

0034
RECORD OF PROCEEDINGS
 Etna Township Zoning Commission

Minutes of

December 21,

Meeting
 2005

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

20

The Etna Township Zoning Commission met in the Etna Township Hall on December 21, 2005 for the purpose of conducting a regular meeting and to hold two public hearings one on Section 510 Appeals, Section 513 Application and Standards for Variance and Article-2 definitions and one on Sections 809 and 810 General Business District regarding marginal strip developments and strip developments. The hearings were audio and video taped for the township records.

The meeting was called to order at 7:00 p.m. by Chairman Bravard with the following members present: Mr. Kerner, Mrs. Taylor, Mr. Colburn, Mr. Van Dyne, Chairman Bravard, and Clerk Laura Brown.

Jim VanDyne moved that we adopt the agenda with flexibility. Colburn seconded the motion. Roll call: Motion passed 5-0.

Mike Kerner made a motion to waive the public reading and approve the minutes for the meeting on December 7, 2005. Taylor seconded the motion. After discussion roll call: Motion passed 5-0.

(New Business B)

Chairman Bravard reviewed the correspondence that was sent from the Zoning Commission. Chairman Bravard read the letter from Phil Laurien quoting the cost for Completing a Zoning Resolution, revise the Land Use Map, limitation of Big Box stores, and establishing noise control.

Jim VanDyne does not want to see anything on State Route 310. Vince Colburn stated the quote is still good but the Zoning Commission can pick the routes. Mr. Colburn also questioned what the differences were between the quote on revising the Zoning Resolution and revising the Land Use Map. The quote on the Land Use Map stated a complete text and map of a comprehensive land use plan similar to the Concord Township Plan. The Zoning Commission will continue the discussion after the public hearing.

Public Hearings

A. Section 510 Appeals, Section 513 Application and Standards for Variance and Article – 2 definitions. Mike Kerner moved to re-open the public hearing on Section 510 and 513 at 7:10 p.m. VanDyne seconded. Roll call: 5-0. This hearing was first heard on December 7th, 2005. The hearing was recessed to wait for the non-binding recommendation from Licking County Planning Commission.

Chairman Bravard read the recommendation and staff report from LCPC. The LCPC recommended approval and provided a definition from the prosecutor's office on aggrieved person.

Current: Section 510 Appeals

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this resolution may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the township affected by any decision of the zoning inspector. Such appeal shall be taken within twenty (20) days after the decision by filing, with the zoning inspector and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is taken. The zoning inspector shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from is taken.

Recommendation: Section 510 Appeals

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this resolution may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the township affected by any decision of the zoning inspector. Such appeal shall be taken by filing, with the zoning inspector and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is taken. This notice must be presented at the Etna Township Hall to the township clerk or the zoning inspector by the close of normal business hours on the twentieth (20th) day after the decision. In their absence, the notice may be administratively received by a township official. The zoning inspector shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed is taken.

Etna Township Zoning Commission
RECORD OF PROCEEDINGS

Minutes of

December 21,

2005 Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Reasoning for changes to Section 510:

Held: Currently an appellant may submit a notice of appeal anytime on the 20th day after a decision. An appellant, under current resolution, could come to the township office as late as 8:00PM on the 20th day and then contend that the township must take his appeal the next day because either the clerk or the zoning inspector was not available. The "normal business hours" statement should help solve this.

2. At times during normal business hours our clerk and zoning inspector may be out. Since we are obligated to accept appeals and variance requests we feel it important to allow a township official accept such notices administratively only. This will prevent the potential for legal action against the township.

Current: Section 513 Application and Standards for Variance

A variance from the terms of this resolution...until a written application for a variance is submitted...

1. - 5. A variance shall not be granted...

Recommendation: Section 513 Application and Standards for Variance *and Appeals*

A variance or appeal from the terms of this resolution...until a written application for a variance or appeal is submitted...

1. - 3.

4. Switch the current statements from #4 with the statements from #5

5. Switch the current statements from #4 with the statements from #5...shall accompany the variance or appeal application.

A variance or appeal shall not be granted...

