

RECORD OF PROCEEDINGS

Minutes of

Meeting

DAYTON LEGAL BLANK CO., FORM NO. 1014

Etna Township Board of Zoning Appeals

Held

August 20,

2007

ADJUDICATORY HEARING

The adjudicatory hearing was called to order by Chairman Goll at 6:20 p.m. on August 20, 2007 at the Etna Township Hall. The meeting was audio and video taped for township records. Mrs. VanDyne, Mr. Cox, Mr. Goll, Mrs. Rogers, Mr. Johnson, and clerk Laura Brown were present.

The purpose of this hearing is to consider an appeal of the zoning inspector's decision submitted by Ethel Cochran for the property located on State Route 310 next to Dairy Queen parcel number 010-017994-00.000. The nature of the appeal is regarding no permit on file regarding a sign. Chairman Goll explained the process.

The principles who wanted to testify and present evidence were sworn in all other witnesses will be sworn in as they give their testimony. Ethel Cochran of 7825 Quarry Cliff Court Reynoldsburg, Steven Karales 771 Gascony Drive Reynoldsburg, and Stan Robinson Zoning Inspector were sworn in.

Ethel Cochran stated that Mr. Karales is her real estate agent and will testify regarding this sign. Steven Karales stated the signs were erected in 2004. The sign company back in 2004 spoke with the township and was told where to install the signs. The sign in question is still on the same post as the one back in 2004. At that time four signs were installed on 310, one where the garden store is today, one where the day care is today, one across the street, and one on the property in questions. Steven Karales feels the orange stickers were placed over his phone number on the sign. Stan Robinson told him the sign was in violation. Steven Karales stated the signs have been there over three years and they have never been told they were in violation. The sign company stated the signs were to be installed behind the telephone poles. Mr. Karales stated he was told if something was not done he would go after his other clients in Etna as well. Mr. Karales did not feel the stickers should have been placed on the sign until a hearing was held.

Mr. Karales stated the signs are over \$500.00 to install. They are 4 x 8 commercial real estate signs and are technically temporary signs. The sign is not permanently affixed; the post is not cemented in. This is a v shaped sign using two signs and three posts. The posts have not been moved since May of 2004. The panels were replaced and the posts have been painted. Mr. Karales stated when he spoke to the sign installer who is not in business any longer but he did call him. He remembered they were 20 feet from the center line of the road which is what he was told as to how they were to be installed. He did not measure them because of the traffic on 310 it would be hard to measure. Mr. Karales stated he was told they had to be behind the telephone poles, Dallas Maynard was the zoning inspector at the time.

Mr. Robison asked Ethel Cochran and Steven Karales if either of them are aware of or have a copy of a permit for the sign. Mr. Karales stated no. He would not have applied for the permit that is why he hired the sign company and the sign company is no longer in business. Mr. Robinson submitted a list of sign permits for the township back to May of 1961 as Exhibit 1. A copy of the permit was not located. Mr. Karales stated if there was an issue at that time then Dallas should have brought the issue up.

Mr. Robinson stated if you view the picture the sign is twenty feet off the right-of-way. Mr. Karales stated the sign is behind the stake that ODOT placed on the right-of-way.

Mrs. VanDyne asked what the name of the sign company was that installed the signs. Mr. Karales stated the sign company is no longer in business and he does not remember the name it was something like Signs and More out of Lancaster, Ohio he could provide the information if needed.

David Goll asked if Mr. Karales had just spoken with the sign company. Mr. Karales stated he could not reach anyone. Laura Brown stated earlier in the meeting Mr. Karales stated when he spoke with the sign installer he remembered they were 20 feet from the center line. Mr. Karales clarified that was what he remembered the sign installer stated at the time the signs were installed.

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Stan Robinson stated the log shows sign permits in April of 2003 for Buckeye Mulch and October of 2004 for B & T Car Company. The zoning resolution in Section 300 requires zoning permits for any structure which includes a sign. Section 1200 requires a sign permit and 1205A regarding a free standing sign stated 20 feet back from the right-of-way. Stan Robinson can not find a sign permit and the owner can not produce a sign permit. The sign is only two feet out of the right-of-way.

Claudette VanDyne asked Stan Robinson what is the road right-of-way for 310. It changes as you travel 310. That is why ODOT came out and staked 310. Steven Karales asked if the township was going to have everything moved that is in the right-of-way. Stan Robinson requested O.D.O.T. to stake the right-of-way. Mr. Karales stated he understands the laws today and if they did exist before he does not feel that he should be penalized for something that happened three years ago that is wrong.

Cheri Rogers moved to close the testimony portion of the hearing. Jeff Johnson seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Rick Cox stated a permit is required for a sign that is over twelve but is not more than sixty-four square feet in area. The change to the sign regulations were passed July 7th of 2003.

