

**COLERAIN TOWNSHIP BOARD OF ZONING APPEALS**  
Regular Meeting Minutes  
4200 Springdale Road - Cincinnati, Ohio 45251  
**Wednesday, August 22, 2018 – 6:30 p.m.**

Meeting called to order: 6:30 p.m.

Pledge of Allegiance was led by Mr. Reininger.

The Explanation of Procedures were presented by Mr. Reininger.

Roll Call: Mr. Bartolt – aye, Ms. Wilson – aye, Mr. Price – absent, Mr. Roberto – aye, Mr. Reininger – aye.

There were no alternatives present.

Also present were staff members Jenna LeCount and Jesse Urbancsik and the Assistant Law Director, Scott Sollmann.

Swearing in: Mr. Reininger swore in the appellants, attorneys and all speakers in the cases.

Mr. Reininger asked for a change of the sequence of appeals.

Mr. Robert made a Motion to change the order and seconded by Mr. Bartolt.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Hearing of Appeals:

**BZA2018-011** Request for a variance from Section 12.8.1

Location: 3598 Ripplegrove Drive

Applicant/Owner: Laura Fox/R. Patrick Conaway

Ms. LeCount stated that the applicant is requesting a variance from Section 12.8.1. for a six-foot privacy fence which extends into her front yard. The subject property is located at the northeast corner of Ripplegrove Dr. and Silva Dr. and is a single family house zoned R-6 Urban Residential District. The property is bordered by Northgate Mall to the north and single family

residential to the west, south and east. There is a privacy fence separating Northgate Mall parking lot and the houses to the south of the Mall on Ripplegrove Dr. There is a break in the fence with pedestrian connections between the Northgate Mall parking lot and the dead end of Silva Dr. and dead end of Wilcox Dr.

The property currently has a four-foot-high chain link fence in the front yard on Silva Dr. which complies with zoning regulations. The owner and occupant of the property are seeking a more substantial barrier between the property and the pedestrian access to Northgate Mall than the four-foot-high fence that currently exists. Ms. LeCount noted that a six-foot privacy fence could be installed from the back corner of the property to the edge of the house. She additionally noted that the property owner could plant a solid row of evergreen trees behind the current chain link fence and accomplish the need for privacy and separation.

#### Staff Findings:

1. The fence height variance requested is substantial since the zoning resolution prohibits privacy fences in the front yard of principal buildings.
2. The granting of the variance would grant a consideration that is not available to other property owners in the neighborhood.
3. The property in question would likely yield a reasonable return without the variance.
4. The granting of the variance would probably not have a negative impact on neighboring property but would create a precedent to allow for privacy fences in front yards if requested by similar properties.
5. Approval of the fence variances would not affect the delivery of government services.
6. There are no unusual topographic or site configuration issues related to this property which would prevent the reasonable application of the front yard regulations. The expressed nature of the hardship is based on an adverse relation between neighbors and not a physical attribute of the property.
7. By taking into consideration the benefit to the applicant if the variance is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would not be done by granting the variance for a front yard privacy fence.

Staff Recommendation is denial of the variance request.

With no questions for staff from the Board, Mr. Reininger opened the public hearing.

Laura Fox, tenant of the subject property, stated that they are requesting the variance for privacy and safety concerns for her dogs. Ms. Fox stated that pedestrians can see into the bedroom window on the side of the street as well and that people passing by were throwing things, hitting, and almost stabbing her dogs. She would additionally like to have her AC unit fenced in as well.

John Kroger, neighbor of the applicant, reiterated the applicant's hardship and also added that pedestrians litter on the property as well and that all sorts of things happen near her back yard. He is in favor of the six-foot privacy fence.

With no one else to speak in favor or against the variance, a Motion was made by Ms. Wilson and seconded by Mr. Roberto to close the public hearing.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Mr. Roberto asked staff if the Township could close the pedestrian pathway from Northgate Mall to Ripplegrove Drive and how could the problem be resolved without the fence.

Ms. LeCount responded that staff would not advocate the closure of the pedestrian access because it is a major asset to the community.