Reasoning for changes to Section 513:

1. In section 509 it states that "Appeals and variances shall conform to the procedures and requirements of Sections 509 through 518... Sections 511 through 513 only refer to variances and may confuse an appellant with conflicting and/or omitted context.

2. We'd like to switch #4 and #5 because #4 (a-g) only concerns variances, #5 concerns both. We thought it better to keep all of the sub-sections that had to do with both appeals and variances together so that the current #5 sub-section may not be overlooked by an appellant.

Current: Article-2 Definitions

There is no definition for "Aggrieved person"

Recommendation: Article-2 Definitions

Aggrieved person: An Aggrieved person is one whose interest in the matter is immediate and/or pecuniary, and not a remote consequence of the judgment. (Pecuniary is defined: relating to money)

Reasoning for addition to definitions:

Currently anyone may submit an appeal, including a person having no interest in the zoning inspector's decision. This could cause appeals to be made without merit and/or for spite or indifference toward a citizen of Etna Township.

The term aggrieved is in our Section 510 and is an ORC requirement. Therefore we feel it imperative it be defined to prevent any confusion. The definition is noted in a handbook circulated at the June 2, 2005 zoning seminar by Licking County AND is confirmed by an Ohio court case (Ohio Contract Carriers Assn., Inc., v. Pub. Util. Comm. (1942) 140 Ohio St. 160). This information I confirmed with the Licking County Prosecuting Attorney's office.

Steve Holloway, BZA Chairman, presented information regarding the definition of an aggrieved person. Mike Kerner stated the prosecutor's office agreed with the "and/or pecuniary" in the definition of aggrieved person.

Mike Kerner moved to close the public hearing at 7:20 p.m. Taylor seconded. Roll call: 5-0.

Mike Kerner moved to vote on the public hearing tonight. VanDyne seconded. Roll call: 5-0.

Mike Kerner moved to recommend to the Trustees approval of the modifications to the definition section, Section 510 Appeals and Section 513 Applications and Standards for Variance as presented above. Colburn seconded. Roll call: passed 5-0.

B. Sections 809 and 810 General Business District regarding marginal strip developments and strip developments. Vince Colburn moved to open the public hearing on Section 809 and 810 regarding strip malls at 7:25 p.m. Taylor seconded. Roll call: 5-0. Chairman Bravard discussed the letter and staff report from the Licking County Planning Commission. The LCPC staff and commission recommended approval and to amend the definitions by adding the definition of shopping centers.

RECORD OF PROCEEDINGS

Minutes of

December 21,

Meeting
2005

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Neil Ingle wanted to verify what the Zoning Commission was doing. Jim VanDyne explained that it was not defined what a strip mall was and that is why they are removing.

Held

20

~~Jim Van Dyne moved to close the public hearing at 7:30 p.m. Kerner seconded. Roll call: 5-0.~~

Mike Kerner moved to recommend to the Trustees to approve the amendment including the definition as stated below. Colburn seconded. Roll call: 5-0.

The Zoning Resolution now:

Section 809 – Local Business District (LB) The purpose of the LB District is to encourage the establishment of areas for convenience business uses which tend to meet the daily needs of the residents of an immediate neighborhood. Such districts shall be strategically located with access to a collector thoroughfare as specified in the major thoroughfare plan. Marginal strip development shall be prohibited.

The suggested change:

Section 809 – Local Business District (LB) The purpose of the LB District is to encourage the establishment of areas for convenience business uses which tend to meet the daily needs of the residents of an immediate neighborhood. Such districts shall be strategically located with access to a collector thoroughfare as specified in the major thoroughfare plan. ~~Marginal strip development shall be prohibited.~~

The Zoning Resolution now:

Section 810 General Business District (GB) The purpose of the GB District is to encourage the establishment of areas for general business uses to meet the needs of a regional market area. Activities in this district are often large space users and the customers using such facilities generally do not make frequent purchases. Shopping centers will be the predominant building approach. Strip development shall be prohibited. GB Districts shall be located on an arterial thoroughfare as specified in the major thoroughfare plan.