Stan Robinson stated the Table 1205-A Free Standing requires 20' from the right-of-way. Section 1207 Setbacks for public and quasipublic signs state real estate signs may be erected not less than ten feet from the established right-of-way. The sign is not obstructing any vision.

The board discussed the late fee that will be charged for the sign permit. The Trustees are the only board permitted to waive late fees. Stan Robinson has not accessed the late fee because a sign permit has not been applied for.

The board discussed the cost to move the sign. They also discussed the option of a variance. The variance would be for a temporary sign but the sign has been there for three years. The sign is not in the road right-of-way but is not the ten feet from the right-of-way. Variances can be granted for practical difficulties but not appeals.

Stan Robinson stated the late fee is double the amount of the original permit. The permit would be one hundred dollars and twelve dollars for every square foot so it would be approximately one hundred and twenty the late fee would be two hundred and forty dollars. Mr. Karales stated a sign cost five hundred dollars to put up and one hundred and fifty to move the post. Because they would have to take everything down it would cost seven hundred dollars. Then you would impose a late fee for a sign that has been there for three years. Rick Cox explained that the board can not waive the late fee and suggested he move the sign back. Mr. Karales felt the sign should be grandfathered because the zoning inspector was not doing his job and did not know what the rules were and now the zoning inspector is going to enforce them. The sign has been there for three years and no one has said one word about the sign.

Cheri Rogers stated appeals are based on the interpretation of the zoning inspector at the time, his interpretation of the zoning regulations at this time. At this time the sign is out of compliance.

Stan Robinson stated if he takes the sign down and puts it back up there would be no late fee because the sign was not up. David Goll stated to move the sign it would cost seven hundred and fifty dollars. Stan Robinson stated the sign needs moved any how.

Steven Karales asked if this was about revenue. The board stated no it is about helping you out. Mr. Karales feels they are being penalized for something they were told to do three years ago. And this will cost them seven hundred and fifty dollars and then charge a late fee for a permit that can not be found. David Goll stated it is unfortunate that the sign company is out of

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business now because they are the ones that messed up. Mr. Karales stated the township should have caught it at that time not three years after the fact.

Jeff Johnson stated there are two options to allow the sign to remain where it is just like it is the other option is side with the way Stan interprets now and make him move the sign. Stan can not issue a permit for a non compliant sign. The permit is for the structure the sign is on. If the real estate company takes the poles with them then the new sign would need a permit.

Mr. Karales stated the sign is behind the telephone poles, it is behind ODOT's post, and it does not obstruct the view.

Jeff Johnson moved to approve the appeal based on Section 507 Duties of the Board of Zoning Appeals Item 1.

Discussion: Cheri asked are you stating that Stan is not interpreting the Zoning Regulations. Jeff stated he is not saying that Stan is not interpreting what it means but that Jeff believes it was the previous zoning inspector's interpretation. Claudette verified that the interpretation is on the zoning inspector at the time the signs where installed. Jeff stated if everything is done by the book then the Board of Zoning Appeals Board would not be needed. It is difficult to penalize someone that was told something at the time that it happened. Because he painted the post and replaced the face it looks like a new sign. It says the signs need to be maintained.

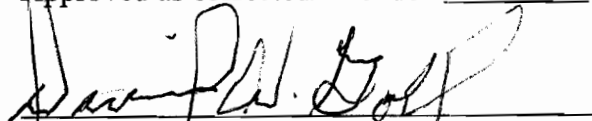
Claudette VanDyne seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, no; and Jeff Johnson, yes. Passed 4-1.

Rick Cox motioned to close the hearing at 7:10 p.m. Mrs. Rogers seconded. Roll Call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Passed 5-0.

Approved as read Sept 17, 2007

Approved as corrected/amended _____





Laura Brown, Clerk

David Goll, Chairman

DAYTON LEGAL BLANK CO. FORM NO. 1014B

Etna Township Board of Zoning Appeals

Held

August 20,

2007

The adjudicatory hearing was called to order by Chairman Goll at 7:19 p.m. on August 20, 2007 at the Etna Township Hall. The meeting was audio and video taped for township records. Mrs. VanDyne, Mr. Cox, Mr. Goll, Mrs. Rogers, Mr. Johnson, and clerk Laura Brown were present.

The purpose of this hearing is to consider a variance regarding the building height requirements submitted by ProLogis for the location on 11819 National Road, ProLogis South. 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. Nelson Yoder with Meacham and Apel Architects of 6161 Riverside Drive, Philip Smith with ProLogis of 3765 Interchange Road, and Stan Robinson Zoning Inspector were sworn in.

