

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
April 19, 2006**

Chair Ed Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:30 p.m. All Board members were present. Alternate member Robert Erickson was in attendance. Chair Morel introduced the Board members and explained the public hearing procedure to those present.

Continuances

Determination of comparable and or accessory use for Self-Service Mini Storage (3990 Pearl Rd.)

Mr. David Brown and MaryAnn Chandler from the law firm Brown and Amodio represented the living quarters located at Self-Service Mini Storage for determination of comparable use and or accessory use.

Chair Morel stated that at the last hearing, Mr. Brown and Ms. Chandler offered evidence and testimony to persuade the Board to consider the living quarters in Self-Service Mini Storage as a comparable and or accessory use. The Zoning Inspector had deemed the living quarters to be in violation of the Zoning Resolution.

Mr. Brown stated he had no further testimony/evidence to offer this evening but asked the Board to reverse the decision of the Zoning Commission and Trustees that the living quarters is a comparable and or accessory use for all the reasons that have been stated in the transcripts submitted.

Chair Morel stated the comparable use was based on testimony and evidence offered by the applicant that there are various uses allowed in the Intensive Business District. Mr. Brown offered testimony that there are condominiums 1,000 ft. away and that this could have been developed in the same way. Mr. Brown interjected that under Section 406.2 it lists the permitted uses in the Intensive Business District. It also lists comparable uses to the permitted uses, which are permitted upon determination by the Zoning Commission and approval of the Township Trustees. Mr. Brown continued that the living quarters are indeed comparable to a number of the permitted uses in that District. An application was made to the Township to make a determination of this comparable use. The Zoning Commission turned down this application. It was then turned over to the Township Trustees and by a decision of 2 to 1, the decision of the Zoning Commission was affirmed. Mr., Brown stated they then made application for appeal to the BZA. This is not a variance it is an appeal.

Mrs. Karson stated after reading the transcripts of the Zoning Commission at least twice, she agreed with the decision of the Zoning Commission and the Trustees. and did not feel

the living quarters were a comparable use or an accessory use. Chair Morel stated he would like to discuss each use separately and to begin with the issue of comparable use.

Mr. Dufala stated he did not feel the living quarters were a comparable use. That would be like saying one could have storage units behind their home and rent them out. It's not the same. It changes the dynamics. One would be living there and running a business it was not like a condominium alone. Mr. Becker stated he agreed, and though there were a mix of uses, there was a clear separation between the businesses and condo's. He also added that he did not like the idea of setting a precedent in this District.

Mr. West stated he too agreed with the comments of Mr. Dufala and Mr. Becker and did not feel this is a comparable use. Chair Morel stated he agreed with Mr. Dufala's statement that the zoning intention is to separate and buffer the Township's residential from the commercial. Also if the intent was develop the property as residential, then all the setbacks, acreage and buffering would have to be met.

Having no further discussion by the Board, Chairman Morel called for a motion.

Mrs. Karson made a motion to deny the appeal of determination of comparable use of a living quarters for Self-Service Mini Storage located at 3990 Pearl Rd. It was second by Mr. West.

ROLL CALL-Karson-yes, West-yes, Becker-yes, Erickson-yes, Morel-yes.

Chair Morel then asked for discussion on the appeal of the living quarters at Self-Service Mini-Storage as an accessory use. He stated in the transcripts there was much information offered that the living area was to be for security. The plans came in with "security" on them but it turned out to be more than that. There was also testimony offered by the lady that was an employee of the owner of said business, that living quarters are standard in such places and not out of the norm. Mrs. Karson stated that lady referred to the storage units that she was personally involved with. Chair Morel stated that the storage units in Medina Township do not have such living quarters. Mr. Dufala stated he felt the potential to provide for such a space would be based on the size and how much money was being generated. He added that if there were only a few buildings, there would not be the monies involved to support someone living there 24-7. It would have to go by the number of unit that were able to be rented out to be able to pay someone to live there. Mr. Dufala also commented that Cali on Pearl Rd. only has 4 buildings so it would not be practical to have someone living there on the premises.