Mr. Bartolt asked Ms. Fox if she is against brining the fence up to the corner of her house. Ms. Fox stated that it would cut off nearly half of her yard.

Mr. Reininger complimented the applicant on her property and stated that his primary concern is that the tall privacy fence could welcome graffiti and damages. Ms. Fox stated the her and her landlord will take responsibility and would have no problem repainting the fence. Mr. Reininger asked her if she thought about tall landscaping and greenery as an alternative to the fence.

Mr. Bartolt asked staff if she could keep the existing chain-link fence and build a second fence back. Ms. LeCount responded that she would need a variance for a second fence.

Ms. Wilson commented that evergreens would provide better protection over a fence and hopes the applicant would consider that.

A Motion was made to deny the variance request by Mr. Bartolt. The Motion died for lack of a second.

Ms. Wilson questioned whether or not to table the case so the applicant could weigh all her options. Mr. Roberto stated that he considers it to be her backyard and she should be allowed to have the fence because of her hardship.

A Motion was made to approve the variance request by Mr. Roberto and seconded by Mr. Bartolt.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – nay.

**BZA2018-009** Request for a variance from Sections 15.3, 15.8.3(C), 15.8.3(D)(1), Section 15.8.3(D)(2) and Section 15.12.2(C)

Location: 7671 Colerain Avenue

Applicant/Owner: David Biddle/Tri-Angle B Holding Company LTD

David Biddle representing property owner Tri-Angle B Holding Company LTD has requested a variance from Sections 15.3, 15.8.3(C), 15.8.3(D)(1), Section 15.8.3(D)(2) and Section

15.12.2(C) of the Colerain Zoning Resolution for the proposed replacement of a sign cabinet and panels on a non-conforming sign.

Ms. LeCount stated that the property is located on the west side of Colerain Avenue between Lina Place and Harry Lee Lane. The property already contains a non-conforming pylon sign and several additional temporary signs in violation of the Colerain Zoning Resolution. The property is across the street from the future Duke site. Ms. LeCount pointed out non-conforming signage throughout the Groesbeck Corridor and the illegal temporary signage between the two sign poles.

The sign in question currently has three permanent sign cabinets and the proposal is to keep the top two cabinets and replace the lower cabinet. The proposal will cause the loss of the legal non-conforming status on the subject signage. The existing sign is set back approximately 4 feet from the right-of-way where 10-feet is required. It is 17 feet in height, where only 15-feet is allowed per the code. The upper two cabinets proposed to remain are about 104 square feet and the added cabinet is an additional 37.5 square feet for a total of 141.5 square feet exceeding the maximum allowed by 83.5 square feet. The variance request is for the additional 83.5 square feet of sign area, which keeps the top two existing signs and replaces two panels and the cabinet. The Zoning Certificate was denied due to the non-conformity of the existing sign and the prohibition of the structural alteration of the sign. A neighboring property was shown with a new monument sign displaying what a conforming new sign might look like.

Staff Findings:

1. The property in question would likely yield a reasonable return without the variance. The property can reasonably be identified with signs meeting current zoning regulations.
2. The sign variances requested are substantial since the existing sign is non-conforming in multiple respects (height, size and setback). The proposed sign is 240 percent larger than allowed.
3. The granting of the variances would grant a consideration that is not available to other property owners in the neighborhood.
4. The granting of the variance would probably have a negative impact on neighboring property and would create a precedent to allow for sign variances if requested by neighboring properties. The addition of non-conforming signs would add to the sign clutter in the neighborhood.
5. Approval of the sign variances would not affect the delivery of government services.
6. There are no topographic issues related to this property which would constrain the reasonable application of the sign regulations without additional expenses.
7. By taking into consideration the benefit to the applicant if the variance is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by not granting the variance for the replacement of the non-conforming sign cabinet and face panels.

Staff Recommendation is denial of the variance requests.

With no questions for staff from the Board, Mr. Reininger opened the public hearing.

