

## Etna Township Board of Zoning Appeals

Held

April 25

2006

**ADJUDICATORY HEARING**

The adjudicatory hearing was called to order by Chairman Cox at 6:03 p.m. on April 25<sup>th</sup>, 2006 at the Etna Township Hall. The meeting was audio and video taped for township records.

Roll Call: Mr. Goll, Mr. Chew, Mr. Cox, Mrs. Rogers, Mr. Johnson, and Mrs. Brown present.

Court Reporting for this hearing was provided by Celeste Dawley, RPR of Fraley Cooper and Associates of Pataskala Ohio for a complete transcript.

David Goll stated he is on the Board of Trustees for the water and sewer district. The appeal does not have relevance with his position on the Southwest Licking Water and Sewer Board and does not feel he needs to recuse himself from this hearing. He can make an impartial judgment regarding the outcome.

Chairman Cox read a statement regarding the function of the Board of Zoning Appeals and the process of the appeal hearing. The purpose of this hearing is to consider an appeal of the decision of the Zoning Inspector submitted by David Weber for the property located at 8941 Hazelton Etna Road, Pataskala, OH 43062.

Chairman Cox called for the applicant to testify. Jonathan Veley stated he is representing his client David Weber and is not testifying personally, but did state "I do" when being sworn in.

Jonathan Veley, Attorney for David Weber, 22 South Third Street, Newark, Ohio 43055. Mr. Veley discussed the appeal and presented an opening statement. During the opening statement he presented an overview of the permit and the appeals. He stated four appeals were accepted and the fifth appeal was not accepted by the Zoning Inspector. He discusses Section 303 Submission to the Director of Transportation and discussed that the Zoning Inspector should schedule a meeting with the Technical Review Committee per Section 529 Duties of the Technical Review Committee.

David Weber of 232 Purple Finch Loop was sworn in as the first witness. He stated the entrance to the neighborhood is less than 900 feet to the property. A discussion regarding the appeal that was filed previously and when the filed appeal was not heard, the appeal filed March 10<sup>th</sup> is addressing a mixture of both issues. Mr. Veley submitted a letter dated 9/20/05 from the first appeal and is marked Exhibit 1. Mr. Veley submitted a letter from David Weber from the first appeal and is marked Exhibit 2, David Weber stated this was filed on the 21<sup>st</sup> day of the first appeal. Mr. Veley asked David Weber to respond to his appeal regarding the Zoning Inspector's authority to approve the addendum to the permit. Mr. Weber feels the addendum is setting a policy for the township which is the job of the Zoning Commission. David Weber discussed copies of water and sewage permits and culvert permits; he stated he spoke with Dallas Maynard regarding these issues. David Weber stated he discussed the submission with ODOT and did not feel the discussions went well. The Zoning Inspector stated he was not required to submit to ODOT.

David Weber stated he was here March 29<sup>th</sup>, 2006 the 19<sup>th</sup> day for filing the appeal. He stated a neighbor had come to his house and Steve refused to accept the appeal because of stipulations. Mr. Weber felt it got heated at times. Mr. Veley asked David Weber about the plans submitted for the permit. Chairman Cox asked David Weber where the parking lot was appealed. David Weber stated it was not accepted. Laura Brown stated that she received the appeal on the 30<sup>th</sup> and it was not in the package that was submitted. A letter that David Weber received dated April 21, 2006 from Hayes Law Office was submitted as Exhibit 3. David Weber has not done anything other than filing the appeal to the property owners.

David Goll a member of the Board of Zoning Appeals was sworn in. Mr. Goll verified he serves on Southwest Licking Community Water and Sewer Districts Board of Trustees. Mr. Veley asked Mr. Goll how much in tap fees and other fees this property will generate. Mr. Goll does not know exactly how much in fees but did say it would be thousands of dollars. Mr. Goll stated it would not influence his vote in any way. Mr. Veley stated he objects to Mr. Goll not recusing himself.

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Gary Burkholder 254 Trail East Pataskala was sworn in. Mr. Burkholder verified he is a Trustee to the township. He has received verbal communications from the Ohio Department of Transportation regarding state route 310. He may have also received written communication. Mr. Burkholder did not recall any conversations with the Zoning Inspector regarding the submission to the Director of Transportation.

Steve Ferris, Etna Township Zoning Inspector was sworn in. Mr. Ferris verified with Mr. Weber that he reviewed the plans for the permit. Mr. Ferris stated for the record his interpretation of the conversation was that Mr. Weber liked the new plans. Mr. Ferris stated he told Mr. Weber that he explained it was an accessory use he did not state you could not file the appeal. Steve Ferris submitted page 3-1 from the Zoning Resolution as Exhibit 4. Steve Ferris questioned Mr. Weber about Section 301 Contents of Application for Zoning Permit and if it requires a sewer and water permit or culvert permits. Mr. Weber stated they are on the zoning application. Steve Ferris stated the Zoning Resolution does not require those permits.

Scott Hayes presented evidence for the property owners. For the record he presented binders of information to the Board of Zoning Appeals and Jonathan Veley, Mr. Weber's attorney. Mr. Hayes asked Mr. Weber questions regarding the agriculture portion of the property. Rick Cox stated there currently is not an appeal in front of the board regarding the parking. The entire book is Exhibit 5. Mr. Hayes stated the only difference in the two permits is the placement of the building on the lot. Mr. Weber stated no it looks different to him. Mr. Weber did not remember the gas station. Mr. Hayes stated there is a gas station. Scott Hayes asked Mr. Weber how far is house is from the property. In Exhibit 5 Tab J shows the distance between Mr. Weber's house and the Langel property. Mr. Weber stated he can see the property from his house. Mr. Hayes questioned Mr. Weber from the book he presented as Exhibit 5.