The suggested change:

Section 810 General Business District (GB) The purpose of the GB District is to encourage the establishment of areas for general business uses to meet the needs of a regional market area. Activities in this district are often large space users and the customers using such facilities generally do not make frequent purchases. Shopping centers will be the predominant building approach. ~~Strip development shall be prohibited.~~ GB Districts shall be located on an arterial thoroughfare as specified in the major thoroughfare plan.

Definition: Shopping Centre –

1. Any group of more than five permitted or discretionary uses, designed, developed and managed as a unit by a single owner or tenant, or a group of owners or tenants.
2. A group of commercial uses, which have been designed, developed and managed as a unit by a single owner or tenant, or a group of owners or tenants and distinguished from a business area comprising unrelated individual uses.
3. A building or group of buildings on the same site, in which more than six of the permitted uses are located together for their mutual benefit, including the use of off-street parking and other joint facilities.
4. A group of commercial establishments, planned, developed, owned, and managed as a unit, with off-street parking provided on the property, and related in its location, size and type of shops to the trade area which the unit serves.
5. A commercial development, containing at least three individual business establishments conceived and designed as a single, comprehensively planned development project with appropriate relationships between the shopping centres buildings, activities, open spaces, parking areas, loading areas, driveways, other shared facilities, public areas and adjoining streets, and held in single ownership or by participants in a condominium corporation or commercial cooperative.
6. Several mixed commercial functions housed in one or more buildings designed as an integrated unit and contained within one legal parcel of land.
7. A commercial area developed in accordance with a comprehensive scheme containing not less than four separate commercial uses which uses are intended to serve more than one neighborhood area with a broad range of retail, cultural, and personal services.
8. A group of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

New Business Item b continued.

Vince Colburn moved to ask the Trustees to set up the initial appropriation of \$10,000 to start the process for a new Zoning Resolution. Taylor seconded.

Discussion: Vince Colburn would ask the board if they agree with the 10,000. The Zoning Commission discussed what money is appropriated.

Licking County Zoning Commission
RECORD OF PROCEEDINGS

Minutes of

December 21,

Meeting
2005

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Vince Colburn amended the motion to appropriate \$15,000. Taylor agreed. ~~Mike Kerner stated he would rather leave the dollar figure off and let the Trustees decide the dollar figure. Vince stated to appropriate the money to provide us with question 1 for a complete working Zoning Resolution.~~

Vince Colburn amended the motion to ask the Trustees to appropriate the amount of money to provide a complete working Zoning Resolution. (Question #1, what would be the cost to completely redo our Zoning Resolution from Phil Laurien dated December 21, 2005.) Taylor agreed (Seconded). After some discussion the roll call was 5-0.

Chairman Bravard moved to ask the Trustees to appropriate the money for question #2 (What would be the cost and time to completely revise the Land Use Map? Phil Laurien quoted \$24,900.) Colburn seconded. After discussion the roll call was as follows: Kerner, no; Taylor, yes; Colburn, yes; VanDyne, yes; and Bravard, yes. Passed 4-1.

Item A - Steve Holloway regarding fences and structures.

Steve Holloway found a number of fence violations around the township. He asked the Zoning Commission to review the following sections in the Zoning Resolution on page 2-9, page 2-10, page 2-13, page 2-14, page 10-2, the front yard set back requirements in R-1 are 25 feet, R-2 are 25 feet, R-3 20 feet, and RS 25 feet, and page 10-3. He wanted to not on page 2-13 the definition of setback line reads all fences (fences are defined as structures on page 2-14) anywhere on a residential property must be located in accordance with the setback. The only exception is accessory buildings. This would include rear yard and side yard setbacks.

The Zoning Commission discussed deed restrictions, the planned unit development regulations and the zoning resolution regarding fences. Steve Holloway discussed the minutes from September 27, 2004 Licking County Planning Commission regarding fences.

Gary Burkholder discussed the setbacks of accessory buildings and the easements and swales where they are being placed. He does not want to see fences, hot tubs or structures in the setbacks.

Tina Taylor also stated that cornfields in the township also block the view on corner lots.