Nelson Yoder stated ProLogis is requesting a variance for building height up to forty five feet for all the buildings in the park on 11819 National Road. The buildings are over two hundred feet from the property line on the east side and on the west side about two hundred and fifty feet of existing row of trees. The south side borders interstate 70 and the north side is route 40. To attract the type of tenants that ProLogis would have the buildings need the high clearance and the buildings need to be higher than thirty five feet. ProLogis has adopted a new light fixture called a dark sky fixture to help with light on adjoining properties. The lights will be located at thirty feet whether the building is thirty five feet tall or forty five feet tall. The number of lights on building number three has been cut in half to try to work with the communities concerns.

The buildings on the north side are between forty and forty five feet. ProLogis plans on using wall signs. It was discussed that there is a small portion of property south of Interstate 70. This portion of the property is not affected by the property on the north side of Interstate 70. The legal description defines the section on the other side of Interstate 70.

It is approximately two hundred and fifty feet from the Mayflower side of the property and has the trees in between. The buildings on the north side have a variance for up to forty five feet in building height.

Stan Robinson stated the regulations do state thirty five feet in building height.

Cheri Rogers moved to close the testimony portion of the hearing. Jeff Johnson seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Cheri Rogers moved to approve variance VA07-07 with a maximum building height of forty-five feet for all of ProLogis South except for the property south of Interstate seventy based on Section 513 Application and standards for variance and appeals that fact that all the standards and conditions imposed by subsection five were met. Rick Cox seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Cheri Rogers moved to close the hearing at 7:30 p.m. Claudette VanDyne seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Approved as read _____

Approved as corrected/amended _____

Laura Brown 8/20/07

Laura Brown, Clerk

David Goll

David Goll, Chairman

Etna Township Board of Zoning Appeals

Held

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2007

The adjudicatory hearing was called to order by Chairman Goll at 7:40 p.m. on August 20, 2007 at the Etna Township Hall. The meeting was audio and video taped for township records. Mrs. VanDyne, Mr. Cox, Mr. Goll, Mrs. Rogers, Mr. Johnson, and clerk Laura Brown were present.

The purpose of this hearing is to consider a variance regarding set-backs submitted by Scott Birrer for ProLogis. The nature of the variance is regarding rear setbacks for Phase II to zero from twenty-five feet, front set backs of Phase I to zero from twenty five feet, and to reduce minimum ground sign set back from right-of-way on state route 40 to five feet three inches for the location on 87 Heritage Drive, ProLogis North. 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. Nelson Yoder with Meacham and Apel Architects of 6161 Riverside Drive, Scott Birrer with Gallagher and Kavinsky of 8740 Orion Place, Philip Smith with ProLogis of 3765 Interchange Road, and Stan Robinson Zoning Inspector were sworn in.

Part A

Scott Birrer stated ProLogis is subdividing and re-plating a hundred and forty six acre parcel into six different parcels. This parcel will have a line through the building. This is only for ProLogis' investment portfolio. ProLogis will invest them into different funds. ProLogis will maintain ownership of over twenty percent of both funds and the funds themselves will remain with ProLogis. The buildings will be owned by one person. Exhibit B in the packet provided illustrates the imaginary line to divide the building.

ProLogis needs a variance from the rear set back of one building and the front set back on the other building. This is similar to a condo or to a shopping center. This is still one building. There will not be a space between the buildings. From the outside the building will look like one building. The rest of the building will remain in the setbacks as originally approved. This is an imaginary line.

Stan Robinson verified that ProLogis will remain ownership. Scott Birrer stated it would be difficult to sell off that portion of the building.

The board will address this variance into two sections Part A will address the setbacks and Part B will address the sign.

Cheri Rogers moved to close the testimony portion of Part A. Rick Cox seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Rick Cox stated this would be no different than a condo situation. This is only going to affect ProLogis.

Rick Cox moved to approve variance VA07-6 Part A regarding front and rear setback to be zero feet. Claudette VanDyne seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Part B

Cheri Rogers moved to open Part B. Jeff Johnson seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Scott Birrer stated the sign was constructed with the zoning approval (Exhibit E) but the large monument sign is out of compliance by less than five feet. The cost to install the sign was two hundred thousand dollars to construct, it would cost significant to move the forty ton of concrete on the sign. It is not on any utility lines or does it impede vision. The sign was drawn to be ten feet off the right-of-way.

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Stan Robinson did not have any testimony.

Cheri Rogers moved to close the testimony portion of VA07-6 Part B. Rick Cox seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Cheri Rogers moved to grant the variance of VA07-6B reducing the sign setback to five feet three inches from ten feet based on Section 512 Variance where a literal enforcement of the provisions of this resolution would result in practical difficulties. Rick Cox seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Rick Cox moved to close the hearing at 8:04 p.m. Cheri Rogers seconded. Roll call: Claudette VanDyne, yes; Rick Cox, yes; David Goll, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Approved as read *[Signature]*

Approved as corrected/amended _____

Laura Brown 8/20/09

David P.H. Goll

Laura Brown, Clerk

David Goll, Chairman