Justin Scalf, representative of One Stop Signs, stated is he representing property owner David Biddle. He is the one installing the sign and understands the legal non-conforming status. The scope of work only is focused on one cabinet. He stated the just moving the sign alone would be nearly \$10,000 and installing a new monument sign could be upwards of \$20,000. The current unilluminated cabinet lit by goosenecks only represents two tenants and one is missing. He states that he understands that face changes can be done, but new installation of the proposed cabinet cannot be done with the variance.

David Biddle, the property owner, stated the bottom panel has always been for three tenants. He wants to replace what is already existing and wants to make it look better. He said that he has always told tenants that they need permits for the temporary signage and never has received a letter saying to take them down. Mr. Roberto interjected stating that Mr. Biddle is the owner of the property, therefore he is responsible.

Greg Thielmeyer, owns the bicycle shop adjacent to the subject property, stated that he spent \$14,000 to get his new sign up to code and said that is what he did to make his property look better. He agreed with Mr. Roberto's comment on saying that the property owner is solely responsible for how the property looks including signage. He states that property owners should make their property look good as it is a representation of the community. He questioned why doesn't everyone meet the zoning codes since he put a lot of effort into this property and doesn't like how the other properties look. Mr. Thielmeyer is against the variance request.

With no one else to speak in favor or against the variance, a Motion was made by Mr. Bartolt and seconded by Ms. Wilson to close the public hearing.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Mr. Roberto questioned removing the large pawn shop sign and using the remaining panels for the multiple tenants. Mr. Biddle responded that his tenants wanted to maintain the signs. Mr. Roberto restated that the property owner dictates that. Mr. Biddle stated that the signs have been there for 23 years and that they have always maintained them and stated that he could lose a tenant over this. Mr. Roberto clarified that the overall height of the sign can be 15-feet and the current sign height is approximately 17-feet. Mr. Roberto stated that the panel couldn't be much more than 2-feet tall. He stated that they can comply by reducing the overall height down by 2-feet.

Mr. Bartolt asked if the Red Payday Loan sign could go away, and if the new panel could go in its place. Mr. Biddle stated that tenants control those two panels per their contract.

Mr. Reininger commented that the sign is 240% larger than anything that the Board permits in zoning. He reiterated the conditions of the other members, mainly with the size and setback conditions.

Mr. Roberto made a Motion to deny the variance requests and Mr. Bartolt seconded.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – aye.

**BZA2018-010** Request for a variance from Section 8.3.1, Section 13.3.2, Section 13.4.2(D), Section 14.6.1, Section 14.6.2(A), Section 13.4.1, Section 15.5.1, and Section 13.4.2(C).

Location: 10140 Colerain Avenue

Applicant/Owner: Mark Koeninger / Louis Zettler

Mark Koeninger with KPA Architecture and Landscape, LLC representing property owner Louis Zettler has requested variances from Section 8.3.1, Section 13.3.2, Section 13.4.2(D), Section 14.6.1, Section 14.6.2(A), Section 13.4.1, Section 15.5.1, and Section 13.4.2(C) in order to redevelop a property located at 10140 Colerain Avenue, currently being used as an auto sales facility, as a newly developed auto sales facility.

Ms. LeCount presented the subject property, located on the east side of Colerain Avenue just north of I-275 and south of the Colerain Towne Center. The property is zoned B-2 General Business and was developed in the late 1980s as a BP gas station. The property was converted to an auto sales facility around 2007. At the time the property was converted to an auto sales facility, it was about 0.4 acres in size. It was subsequently reduced to 0.33 acres with the widening of Colerain Avenue by the Ohio Department of Transportation (ODOT).

On July 2, 2018, the applicant applied for a Zoning Certificate to demolish the existing building and canopy on the site and construct a newly developed auto sales facility. The Zoning Certificate was denied due to missing information.

Missing Information:

1. Site landscaping and buffering as required.
2. Exterior lighting including photo-metrics.
3. Equipment, outbuildings, dumpster locations, etc. that will be visible on the site.
4. Proposed site drainage, including water retention/ detention and sedimentation control measures.
5. Legal descriptions for easements and other site restrictions.
6. Parking and loading configuration, including calculation of total spaces for vehicle display, customer and employee parking, criteria used to determine total needed, pavement detail, curb location, curb detail, and aisle and stall dimensions.