At 7:16 p.m Chairman Cox recessed the hearing until 7:27 p.m.

Mr. Weber read from Section 504 Duties of the Zoning Commission and he feels setting policy is the job of the Zoning Commission. Mr. Weber discussed some correspondence he received from Gary Burkholder regarding traffic. Four pages were submitted as Exhibit 6. Mr. Hayes discussed with Mr. Weber how the Zoning Inspector was notified. Mr. Weber and Scott Hayes discussed certification from ODOT and Section 606 Submission to Director of Transportation along with a discussion regarding the water and sewer permit and what is required.

Jonathan Veley requested a recess for review of the document Scott Hayes submitted into evidence. David Weber wanted to recess for review of the documents. The Board of Zoning Appeals stated Scott Hayes is responding to the application David Weber made. The hearing proceeded with questions and answers between David Weber and Scott Hayes regarding the appeal on Zoning Violations. David Weber felt a Technical Review should have been called to prevent the Zoning Violations in the future in regards to the lightening and so on.

Aaron Matson CESO 1700 Lyons Road, Dayton Ohio testified of the discussions with ODOT regarding traffic impact studies. Mr. Matson also discussed the lighting. They have a checklist that they review when drafting the site plans. Brian Smallwood CESO 1700 Lyons Road, Dayton Ohio testified in regards to the checklist he compiles to draft the site plans. Jonathan Veley inquired about the water and sewer permits. Mr. Smallwood had conversations with Southwest Licking Water and Sewer District regarding this process and they provided a letter of sewer adequacy because they need a zoning permit to obtain the sewage permit. Because they are on a State Route who provides the Culvert Access Permit, Licking County has the jurisdiction to grant access and Mr. Smallwood has had contact with ODOT regarding access.

Mr. Ferris reviewed what is required in the Zoning Resolution in regards to the water and sewer and culvert permits. Mr. Ferris does not feel there has been a violation of the Zoning Resolution at this time and he can not charge a zoning violation he can not predict. Mr. Ferris stated that the Zoning Resolution does not address two permits on one property, he also checked the Ohio Revised Code and with Jerry Brems of Licking County Planning Commission and can not find anywhere text that states he can not have two permits on one property. At a Technical Review Committee meeting on April 5<sup>th</sup>, 2006 with Licking County Planning Commission and Mr. Ferris brought up the fact that screening, landscaping, and buffering has to be addressed.

DAYTON LEGAL BLANK CO., FORM NO. 1014B

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Steve Ferris feels the item regarding sewer and water permits is on the zoning application as a courtesy to the water and sewer district. Both permits for the Langel property have commitment letters from the water and sewer district. In past with large commercial developments the zoning office has never had a water and sewer permit but have had a commitment from them that it could be provided. ProLogis is one he can think of at this time. Mr. Ferris stated he did not refuse to accept the appeal from Mr. Weber, he did state to Mr. Weber that the parking is part of an accessory structure.

Matt Wilson of 158 Cameron Drive of Pataskala stated on March 29<sup>th</sup> 2006 he came to town hall to turn in the appeal. He was told it was not complete and could not be accepted. He then contacted Mr. Weber regarding the appeal. Chairman Cox verified it was a form letter. Mr. Weber and Mr. Wilson came to town hall and it was explained that the appeal was not complete. The appeal was not accepted because the land owner and to scale drawing was not attached. Chairman Cox stated he spoke with Mr. Wilson regarding the form letter appeal that was distributed and the form letter was not a complete appeal in his opinion. Chairman Cox made an effort to call the residents to explain what would make the application valid. He did not want the appeal to be turned down because it was missing information. He feels the zoning office was trying to help them with the information to make it complete. It did not have anything to do with accessory structure in the information that Mr. Cox had.

Mr. Hayes reviewed the book he submitted as Exhibit 5.

Mr. Veley stated that Wal-mart has succeeded in obtaining a rezoning by using the parking lot as an accessory building. The board has the opportunity to deny the zoning permit and opportunity two is to send this to a technical review board within Etna Township. He feels the best solution is to send this to a technical review.

Kelli Castillo of 124 Kraner Street or Pataskala stated that Chairman Cox did contact her regarding the appeal and that it was not a complete appeal.

Laura Brown, Clerk for the Board of Zoning Appeals stated we administratively receive the appeals. She did not want to see the appeal be dismissed down because the correct paperwork was not received. It could have been administratively accepted but it could have been dismissed because of the paperwork being incorrect.

Kelli Castillo asked that the Board consider all the issues that were brought up. David Weber asked if all the applicants were notified and Laura Brown verified that all applicants received notification. Rick Cox feels the testimony from the residents of Cameron Chase that filed the appeal was heard.

The Board of Zoning Appeals discussed Section 303 Submission to Director of Transportation. They discussed the fact that if the appeal is up held that the first permit would still stand. They discussed why the building was turned on the property.

Cheri Rogers moved to close the hearing to deliberate and render a decision within 30 days. Jeff Johnson seconded. Roll Call: David Goll, yes; Philip Chew, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Mr. Goll motioned to adjourn the meeting. Mr. Chew seconded. Roll Call: David Goll, yes; Philip Chew, yes; Rick Cox, yes; Cheri Rogers, yes; and Jeff Johnson, yes. Motion passed 5-0.

Mr. Cox adjourned the meeting at 9:46 p.m.

Approved as read 6/27/06

*Laura Brown*  
Laura Brown, Clerk

Approved as corrected/amended \_\_\_\_\_

*Frederick Cox*  
Frederick Cox, Chairman

Final Order Mailed: 6/28/06