

RECORD OF PROCEEDINGS

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Minutes of

Etna Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

January 31,

2017

Held \_\_\_\_\_ 20 \_\_\_\_\_

The hearing was called to order by Chairman Cox at 6:04 p.m. on January 31, 2017 at the Etna Township Administration Building. The roll call showed members Kathy Johnston, Rick Cox, Greg Reis, and Mark Schaff present, along with Clerk Laura Brown. Trent Stepp was excused.

The application is for an Area Variance, VA-17-01, submitted by Joe Wagner for Sunburst Pools for 12981 National Road. The nature of the variance is from Article 12 Signage, Section 1005 Accessory Structures, and Section 1103 Paving for 12981 National Road.

Chairman Cox explained the process of the hearing. Joe Wagner, Applicant; Jack Moser, attorney for the applicant; David Thrash, resident; Freddie Latella, resident; Herman Kroninger, resident, and Jeff Johnson, representing the township, were sworn in.

The applicant was aware of the circumstances leaving a four member board and wished to proceed.

A written Staff Report was provided. Jeff Johnson reviewed the facts of the case. The variance is for signs and the driveway. The violations cited in the complaint filed are as follows: The wooden sign at the northwest corner of the Subject Property has been installed without a zoning permit in violation of Section 1201(B) of the Resolution. The lighted wall sign on the west side of an existing building on the Subject Property has been installed without a zoning permit in violation of Section 1201(B) of the Resolution. The lighted wall sign on the west side of an existing building on the Subject Property results in the total aggregate signage area on the Subject Property to exceed the permitted maximum total sign area for all wall signs on the Subject Property in violation of Section 1209(E)(1) of the Resolution. The banners/flags on the Subject Property adjacent to the State Route 40 right-of-way are expressly prohibited by the Resolution and constitute a violation of Sections 1204(F) and 1204(I) of the Resolution.

The driveway is in violation of the following two sections, Section 1005 does not allow the driveway to be installed any closer than five feet to any side or rear property line and Section 1103 requires the driveway to be paved with either asphalt or concrete.

The property owner was issued a zoning permit for the driveway located five foot from the property line and the driveway was required to be paved. The driveway permit and violation letter were entered as Exhibit 1 and a copy was provided to the applicant.

Jack Moser, attorney for Mr. Wagner, of 107 West Johnstown Road, reviewed Exhibit 1 discussing the Access/Culvert Permit issued by the Licking County Engineer's office from January 23, 2009 authorizing the driveway to be shared with the church.

David Thrash with the church testified the church driveway did not extend to the rear of the property. The church had the property surveyed and the driveway is on the church's property. The agreement to share the driveway was to go to the rear of the lot. The church has installed cement blocks to keep traffic off their property. Chairman Cox asked for clarification what the applicant is requesting regarding the driveway. The Zoning Violation is that the driveway is not paved and is located to close to the property line. Mr. Moser does not feel the driveway is an accessory structure and referenced the definition of an accessory structure. Laura Brown stated the Zoning Office requires a zoning permit for driveways. The definition for structure stated anything constructed or erected, the use of which requires location on the ground, or attachment to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, and billboards. On Exhibit 1, the Zoning Permit has notes from previous inspector stating must be paved and five foot from the property line. The applicant was asked to verify what variance they are asking for. Mr. Moser does not feel it is required after reading the Zoning Resolution. They do want a variance for five feet and ability to have the access. The township cannot grant access to Mink Street because it is Licking County's road and the distance from the light at the intersection would be an Ohio Department of Transportation issue. The township created the drawing when issuing the permit. Mr. Gueli obtained the permit because Laura Brown helped him with the paperwork and Rob Platte issued the permit. The driveway was already installed prior to the permit.

Mr. Wagner is the owner of Sunburst Pools at 12981 National Road explained that Mr. Gueli has health issues and could not attend this evening. Mr. Gueli owns the property and leases the building to Mr. Wagner. Mr. Wagner stated the driveway is important to his business because of the water trucks that enter his business. The traffic on U.S.40 is busy compared to the traffic on Mink Street with the traffic light. Mr. Wagner stated to pave the driveway would be a hardship for his business. Mr. Mosier stated the definition of paved does not state it couldn't be crushed asphalt. The board members discussed the current condition of the driveway. The water trucks are both full and empty when entering the property. Mr. Mosier stated the property across the street has a pile of gravel and is adding onto the driveway and the township will check on what is being done on that property. The concerns with selective enforcement and grandfathered properties were discussed.