Variance Requests:

Section 8.3.1 – The minimum lot area in the B-2 zone is 1 acre. The plan indicates a net lot area of 0.33 acres. The variance request is for a 0.67-acre reduction from the minimum lot area.

Section 8.3.1 - The maximum allowable lot coverage by impervious surfaces is 75 percent. The site plan indicates a lot coverage of 87 percent. The variance request is for an additional 12 percent of the site to be covered with impervious material.

Section 13.3.2 requires ten parking spaces for each 1000 square feet of building area and two spaces for each service bay. Based on the building size of 2,325 square feet and an

allowance for a reduction for what appears to be a storage closet of 60 square feet allowed by section 13.3.1(D)(2) and an allowance for a ten percent reduction of overall parking spaces per section 13.3.4(B)(1) the required number of off street parking spaces is 20 exclusive of auto display spaces. Only 6 spaces are included in the plan. The variance request is for a 14 space reduction in parking spaces.

Section 13.4.2(D) – The minimum setback for parking spaces on entries perpendicular to the right of way is 30 feet. The actual setback is 18 feet on the north and south property lines. The variance request is for a 12-foot reduction in the setback for perpendicular parking.

Section 14.6.1 - The minimum area for landscaping of a parking lot is 15% of the total area. No internal landscaping is proposed. The variance request is for the elimination of this requirement.

Section 14.6.2(A) - A landscape island is required at the end of each row of parking including the parking along the street frontage. None are proposed. The variance request is for the elimination of this requirement.

Section 13.4.1 and 15.5.1 requires that the parking area have a 15-foot setback from the right-of-way and that the setback include landscaping. No setback of the parking from the right-of-way is proposed. The variance request is for the elimination of this requirement.

#### Staff Comments:

1. It is the applicant's contention that it is the Township was responsible for the road widening project that impacted their site. While the Township was in favor of the widening project, the Ohio Department of Transportation (ODOT) was entirely responsible for the acquisition of right-of-way, design and construction of the project.
2. It is the applicant's contention for every variance request that "The Car Connection property, after the roadway project, is no longer a grandfathered parcel..." Section 11.9 of the Zoning Resolution states that the property can legally be continued to be used indefinitely unless the building is abandoned for more than two years or is damaged or destroyed by over 60 percent of its value. This property is losing its non-conforming status only because the owner is choosing to completely demolish the principal building and redevelop the site.
3. The property was 0.4 acres in size before the widening project which was substantially smaller than the minimum one-acre size requirement for new development. The ODOT purchase of 0.07 acres for the right-of-way and whatever damages that occurred to the property should have been part of ODOT's negotiation for the purchase of the property. Even at the original 0.4 acres the redevelopment of the site would have required substantial variances to be redeveloped as proposed by the applicant.
4. The original configuration of the site as a gas station worked reasonably well for the property and could have continued as a gas station. The owner's preference to adapt the existing gas station building and canopy as a car sales facility created self-imposed difficulties.

#### Staff Findings:

1. The property in question would likely yield a reasonable return without the variances. The site can continue to be used for auto sales in its current condition as a non-conforming development. The property can reasonably be used as a permitted use in the B-2 General Business District within the limits of the zoning regulations.

2. The variances requested are substantial since allowances for landscaping, permeable surfaces, and good parking configurations are highly desirable for new developments.
3. The granting of the variances would grant a consideration that is not available to other property owners in the neighborhood.
4. The granting of the variances would probably have a negative impact on neighboring property and would create a precedent to allow for other variances if requested by neighboring properties.
5. Approval of the variances would not affect the delivery of government services.
6. There are no topographic issues related to this property which would constrain the reasonable application of the regulations without additional expenses.
7. By taking into consideration the benefit to the applicant if the variances are granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by not granting the variances for the proposed auto sales facility.

Staff Recommendation is denial of all the variance requests.

