



# CITY of MEDINA

## Board of Zoning Appeals

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### Board of Zoning Appeals

Meeting Date: March 12, 2015

Meeting Time: 6:00 pm

Present: Bert Humpal, Jim Bigam, Mark Pinskey, Mark Williams, Jonathan Mendel, (Community Development Director), Justin Benko (Associate Planner), Sandy Davis (Administrative Assistant)

Absent: Kris Klink

Announcements: None

Minutes: Mr. Bigam made a motion to approve the January 8, 2015 minutes as submitted. The motion was seconded by Mr. Williams.

Vote:	
Humpal	<u>Y</u>
Bigam	<u>Y</u>
Pinskey	<u>Y</u>
Williams	<u>Y</u>
Approved	4-0

Old Business: None

New Business:

- Z15-04      421 Sturbridge      Daniel Sebaugh      VAR  
Justin Benko gave a brief overview of the case. Mr. Benko stated this is a Variance request to Section 1121.05 of the Planning and Zoning Code to allow an addition 40 feet from the rear property line instead of the minimum allowed 50 feet. Mr. Benko stated the property is located on the north side of Sturbridge Drive, Brimfield Drive is located to the west and Wadsworth Road is located to the east. Mr. Benko stated the property is adjacent to residential zoning on all sides.

Mr. Benko stated the applicant has received a building permit to construct a roof above an existing deck. Mr. Benko stated during the process, the applicant determined it would more desirable to enclose the porch to add square footage to the house. Mr. Benko stated

the proposed addition will be a 19' by 12' heated sunroom which would encroach into the rear yard setback. Mr. Benko stated the applicant is seeking a variance from section 1121.05 of the Planning and Zoning Code to allow an addition 40 feet from the rear of the property when a 50 foot rear yard setback is required.

Mr. Benko stated staff spoke with Mary Santelli of 420 Hampden Court. Her property is northwest of the applicant's property. Mrs. Santelli had no issue with the variance request.

Mr. Benko stated the request is subject to determination of a practical difficulty as a rear property line setback is requested.

*A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;*

Mr. Benko stated the existing site can still be used as a single family residential dwelling without the granting of a variance.

*B. Whether the variance is substantial;*

Mr. Benko stated the rear yard setback for the proposed sunroom is 20% less than what is allowable by code.

*C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;*

Mr. Benko stated the essential character of the neighborhood may not be altered. The applicant received a building permit to construct a roof over an existing deck. During the construction process, the applicant determined an enclosed, heated sunroom was preferred. The sunroom would still be installed over the existing deck.

*D. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);*

Mr. Benko stated the variance would not adversely affect the delivery of governmental services.

*E. Whether the property owner purchased the property with knowledge of the zoning restrictions;*

Mr. Benko stated the code requirements have been in effect for a significant time period.

*F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or*

The applicant could proceed with the covered porch.

*G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.*

Mr. Benko stated the likely intent of the requirements is to provide a standard and predictable amount of development and site disturbance for a given parcel and to prevent excessive encroachment into rear yards.

Mr. Benko stated the BZA must weigh the above seven factors for the requested variance and determine if a practical difficulty exists that would merit a variance from section 1121.05.

Present for the case was property owner Dan Sebaugh, 421 Sturbridge Drive, Medina, Ohio. Mr. Sebaugh stated the original plan was to put a roof over an existing deck and then they decided to make a sunroom. Mr. Sebaugh stated during that course of action he learned that a variance was needed.

Mr. Humpal asked if the adjoining property owners were notified. Mr. Mendel stated they were notified. Mr. Mendel stated he received a few calls from the notification but there was no concerns, just inquiries.

Mr. Williams asked the applicant if he intended to have further outdoor deck/porch areas in the area that is already in a set-back encroachment. Mr. Sebaugh stated no. Mr. Sebaugh stated there is a walk-out basement so that part is raised and there is already an existing patio there so there will be no additional structures added.

Mr. Williams stated a condition can be put on the approval that there be no further development in the back. Mr. Mendel stated it is already explicit in the Planning and Zoning Code.

Mr. Bigam asked if the roof is going to cover the existing deck plus the side. Mr. Sebaugh stated the roof will only cover the existing 12 x 19 deck. Mr. Sebaugh stated the roof is already there, it was approved previously. Mr. Sebaugh stated there are no structures backing up to his property, only land. Mr. Sebaugh stated there is a fence in the backyard neighbor's property.

Mr. Sebaugh stated there is an easement in the back also.

