

BOARD OF APPEALS PUBLIC HEARING – APRIL 2, 2015

PUBLIC HEARING
BOARD OF ZONING APPEALS
April 2, 2015

The Austintown Township Board of Appeals held a Public Hearing on Thursday, April 2, 2015, at the Township Building, 82 Ohltown Road, Austintown, Ohio, for consideration of the following cases:

APPEAL CASE 2015-02-A-Ace Pipeline, and
APPEAL CASE 2015-03-A- Newport Auto Group.

The following Board members were in attendance:

Mr. Robert Satterlee – Chairman
Mr. Michael Beaudis – Vice-Chairman
Mr. William Glaros
Mr. James Mahoney
Mr. Dale Basista
Mr. Joe Koch

Chairman Satterlee opened the public hearing at 7:03 P.M. The following testimony was given under oath or affirmation. Court Reporter in attendance, complete transcript taken of the hearing.

APPEAL CASE 2015-02-A

Anthony Marino, dba Ace Pipeline, 3304 Austintown-Warren Road, Mineral Ridge, Ohio, 44440, on behalf of James T. McElrath, Sr., 3304 Austintown-Warren Road, Mineral Ridge, Ohio, 44440, appeals from the decision of the Austintown Township Zoning Inspector and requests a variance from the terms of Article I-Definitions: “Strip Mining” and Article XIV-Industrial I-2 District - Section 1401-Paragraph 2(f) Prohibited Uses: “Strip Mining”, of the Austintown Township Zoning Ordinance, as amended through November 25, 2014, to allow for an above ground mining operation at the property located at 5552 Dunlap Road with approximate mining dimensions of 50 feet in width, 150 feet in length, and an overall height of 30 feet. Said property is further described as 22.104 acre parcel of land, Parcel 48-085-0-020, Tract No. 6, is located on the east side of Holton Road, approximately 270 feet south of the Victoria East Road-Holton Road intersection, and at the westerly terminus of Dunlap Road (a dedicated unimproved right-of-way); and is zoned as Industrial I-2 District in Austintown Township, Mahoning County, State of Ohio.

Assistant Zoning Inspector Harris read the applicant's letter dated March 8, 2015 into the case record, referenced a HGIS photograph, a letter of permission from Ace Pipeline giving Mr. Marino the right to represent the property owner, two e-mails, a letter of

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determination issued on February 26, 2015 by the Zoning Inspector, the case mailing list, and three plat maps prepared by the zoning office,

Mr. Satterlee stated the mailing list for case 2015-02-A will be incorporated into the case record.

Tony Marino, 1782 South Main Street, Warren, Ohio, 44481 stated they would like to take the remaining rock out to a grade from the last mining operation conducted in 1973 or 1974. They will use the land for storage of their equipment. Mr. Satterlee inquired about the width of the mining operation. Mr. Marino stated it was 50 feet wide and 150 feet long. Mr. Marino stated he had not specifically measured the area but the State would and the permit would be based on State measurements. The road leading to the plot will also be a part of the permit.

Mr. Satterlee suggested they would need more than 50 feet. Mr. Marino stated they would like an area 100 feet by 200 feet long to be on the safe side. The state will probably require an acre for the permit. The hours of operation will be 7:00A.M. to 3:00P.M. The material will be recycled and some of the material will be used to create a brim for the pond and some of the material will be sold. They do work for Dominion and store pipe and some equipment on-site.

Mr. Koch asked if the material could be used for road sub-base. Mr. Marino answered in the affirmative.

Joe Duponty, 361 Ohltown Road, stated his property abuts the subject property and commended them for cleaning it up.

Mr. Koch asked about materials that will be recycled. Mr. Marino stated they have a concrete crusher on-site and will be making material including their own top soil to be used by Dominion. Mr. Marino stated the site was mined in the 1960's and 70's. They will go to the exact subgrade previously mined. The mining operation should take about a month. They have to place a \$10,000.00 bond with the permit and wish to complete the job to secure a refund for the bond.

Mr. Koch inquired about noise. Mr. Marino stated on the Ohltown side they are 25 feet below the road. It was observed by Mr. Koch the trees will create a sound buffer. There is a body of water on the site described as a shale pond by Mr. Marino. He also stated the hours of operation will be during normal business hours.

Michael Myhal, 6201 Whispering Meadows, Canfield, Ohio, owner of TMI located at 6475 East Victoria Road, asked if there would be any negative impact on his business or property and inquired about the area where the mining will occur. Mr. Satterlee stated the area is best viewed from Dunlap Road and appears to be in the middle of the applicant's property and not on either end. Mr. Harris gave a description of how to access the property. Mr. Myhal approached the Board and viewed a map of the property with the mining operation marked and stated he had no objections.