Mr. Bartolt asked staff about the pedestrian connection stripping would work to connect a path to the building. Ms. LeCount responded that it would.

C. Francis Barrett, attorney for property owner Louis Zettler, asked for clarification for the Township's role in the widening of Colerain Avenue. He stated that because of the widening of Colerain Avenue, there were a number of meetings with Colerain Township and ODOT. Mr. Roberto stated that Mr. Barrett suggests blame on ODOT and Colerain Township. Ms. Wilson agreed that Mr. Barrett was alluding the blame. Mr. Barrett asked Ms. LeCount for her opinion on whether if this would be an overall safer site due to the proposed development. Mr. Roberto stated that Mr. Barrett needs to diverge his questions to the Board. Mr. Barrett asked if the board would focus not on the number of variances, but on the overall positive impact the development will bring.

Mr. Koeninger, with KPS Architecture, recounted the history of the site and reiterated the issue of the Colerain Avenue widening. He noted the steel column in the middle of the property and stated that there is not a legal, safe circulation around the existing structure and that this adds to the number of hardships against the property. Mr. Koeninger went through each variance request to explain his reasoning for each appropriate one.

The site before the roadway project was presented displaying the right-of-way before and after the widening of Colerain Avenue. The right-of-way was moved 25.7 feet onto the subject property. It went from a gas station to an office building. The site lost 25-feet of frontage and steel columns, which are 15-feet in front of the right-of-way, are in the middle of the property. Mr. Koeninger stated that these columns are hazardous to the business since it is required that 18-feet is the minimum for circulation. He stated that a paramedic or fire truck could not pull onto the property unless they back out, stating that it is unsafe to operate on the property.

Mr. Koeninger recognized that it isn't even close to a 1-acre site and stated that the property owner has his hardship placed on him due to the roadway project.

Mr. Koeninger recognized that the plan uses the entire lot space but this is in order to provide the circulation needed for emergency vehicles. He stated that there is no way to get around this and is the best scenario that could be designed on the property.

The interior bays are being called service bays however, no work will be done on the cars within the bays. They were not counted as service bays and closets, mechanical rooms, and restrooms within the square footage of the proposed structure. He stated that there are two offices within the building and he measured from the inside walls to calculate the square footage. He additionally stated that he based the number of parking spaces on the number of users for the building. He said this property does not need 20 parking spaces.

The entire property is the parking lot and that landscape islands are not needed and they take away from space and circulation issues. The landscaping in the corner of the property and around the building was pointed out. He stated that landscaping covers 13% of the entire property.

Mr. Koeninger stated that a 15-foot buffer was present before the widening of Colerain Avenue and that there is no way to include a 15-foot buffer from the right-of-way on the proposed site plan. Since it is an all asphalt lot, Mr. Koeninger stated that lines could be painted on the surface to indicate a pedestrian path and stated that the strip application does not seem practical. Mr. Koeninger stated that the development will not be using dumpsters. Stormwater was not included in the plans because the whole property sheet drains back onto the hill which has storm drains. He noted that permeable pavement is extremely expensive. Mr. Koeninger stated that lighting is included on the building.

Mr. Koeninger proceeded to go over each of the staff findings. He stated the property is dying and needs the variances in order to yield a reasonable return as a functioning car lot. He responded that the variances are substantial however, they are not much of a change as they were before and said that compromises can make the site work. He proceeded to show renderings of the proposed development that were not included in the application. He stated that if the variances are not granted, it is a hindrance to government services. The site is flat so there are no topographic issues related to the subject property. Mr. Koeninger concluded that if variances are not granted then the property is going to sit vacant and be a potential detriment to the health, safety and welfare of the neighborhood and broader community.

Mr. Barrett asked Mr. Koeninger if there are any negative impacts on the adjacent owners or on the Township in general. Mr. Koeninger responded that it is a viable business and this would further improve the neighborhood. Mr. Reininger interjected asking the gentlemen if the dialogue could be addressed to the Board directly. Mr. Barrett asked if he is allowed to ask Mr. Koeninger a question. Mr. Reininger said he would appreciate it if he asked the question to the Board. Mr. Sollmann clarified that he is only supposed to be giving a presentation and all dialogue should go to the Board. Mr. Sollmann noted Mr. Barrett's objection.

