that point.

Michelle Weber moved to grant the appeal based on Section 1200 Intent of the Zoning Resolution. The purpose of this article is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising signs, and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, and preserve the scenic and natural beauty of designed areas. It is further intended to reduce sign or advertising distraction and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more open space, curb the deterioration of the natural environment, and enhance community development. Jeff Johnson seconded. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Jeff Johnson motioned to adjourn the meeting. Mrs. Rogers seconded. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Mr. Goll adjourned the meeting at 7:26 p.m.

Approved as read

Jan 28, 2007



Laura Brown, Clerk

Approved as corrected/amended



David Goll, Chairman

DAYTON LEGAL BLANK CO., FORM NO. 1014B

Etna Township Board of Zoning Appeals

Held

January 23,

2007

ADJUDICATORY HEARING

The adjudicatory hearing was called to order by Chairman Goll at 7:30 p.m. on January 23, 2007 at the Etna Township Hall. The meeting was audio and video taped for township records. Mrs. Weber, Mr. Cox, Mr. Goll, Mrs. Rogers, Mr. Johnson, and clerk Laura Brown were present.

The purpose of this hearing is concerning an appeal of the Zoning Inspector's decision regarding the interpretation that one dwelling per agriculture went into effect February 1974 filled by Scott Hayes attorney for James and Sue Johnson for the property at 110-112 Blueview Drive, Reynoldsburg, Ohio 43068.

Chairman Goll explained the process and the principles who wanted to testify and present evidence were sworn in all other witnesses will be sworn in as they give their testimony. Mr. Johnson, Mr. Hayes, and Mr. Robinson were sworn in.

Chairman Goll stated he is not sure what they are appealing. Mr. Hayes stated Mr. Johnson tried to sell the property. The buyer called and asked if the property is zoned properly. The answer they received was no the property is not properly zoned. The letter from Mr. Robinson stated one dwelling per agriculture parcel. They do not want to tear a building down to sell the property or disclose on residential disclosure form that the property is not zoned properly. Mr. Goll asked if they needed the variance. Mr. Hayes stated he does not think Mr. Robinson is correct.

Mr. Johnson spoke with Tom Fredericks with County Planning prior to purchase. He referred him to Skip Fry, Zoning Inspector. This was on September 21, 1989. On September 30, 1989 he spoke with Skip Fry who stated the property was built prior to zoning and was grandfather. Based on this information he purchased the property on December 1, 1989.

On September the 6th, 2006 Mr. Johnson was approached by Century 21 with an offer to purchase the property. The financing was approved with the condition of an appraisal of the property. The appraiser contacted Mr. Robinson and was told the property was not properly zoned. That is when he contacted Mr. Hayes and started the appeal process.

Mr. Hayes reviewed the Exhibits he would like to submit. **Exhibit 1** is two copies of deeds pertaining to the property. The Johnsons purchased the property on a land contract and then few months later took out permanent financing. **Exhibit 2** is notes from Mr. Johnson. The notes showed 9-30-86 but it was actually 1989. A neighbor on Blueview Drive submitted a letter from Skip Fry dated April 8, 1992 and a letter from Robert Becker dated April 22, 1992 that Mr. Hayes just received today. **Exhibit 3** consists of four pictures of the buildings on the property. Mr. Johnson explained that since he has purchased the property he has replaced the siding, roof and painted. The tax records indicate that all the buildings were built in 1970's. **Exhibit 4** Letter from the Zoning Department, Stan Robinson dated December 5, 2006 stating one dwelling per AG parcel went into effect February 1974. **Exhibit 5** Section 915 Agricultural District from the Zoning Resolution that states B. Single-family dwellings are permitted uses. **Exhibit 6** is a copy of the definition page of the Zoning Resolution for Dwelling, Single-Family. **Exhibit 7** is the tax cards for each of the units. Mr. Johnson explained that the tax card for 110 and 110A was built in 1971, the tax card for 110B was built in 1975 and the tax card for 112 was built in 1976. Mr. Johnson purchased the property December of 1989. **Exhibit 8** A copy of a judgment entry in a the case of Robert Koch vs. Etna Township in the common please court of Licking County specifically on page 16 The zoning inspector advised the court that a 1974 zoning resolution had been invalidated by the courts. Mr. Hayes received this document today. **Exhibit 9** is a copy of the 1965 Etna Township Zoning Resolution.

