

COLERAIN TOWNSHIP BOARD OF ZONING APPEALS

Regular Meeting Minutes

4200 Springdale Road - Cincinnati, Ohio 45251

Wednesday, October 24, 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: Ms. Wilson – absent, Mr. Bartolt – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Alternates Sam Hill and Mark Schupp were seated.

Also present were staff members Jenna LeCount, 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. Schupp made a Motion to amend the agenda and Mr. Hill seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Hearing of Appeals:

BZA2018-015 Request for a variance from Section 13.7.3 to allow for parking of a commercial food truck vehicle in a residential driveway.

Location: 3407 Lapland Drive

Applicant/Owner: Douglas and Kimberly Fread

Ms. LeCount presented the case on the subject property which is zoned R-6 Urban Residential and contains a single family house constructed in 1957. The lot size and width are non-conforming but are consistent with other development in the neighborhood and has not been significantly modified since the original development. The R-6 minimum lot size is 7,500 square

feet and the applicant's lot is 5,967 square feet. The required minimum lot width is 65 feet and the applicant's lot is 50 feet wide. The house has a single car-width driveway leading to a lower level single car attached garage. On street parking on Lapland Drive is restricted to one side of the street due to the narrow pavement width.

The commercial food truck will take up the majority of the driveway and is currently 25 feet long. A standard size vehicle would not be able to fit behind the commercial food truck without it going onto the sidewalk. Ms. LeCount showed neighboring properties and showed images of the existing truck. Ms. LeCount stated the staff findings and stated that this could have a negative impact on the neighborhood due to the addition of extra vehicles allowed on the subject property. Ms. LeCount stated that the use variance requires a higher level of security than a dimensional variance and the applicant will need to establish a hardship associated with their property in order for the Board to grant a use variance.

Staff Findings:

1. The property in question would likely yield a reasonable return without the variance. The property can reasonably be used as a single family residence under current zoning regulations. The nature of the hardship in this case is that the applicant is not wanting to make arrangement for parking the vehicle in another location.
2. The variance requested is substantial since commercial vehicles parking in a residential neighborhood is not in keeping with typical household vehicles.
3. The granting of the variance 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 since the number of vehicles per household has increased significantly since the development of this neighborhood in the 1950s making the neighborhood overcrowded with regular household vehicles. The granting of this request could create a precedent to allow for similar variances if requested by neighboring properties.
5. Approval of the variance could possibly affect the delivery of government services.
6. There are no topographic issues related to this property which would constrain the reasonable application of the parking 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 allowing the parking of a commercial vehicle in a residential district.

Staff Recommendation is denial of the variance request.

Mr. Hill asked Staff if they received a complaint regarding the vehicle. Ms. LeCount responded that they had and this is why the applicant is currently in front of the Board.

Kimberly Douglass, the property owner, stated that she was not aware of the complaints about the vehicle and that her neighbors seemed to be okay with it being parked in the driveway.

With no further questions for Staff, Mr. Roberto made a Motion to close the public hearing and Mr. Hill seconded.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Mr. Hill asked the applicant how long they have owned the food truck business. Ms. Douglass stated that it is new and that they have only been running it for three months and plan on starting it back up next year. Mr. Hill asked the applicant if she was aware of the parking regulations. Ms. Douglass responded that she was not aware that it was a violation.

Mr. Roberto asked the applicant if she had investigated possible off-site storage locations for the vehicle. Ms. Douglass responded that they need somewhere to plug the truck into. Mr. Roberto asked if they are currently in business. Ms. Douglass stated that they have a few places that are lined up for work.

Mr. Bartolt asked the applicant if she knew of any other places where food trucks are parked within the area. Ms. Douglass stated that most food trucks are run off of propane and she only knows a couple that are electric. Mr. Bartolt asked that if there was an off-site storage place with electric if she would be willing to park the vehicle there. Ms. Douglass responded that she would.

Mr. Reininger asked if the electric is used for refrigeration. Ms. Douglass stated that it is and for charging of the batteries located within the vehicle. Mr. Reininger asked if it was possible to store food within the residence and Ms. Douglass responded back that it wasn't efficient.

Mr. Bartolt clarified to the applicant that she is currently not using the food truck. Ms. Douglas responded that they have not been using it for the last month and a half.

With no further questions from the Board, Mr. Roberto made a Motion to deny the variance request. Mr. Bartolt seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

BZA2018-010 Request for 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 14.5.1, and Section 13.4.2(C) in order to redevelop a property currently being used as an auto sales facility, as a newly developed auto sales facility.