No one else in attendance to speak for the request.

No one else in attendance to speak against the request.

2015-02-A- Anthony Marino, dba Ace Pipeline: Motion by Mr. Koch to approve the conditional use including all representations made.

Seconded by Mr. Mahoney.

Roll Call Vote: Mr. Koch – Yes; Mr. Basista – Yes; Mr. Glaros – Yes; Mr. Mahoney – Yes; and Mr. Beaudis – Yes.

APPEAL CASE 2015-03-A

David D. Rubino, dba Rubino Sign Company, LLC, 642 Angeline Drive, Boardman, Ohio, 44512, on behalf of Dominic Italiano, III, dba Italiano Enterprises, LLC and Newport Auto Group, 346 Royal Birkdale Drive, Columbiana, Ohio 44408, appeals from the decision of the Austintown Township Zoning Inspector and requests to amend Conditional Use Permit 2013-15-A by requesting variances from the terms of Article III-Non-Conformities, Section 301-Continuance of Non-Conforming Uses, Paragraph 3b: “Abandonment of Non-Conforming Use” and Article XI-Business B-2 District Section 1105-General Requirements of Business B-2: “Side Yard” and “Rear Yard”, and Article XVIII-Signs, Section 1804-General Requirements: Paragraph No. 2 and 1805-Business-Industrial Signs: Paragraph No. 2, of the Austintown Township Zoning Ordinance, as amended through November 25, 2014, to allow for the re-establishment of a non-conforming pylon sign with an approximate height of 21 feet to be placed at the front property line and to allow for a building addition with minimum side and rear yard setbacks of four (4) feet at the property located at 1665 South Raccoon Road. Said property is further described as Lot No. 1, Srock-Sweitzer Plat No. 1, is located on the east side of South Raccoon Road, approximately 108.80 feet north of the New Road-South Raccoon Road intersection; and is zoned as Business B-2 District in Austintown Township, Mahoning County, State of Ohio.

Assistant Zoning Inspector Harris referenced the applicant's letter dated March 20, 2015 notifying of the hearing and requesting the property pins be marked, the applicant's letter of application, a drawing of the original Clark sign, a site plan, a letter of determination dated February 24, 2015 issued by the Zoning Inspector, an elevation of the proposed sign, and copies of the e-mails exchanged between Austintown Zoning and sign contractor Dave Rubino (marked as Exhibit A).

Mr. Satterlee stated the case mailing list for Appeal Case 2015-03-A will be incorporated into the case record.

Mr. Satterlee inquired about the proposed building and lack of drawings. It was determined that the building and additional use will be continued to another date after drawings are submitted. Mr. Satterlee determined that the conditional use approval was just for selling cars and second part of the case will not be heard tonight.

Dominic Italiano, 346 Royal Birkdale Drive, Columbiana, Ohio stated he thought the minimum setback for a building was four feet which led to some discussion about a future building and use. Mr. Satterlee suggested that he apply for a zoning permit but if he changes the terms of the conditional use for something other than auto sales he would have to amend his current conditional use. Mr. Italiano asked that the discussion regarding a building be tabled until such time as he is ready to move forward and wants to get the sign up as soon as possible. He is excited about being in Austintown. He came before the Board a year and half ago and took a big risk at this location. He worked eight years at Turning Technologies selling software and decided to start his own businesses. He made promises to the Board and spent money on water retention. The total cost was \$80,000.00 for new curbs, blacktop, and additional square footage to the parking lot and refacing the entire building. He is excited about this is project. He sold 2.7 million dollars' worth of cars on Raccoon Road. He believes the best is yet to come and asked for the Board's support in growing the business. He stated he needs signage and has purchased two billboards in Austintown and two billboards in Boardman. He is spending 4 to 6 thousand dollars in advertising and does not currently have a sign of his own. He studied marketing at YSU and understands the need to establish a brand to grow the business. He asked for consideration in understanding the letter of the law from the spirit of the law. He wants to be in Austintown, bring taxpayers here, and tell them about the good restaurants next to his business. He works from 7 in the morning to midnight. He bought the property with the existing sign with the existing base with the existing four bolts. He thought all he had to do was erect it but found out differently and that is why he is here today to answer any question the Board may have in order to seek the variance. He suggested the sign will hang over too far and asked for the room to allow the sign. Mr. Koch asked how far it hangs over. Mr. Italiano stated approximately two and half to three feet.

Mr. Satterlee inquired about the property pin stakes. Mr. Italiano stated the stakes are accurate within two inches either way.

