

## Etna Township Board of Zoning Appeals

Held March 30, 20 2022

**VA21-04 Hazelton-Etna/Klema Redwood**

The meeting was called to order by Chairman Reis at 5:01 p.m. on March 30, 2022 at the Township Hall. The roll call showed members Shannon Mills, Greg Reis, Tommy Hunt, and Trent Stepp, present, along with Clerk Laura Brown. Eric Nickolas was excused.

Chairman Reis called the adjudicatory hearing of the Etna Township Board of Zoning Appeals to order at 5:02 p.m.

The public testimony portion of the hearing was closed on March 16, 2022.

The nature of the hearing was to consider Use Variance request VA21-04 from Section 912 (A) Agriculture District Permitted Uses submitted by Connie Klema for property located on Hazelton-Etna Road, parcel # 010-018624-00.00 located south of South Street, east of Lynns Road, west of Hazelton-Etna Road, and north of I70.

Trent Stepp moved to recess at 5:03 p.m. for the purposes of deliberation. The motion was seconded by Shannon Mills. Discussion: For the record Thomas Spyker with Reminger, Mark Altier with the Licking County Prosecutor's office, and John Singleton, Etna Township Zoning Inspector were invited into the deliberation. The motion passed by unanimous affirmative vote.

Trent Stepp moved to come out of recess from deliberation at 6:40 p.m. The motion was seconded by Shannon Mills. The motion passed by unanimous affirmative vote.

Chairman Reis stated for the record the slideshow from Redwood will be Exhibit #2 and the Board of Zoning Appeals received an email from Roger Kessler supporting the Use Variance on March 21, 2022.

Trent Stepp moved to approve Use Variance VA-21-04 submitted by Connie Klema for property located on Hazelton-Etna Road, parcel # 010-018624-00.00 located south of South Street, east of Lynns Road, west of Hazelton-Etna Road, and north of I70 from Section 912 (A) Agriculture District Permitted Uses because the Standards for Use Variance, "unnecessary hardship" as defined in Section 513.B have been met. There are conditions with that approval, because of the length of the motion Thomas Spyker was delegated to read the conditions into the record.

Thomas Spyker stated "For the record he is retained legal counsel for the board but his role in reading this is not legal it is simply the young guy in the room nominated to read the fine print into the record."

FINAL ORDER of the Etna Township Board of Zoning Appeals, Use Variance Application VA-21-04 Klema-Redwood (Parcel # 010-018624-00.00).

This matter came before the Board of Zoning Appeals on March 16, 2022, for adjudication of the application for a Use Variance submitted by Connie Klema for the property located on Hazelton-Etna Road, parcel # 010-018624-00.00 located south of South Street, east of Lynns Road, west of Hazelton-Etna Road, and north of I70 from Section 912 (A) Agriculture District Permitted Uses (hereafter, the "Property").

During an open meeting, the Applicant presented evidence and argued that pursuant to Section 513(B) of the Etna Township Zoning Resolution, strict application to the current zoning would result in an undue hardship. The Applicant presented documentary evidence including the Application (Exhibit 1) and a Powerpoint Presentation (Exhibit 2). These incorporations includes but are not limited to the use placement and acreage outlined on Slide 7 of Exhibit 2. Exhibits 1 and 2 are attached to this decision and all details contained therein, unless otherwise noted in this Decision, are incorporated into the approval.

This matter was previously before the Board of Zoning Appeals for adjudication of a Use Variance on May 24, 2021, whereafter the Use Variance was denied. Subsequently, the Licking County Court of Common Pleas reversed and remanded the Board's decision. *See Redwood USA, LLC v. Etna Township Board of Zoning Appeals*, Licking County, Ohio, Case No. 2021 CV 632. Pursuant to that Court Order, this matter is now back before the Board for adjudication of the Use Variance.<sup>1</sup>

<sup>1</sup> The Board notes that the Application submitted for consideration on remand is not identical in substance to that previously considered by the Board on May 24, 2021. The Board considers the changes allowable supplements to the original application and considers the evidence as submitted during the March 16, 2022 Meeting.

## RECORD OF PROCEEDINGS

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

## Etna Township Board of Zoning Appeals

Held March 30, 20 2022

As outlined below, the Board of Zoning Appeals grants the Use Variance, as fully described in Exhibits 1 and 2 subject to Supplementary Conditions and Safeguards pursuant to Section 514 of the Zoning Resolution.