Location: 10140 Colerain Avenue

Applicant/Owner: Mark Koeninger / Louis Zettler

Ms. LeCount summarized her presentation from the August meeting when the applicant originally applied to the BZA. She reiterated the concerns of the property and the variance requested. She stated that the applicant has been using the property in a non-conforming manner. The property was previously used as a gas station and Ms. LeCount pointed out that the canopy structure and building are still existing. She stated that the property will lose its non-conforming status due to the redevelopment of the site. The proposed building design complies with the Township standards; however, since the site is within the B-2 zoning district and this is not a development plan review, the applicant will not necessarily be held to these elevation drawings when an application is made for a zoning certificate. She recounted that Staff met with the applicant after the August BZA Meeting to identify opportunities to bring the development plan closer to compliance with the Zoning Resolution. Ms. LeCount identified each variance that was previously requested and the changes to those 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. No Change is proposed by the applicant.

Section 8.3.1 - The maximum allowed 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. The impervious area has been reduced to 82 percent resulting in a request for an additional 7 percent of the site to be covered with impervious material than is allowed.

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. Ms. LeCount stated that staff finds the applicant is required 20 parking spaces and the applicant is proposing 6 spaces. 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. No change, however the revised angle of the south row of parking helps to mitigate some of the safety concern.

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. No change is proposed by the applicant.

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. Landscape islands have been added at the ends of the parking

spaces facing Colerain Ave. at 75 square feet each and a width of 5 feet. Section 14.6.2(A) requires a minimum size of 135 square feet each (60 square foot variance request) and Section 14.6.2(F) requires a minimum width of 9 feet (4-foot variance request). In addition, since the customer parking has been relocated to the front of the building, a landscape island is required at both ends of that row of parking and none is provided.

Section 13.4.1 and 14.5.1 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. A 2 foot 6-inch-wide buffer strip has been added across the front of the property with shrubs indicated. Two canopy trees or three ornamental trees are required for this buffer strip and none are proposed. The variance request is for a 12 foot 6-inch reduction in the buffer strip width and elimination of the tree requirement for this section of buffer strip.

Section 13.4.2(C) requires a pedestrian connection between the building customer entry and the public sidewalk along Colerain Ave. None is proposed. The variance request is for the elimination of this requirement. A four-foot-wide pedestrian walkway is proposed between customer parking spaces in front of the building and a four-foot-wide pavement from the public sidewalk to the edge of the display parking area. This pedestrian connection is required to be at least four feet wide and continuous from the customer building entry to the public sidewalk. The amended variance request is for a partial waiver of the pedestrian connection requirement.

New Item – Section 13.4.2 requires that access driveways for commercial development be at least 24 feet wide. The amended site plan has one-way access with drives measuring 20 feet in width. A four-foot width variance would be required for these driveways.

Ms. LeCount reminded the Board that they are not approving a development plan so signage and other items will need to be addresses separately. She noted that there is a proposed sign that will not meet code, but that will be addressed during the zoning certificate approvals.

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. While the widening of Colerain Avenue over the years has impacted numerous property owners to various degrees, the impact on this property that was already non-conforming in size was more significant than other properties.
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. The property is somewhat unique with a lot size that is substantially smaller than the minimum requirement.

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:

1. Approval of the variance request from Section 8.3.1 to allow for a 0.67-acre reduction from the minimum lot area requirement of one acre.
2. Approval of the variance request from Section 13.4.2(D) to allow for a reduction from the minimum setback for perpendicular parking on entrance drives on the north and south property lines from 30 feet to 18 feet.
3. Approval of the variance request from Sections 13.4.1 and 14.5.1 to reduce the minimum width of the streetscape buffer from 15 feet to 2 feet 6 inches on the condition that required tree planting in the buffer strip be accommodated elsewhere on the site.

Denial of all remaining variance requests.

Ms. LeCount stated that the Board may want to make a Motion for each variance request when it comes time.

Scott Sollmann noted that Mr. Barrett is allowed to cross examine staff and other witnesses that he thinks.

Fran Barrett, attorney for the applicant, asked the Board for permission to ask Ms. LeCount questions. Mr. Barrett asked Ms. LeCount questions regarding the site and about the August Meeting. Mr. Barrett asked Ms. LeCount if she thought the site is safe and Ms. LeCount responded that it was not a yes or no question. Mr. Barrett asked Ms. LeCount if the site will be physically improved with the proposed development and that if the main reason to improve the site is regarding safety concerns and functionality. Ms. LeCount recounted that the use is conforming and the use is allowed in a B-2 zone, but the site itself is non-conforming. She stated that with respect to the size of the site, it cannot be conforming. Mr. Barrett questioned Ms. LeCount on more items regarding the road widening project, economic impact, and parking.