Neil Ingle, Rick Cox, and Gary Burkholder discussed deed restrictions, and easements restrictions.

There is no permit required for fences. Mike Kerner stated the Zoning Resolution states a permit is needed. Steve Holloway was looking for guidance. He does not want to make a resident tear the fence down and then change the law. Section 300 page 3-1 states a permit is needed for the fence. Dallas Maynard stated he has always felt a permit was needed for fences.

Claudette VanDyne stated on page 10-6 Section 1031 Principal Structure Limitation Item 3 regarding accessory structures.

Neil Ingle has concerns of the home owners in a subdivision that bought homes that did not want fences in the set backs. He had the Zoning Resolution and the deed restrictions to protect him. He does not feel the law should be changed because people are violating the law. Jim VanDyne feels the set backs are for the subdivision but does not agree with the set backs for all of Etna Township. In the subdivision, Section 1323 Contents of Applications for Approval of Final Development Plan page 13-7, Item 8. Gary Burkholder also feels a fence needs a permit. Vince Colburn questioned why a permit has not been needed. Dallas Maynard stated it is not on the fee schedule. Vince Colburn feels the homeowner needs to step up. Tina Taylor stated half her yard is in the flood plain. Jim VanDyne asked about the fence around the

RECORD OF PROCEEDINGS

Minutes of

December 21,

Meeting
2005

DAYTON LEGAL BLANK, INC., FORM NO. 10148

trash dumpster. Dallas Maynard considered the enclosure a structure. Dallas Maynard does not feel if the township requires the facility to put an enclosure around a dumpster then the township does not charge a permit for that.

Jim VanDyne would like to help the Zoning Office to revise the fee schedule. Dallas Maynard feels a fee for permit revisions is needed also.

Rick Cox does not feel the board does not want to change the law to make the fence issue go away. He wants to better define it by removing it from the structure definition. This will make it easier to interpret the Zoning Resolution by defining the fence in a definition all its own.

Steve Holloway asked if the zoning commission is going to consider this then he would ask the Township Trustees to hang tight on all of these violations that may come in the future. The BZA will have to deal with the ones pending now. Rick Cox stated the case the BZA has heard turned in more who have turned in more and these are being entered into evidence. The BZA will interrupt them the same way but this could get out of hand is this something we want to look at and handle before we get the first one. Steve Holloway stated that right now the BZA has three and twenty two on top of that. Once these are turned in as evidence they those complaints will have to be dealt with. They are on corner lots. The one case has three front yards. The first case is in violation.

Vince Colburn asked Dallas Maynard if he charged a fee for the fence around the dumpster and for a revision and these fees are not on the fee schedule. Dallas Maynard stated he construed the building as an accessory structure. Vince Colburn asked if he had the authority to charge a fee that is not on the fee structure. Vince Colburn stated his point was we issue permits and charge fees that are not on the fee schedule.

The Zoning Commission's comments: Vince feels we need to follow the resolution and issue permits. Tina Taylor feels we should issue permits. Mike Kerner feels a permit should be issued, before we came up with \$35.00 fee for a fence permit. Mike Kerner feels the case coming up now the resident is in violation of the zoning resolution. Steve Holloway agreed and they will up hold the resolutions the way they are.

Dan Bravard stated to recommend to the Trustees to charge a fee for fences. - Mike Kerner stated it is not the Zoning Commission's role to establish the fee schedule. Jim VanDyne stated the Zoning Commission compared fees in other townships and helped Dallas come up with fees in the past because Dallas asked for help. The Zoning Resolution stated the Board of Trustees shall establish a fee schedule.

Steve Holloway asked the Zoning Commission if they are going to address the issues with the fence or leave it as it is. Mike Kerner is not sure what he would do at this point. He would like to think on it. If the township requires permits this should solve a lot of problems in the future. Tina Taylor feels we can fix the future with permits; she does not want to make this decision on the spur of the moment. She would hate to see a major change and the residents take the fence down and then they would not have had to take it down. Vince Colburn feels it should be practice to issue a permit for a fence, does not know what to do at the spur of the moment. Jim VanDyne stated the resident that was told not to build the fence is in violation but he can go around the neighborhood and find 180 violations. He is not sure about all the other fences. Jim does feel our zoning resolution needs some changes and it will be well spent money on the revisions to the zoning resolution.