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The decision that is made this evening will set a precedent for the township in the future. The board asked for clarification on what they are asking for. The church stated the concrete barrier is on the property line. The applicant is asking for a zero setback for the driveway extending as far back onto the property as it is showing in the picture. The church does not use the extension of the driveway. The applicant is asking for the paving requirement to be waived because the properties surrounding the property are gravel. Mr. Wagner does not want to file complaints on the other businesses that have not paved their driveways. Chairman Cox explained that larger companies have asked for variances regarding paving of parking areas and were denied and there are concerns with setting precedent.

Chairman Cox stated this is a developable property and if the property is split the variance goes with the property. Mr. Moser suggested the board do a conditional variance where the property must stay in tack.

David Thrash of 9100 Hazelton-Etna Road was in attendance representing the church. The drive is on their property line. When they had the property surveyed they discovered the entire driveway is on the church's property. The church's insurance company recommended the church stop sharing the driveway so the church placed the concrete barriers along the driveway. The church would like to remove the concrete barrier and request the five foot setback so their driveway will not be used and they want to remove the driveway that goes back to the rear of the property. Mr. Wagner committed to installing a split rail fence along the driveway to keep traffic off their driveway. Mr. Wagner stated he has equipment and will help with the restoration of the extended driveway. The Board discussed whether a fence would be permitted. The township allows fences on the property line. The board discussed whether they could approve a variance with the condition of requiring a fence.

Freddie Latella of 184 Hawthorne Drive has served on several boards for the township. He served on the Zoning Commission when they drafted the sign code. He feels when the board grants a variance it is not setting precedence and considers Mr. Wagner a small business. He feels the sign code is good but not flawless.

The board would like clarifications on what the applicant is requesting. The applicant is asking for a zero setback for the driveway and to not be required to pave the driveway.

The board and applicant discussed the driveway and history of the shared driveway. The Zoning Permit was issued after the driveway was installed. Mr. Gueli requested the paving be completed in the spring of that year. The concrete driveway needs a permit and requires a five foot setback. The board inquired why the five foot setback was not followed. The applicant was sharing a driveway with the church next door and just added onto the existing driveway. The property owner did not move the driveway five foot from the property line. The Zoning Permit required a five foot setback.

The applicant is requesting a zero setback for the driveway and the paving requirement to remain gravel. The applicant did agree to install a fence along the driveway to separate the properties. Chairman Cox requested the applicant provide the township with their request in writing and all the conditions they are agreeing to. Chairman Cox suggested after a certain amount of time the driveway be required to be paved and that the area around the property that is already paved remain paved.

Chairman Cox feels the application submitted does not present the board with what they are asking for. The applicant needs to provide the conditions he is willing to do. Mr. Moser asked if it would help if they resubmitted the application. Chairman Cox requested the applicant separate the variance into two requests and the Board of Zoning Appeals will vote on them in two motions. Chairman Cox requested the applicant itemize the request. Laura Brown will verify with the Prosecutor's Office on approving a variance with conditions. The gravel driveway is for the pool company use only and can't sell the corner with the gravel driveway. Mr. Moser said they will modify and submit a modified application regarding the fence, setback and work with the church along with a period of time to pave the driveway. What the variance request is for regarding the signs also. The modified application needs to make it easier for the Board of Zoning Appeals to understand what the applicant is requesting. The Board would like to know what the total square footage is that they are requesting regarding the signs. They are asking for the variance to distinguish between the two pool companies. The sign regulations go by property not business so all of the signs go towards the calculations. The applicant will provide the square footage measurements for all the signs.

Herman Kroninger of 12771 National Road inquired on how many businesses are located on the property. The business with all of the cars is not a part of this hearing. The board directed Mr. Kroninger to the Zoning Office.

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Chairman Cox discussed the condition of the existing paving areas at the business. This area will need to remain paved. Chairman Cox would like the driveway paved eventually.

Mr. Moser and Mr. Wagner will provide an updated application. The Board of Zoning Appeals will check on the conditions placed on variances with the Licking County Prosecutor's office.

Kathy Johnston moved to recess the hearing at 8:00 p.m. The motion was seconded by Mark Schaff and passed by unanimous affirmative vote.

Kathy Johnston moved to adjourn at 8:01 p.m. The motion was seconded by Greg Reis and passed by unanimous affirmative vote.



Laura Brown, Clerk



Rick Cox, Chairman