Mr. Pinskey made a motion to approve a Variance to Section 1121.05 of the Planning and Zoning Code to allow an addition 40 feet from the rear property line instead of the minimum allowed 50 feet. Mr. Pinskey stated the approval is based on the finding that the variance is not substantial and will not impact the essential character of the neighborhood. The motion was seconded by Mr. Williams.



Mr. Mendel stated on March 12, 2015 the applicant requests rezoning, site plan and TC-OV certificate of appropriateness approval from the Planning Commission.

Mr. Mendel stated there are two types of variances being requested this evening, with the first one being Use variances. Mr. Mendel stated the request for an expanded motor vehicle filling station with convenience store is subject to determination of unnecessary hardship since it requires a use variance.

Mr. Mendel stated the Board shall weigh the following factors to determine whether an area variance should be granted:

*A. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;*

Mr. Mendel stated this property is a long established gas station and convenience store. The proposed expansion is a new 1,614 sqft convenience store building with no changes to the gas pumps or canopy. Mr. Mendel stated this is the only gas station in the immediate vicinity.

*B. The hardship condition is not created by actions of the applicant;*

Mr. Mendel stated this property and use was originally constructed under a different zoning district many decades ago. Mr. Mendel stated the applicant has operated this business for about ten years and the zoning change was not created by actions of the applicant.

*C. The granting of the variance will not adversely affect the rights of adjacent owners;*

Mr. Mendel stated granting this use variance should not adversely affect the rights of adjacent owners, because there is not a significant increase to the capacity of the use (number of gas pumps) but just an increase to the convenience store building with the intention of moving inside many of the unsightly items currently placed outside on the property.

*D. The granting of the variance will not adversely affect the public health, safety or general welfare;*

Mr. Mendel stated the proposed convenience store expansion should not demonstrably affect the surrounding vicinity. Mr. Mendel stated this may maintain the extent and intensity within the context of the existing mixed neighborhood.

*E. The variance will be consistent with the general spirit and intent of this Ordinance;*

Mr. Mendel stated the proposed use should be consistent with the spirit and intent, since it should maintain the status quo for the immediate neighborhood.

*F. The variance sought is the minimum which will afford relief to the applicant; and*

Mr. Mendel stated the use variance being requested will permit the continued operation and improve the aesthetics of the vicinity and provide minimum relief.

*G. There is no other economically viable use which is permitted in the zoning district.*

Mr. Mendel stated if this use variance is not approved, the current conditions at this property would persist, which is aesthetically substandard or the property could become vacant and be a significant detriment to the immediate neighborhood.

Mr. Mendel stated in addition to the above use variance/unnecessary hardship review, this project is also subject to determination of a practical difficulty various bulk variations are requested. Mr. Mendel stated there are seven factors that the BZA should consider when evaluating whether or not a practical difficulty exists. Mr. Mendel stated these factors are outlined below, along with a discussion of how these factors apply to the application in question.

*A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;*

**Setbacks and open space variances:**

Mr. Mendel stated if the minimum required front, rear and side setbacks of the M-U zoning district were met, the new building would be located in the middle of the site and require removal of the gas pumps and canopy.

**Parking location setback variance:**

Mr. Mendel stated if the required parking spaces were setback the minimum required by the M-U district, it would cause the spaces to be located in the center of the site or necessitate a significant reduction in parking provided on-site.

**Existing nonconforming pole sign variance:**

Mr. Mendel stated the existing pole sign at the NE corner of the site would need to be relocated elsewhere on the site to comply with 1147.04(D).

*B. Whether the variance is substantial;*

**Setbacks and open space variances:**

- Mr. Mendel stated the proposed front yard setback from the north lot line along Union St. is 28.25 feet versus the minimum required 40 feet, which is a 30% reduction. The existing building is 44 feet from the north lot line.
- Mr. Mendel stated the proposed rear yard setback from the west lot line is 5 feet versus the minimum required 30 feet, which is an 83% reduction. The existing building is 3.75 feet from the west lot line.
- Mr. Mendel stated the proposed side yard setback from the south lot line is 2.25 feet versus the minimum required 5 feet, which is a 55% reduction. The existing building is 4 feet from the south lot line.
- Mr. Mendel stated the proposed useable open space is 508 sqft versus the minimum required 2,102 sqft, which is a 76% reduction. The existing site has effectively no useable open space.

**Parking location setback variance:**

Mr. Mendel stated the proposed parking spaces are fully within the required setbacks as proposed.

**Existing nonconforming pole sign variance:**

Mr. Mendel stated maintaining the existing pole sign as is would be a 100% variance as the code requires complete removal and replacement with a compliant sign.