Mr. Koeninger, architect for KPS Landscaping, stated that no one wants to come to a BZA Meeting and that is why Mr. Zettler was not there. The applicant stated that Mr. Zettler is preparing to spend hundreds of thousands of dollars to redevelop the site. As a result of the roadway property, the site currently is inefficient and unsafe according to applicant. The applicant stated that the property owner was given approval in 2009 to operate as a car lot. The roadway project killed his business. The applicant stated that the business is off by over 30% and one of the main reasoning is because he lost nearly 40% of his display area. The applicant stated that there was a 15-foot greenspace in front of the property before the widening. The applicant handed the Board photos that he took directly after the August BZA meeting. The applicant

stated that cars are currently parked right at the current right-of-way. The applicant stated that there are only four cars now and his company is affected due to the small amount allowed for display. The applicant stated that it is not possible for an ambulance to get on the site efficiently or effectively. The applicant restated that the building is a non-conforming use and cannot alter the building in anyway.

Mr. Roberto disputed to the applicant that the canopy and building can be removed. Mr. Koeninger stated the reasoning for the moving of the building is to make the property functioning and safe and that they are required to move the building to the back of the property. Mr. Koeninger stated that overall the property will be nicer when the project is complete. The applicant proceeded to go through each variance request and each request that changed since the August Meeting.

Mr. Koeninger stated that the lot size cannot be changed. The applicant stated that he did reduce the overall density of the site. If there were to be anymore greenspace, it would not be circulating efficiently and could affect other variances. With respect to the parking requirement, the applicant stated the 60 sq. ft. was taken into consideration due to a staircase and loft space within the building. Regarding the 30-foot setback, Mr. Koeninger stated that he nailed this. The applicant stated that in the original design that they moved the original 6 spaces behind the building and increased the size of the landscaping islands and created two along the parking strip. The parking area is technically outside the 30-foot setback from the street – not counting the display area. Regarding the 15% parking area, the applicant stated the ratio is 15% and thinks that it should no longer be a variance request. The applicant stated that the landscape islands were added and knows that they are supposed to have 9-foot-wide parking islands. The applicant said that he believes that this is written for larger parking lots and is not practical or feasible for a development on the subject property. The applicant stated they are shooting themselves in the foot with this. The applicant stated that he put landscaping around the entire width of the building. The applicant stated that 2.5 feet was added to the 15-foot setback and that any further would encroach on the minimum circulation aisle. The applicant stated that a 4-foot paved pathway between the sidewalk and building was added and that it would not be a problem to chalk a walkway between the sidewalk and front door. Regarding the new variance request, the applicant stated that they made one entrance smaller with a one-way aisle of 20 feet and said he had tried to convince the owner to make this entrance smaller to allow more space of display cars.

Mr. Roberto clarified that three conditions have been met.

Ms. LeCount clarified that she has seen the site but has not pulled onto the property. As a B-2 use it can yield a reasonable return and Mr. Koeninger stated the property owner wouldn't be able to if the entrance to the property is properly situated. He strongly disagreed with item number five on Staff Findings and reiterated the need for safe access for governmental vehicles. The applicant stated that he has no problem providing a foot candle plan for the site. He brought up that there were existing poles and states that there is no proposal for signage on the site. He stated that poles have been completely removed. Mr. Reininger stated that there is one pylon left.

Mr. Hill asked Mr. Koeninger who determined the site as unsafe. Mr. Koeninger stated that the Zoning Resolution basically states that it was unsafe. Mr. Hill asked if the site was made so obsolete and if the State was interested in buying the entire property and Mr. Koeninger stated that he does not have an answer. Mr. Hill asked if he had followed up with the Fire Department or Building Department or is it just based off of his professional knowledge. Mr. Koeninger stated he did not follow up with either.

Mr. Roberto asked if the owner of the property was compensated when the land was taken. Mr. Barrett stated that it is still pending and have estimated the amount that they will received. Mr. Roberto stated that the canopy is separate from the building itself – cantilevered and that this would not affect the building itself. Mr. Koeninger stated that he would disagree on how the building department would look at that. Ms. LeCount stated that if the building is not touched, then the building is still non-conforming. The frontage could be altered towards compliance of the zoning resolution. Mr. Roberto stated that the canopy cover could be eliminated. Mr. Koeninger disagreed and he is strongly concerned that he would need a demolition permit. Ms. LeCount stated that a zoning permit is not needed to remove the canopy. Mr. Roberto stated that he has his sympathy for the 40% of property taken. Mr. Roberto stated that he wants their business to be successful and wants all businesses to be successful in the Township. Mr. Roberto stated that the parking need meets the 30% on how it is viewed. The applicant has indicated that the display cars are mobile and something that needs to be discussed. Staff does not say that this is met and it is a decision on the board to say that its met. Mr. Roberto asked how many accidents have occurred on the property. Mr. Koeninger stated that he knows some cars have hit the pole, and does not have any further information.