Steve Holloway asked if they agree that this is what it should be (The Zoning Resolution) and enforce it as it is or do you expect to think about this, about maybe changing it. Steve stated he needs to know this now; they have three cases now but have twenty more maybe coming up here once the BZA hears

RECORD OF PROCEEDINGS

Etna Township Zoning Commission

Minutes of

December 21,

January 4,

2006

Meeting 2005

DAYTON LEGAL BLANK, INC., FORM NO. 10148

these. The BZA can hear every single one of them and go through the process he has no problem with that. He does not know what changes the Zoning Commission is going to do. He wants to be real careful about making people do something and then the law changes a little bit even if it means making people

The Etna Township Zoning Commission met in the Etna Township Hall on January 4, 2006 for the purpose of conducting a regular meeting. The meeting was held pursuant to a resolution is printed now. Steve is concerned with the twenty more that have not been heard yet. Vince Colburn stated the home owner that the meeting was called to order at 7:00 p.m. by Chairman Pro Tem Kerner with the following members present: Mrs. Dunlap, Mrs. Taylor, Mr. VanDyne, Chairman Pro Tem Kerner, and Clerk Laura Brown. Vince Colburn was at work. recess it indefinitely (pending the Zoning Commission's decision). Tina Taylor said this would give the board a chance to recess with Steve Holloway stated he seconded the motion. Motion passed 4-0. Steve Holloway stated he wanted to give them a chance to make changes. Steve Holloway stated it needs to be fair to the community and if the Zoning Commission is going to change something we need to give a decision property at Watkins and State Route 40, P.V.C.R. Mr. Knapp also feels that Dan Bravard served this township for many years and should be recognized for his service.

Gary Burkholder stated it is an unenviable position for the BZA he agrees but if Chairman Kerner explained that he was vice-chair and he becomes chair until March you get a speeding ticket you can not say but the other ten cars were speeding. and asked for motions to appoint a vice-chair until March 2006. Jim VanDyne moved to appoint Vince Colburn. Tina Taylor moved to appoint Jim VanDyne. Jim VanDyne respectfully declined. Tina Taylor seconded the motion to appoint Vince Colburn as vice-chair. The law and the current law would be applicable. He wants to solve this for all parties also but does not feel it is appropriate to put the cases in limbo while Gary Burkholder explained that the Zoning Commission a resolution that is locally drafted to be passed from the Zoning Commission and the Board of Trustees regarding the PUD. The draft PUD did not get forwarded to Don Brosius because the Trustees something is going to change legislatively why you would have people tear their fences out. Steve Holloway wants to be fair to the citizens, if we are going to change a law and we know we are going to change the law then put it off a couple months to make the decision. Rick Cox stated the Board is not advocating a law change, but if the Board of Zoning Appeals is busy there is a problem, something is wrong. The Board is trying to find out if it is wrong.

Steve Holloway thinks it should come out of structures and make it clear, The commission Steve Holloway stated that discussing to focus schedule every yard that has a backyard fence, corner lot or not, that is within 5 feet in a residential district Mike Kerner and Jim VanDyne attended the Board of Zoning Appeals meeting and have feels that a discussion on fences is needed. The Zoning Commission is here to propose zoning changes and not to enforce deed restrictions. Jim VanDyne would like to review previous zoning books to see what regulations were in place for fences. Jim VanDyne would like to see if they are grandfathered in before 2002 if it can be enforced by the township.