*C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;*

Mr. Mendel stated the variances as requested are unlikely to substantially affect the character of the neighborhood as the variances requested are for the construction of a new building to accommodate the enhancement of the site. Mr. Mendel stated the variances would effectively maintain the status quo.

*D. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);*

Mr. Mendel stated the variances will not adversely affect the delivery of governmental services.

*E. Whether the property owner purchased the property with knowledge of the zoning restrictions;*

Mr. Mendel stated it is unknown whether the applicant/owner purchased the property with knowledge of the zoning restrictions.

*F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or*

Mr. Mendel stated the bulk variances (setbacks, open space and parking setbacks) are part in parcel to the project as proposed. Mr. Mendel stated there does not appear to be any feasible alternatives that would not require the complete reconstruction of the site.

Mr. Mendel stated as for the pole sign variance, there is area on the property where a compliant sign could be feasibly located.

*G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.*

Mr. Mendel stated the spirit and intent of the code could be considered observed because the bulk variances requested are necessary for the construction of the new convenience store building, which will enhance the neighborhood and improve the site greatly.

Mr. Mendel stated the spirit and intent behind Section 1147.04D requiring the compliance of nonconforming signs was an effort to find an appropriate trigger for removing nonconforming signs within the community. Mr. Mendel stated using site

plan review as a trigger for compliance can be justified under the presumption that the cost of sign compliance may be minor in relation to the overall project budget.

Mr. Humpal asked if there should be one motion or two. Mr. Mendel suggested putting the bulk variances for setbacks in one motion and the Use variances in another motion. Mr. Mendel stated the sign should also be in a separate motion.

Mr. Mendel stated notices were sent to all adjoining property owners and he has spoken with one neighbor who was not required to be notified per the Planning and Zoning Code and also one other neighbor who is present here tonight.

Mr. Mendel stated there was no negative or positive input from the neighbors, only questions on what the plan looks like.

Present for the case was Norman Saeger, Saeger Architectural Services, 4956 Eshelman Avenue, NE, Louisville, Ohio 44641. Mr. Saeger stated he is the architect for the applicant. Mr. Saeger stated the intent is to keep the business operational while transforming the structure. Mr. Saeger stated it will be a phased project. Mr. Saeger stated they are proposing a structure that will fully encompass the existing building so that when it is completed, it will be a larger building with the existing building having been demolished within the confines of the new structure.

Mr. Saeger stated all the refrigerators, antifreeze, and items outside the building, will be taken into the building. Mr. Humpal suggested adding to any approval that all the outside items be moved to the inside of the building. Mr. Mendel stated that would be ok.

Mr. Saeger stated there is an outside location for the ice freezer and probably the firewood next to it but all the other items will go inside the store.

Mr. Bigam stated he likes that the owners are going to invest in the property which needs to be cleaned up. Mr. Bigam asked what type of lighting will be used on the site. Mr. Saeger stated the intent is to not add any new light fixture poles and the only exterior new lighting will be on the entrance overhang which will have down lights.

Mr. Bigam asked if there will be enough room to maneuver a large tanker. Mr. Saeger stated it will be the same size area for traffic.

Also present for the case was property owner Sukhjinder Singh, 4737 Lexington Road, Medina, Ohio. Mr. Singh stated the front of the building will be no further forward than what currently exists. Mr. Singh stated the tankers can maneuver through the site the same as they do now. Mr. Singh stated when the new building is built, all the coolers will be on the inside of the building. Mr. Bigam asked the number of additional parking spaces are being proposed. Mr. Singh stated there will be one parking space taken away. Mr. Mendel stated there is basically the same amount of striped parking on the plan as is currently on the site. Mr. Mendel stated the property falls under the Downtown Parking District which the code exempts from the required parking standards in the zoning code. Mr. Mendel stated there are

no real code required parking standards they need to meet, it is more of a performance standard of meeting the necessary setbacks.

Mr. Bigam stated he feels for the safety of the neighborhood the subject of the site maneuverability should be discussed by the board. Mr. Bigam stated the site of the tanks and where they will be off loaded should be discussed. Mr. Mendel stated he agrees it should be discussed but is more under the charge of the Planning Commission Site Plan Review. Mr. Mendel stated the Board of Zoning Appeals are charged with reviewing the variance requests only.

Mr. Williams asked where the tanks are located on the site. Mr. Singh stated they are under the three parking spots and not under the canopy. Mr. Singh stated the filling area is there also. Mr. Singh stated that area will not be disturbed at all during the construction or as part of the construction.

Sara Kibler, 503 N. Court Street, spoke. Ms. Kibler stated when she moved to her home, the gas station closed at around 9:30 p.m. Ms. Kibler stated it is now open until midnight and opens at 5:30 a.m. Ms. Kibler stated she has experienced a significant increase in the amount of traffic over the years. Ms. Kibler stated she does not think there will be sufficient parking and she feels this will increase traffic and she is against the project.