Chair Morel asked Mrs. Strogin how many storage unit facilities were in Medina Twp. Mrs. Strogin, Chair of the Zoning Commission was sworn in. She stated there are 3 such businesses in the Township. None of the them have any manager living quarters on them therefore there is no such accessory use to such businesses within the Township. The storage unit on Pearl Rd. mentioned by Mr. Dufala has not yet been built out but it has no

such use. The storage unit on Gateway has expanded at least once and is quite large as well but it has no such living quarters either.

Mr. Brown objected that this is an appeal and no new testimony/evidence was to be admitted. Mrs. Stogin stated she did not believe this is new testimony but only pointing out the details of that 1' thick document. Mr. Bill Thorne concurred that Mr. Brown was correct and this is an appeal and the documentation for the appeal has already been offered. However, Mrs. Stogin was just reiterating her comments made about the accessory use that were made at the Zoning Commission meeting.

Mr. Dufala stated the Township certainly could not stop them from having somebody there 24 hrs. in the office. They are just not able to sleep there and have their address there. Mrs. Karson stated it was different to have security and somebody trained in security then just having a couple who has no such training and come and go like normal people do. Mr. Dufala stated that if anyone was there it was going to help matters to see the cars going in and out and how long they are there.

Chair Morel stated by the applicant's own admission that couple does come and go and questioned how effective that was for "security". Mr. Becker stated "security" was someone checking in and out and doing that job specifically. Security is a camera or someone who clocks in and out. The way the living quarters is being used is not fulfilling the purpose of security.

Mr. West stated that though Mr. Brown has done the best he can, to suggest this is "security" rather than just another way to pay the people to maintain the operation of the business was stretching it. There are no such accessory uses elsewhere in the Township and therefore he did not feel this is an accessory use.

Chair Morel stated he too felt it was stretch. He added he owned a business in Cleveland and there was an apartment building right next door. That area is a mix of business and residential and it would great if he could have someone live in his building for security but he can't get an occupancy permit for his building for someone to sleep there. Chair Morel stated that he has to incorporate other measures of security for his business. He added he also did not want to see this become a precedent for this Zoning District. Once beds, a washer and dryer and living room area were added, the quarters at the Self-Service Mini Storage clearly went from security quarters to residential. A residential use would then have to meet all the buffers and setback requirements between commercial and residential, which this does not.

Mrs. Karson made a motion to deny the appeal of the determination of an accessory use of a living quarters for Self-Service Mini Storage located at 3990 Pearl Rd. It was second by Mr. West.

ROLL CALL-Karson-yes, West-yes, Becker-yes, Erickson-yes, Morel-yes.

Mrs. Strogin asked what was the time frame that the living quarters would have to be vacated. Mr. Thorne stated that would be based on whether this decision would be appealed.

VARIANCES

Montali variance request-3594 Pearl Rd.

The applicant, Mr. John Montali summarized what took place at the BZA hearing last month. The property is located at 3594 Pearl Rd. The variation requested: The approval of 35' side lines and a 5 ft. front yard variance because at the last meeting, ZI Ridgely stated this property would need the required frontage on the outside curve so the frontage would need to be 110 ft. not 150 ft.

Mr. Montali continued that Ms. Marla Meszar (3595 Pearl Rd.) questioned that part of the property he purchased from the Becker's was hers. As it turned out tax maps have already approved the piece of property he purchased from the Becker's on the north side and that convinced Ms. Meszar as well as himself that it did not effect the frontage she owned to the west side of the property.

Mr. Montali continued that he was seeking the variance stated for the property at hand. Mrs. Strogin interjected that a 75-ft. buffer is required on both sides of this property. Mr. Dufala stated he did not recall a residential use to the north of this land. Chair Morel stated that Mrs. Strogin meant a 75-ft. buffer when commercial abuts a residence or a residential use. Mrs. Strogin stated that was correct. The land is residential on both sides of Mr. Montali's property in terms of use. The current owners of that land could use it to put a residence on the property. It is not the Township's intent to drive those on such land out but to protect them. However, the Township will not give any more residential use than what is allowed in this commercial area.

