

## Etna Township Board of Zoning Appeals

Held

March 16,

20 2022

The meeting was called to order by Chairman Reis at 6:02 p.m. on March 16, 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.

Connie Klema confirmed on March 15, 2022 she was notified of the four member board and wanted to proceed this evening.

Chairman Reis explained the process for the hearings and Zoning Inspector John Singleton along with Connie Klema, Doug Lowe, and Todd Foley were all sworn in.

Trent Stepp moved to go into Executive Session at 6:06 p.m. per O.R.C. 121.22(G)(3) to confer with legal counsel. The motion was seconded by Shannon Mills and passed by unanimous affirmative vote. For the record the four board members along with Tom Spyker with Reminger and Mark Altier with the Licking County Prosecutor's office were in the executive session.

Trent Stepp moved to come out of Executive Session at 6:42 p.m. The motion was seconded by Shannon Mills and passed by unanimous affirmative vote.

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

The adjudicatory hearing was called to order by Chairman Reis at 6:43 p.m.

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.

John Singleton, Zoning Inspector, reviewed the written Staff Report. The use variance request is to permit multi-family dwellings and commercial in an Agricultural District. They are proposing approximately twenty-two acres of natural buffer area, twenty-one acres of commercial and nineteen acres of residential which would be one hundred and thirty apartments. The property is located northwest of the I70 interchange. The Comprehensive Plan calls for PMUD type developments in the corridor area. It is approximately fifty-two acres.

Connie Klema representing the owner of the property presented and provided a slideshow presentation. The property is zoned agricultural and has single family residential and retail/commercial uses adjacent to it. The property on the east side of SR310, which is over two hundred acres, was recently zoned for commercial, restaurants, offices, retail, multi-family and single family. The Future Land Use plan shows this area as a gateway to the community which means mixed uses of commercial and residential uses. The Licking County Planning Commission stated this use fits the Etna Township Comprehensive Plan. Their plan has a mix of uses. The site is only fifty-two acres with twenty-two acres of open space. They went through the process for a rezoning which is township first and then the Licking County Planning Commission. The Licking County Planning Commission made some recommendations which the applicant made those changes. The Etna Township Zoning Commission liked the plan with the revisions and basically unanimously voted to recommend approval to the Board of Trustees and the Licking County Planning Commission reviewed the plan and recommended unanimously to approve these uses. It wasn't until they went to the township Trustees where they were denied zoning. Since they were denied zoning this is now farmland sitting in the middle of mixed uses.

#### **Exhibit #1 – Commercial Use Areas**

Connie Klema presented a list of permitted and conditionally permitted uses. These uses are the same uses that were approved for the adjacent property and the uses that Licking County Planning Commission recommended removing were removed. If the Board of Zoning Appeals approves the Use Variance they are approving the residential to only go in the nineteen acres shown on their site plan, the green spaces as shown on the site plan, and the commercial uses in the areas shown as commercial on their site plan.

Connie Klema presented the opinion from the court when they appealed the decision of the Trustees. A use variance permits land uses for purposes other than those permitted in a district as described in the relevant regulation. Currently it is ag and they are not asking for ag, they are asking for something other wise.

An example of a Use Variance is a commercial use in a residential district, the court said on an appeal there is no dispute that the Etna Township Board of Zoning Appeals has the power to grant Use Variances which would allow a landowner to use his land for uses that are not permitted nor conditionally permitted uses in the Zoning Resolution. The applicant is asking the board to consider whether this fits in our Comprehensive Plan and if so these uses should be approved.

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If the board approves tonight what they are proposing is everything that is in that text that Connie Klema provided in the Use Variance Application. Meaning that they would be constrained to all the uses of square footage minimums, height minimums, buffering, landscaping, all those things would be part of their request and approval. This would have to be developed according to the text submitted. Connie Klema feels without a Use Variance this land has no alternative and it can't be rezoned because they have been denied.

Doug Lowe, who also represents the property owner, reviewed the standards for Use Variances from the Etna Township Zoning Resolution under Section 513.B.

1. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district; Doug Lowe stated the property would not be a good fit for a cemetery, school, estate homes, or agricultural.
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; Doug Lowe feels this property does because the way the surrounding area has been developed, all in accordance with the Comprehensive Plan. Now this property is basically on an island by itself for a use that no one else around there is using their property for. Agricultural is not a good use for this property.
3. The hardship condition is not created by actions of the applicant; Doug Lowe feels the hardship is not of Redwood's making. Redwood did not drive the development around this property. Per O.R.C 519.02 that specifically talks about not having arbitrary unreasonable administration of the Zoning Regulations and yet to say all the surrounding properties can be developed in accordance with the Comprehensive Plan but this property cannot, would be an arbitrary use.
4. The granting of the variance will not adversely affect the rights of adjacent property owners or residents; Doug Lowe skipped this point.
5. The granting of the variance will not adversely affect the public health, safety or general welfare; Doug Lowe stated nothing proposed is hazardous, but you have to give reasonable assumption that the Planning Commission and Etna Zoning Commission would not have (recommended to) approved the rezoning.
6. The variance will be consistent with the general spirit and intent of the Zoning Code; Doug Lowe discussed the Etna Township Comprehensive Plan and this is consistent with that plan.
7. The variance sought is the minimum that will afford relief to the applicant. Doug Lowe feels this is the missing piece and fits in the middle of the rest of it and any other uses are not what the Comprehensive Plan calls for. The Licking County Planning Commission said this plan would support the Comprehensive Plan and the surrounding uses around the property and the existing businesses already in the community.
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. Doug Lowe feels granting the variance does not confer any special privileges to his client that other people are not getting. By doing what Etna Township's Comprehensive Plan says is not a special privilege. This is doing what the people visioned for this area.

Doug Lowe provided a few quotes from the Comprehensive Plan. "This is a Comprehensive Land Use Plan that has been developed to guide growth in this community over the next twenty years." "The information in this document will provide direction for the township officials to follow to achieve those goals." "Additionally, a future land use plan has been developed that describes how the township should grow over the next twenty years." This isn't something that just cropped up last year, when Connie Klema first came to the township. This was the vision years ago when the plan went into place. This is a guideline for developers to use when looking at Etna Township. "The State Route 310 Corridor, spanning Etna Township from Fairfield County to Pataskala, is a defining area for this community. Therefore, careful thought and well-conceived strategies have been employed by the Etna Township Planning Committee creating a plan for this part of the township." "The Community Gateway-Mixed Use area will include a mix of uses, such as retail business, restaurants, offices, and residential development." "The committee believes a well-defined vision for this area will help the board of zoning appeals guide developers during site plan review process."

The applicant made the changes recommended by Licking County Planning Commission and they approved the plan at the April 27, 2020 meeting.

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John Singleton discussed the original access point was going to be coming thru the PMUD to the east and wanted to know how it will be affected by the changes of the development of that parcel. Connie Klema explained that the owner of that parcel is working with them and they are required under the Licking County Subdivision regulations to connect to their site. The owner of the property where the McDonalds is located on is also willing to work with them where Etna Crest Boulevard comes back to this property. This will not be worked out until after the zoning is approved and they go thru the process with the subdivision regulations. The Licking County requirement to tie into Green Apple and Pepper Tree was discussed. Connie Klema explained the process and they are able to tie into those streets if it is required but they do not want to and they will apply for a variance at that time from Licking County. They are pursuing other access points to the east. The streams are protected and Licking County Soil and Water will support a variance. The Use Variance is for how the property will be used and access does not pertain to the request through the Board of Zoning Appeals.

Trent Stepp inquired if there is only one entrance being proposed into this development and referenced Item five "The granting of the variance will not adversely affect the public health, safety or general welfare" regarding fire trucks and school buses and other large vehicles concerning egress and access. Connie Klema explained that even if the Board of Zoning Appeals grants the variance this evening the applicant will still have to meet the county regulations and fire department requirements. They are planning on working with two different neighbors to obtain public access and both property owners said they are still willing to work with them. Connie Klema has also discussed emergency access with the fire department. They have a means to get full public access and satisfying the fire department for emergency access.

Trent Stepp inquired on the areas dashed in red on the slide outlining the site plan. Connie Klema confirmed the fifty-two acre parcel is what is shown on the slide and the out parcels are six acres, four acres, and two acres. The twelve acres of commercial will be mixed uses of restaurants, commercial, offices, and that type of things. The text that she handed out (Exhibit 1) goes with this map and anything that is shown as commercial is shown in red, anything shown as a residential use is in the 42.1 acre area, and the open space green area is shown in the Natural Buffer Area. Those will be committed to and not be changed. The u shaped tree line will remain.

Greg Reis confirmed the yellow dashed area is the preserve area and Connie Klema explained the plan is to leave this area as natural open space. Connie Klema stated they can maintain this area with walking paths but cannot put in tennis courts or something of that nature. They have discussed walking trails. Greg Reis inquired on a plan for this area and Connie Klema stated it will not be developed with any buildings but can be developed as used by the public such as a walking path. They are waiting to find out what they have to do with the access points to plan a walking path. A walking path can be part of the use variance approval or interconnectivity that the public can use. It would be maintained by the owners of the property who will share in the cost of the maintenance of the reserve area. The residential area will comply with the use variance request.