Michael Heil, Assistant Attorney General representing the Ohio Department of Transportation, and took blame for ODOT's plan, not the Township, for the widening of Colerain Avenue.

concluded that he wants to improve Colerain Avenue and that this development would be a part of that improvement.

With no one else to speak in favor or against the variance, a Motion was made by Mr. Roberto and seconded by Mr. Bartolt to close the public hearing.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Mr. Roberto commended Mr. Koeninger's presentation and plans and stated that the proposed development is a great plan. He confirmed that the property received compensation for the loss of the 25-foot frontage. He stated about the property lost and items that can be overlooked in order to reduce the number of variances requested.

Ms. Wilson asked for clarification on the reasoning behind rebuilding the site. Mr. Koeninger responded stating that there currently is no safe way to enter the property and that reckless driving could affect the property. Ms. Wilson asked if there is any way to remove the existing columns. Mr. Koeninger responded that the canopy can be removed. Ms. Wilson stated that ODOT created the problem and that it would be inevitable because it is the right-of-way. Mr. Koeninger stated that would not be true. Ms. Wilson reiterated that it would still be a problem since the site is under 1-acre and clarified that the desire is to building a new structure.

Mr. Bartolt stated that the variance requests are substantial due to the uniqueness of the property and that in fact this development would better the community since the area is kind of a gateway to the Township. Mr. Bartolt asked staff if the owner was to sell the property, would anything be allowed on the site. Ms. LeCount stated that any redevelopment would require a variance because of the 1-acre minimum however, a B-2 use could develop on the site within the code. Mr. Bartolt said that this site could be vacant for years to come and asked if the applicant if they are willing to work with the Township to resolve the issues.

Mr. Reininger stated that the property owner has created their own problem and that the site is grandfathered in as an auto sales lot and mentioned the amount of asphalt in the area. He commended the effort for being something different however it is still hampered by the zoning codes and stated possibility that it could be narrowed down to one or two variances.

Mr. Roberto noted that nothing can be done with the acreage and the 75% lot coverage. He said he would allow the ten parking spaces and that the 30-foot setback is unrealistic to achieve. He stated that there was probably more landscaping calculated than their calculations so he would be fine with the proposed landscaping and there is no need for the landscape islands. Painting a line on the ground would work for a pedestrian connection. He stated that his concern is the 15-foot setback from the right-of-way. He concluded that all the other variance request he would allow wiggle room for with the guidance from staff on how best to approach it.

Ms. LeCount asked the Board for the opportunity to table the case for the applicant to work with staff to narrow down the request to two potential variances regarding the 1-acre lot and the 15-foot setback.

A Motion was made by Mr. Roberto to table the case in order to amend the existing plans with direction from Staff to the October 24, 2018 Meeting. Ms. Wilson seconded the Motion.

Roll Call: Ms. Wilson – aye, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Approval of the June 27, 2018 Meeting Minutes:

A Motion was made by Mr. Roberto and seconded by Mr. Bartolt to approve the June 27, 2018 Meeting Minutes.

Roll Call: Mr. Bartolt – aye, Ms. Wilson – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Administrative Matters: None.

A Motion was made by Ms. Wilson and seconded by Mr. Roberto to adjourn the meeting at 8:33 p.m. The meeting was adjourned.

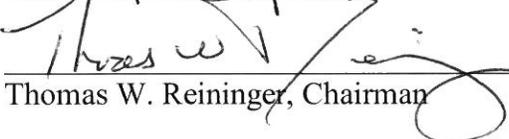
Respectfully Submitted:

  
\_\_\_\_\_  
Jesse Urbancsik, Planner

Secretary:

  
\_\_\_\_\_  
Robert A. Bartolt, Secretary

Accepted by:

  
\_\_\_\_\_  
Thomas W. Reininger, Chairman