Mr. Montali stated he has purchased land to make his property 150' wide by 400 ft. deep. However at the frontage area the last 75' tapers down to 105 ft. This is all the property that the Becker's would relinquish. The frontage requirement at a curve is 110 ft. so he was asking for a 5-ft. variance for the front and a 40-ft. variance to make the side yards 35 ft.

Ms. Meszar stated the land has been around for a very long time and gave a brief history as to who owned the land and how it was divided up. Chair Morel stated in 1992, Mr. Montali was allowed to put a building on that property. He has since added more land to the property to take it from a triangle to a rectangle.

The Board then reviewed the Duncan Factors as follows:

- 1 Will the property yield a reasonable return or is there a beneficial use of the property without the variance request? Chair Morel stated the only way this property could be dealt with is by variance. Mrs. Karson agreed.
- 2 Is the variance substantial? Chair Morel stated the side yard variances are substantial if there was a house next door. But the fact that it is a residential use and there are no residences within hundreds of feet waters this down.
- 3 Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? Chair Morel stated there was testimony offered last time about the traffic pattern and wild life sanctuary back there.

Mr. Dan Miltner 3380 Pearl Rd. was sworn in. Mr. Miltner stated that he and his wife own property behind the property in question and stated he submitted a letter last month that addressed the following:

We have three reasons for opposing this variance. The first two reasons are public purpose. The third is personal.

First, we physically inspected the location of the proposed building. Upon attempting to exit the property on Pearl Rd., we found that it was extremely difficult to exit the property as southbound vehicles had very little reaction time coming around the bend by the

bridge over the Rocky River. We have yet to feel the increase traffic flow from the River Trace development immediately north the property requesting variance. Allowing multi-vehicle access and egress will create a high accident area.

Secondly, encroachment to the west of the existing structure will further restrict the wildlife greenbelt that travels through our property (now registered as a Backyards for Wildlife Sanctuary) to the forty-six acre Medina County Park District Property and the twenty-nine acre Medina Sanctuary immediately beyond the Park property. Mr. Miltner stated subsequently he learned there was a wetlands abated piece of property acquired by the Western Reserve Land Conservancy regarding the TSC commercial development that further enhances that stretch of greenbelt and would be effected by the building of another building. The land drops down from the subject property to the River itself, and he was therefore concerned about the watershed.

Finally, the residents of Medina Twp. rely on the enforcement of proper zoning to protect the standard of living that this wonderful community provides. Regina and I ask that you consider the above in your decision.

4. Will the granting of the variance adversely affect the delivery of governmental services? No.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? Yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance. Mr. West stated not the front. Chair Morel stated Mr. Montali was taking a piece of property that has been around for a long time and turning it into an unbuildable lot. This is a sticky wicket in his opinion.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? Chair Morel stated he felt Mr. Montali was at least taking the property and making it bigger. Mr. Dufala stated that at least the dilapidated house on the property would be taken down. Chair Morel stated it was commercial property and if it doesn't get some variances it could not be built on. Also, in 1992 variances were granted that the land could be built on. He added he could understand Mr. Miltner's concern about traffic on Pearl Rd. but that was not a zoning concern. Adequate site distance and traffic was handled by ODOT.

Mrs. Strogin stated that Mr. Montali bought the property knowing it was unbuildable and then bought more land, which still left the land in the same state. She felt Mr. Montali made his own hardship. The other issue is that there has been no site plan for the property so the chances Mr. Montali would be back before the Board asking for variances was a good probability.

Chair Morel asked about the property being legal in 1992. Mrs. Strogin stated it wasn't legal but the BZA granted the variances to make it so. Mr. Dufala stated he would be glad to see the house taken down and the property cleaned up.

Mr. Montali stated Mrs. Strogin has issues and did not know if it was him or with the land or both. To say that he would be back before the Board asking for variances, what more variances could he ask for? He stated that if he did come back before the Board he would expect to be thrown out. Mr. Montali continued that he worked very hard to purchase this land and make it bigger and it has taken him 12 months to do it. He added he was not here for a site plan but for a lot split to make the land a truly buildable piece of property.