The property was sold to her client about a year ago. The property was owned by the Snider Family previously. It has always been one big piece with the addition of some smaller pieces.

Trent Stepp asked Doug Lowe to confirm his answer to number six "The variance will be consistent with the general spirit and intent of the Zoning Code", in regards to, the intent of the Zoning Code in regards to multi-family housing. Doug Lowe believes it is clearly part of the Comprehensive Plan, which is a guide for developer's and it fits within that plan and is within the spirit of the plan. It is what is being developed all around this parcel and directly across the street. This is how it meets the spirit of the Zoning Code; it is doing exactly what the long term plan envisioned to be done with this area.

Trent Stepp asked if it is Doug Lowe's opinion that the standards for use variance is reliant upon the Comprehensive Plan. Doug explained the Comprehensive Plan itself says "The Committee believes a well defined vision for this area will help the Board of Zoning Appeals guide developers during the site plan process." Doug feels it is a guide for this board along with them and the township as a whole and is a reason to look at if this variance is reasonable or are they asking to do something that is total aberration which they are not. Trent Stepp is specifically asking about the "Standards for Use Variances" which Doug explained was met. Mr. Lowe feels they have met the eight part standards and feels the township's eight part plan is a more complicated than the three part plan the legislators put in.

Trent Stepp moved to close the public testimony portion of the hearing at 7:23 p.m. The motion was seconded by Tommy Hunt and passed by unanimous affirmative vote.

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Trent Stepp moved to recess for the purposes of deliberation. The motion was seconded by Shannon Mills. Discussion: The board is taking time to fully go thru everything and will not be rendering a decision this evening. The board will give the applicant a decision within thirty days. The public testimony portion of the hearing has been closed. The motion passed by unanimous affirmative vote.

Trent Stepp moved to come out of recess from deliberation at 8:02 p.m. Due to the late hour, moved to set a later date for them to reconvene to make a decision. The motion was seconded by Shannon Mills. The motion passed by unanimous affirmative vote.

**Organizational Meeting**

The public meeting was called to order by Chairman Reis at 6:36 p.m.

The meeting was turned over to Clerk Laura Brown for chairman nominations.

Trent Stepp, Shannon Mills, and Tommy Hunt all nominated Greg Reis for Chairman. The nominations were closed. Roll call was as follows: Shannon Mills - Greg Reis, Greg Reis - abstain, Tommy Hunt - Greg Reis, and Trent Stepp - Greg Reis. Greg Reis will serve as the Chairman for 2022.

The meeting was turned over to Chairman Reis.

Greg Reis nominated Trent Stepp. Shannon Mills and Tommy Hunt nominated Eric Nickolas for Vice Chairman; Roll call: Shannon Mills – Eric Nickolas, Greg Reis - Trent Stepp, Tommy Hunt – Eric Nickolas, and Trent Stepp – Eric Nickolas. Eric Nickolas will serve as the Vice Chairman for 2022.

Trent Stepp moved to authorize the Board of Zoning Appeals Clerk to contact the Licking County Prosecutor's Office for administrative purposes only. The motion was seconded by Shannon Mills and it passed without objection.

Trent Stepp moved to appoint Laura Brown as the Board of Zoning Appeals Clerk. The motion was seconded by Shannon Mills and it passed without objection.

Trent Stepp moved to use the Pataskala Post, Pataskala Standard and Newark Advocate as the designated media for public notices. In addition, all notices are to be posted on the calendar on the township website. The motion was seconded Shannon Mills and it passed without objection.

Shannon Mills moved to approve the 2022 submission deadline of noon on the first Tuesday of the month and a monthly meeting to be held at 6:00 p.m. on the fourth Tuesday of the month with the exception of the month of December which will be determined at that time because of the Christmas holiday. The motion was seconded by Trent Stepp and the motion passed without objection.

The meeting cancellation process and procedure for members informing the board of scheduling conflicts was discussed. The Board of Zoning Appeals will continue with the same procedure for members informing the Board of scheduling conflicts regarding meetings and hearings.

Thomas Spyker discussed the process of adjourning and reconvening for the adjudicatory hearing portion. Mr. Spyker will discuss the date with the applicant and obtain a waiver from the applicant if needed.

Trent Stepp moved to continue the recess until March 30<sup>th</sup> at 5:00 p.m. to deliberate and come with final findings, to render a decision for VA21-04 case. The motion was seconded by Shannon Mills and passed by unanimous affirmative vote.

Trent Stepp moved to adjourn the meeting at 8:13 p.m. Tommy Hunt seconded the motion and it passed without objection.

  
Laura Brown, Clerk

  
Greg Reis, Chairman