Jim Krejci, 136 W. Union, spoke. Mr. Krejci stated moving the coolers inside is a good idea. Mr. Krejci stated he is concerned about parking being put on the lot being the station. Mr. Krejci stated that cannot happen because it is infringing on a residential area. Mr. Mendel stated under its current zoning, it is not permitted. Mr. Krejci stated he is concerned the owner will eventually try and put parking there and he has lived there for 35 years. Mr. Krejci stated he owns 136, 130, and 124 W. Union as rental properties. Mr. Krejci stated he is constantly cleaning the garbage out of the yards. Mr. Krejci stated he has no real objection to the proposal but wonders if it will cause more parking to be on Union Street. Mr. Krejci stated he would like to see the coolers inside the building. Mr. Krejci asked where the sign will be moved to. Mr. Mendel's stated it is an existing non-conforming sign so if the Board does not approve the variance request, they would need to propose a different location. Mr. Mendel stated this site is outside the direct traffic patterns for the circulation around the gas pumps and in and out of the site. Mr. Mendel stated it can be incorporated elsewhere on the property.

Mr. Mendel stated the current sign is non-compliant in height, area, and setback.

Barbara Booker, 125 W. Union, Medina, Ohio, spoke. Ms. Booker stated she is not opposed to the convenience store expansion as it will be substantially nicer. Ms. Booker stated she would prefer the variance be 12 feet towards the house. Ms. Booker stated the house property may be zoned M-U in the future. Ms. Booker stated she objects to the possibility of the property being rezoned to M-U in the future. Ms. Booker asked what can prevent the owner from taking the house down. Mr. Mendel stated the zoning code will prevent it. Mr. Mendel stated any further expansions

would need to go through the public review process. Mr. Mendel stated the question is appropriate for the Planning Commission. Ms. Booker stated a larger store will generate more trash from the consumers. Ms. Booker stated the garbage ends up in the neighbor's yards and goes into the storm sewers causing flooding. Ms. Booker stated she would like to see trash cans on the property and signage to throw trash away.

Mr. Bigam made a motion to approve the following variances;

- Use Variance from Section 1129.02 of the Planning and Zoning Code to permit the expansion of an existing nonconforming motor vehicle filling station with a retail convenience store at 427 N. Court (028-19A-17-149) on an M-U zoned property where such a use is not permitted
- Variances from Section 1129.05 to allow:
  - A 28.25 foot front yard setback from the north property line along Union Street instead of the minimum required 40 feet.
  - A 5 foot rear yard setback from the west property line instead of the minimum required 30 feet.
  - A 2.25 foot side yard setback from the south property line instead of the minimum required 5 feet.
  - 508 sqft of useable open space instead of the minimum required 2,102 sqft (25%).
- A variance from Section 1129.07 to permit existing and proposed parking spaces to be located within side and front yards.

Mr. Williams seconded the motion.

Mr. Williams stated he would request that the business owner install trash receptacles on the property to help the neighborhood. Mr. Singh stated there are trash receptacles on the property now but the residents still throw the trash on the ground.

Vote:

Humpal	<u>Y</u>
Bigam	<u>Y</u>
Pinsky	<u>Y</u>
Williams	<u>Y</u>
Approved	4-0

Mr. Williams asked the applicant if the reason for not redoing the sign is a cost factor. Mr. Singh stated he recently got approval for the pole sign and he does not feel there is enough space for that sign. Mr. Singh stated if you put a different sign, it will not be visible from the road. Mr. Singh stated the sign needs to be at least 5 to 7 feet tall to be seen. Mr. Singh stated other locations on the site would block parking. Mr. Singh stated he would like to keep the sign. Mr. Pinsky stated the canopy is so close to the road that it offers a substantial amount of advertising on its own. Mr. Pinsky stated he would like to see this become a conforming sign.

Mr. Bigam stated a conforming sign may block site from people pulling out of the car wash. Mr. Singh stated he can put the sign in the canopy on two sides. Mr. Williams suggested tabling the sign request. Mr. Mendel stated if the applicant tables the request, there is no time limit to when he must come back to the board. Mr. Mendel stated if the board tables the request, the applicant must come back to the board within a month. Mr. Pinskey stated he would like to have the city work with the applicant to come up with a plan for the signage.

There was a brief discussion regarding other locations for the sign on the site. Mr. Singh tabled the sign variance request.