James Johnson stated he has tenants in all of the buildings and rarely has a building empty, he may have had one remain empty for two months.

The letter from Skip Fry was directed to all the residents on Blueview not specifically to 110-112 Blueview. Jeff Johnson asked if he had copies of the zoning certificates for the buildings. Stan Robinson stated he has provided copies of the zoning certificates that he could find.

Stan Robinson provided an overview and copies of zoning certificates as **Exhibit 10**. Page two is a copy of the Trustees meeting on January 12, 1974 where the Trustees passed a resolution for the 1974 resolution. Page three is a copy of the agricultural district in the 1974 resolution. Mr. Robinson stated per Ohio Revised Code 519.122 Limitation on procedural challenges states no action challenging the validity of a zoning resolution shall be brought more than two years after the adoption of the resolution. A copy of the zoning inspector log is also attached. Mr. Robinson stated the issues is the use of the property not how many structures. Mr. Robinson stated he considers the use as a multi-family use by having two single family house and a double. The double is legal because it is prior to 1974. Mr. Robinson feels the intent of the resolution is for one single family dwelling. Mr. Hayes stated they disagree on how many single family dwellings are permitted.

Jeff Johnson questioned the tax records. The buildings all have the same parcel number but have three different drawings for property appraisal purposes. The buildings were built at different times.

Rick Cox stated they have applied for all the zoning permits for the buildings. The previous Zoning Inspector was on the property to issues permits.

RECORD OF PROCEEDINGS

0151

Minutes of

Meeting

DAYTON LEGAL BLANK CO., FORM NO. 10148

Etna Township Board of Zoning Appeals

Held

January 23,

2007

Cheri Rogers moved to close the public hearing and move to discussion. Rick Cox seconded. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Cheri Rogers stated the appeal is for the interpretation of the Zoning Resolution. She feels he interpreted the Zoning Resolution correctly.

Cheri Rogers moved to deny the appeal based on Section 507 item one – 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. No error has occurred. Michelle Weber seconded. The Board had discussion the appeal is on the interpretation of the letter dated December 5, 2006. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Scott Hayes requested findings of fact and conclusions of law.

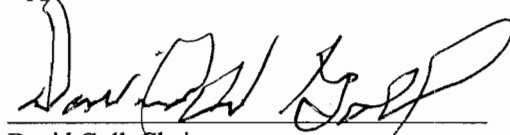
Rick Cox motioned to adjourn the meeting. Cheri Rogers seconded. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Mr. Goll adjourned the meeting at 8:27 p.m.

Approved as read 2/8/07


Laura Brown, Clerk

Approved as corrected/amended _____


David Goll, Chairman

DAYTON LEGAL BLANK CO., FORM NO. 10148

Etna Township Board of Zoning Appeals

Held

January 23,

2007

ADJUDICATORY HEARING

The adjudicatory hearing was called to order by Chairman Goll at 8:32 p.m. on January 23, 2007 at the Etna Township Hall. The meeting was audio and video taped for township records. Mrs. Weber, Mr. Cox, Mr. Goll, Mrs. Rogers, Mr. Johnson, and clerk Laura Brown were present.

The purpose of this hearing is concerning a variance filled by Scott Hayes attorney for James and Sue Johnson for the property at 110-112 Blueview Drive, Reynoldsburg, Ohio 43068. The applicant disputes a variance is required but files in the alternative to the appeal.

Chairman Goll explained the process and the principles who wanted to testify and present evidence were sworn in all other witnesses will be sworn in as they give their testimony. Mr. Johnson, Mr. Hayes, and Mr. Robinson were sworn in.