Mrs. Karson asked Mr. Montali to respond to Mr. Miltner's concerns about the riparian area and the green space? Mr. Montali stated he could not as it really was an ODOT or wetlands issue. It is not a zoning issue. He added he lived in the country and his heart went out to them. However this is Pearl Rd. in Medina Twp. and if he did not develop the land he could sure bet somebody else would. Progress is inevitable. This is the Pearl Rd. corridor.

Mr. Miltner stated he understood progress, he just felt the land should be developed in accordance with the zoning code of the Township. He added he lived years ago in Eastlake, which did not adhere to their zoning and is often referred to as the armpit of Summit County. Medina Twp. does not have to have the same reputation.

Chair Morel closed the hearing to public evidence and testimony.

Mr. West stated that looking at the Duncan Factors, the only one he felt may not speak to granting the variance was Factor #3 but did not feel it rose to substantial in terms of being a detriment and felt the variance should be granted.

Mrs. Karson asked if Mr. Montali would work with the Conservancy regarding the riparian issues. Mr. Montali stated his property was no where near the river.

Chair Morel stated the problem he had was taking something Mr. Montali bought which was buildable per variances and making it now unbuildable. Mr. Dufala agreed. Chair Morel stated the front yard variance was not substantial.

Mrs. Gardner was sworn in. She stated she agreed that the front yard variance was not substantial, but over a 50% variance on the sides was. Also, whether a building could fit on the lot and whether variances would be needed for parking were still factors that could arise. Mr. Dufala stated the variance being requested now was actually less than was granted before.

Mr. Becker stated he did not have any issues with the variance request before the Board. This is commercial property and will be developed as such either by Mr. Montali or somebody else.

Mr. Dufala made a motion to approve a 5-ft. front yard width variance and a 40 ft. side yard setback variance on the north and south sides of the property for Mr. John Montali for the property located at 3594 Pearl Rd. It was second by Mr. West.
ROLL CALL-Dufala-yes, West-yes, Karson-yes, Becker-yes, Morel-yes.

Medina Laser Car Wash variance request-3277 Medina Rd.

The Chair reviewed the file. Secretary Ferencz read the application. The applicant is Mr. James Campbell. The owner is Mr. Ron Nelson. A letter was received giving Mr. Campbell the authority to be the acting agent and spokes man for any issues regarding variance requests or zoning issues for Medina Laser Car Wash. The address of the property is 3277 Medina Rd. The variation requested is of Section 605 H. Identification sign 20' from ROW required. Sign is 8 ft. from ROW. Needs 12' variance; and Section 405.3.C. Front Yard Setback 100' from ROW required. Needs 18' variance. The reason for the variance requested stated. "Medina Rd. was made wider."

The applicant, Mr. James Campbell was sworn in. He stated that due to the State road-widening project on Rt. 18, Medina Laser CarWash sign and building were no longer in conformance with the setback requirements.

Chair Morel asked how much right of way did ODOT take? Mr. Campbell stated he believed the State came back 21 or 22 ft. Mrs. Strogen stated it was 18 ft. The building and sign were in compliance when Medina Car Wash was originally granted approval for their use and signage.

ZI Ridgely stated that Medina Laser Car Wash identification sign needed to be 20 ft. from the ROW. Therefore a 12-ft. variance is needed.

The Board then reviewed the Duncan Factors as follows:

1. Will the property yield a reasonable return or a beneficial use without the variance request? Chair Morel stated yes there can.
2. Is the variance substantial? Chair Morel stated one request is and one is not.
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? No.
4. Will the granting of the variance adversely affect the delivery of governmental services? No.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? Chair Morel stated the property was in conformance when the use and signage were approved.
6. Whether the problem can be solved by some other manner other than the granting of the variance? Chair Morel stated it was not practical to saw a building in half and move it and move the sign and spend a couple hundred thousand of dollars to do so.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? Chair Morel stated that the property looks nicer with the widening. The sign is not obnoxious.