3. Z15-07 724 E. Smith Rd. Harbor Learning Center VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a Use Variance request from Section 1123.02 of the Planning and Zoning Code to permit a child daycare center use at 724 E. Smith Road, Parcel #028-19D-02-040 located at a property zoned R-2, (Medium Density Urban Residential) where such a use is not permitted.

Mr. Benko stated the property is located on the south side of E. Smith Road. S. Broadway Street is located to the west, and Guilford Blvd is located to the east. Mr. Benko stated the property is adjacent to R-2 residential zoning to the north, west, and east. I-1 industrial zoning is located to the south.

Mr. Benko stated Harbor Learning Center, child daycare business, is seeking to relocate from 507 Lafayette Road within the City to a property zoned R-2 residential located at 724 E. Smith Road. Medina Children's House, a Montessori preschool program, was formerly at the site. Mr. Benko stated public and parochial schools are conditionally permitted uses in an R-2 zoning district. Harbor Learning Center does not meet these conditional use requirements because it is a child daycare center which is not permitted. Mr. Benko stated the applicant is seeking a variance from section 1123.02 of the Planning and Zoning code to allow a child daycare center use to located in an R-2 zoning district where such as use is not permitted.

Mr. Benko stated the Board shall weigh the following factors to determine whether an area variance should be granted:

*H. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;*

Mr. Benko stated the property appears to have been originally constructed for a preschool/ daycare type use because the first floor and lower level consists of one large room. Mr. Benko stated public and parochial school uses are conditionally permitted.

*I. The hardship condition is not created by actions of the applicant;*

Mr. Benko stated this property has been zoned R-2 residential for decades and zoning was not the applicant's doing.

*J. The granting of the variance will not adversely affect the rights of adjacent owners;*

Mr. Benko stated the property was previously a preschool use. Mr. Benko stated the use variance should not adversely affect adjacent property owners.

*K. The granting of the variance will not adversely affect the public health, safety or general welfare;*

Mr. Benko stated the proposed use is very similar to the previous conditionally permitted Montessori School use at the site.

*L. The variance will be consistent with the general spirit and intent of this Ordinance;*

Mr. Benko stated the proposed use will be consistent with the spirit and intent, since it will maintain the status quo for the immediate neighborhood.

*M. The variance sought is the minimum which will afford relief to the applicant; and*

Mr. Benko stated the use variance being requested will permit occupancy of the vacant building and provide minimum relief.

*N. There is no other economically viable use which is permitted in the zoning district.*

Mr. Benko stated other economically viable uses for this property are unlikely due to the odd configuration of the interior of the building. Mr. Benko stated the first floor and lower level are essentially one large room which would require significant alterations to convert the property to residential occupancy.

Present for the case was Bill Joseph, 22 Parkview Drive, Medina, Ohio. Mr. Joseph stated the interior of the building is one big room as is the downstairs and was designed as a preschool use. Mr. Joseph stated there are no showers or tubs in the buildings and two of the vanities are 24" tall specifically for preschoolers to use. Mr. Joseph stated Harbor Learning Center provides preschool as well as child care.

Mr. Benko stated he had one inquiry from an adjoining property owner to gather more information and they had no objection to the proposal.

Mr. Pinskey asked the number of children that will be in the building. Mr. Joseph stated the school's license is for 44 children maximum.

Mr. Humpal asked if the licensing requires further alterations to the property. Mr. Joseph stated it does not. Mr. Joseph stated he has spoken with the Fire Marshall and no

modifications are necessary. Mr. Pinsky asked if there is a parking space requirement for the site. Mr. Joseph stated there is a lot less parking at their current location.

Mr. Williams made a motion to approve a variance to Section 1123.02 of the Planning and Zoning Code to permit a child daycare center use at 724 E. Smith Road, Parcel #028-19D-02-040 located at a property zoned R-2, (Medium Density Urban Residential) where such a use is not permitted. Mr. Williams stated the approval is based on the finding that it will not alter the essential character of the neighborhood.

The motion was seconded by Mr. Pinsky.

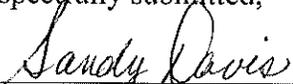
Vote:

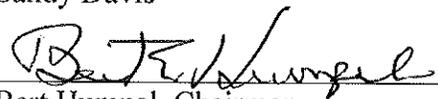
Humpal	<u>Y</u>
Bigam	<u>Y</u>
Pinsky	<u>Y</u>
Williams	<u>Y</u>
Approved	4-0

Mr. Mendel stated he is looking at scheduling a training session for April and he will announce it to the board when it is finalized.

Having no further business, the meeting was adjourned.

Respectfully submitted,

  
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Sandy Davis

  
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Bert Humpal, Chairman