Dee Dunlap questioned if the residents could be grandfathered in. Mike Kerner stated if it is a safety issue the fence needs to come down and Tina Taylor agreed. If it is already done if it is up to the Trustees, the Zoning Inspectors, and the Board of Zoning Appeals. Jim VanDyne has concerns about being charged for zoning permits and the zoning inspector does not come out to house. Dick Knapp stated the Trustees have advertised for a Zoning Inspector. Dick Knapp feels we can have the strongest resolution but without enforcement what do we have. The Zoning Commission had a discussion of revising the fee schedule. The zoning office revises the fee schedule and since Colburn moved to adjourn at 9:30 p.m. Bravard seconded. Roll call: Kerner, no; Taylor, yes; Colburn, yes; VanDyne, yes; and Bravard, yes. Passed 4-1.

Tina Taylor feels a property owner should be able to have a fence to keep dogs and children in. Neil Ingle stated on 66 Trail East has a corner lot and the fence is in compliance. Neil Ingle also discussed the three properties in question over in Cumberland Trail.

Laura Brown, Clerk

Jim VanDyne feels we should have a public hearing on fences. Claudette VanDyne discussed the setback requirements and the swimming pool requirements. The Zoning Commission discussed moving the pool setbacks. A discussion on whether 25 foot setback in the back yard is practical. The property owner is paying taxes on the yard. Dick Knapp questioned the utilities that run underground because of easements. The properties in a suburb are different than rural Etna.

VOID

RECORD OF PROCEEDINGS

East Township Zoning Commission

Minutes of

December 21,

Meeting

2005

DAYTON LEGAL BLANK, INC., FORM NO. 10148

these. The BZA can hear every single one of them and go through the process. ~~He has no problem with that. He does not know what changes the Zoning Commission is going to do. He wants to be real careful about making people do~~ something and then the law changes a little bit, even if it means making people move something. Vince Colburn feels you have to address the violations the way the zoning resolution is printed now. Steve is concerned with the twenty more that have not been heard yet. Vince Colburn stated the home owner that filed a report we can not turn a deaf ear to him. Steve stated if they bring a violation to the BZA they will deal with it. Steve Holloway stated they can recess it indefinitely (pending the Zoning Commission's decision). Tina Taylor said this would give the board a chance to research. Steve Holloway stated he ~~is not going to recess indefinitely but wanted to give them a chance to make~~ changes. Steve Holloway stated it needs to be fair to the community and if the Zoning Commission is going to change something we need to give a decision that is going to stick.

Gary Burkholder stated it is an unenviable position for the BZA he agrees but if you get a speeding ticket you can not say but the other ten cars were speeding. Gary Burkholder has a problem with the Board of Zoning Appeals pending cases while waiting to change the zoning resolution, but the law is the law is the law and the current law would be applicable. He wants to solve this for all parties also but does not feel it is appropriate to put the cases in limbo while waiting for changes from the Zoning Commission. He would be supportive of a TRC. Mike Kerner does agree that if the fences are not a big problem and something is going to change legislatively why you would have people tear their fences out. Steve Holloway wants to be fair to the citizens, if we are going to change a law and we know we are going to change the law then put it off a couple months to make the decision. Rick Cox stated the Board is not advocating a law change, but if the Board of Zoning Appeals is busy, there is a problem, something is wrong. The Board is trying to find out if it is wrong. Steve Holloway thinks it should come out of structures and make it clear, clarify it. Steve Holloway stated that according to our book every yard that has a backyard fence, corner lot or not, that is within 5 feet in a residential district from the boundary of the property line needs to be torn down. Structures have set backs, 25 feet in the rear. Neil Ingle suggested using the deed restriction of Cumberland Trail as a guide when making a change.

The Zoning Commission discussed deed restriction and if it can be enforced by the township.

Jim VanDyne moved to send a letter to the Trustees asking them to forward a letter for a legal opinion regarding enforcement of deed restrictions in Planned Unit Developments. Colburn seconded. Roll call: 5-0.

Vince Colburn would like to spend the time to complete a new resolution.

Vince Colburn moved to adjourn at 9:30 p.m. Bravard seconded. Roll call: Kerner, no; Taylor, yes; Colburn, yes; VanDyne, yes; and Bravard, yes. Passed 4-1.

Laura Brown
 Laura Brown, Clerk

Approved *January 18, 2006*

Approved as corrected/amended _____

Michael A Kerner
 Mike Kerner, Chairman

010V