Mr. Becker made a motion to grant a 12 ft. variance from the road right of way for the location of the identification sign for Medina Laser Car Wash and an 18 ft. front yard setback variance from the ROW for the location of said building. It was second by Mr. West.

ROLL CALL-Becker-yes, West-yes, Dufala-yes, Karson-yes, Morel-yes.

Divecha variance request-3760 Cook Rd.

The Chair reviewed the file. Secretary Ferencz read the application. The applicant is Reeder Architects on behalf of the property owner Mr. Behram Divecha. The property is located at 3760 Cook Rd. The variation being requested stated, "The existing housed is within the setback. The owner is requesting relief from the 100' front yard setback in order to complete construction of existing house that has remained unfinished for several

years. Moving the addition behind the 100' setback created difficulties matching the existing floor levels, interior flow and rooflines. The completion of the house as indicated on the site plan (March 20, 2006) will appear no closer to the road than the existing brick structure and allow the family to park to the rear of the house.”

The applicant, Mr. Brian Reeder from Reeder Architects was sworn in. He stated that there is a century home there now that is unfinished. Thirteen years ago he began the addition next to the house for the previous owners and it stopped. Mr. Divecha purchased the property and wanted to finish the project. Mr. Reeder stated the setback requirements had been increased since the time they began construction and the century home was already in the setback. Therefore they were asking for a 20-ft. variance so they could complete the construction of the home. The residence would have one façade across the front. The old house holds the kitchen so they really could not redesign because of the flow of the house, the way it sits on an angle as well as the existing floor levels. Mr. Becker asked if this was a continuation of construction Mr. Reeder had already started? Mr. Reeder stated yes.

Ms. Jeanette Haskell was sworn in. She stated she lived across the street from this home and asked why the house was being pushed forward 20 ft. if they had 9 acres to work with? Mr. Reeder stated it was not being pushed forward; Ms. Haskell had old proposed drawings. Chair Morel passed out the updated drawing to those concerned audience members. He stated that the main part of the addition is going to be even with the new house and the garage sits back from the house. The addition would be 30 ft. tall and not 38 ft. tall as first proposed.

Mr. Robert Arnold was sworn in. He stated his concern was the same as Ms. Haskell's and would like a copy of the new drawing as well.

Mrs. Gardner stated that has someone who has just completed an addition to an existing home, her architect and her went through at least 5 revisions to make sure the addition complied with all the zoning requirements i.e. setbacks of the Township. Was it ideally what she wanted to see for her property no, but it does meet the zoning and it is possible to do that with any piece of property.

Mrs. Karson stated that she liked the integrity of the façade and felt it would be very effective. Mr. Reeder stated he has worked on this project for 13 yrs.

The Board then reviewed the Duncan Factors as follows:

- 1 Will the property yield a reasonable return without the variance request? The Board stated yes.
2. Is the variance substantial? Chair Morel stated 20%.

3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted?
No.
4. Will the granting of the variance adversely affect the delivery of governmental services? No.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? Probably.
6. Whether the problem can be solved by some other manner other than the granting of the variance? Yes.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution?

Chair Morel stated that this one is where he felt with a project like this he would want an addition built the way he would want it. This house was legal and because it was 10 yrs. later and a change to the setback does not make sense for this home. It would be like telling Medina Laser Car Wash, too bad about the road-widening project. Saw the building in half and move the sign. This is why this Board is here. Mr. Dufala agreed as well as Mr. Becker. Chair Morel stated this was a much better option than the first of putting the garage forward.

Mr. West made a motion to approve a 20-ft. front yard setback variance for the completion of an addition to the residence at said property located at 3760 Cook Rd. It was second by Mrs. Karson.

ROLL CALL-West-yes, Karson-yes, Becker-yes, Dufala-yes, Morel-yes.

Minutes

The minutes to the BZA's March 16, 2006 were approved as amended.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 9:00 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary



Ed Morel, Chairman