Mr. Beaudis inquired about the iron pins that were set from a previous survey. Mr. Italiano stated they were still there. He never moved them or touched them. Mr. Beaudis stated it is difficult to make a decision without knowing where the actual pins are located. Mr. Italiano stated the snow makes them hard to find but assured the Board the pins were still there and advised his surveyor can answer any questions the Board may have. Mr. Beaudis advised he can't be sure were the property line is.

James Mahoney, AES Surveying, 720 Bev Road, Boardman, Ohio, 44512, reviewed the survey and described the jog in the right-of-way. He speculated in years past the need for additional property for ROW was requested and although some property owners may have resisted it appears this ROW was extended during that time period. Mr. Koch

observed it was a taking. Mr. Mahoney stated his survey crew had to excavate to find the pins and they were all there so no pins had to be replaced. There was discussion of the current right-of-way.

Mr. Koch asked if the sign and poles overhang the ROW. Mr. Mahoney stated the sign would be in conformance under the old ROW that existed prior to the current plat. Mr. Koch observed the height would not conform. Assistant Zoning Inspector Harris advised the setback would be 10 feet from the leading edge of the sign. Mr. Italiano stated relocating the sign or lowering it would be a problem as it would interfere with parking cars or vans near the sign. Me Beaudis suggested he could park a car under the sign if he rotates it. Mr. Italiano answered in the affirmative but stated he would like the sign to face the street as it was originally placed. He stated the sign is in keeping with other signs close to the street that does not interfere with people walking or school children. Mr. Satterlee observed there is signage in that area close to the roadway and future road widening may be a problem. He referenced Wedgewood Pizza and McDonalds as non-conforming.

Mr. Koch inquired about the exact height. Mr. Italiano stated the measurement is a combination of the sign base and pole. There was discussion about the setback from the leading edge of the sign from the property line.

Mr. Beaudis observed that the sign could be turned around and reviewed the dimensions. Mr. Satterlee stated the spirit and intent of the ordinance is to prevent sign from creating site obstructions. Mr. Rubino observed there will be no site obstruction, other signs are closer to the road, and it will be an added cost for new foundation.

Mr. Harris stated that without the pins being marked the Mahoning County Engineer advised Mr. Crivelli he would not accept anything encroaching the ROW. Mr. Satterlee asked if that was in writing. Mr. Harris advised it was a conversation between the two of them. Mr. Italiano stated if the Engineer wanted to voice his opinion he should be right here right now talking to the Board on this day. He stated he himself is visiting with the Board on this Holy Thursday to get the matter resolved.

Mr. Rubino stated he spoke to Mr. Ginetti also and questioned the accuracy of the aforementioned conversation. Mr. Satterlee stated it was all heresy and not part of the case and that testimony should be struck from the record and the Engineer could have been here to express an opinion. Mr. Koch questioned the authority of the Engineer regarding the case. Mr. Satterlee stated he did not wish to discuss that issue any more.

Mr. Italiano stated the importance of the sign for a business that did over two million dollars in sales. Mr. Koch observed for the record regarding the risk that Mr. Ginetti may not allow the sign even if approved by the Board as he could appeal the decision within 30 days and also suggested he can ask for an opinion from the prosecutor regarding moving the sign. Mr. Satterlee advised not to invest any money installing the sign if approved for the 30 day appeal period and suggested a compromise by turning the sign inward. Mr. Italiano observed he can't comply either way so is asking to be allowed to

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do it tonight. Mr. Beaudis stated that fact that the pins were not marked makes it difficult to determine any degree of conformity.

Mr. Koch suggested he be careful in how he approaches Mr. Ginetti with this issue. He suggested a conciliatory tone.

Mr. Satterlee commended the applicant and the investment in the property and wished his business much success.

The Board adjourned into executive session at 8:05P.M.

The Board reconvened from executive session at 8:10P.M.

2015-03-A-Newport Auto Group: Motion by Mr. Koch to approve a height and setback variance assuming the survey is accurate to allow placement of the sign on the original foundation contingent on an accurate survey, plus or minus a couple of inches.

Seconded by Mr. Basista.

Roll Call Vote: Mr. Koch - Yes; Mr. Beaudis – No; ; Mr. Glaros – Yes; Mr. Basista – Yes; and Mr. Satterlee– Yes.

Mr. Satterlee advised Mr. Italiano to find the property pins to make sure the drawings are accurate and advised there is a 30 day appeal period.

There being nothing further to come before the Board, the hearing was adjourned at 8:12 P.M.

AUSTINTOWN BOARD OF ZONING APPEALS

Eric Harris, Assistant Zoning Inspector, Austintown Township

APPROVED: _____
Robert Satterlee – Chairman

DATE: _____