Scott Hayes submitted the same evidence and exhibits as he presented in the appeal hearing. **Exhibit 1** is two copies of deeds pertaining to the property. The Johnsons purchased the property on a land contract and then few months later took out permanent financing. **Exhibit 2** is notes from Mr. Johnson. The notes showed 9-30-86 but it was actually 1989. A neighbor on Blueview Drive submitted a letter from Skip Fry dated April 8, 1992 and a letter from Robert Becker dated April 22, 1992 that Mr. Hayes just received today. **Exhibit 3** consists of four pictures of the buildings on the property. Mr. Johnson explained that since he has purchased the property he has replaced the siding, roof and painted. The tax records indicate that all the buildings were built in 1970's. **Exhibit 4** Letter from the Zoning Department, Stan Robinson dated December 5, 2006 stating one dwelling per AG parcel went into effect February 1974. **Exhibit 5** Section 915 Agricultural District from the Zoning Resolution that states B. Single-family dwellings are permitted uses. **Exhibit 6** is a copy of the definition page of the Zoning Resolution for Dwelling, Single-Family. **Exhibit 7** is the tax cards for each of the units. Mr. Johnson explained that the tax card for 110 and 110A was built in 1971, the tax card for 110B was built in 1975 and the tax card for 112 was built in 1976. Mr. Johnson purchased the property December of 1989. **Exhibit 8** A copy of a judgment entry in a the case of Robert Koch vs. Etna Township in the common please court of Licking County specifically on page 16 The zoning inspector advised the court that a 1974 zoning resolution had been invalidated by the courts. Mr. Hayes received this document today. **Exhibit 9** is a copy of the 1965 Etna Township Zoning Resolution.

Stan Robinson stated the variance is from Section 915 Agriculture District he believes you can not give a variance from something that is not a permitted use, a variance if for setbacks. Cheri Rogers referenced Section 512 Variance. Rick Cox stated the special conditions would be the property has valid permits. Rick Cox suggested the variance would state no more dwellings could be constructed. When a building becomes in disrepair they can not be rebuilt taking the lot back to a conforming lot.

Cheri Rogers moved to close the public hearing and move to discussion. Rick Cox seconded. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

The Board discussed the hardship that would be caused by not granting the hardship. The buildings would have to be removed and the people living in the buildings would be affected. Also the same township that issued the zoning permits would now be asking for the buildings to be removed. If the house did not have a zoning permit that would be a different issue.

Jeff Johnson stated that he felt the Board should be using the standards of the 1974 Zoning Resolution and not the current Zoning Resolution. Cheri Rogers felt that it needed to be brought in compliance with the current standards. The Board did not want to grandfather the buildings in. Rick Cox stated the township felt the buildings were grandfathered. The Board discussed unnecessary hardship. The hardship is that the property owner has valid permits for the structures.

Scott Hayes stated he has suggested to Mr. Johnson that they record the variance.

Rick Cox moved to approve the variance for 110 - 112 Blueview Drive with special conditions of the property being that they have valid zoning permits and unnecessary hardship as defined on page 2-15 of the Zoning Resolution specifically item #4 the hardship is unique to the applicant's property and is not a hardship common to the area. Conditionally no additional residential structures be built on this property and once they want to voluntarily destroy a building it can not be rebuilt. Michelle Weber seconded. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

The variance was conditionally granted.

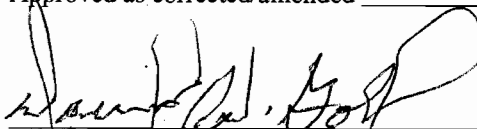
Cheri Rogers moved to adjourn the meeting. Rick Cox seconded. Roll Call: Michelle Weber, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0. Mr. Goll adjourned the meeting at 8:55 p.m.

Approved as read

2/18/07

Approved as corrected/amended


Laura Brown, Clerk


David Goll, Chairman