**I. STANDARD****A. Standards for Use Variances:**

Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provision of this resolution would result in unnecessary hardship. In order to grant a use variance, the Board of Zoning Appeals shall find the following standards for unnecessary hardship to be accurate through clear and convincing evidence:

1. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district;
2. The variance requested stems from a condition that is unique to the property at issue and not ordinarily found in the same zone or district;
3. The hardship condition is not created by actions of the applicant;
4. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
5. The granting of the variance will not adversely affect the public health, safety or general welfare;
6. The variance will be consistent with the general spirit and intent of the Zoning Code;
7. The variance sought is the minimum that will afford relief to the applicant; and
8. That granting the variance requested will not confer on the applicant special privileges that are denied by this resolution to other lands, structures, or buildings in the same district.

***Etna Township Zoning Resolution, Section 513(B).*****B. Supplementary Conditions and Safeguards:**

In granting any appeal or variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this resolution. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this resolution and punishable under Section 311 of this resolution.

The following is a list of general topics that the Board of Zoning Appeals may consider when placing conditions on any proposed Area or Use Variance:

- A. The location, height, and size of all structures and activity areas.
- B. The permission/prohibition and location of speaker systems and any other amplified noises.
- C. The location of all points of entrance or exit and all access points to the property.
- D. The permission/prohibition, location, height, size, and number of on-premise signage.
- E. The permission/prohibition, location, casting, and trespass of all exterior lighting.
- F. The location, amount, width, height, opacity, and type of buffering yards and materials.
- G. The location, amount, and type of landscaping.
- H. The location, amount, type, shading, and screening of parking facilities.
- I. The maintenance and order of the property or use.
- J. The safety and security of the property or use.
- K. The permission/prohibition and location of vehicles and storage of vehicles on the property.
- L. The permission/prohibition regarding hours of operation.
- M. The location, screening, type, and accessibility of garbage disposal areas (i.e. dumpsters, trash cans, recycle cans, etc.).
- N. The location, screening, type, maintenance, and accessibility of public restroom facilities.
- O. The type and permission of any accessory uses.

***Etna Township Zoning Resolution, Section 514*****II. DISCUSSION**

Pursuant to the evidence submitted by the Applicant, the Board of Zoning Appeals finds that the Use Variance as outlined in Exhibits 1 and 2 meet the standards set for in Section 513(B)1-8, subject to Supplementary Conditions and Safeguards pursuant to Section 514.

## Etna Township Board of Zoning Appeals

DAYTON LEGAL BLANK, INC., FORM NO. 10148

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To be clear, the extent of the Use Variance granted under this decision is subject to the full terms and details outlined in Exhibits 1 and 2 to this decision.

In determining the Use Variance, the Board of Zoning Appeals considered only the evidence presented and made specific findings as follows:

1. Applicant meets the requirement of Section 513(B)(1) because due to the development of the immediately surrounding area, the property cannot be put to an economically viable use under the presently permitted uses. (See Exhibit 2, Slide 10).
2. Applicant meets the requirement of Section 513(B)(2) because the requested variance stems from a unique condition of the property in light of the surrounding development. (See Exhibit 2, Slide 11).
3. Applicant meets the requirement of Section 513(B)(3) because Applicant demonstrated the present hardship is not due to their own making, but rather surrounding development. (See Exhibit 2, Slide 12).
4. Applicant meets the requirement of Section 513(B)(4), subject to the Supplemental Conditions imposed below, because Applicant demonstrated the proposed Use Variance does not adversely impact the rights of adjacent property owners. (See Exhibit 2, Slide 12).
5. Applicant meets the requirement of Section 513(B)(5), subject to the Supplemental Conditions imposed below, because the proposed Use Variance does not adversely affect public health. (See Exhibit 2, Slide 13-15).
6. Applicant meets the requirement of Section 513(B)(6) because Applicant demonstrated that the proposed plan is consistent with the general spirit of the Zoning Code. (See Exhibit 2, Slide 14; see also Slide 7).
7. Applicant meets the requirement of Section 513(B)(7) because Applicant demonstrated the requested variance is narrowly tailored and the minimum necessary to bring the use into conformity with the surrounding area and the spirit of the Zoning Code. (See Exhibit 2, Slide 12).
8. Applicant meets the requirement of Section 513(B)(8) because Applicant demonstrated that in light of surrounding development, no special right or benefit will be conferred to the Applicant. (See Exhibit 2, Slide 12).