Mr. Schupp asked staff if the applicant had met the 15% landscaping. Ms. LeCount stated that it is not met and that they are specifically looking for more landscaping in the parking area. Mr. Koeninger stated that they are not counting the 3-foot landscaping bed that goes around the entire building. Ms. LeCount stated she has a different interpretation.

Mr. Bartolt asked the applicant about the left side angle parking and how long the cars will be parked there angled. Mr. Koeninger stated that those cars will not be there for long. Mr. Bartolt asked what was the bare minimum amount of cars for the property owner to be successful. Mr. Koeninger stated that it is off 30%. Mr. Bartolt asked what number he had before and that he is technically increasing what the property owner has now with these proposed plans.

Mr. Reininger applauded the energy that the applicant put into redesigning the site, making it more presentable for the public and potential car buyers. Mr. Reininger asked the distance between island to island and how many spots are between the cars. Mr. Koeninger stated that it is a variable – and that it's a typical dealer thing and that those cars could be small. The applicant stated that the actual number of cars could change during the displays. Mr. Reininger asked if it could be reasonable to take a car out of the plans so that the sidewalk connection could come up without have a car blocking the potential walkway. Mr. Koeninger responded that it is very possible.

Mr. Hill asked if vehicles require striping for all on site. Ms. LeCount stated that they are not needed for display vehicles, only for customer parking.

Mr. Roberto made a Motion to approve the variance regarding minimum lot size from Section 8.3.1. The Motion was seconded by Mr. Hill.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

Mr. Roberto made a Motion to approve the variance regarding lot coverage from Section 8.3.1. The Motion was seconded by Mr. Hill.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

A Motion was made by Mr. Hill to approve the variance regarding parking from Section 13.3.2. Mr. Bartolt seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

A Motion was made by Mr. Bartolt to approve the variance regarding setback for parking setbacks from Section 13.4.2(D). Mr. Schupp seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

A Motion was made by Mr. Schupp to approve the variance regarding minimum landscaping from Section 14.6.1. Mr. Bartolt seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

A Motion was made by Mr. Roberto to approve the variance as proposed, regarding parking islands from Section 14.6.2(A). The Motion was seconded by Mr. Schupp.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

A Motion was made by Mr. Roberto to approve the variance regarding Section 13.4.1 and Section 15.5.1 on the conditions that the tree plantings be accommodated elsewhere on the site. Mr. Bartolt seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye, Mr. Reininger – aye.

A Motion was made by Mr. Roberto to deny the variance regarding sidewalks from Section 13.4.2. Mr. Bartolt seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye,
Mr. Reininger – aye.

Lastly, a Motion was made by Mr. Roberto to approve the variance regarding access driveways from Section 13.4.2 and to designate one-way directional signage for the entrance and exit. Mr. Hill seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye,
Mr. Reininger – aye.

Unfinished Business: None.

Approval of Minutes:

Mr. Roberto made a Motion to approve the August 22, 2018 Meeting Minutes. Mr. Schupp seconded the Motion.

Roll Call: Mr. Hill – abstained, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – aye,
Mr. Reininger – aye.

Mr. Bartolt made a Motion to approve the September 26, 2018 Meeting Minutes. Mr. Hill seconded the Motion.

Roll Call: Mr. Hill – aye, Mr. Bartolt – aye, Mr. Schupp – aye, Mr. Roberto – abstained,
Mr. Reininger – aye.

Next Meeting: November 28, 2018.

Administrative Matters:

Mr. Reininger expressed appreciation to Mr. Sollmann for the cross-examination document handed out to the Board. Mr. Sollmann commended the Board for a job well done and the giving of rationales.

Mr. Reininger introduced an appreciation letter to Mr. Price for his service on the Board.

Mr. Hill thanked Staff for their hard work.

Mr. Roberto made a Motion to adjourn the meeting and Mr. Bartolt seconded the Motion. Meeting was adjourned.

Respectfully Submitted:



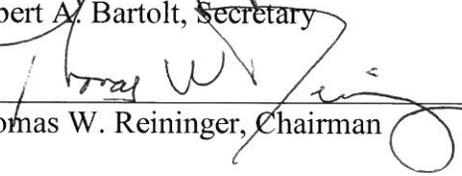
Jesse Urbancsik, Planner

Secretary:



Robert A. Bartolt, Secretary

Accepted by:



Thomas W. Reininger, Chairman