In order to bring the Use Variance in conformity with the Zoning Resolution, the Board exercises its authority under Section 514 to impose the following Supplementary Conditions and Safeguards:

1. Pursuant to Section 514(A)-(O), after issuance of this decision, the Applicant must comply with the provisions outlined in Section 1903(C)-(G).
2. Pursuant to Section 15(A), the height of all commercial buildings is restricted to thirty-five (35) feet.
3. Pursuant to Section 514(B), all external speaker and noise amplification devices are prohibited.
4. Pursuant to Section 514(C), the Applicant or its designee must plan for, construct, and maintain at all times two permanent points of ingress and egress from the surrounding public thoroughfares into the mixed-use parcel for the ease of use, public access, and emergency access.
5. Pursuant to Section 514(E), the location, casting, and trespass of all exterior lights shall at all times be in compliance with Section 1018 of the Zoning Resolution.
6. Pursuant to Section 514(C),(G),(H) and (I), the area designated "Natural Buffer Area" on Exhibit 2, Slide 7 shall be maintained in a manner outlined, submitted, and approved pursuant to Section 1905(B). In addition, the applicant or its designee must plan for, construct, and maintain at all times walking paths through this area connecting all existing adjacent sidewalk stubs to the commercial areas depicted in Exhibit 2, Slide 7, or as approved in the Final Development Plan. Further, the mature tree line depicted in Exhibit 2, Slide 4 shall be maintained as is, with the exception of limited removal for the construction of ingress and egress as approved through the Final Development Plan in accordance with Section 1903(C)-(G).

Deviation from these Supplementary Conditions and Safeguards require prior application and approval.

### III. CONCLUSION

*Whereas*, the decision above was presented to the Board of Zoning Appeals for vote and adoption on March 30, 2022. The Roll Call Vote was as follows: Signature lines for the Board consideration. The Board of Zoning Appeals adopts and issues this decision. The decision then notes on the final page a

RECORD OF PROCEEDINGS

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DAYTON LEGAL BLANK, INC., FORM NO. 10148

Etna Township Board of Zoning Appeals

Held March 30, 20 2022

signature line the final order was approved and signed and a second line that the final order was mailed or emailed to the applicant.

The motion was seconded by Shannon Mills and passed by unanimous affirmative vote.

Trent Stepp moved to close the adjudicatory hearing at 6:55 p.m. The motion was seconded by Shannon Mills and passed by unanimous affirmative vote.

For the record the Board of Zoning Appeals signed the Final Order this evening.

Trent Stepp moved to approve the minutes from the Board of Zoning Appeals meeting and adjudicatory hearing on March 16, 2022. The motion was seconded by Tommy Hunt and passed by unanimous affirmative vote.

Trent Stepp moved to adjourn the meeting at 6:57 p.m. Shannon Mills seconded the motion and passed by unanimous affirmative vote.

  
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Laura Brown, Clerk

  
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Greg Reis, Chairman



Members: Sarah Benoit-Shannon Mills-Eric Nickolas-Greg Reis-Trent Stepp Alternates: Tommy Hunt

## Etna Township Board of Zoning Appeals

### FINAL ORDER

**Re: Use Variance Application VA-21-04 Klema-Redwood  
(Parcel # 010-018624-00.00).**

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## **I. STANDARD**

### **A. Standards for Use Variances:**

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8. That granting the variance requested will not confer on the applicant special privileges that are denied by this resolution to other lands, structures, or buildings in the same district.

*Etna Township Zoning Resolution, Section 513(B).*

### **B. Supplementary Conditions and Safeguards:**

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*Etna Township Zoning Resolution, Section 514*

## **II. DISCUSSION**

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standards set for in Section 513(B)1-8, subject to Supplementary Conditions and Safeguards pursuant to Section 514.

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In order to bring the Use Variance in conformity with the Zoning Resolution, the Board exercises its authority under Section 514 to impose the following Supplementary Conditions and Safeguards:

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2. Pursuant to Section 514(A), the height of all commercial buildings is restricted to thirty-five (35) feet.
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Deviation from these Supplementary Conditions and Safeguards require prior application and approval.

**III. CONCLUSION**

*Whereas*, the decision above was presented to the Board of Zoning Appeals for vote and adoption on March 30, 2022. The rollcall vote was recorded as follows:

 _____ Tommy Hunt	 _____ Shannon Mills	 _____ Excused Eric Nickolas
 _____ Greg Reis	 _____ Trent Stepp	

*Resolved*, the Board of Zoning Appeals adopts and issues this decision.

The Final Order was approved and signed: 3-30-22

The Final Order was mailed/mailed to applicant on: 3-31-22