

AV03cc-160517

**Newbury Center DG LLC**

c/o Hurley & Stewart

2800 South 11<sup>th</sup> St.

**Kalamazoo, MI 49009**

site: NE corner Rt. 87 & Elm

The Newbury Township Board of Zoning Appeals public hearing was called to order by Mr. Lou Tomsic Chairman, a 8:10 p.m. on May 17, 2016 with board members Mary Lee Brezina, Ed Meyers, Karen Endres and Chris Yaecker present. Mr. Tomsic said this was a continuance of the May 3, 2016 hearing where the BZA had asked for more information and that the hearing was being recorded.

Mr. Tomsic verified with the secretary that all notices for the meeting were published and adjacent neighbors notified in accordance with code requirements.

**Newbury Center DG, LLC, agent for Dollar General Retail Store, requests Area Variances for: 1) 16 ft. parking lot setback\* from Kinsman Rd, vs. 75 ft req'd, 2) 6 ft. parking lot setback\* from Elm Dr. vs. 75 ft req'd, 3) 34 ft. building setback\* from Kinsman Rd. vs. 150 ft. req'd, 4) 91 ft. building setback\* from Elm Dr. vs. 150 ft. req'd, \*Art. 6.07A&D, 5) 9 x 20 ft parking spaces vs. 10 x 20 ft req'd, Sec. 11.03 & 6) 30 parking spaces vs. 56 req'd, Sec. 11.01 on parcel 23-386204 at the northeast corner of Kinsman Rd. & Elm Dr. in the B-1 Commercial District.**

Mr. Tomsic then asked the applicant to state his case. Jeff Paulson, the only attendee, was duly sworn in. He verified that the new site plan he presented contained added screening, trees and a concrete sidewalk addition. The septic tank area was also relocated. He presented a drawing of the proposed monument sign, Exhibit A, that complied with the Dollar General (DG) 3 ft. height requirement. Landscaping details were added as the BZA requested at the 5/3/16 hearing.

Jeff Paulson noted that the building sign was larger than the code allowed but he would return for a sign variance request in the future. He presented the ODOT regulations governing driveway access and read sec. 2.6.8 for the record: "When access is requested for property abutting state highways assigned to different access categories, the access should be given to the highway in the lower category"

The drawings of the building elevations were presented indicating sides and rear of sand-colored metal construction. He stated he felt he had done all that the BZA had requested.

Karen Endres said she thought the monument sign base should be brick not metal. Mr. Paulson said the landscaping at the base of the sign would cover the metal struts. He asked if there was a design criteria for signs in the "Kinsman Road Corridor".

Lou Tomsic asked the board to address the Findings of Fact:

- a) Whether the lot in question will yield a seasonable return or whether there can be any beneficial use of the lot without the variance: yes - prior Area Variances were granted for this lot.

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- b) Whether the variance is substantial: the Elm Dr. setback variance request is 82% and there could be future problems should Kinsman Rd. need to be widened.
- c) Whether the essential character of the neighborhood would be substantially altered: no other buildings are at 45 degree angle to any 4 corner site and sight distance for increased traffic flow are reasons for the setback requirements.
- d) Whether the variance would adversely affect the delivery of government services: no.
- e) Whether the owner purchased the property with the knowledge of the zoning restrictions: property is under “contract to purchase” with known restrictions.
- f) Whether the owner’s predicament feasibly can be obviated through some other method: substantial setback variances have previously been granted – these additional variances are a business decision.
- g) Whether the spirit and intent and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: previously granted variances permit this building to be sited without additional variances – the BZA approval “should not be a rubber stamp”.

Lou Tomsic reiterated his view: that the driveway access should be off Rt. 87 and no other variances were needed for the building or parking if sited within the already granted setback variances. He questioned whether Rt. 87 was a category 4 or 5 to allow 1 access per parcel and need for future widening of this state route.

Chris Yaecker said the variance request could be argued both ways – considering the practical difficulties and whether wetlands were a restricting issue.

Mary Lee Brezina said she could understand it was difficult for Dollar General to conform to the setbacks given the existing drainage ditch.

Jeff Paulson said he did everything the BZA had previously asked but needed clear forthcoming direction.

Karen Endres reminded him the BZA had asked him to work within the prior variances but he is here asking for additional variances.

Chris Yaecker discussed lot coverage and/or the need for future expansion. Ed Meyers suggested building a bridge over the stream/ditch to access the building within prior allowed setbacks.

Jeff Paulson reminded all that Lou Tomsic said he was okay with the DG parking needs. Jeff said he would revise the plan to stay within the prior granted variances. Ed Meyers said the BZA should clarify the variances already granted. Lou Tomsic agreed to supply

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the variances granted at the 6/20/14 Dasen hearing. Jeff Paulson signed & dated the site plan Exhibit B identifying those setbacks.

Jeff Paulson reiterated that DG wants stores as close as possible to the front of the lot. Discussion continued regarding voting on partial area variance requests. Lou Tomsic explained that if the additional setback variance requests were denied, the applicant could submit a new plan within the previously granted variances without returning to the BZA.

Lou Tomsic called for a motion for the requested parking variances:

- a) 6 parking spaces shall be 9 ft. wide vs. 10 ft. req'd &
- b) 30 parking spaces shall be permitted vs 56 req'd.

Chris Yaecker moved to grant the 2 parking variances & added the condition that the monument base be brick of a color to match the main building façade, Ed Meyers seconded the motion. After discussion the board agreed to defer this vote till after the vote on the setback issues.

Karen Endres moved to grant an additional 28 ft. building setback from the previously 6/20/14 granted 115 ft. variance from the Kinsman Rd. R-o-W (150 ft. req'd) per Exhibit B site plan dtd 5/17/16; Lou Tomsic seconded the motion with the vote as follows:

Karen Endres	no
Lou Tomsic	no
Mary Lee Breaina	no
Ed Meyers	no
Chris Yaecker	yes

Lou Tomsic moved to grant an additional 22 ft parking setback from the previously 6/20/14 granted 35 ft. from Elm Dr. R-o-W (75 ft. req'd) per Exhibit B site plan dtd 5/17/16; Ed Meyers seconded the motion with the vote as follows:

Karen Endres	no
Lou Tomsic	no
Mary Lee Breaina	no
Ed Meyers	no
Chris Yaecker	yes

Lou Tomsic asked the board to reconsider the deferred motion regarding parking spaces. Exhibit A for the monument sign was withdrawn as it is not part of this variance request. The deferred motion was split into 2 separate motions:

Ed Meyers moved to grant 30 parking spaces permitted vs 56 req'd.; Lou Tomsic seconded the motion that passed by unanimous vote.

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Ed Meyers moved to allowt 6 of these 30 parking spaces to be 9 ft. wide vs. 10 ft req'd.; Lou Tomsic seconded the motion per the vote as follows:

Karen Endres	no
Lou Tomsic	yes
Mary Lee Breaina	yes
Ed Meyers	yes
Chris Yaecker	yes

Mr.Tomsic read to the Appellants and audience, “Within 30 days after service of the minutes granting your request, if someone wishes to challenge this decision through the court, he or she may. The required permit can be issued once all requirements regarding this application are satisfied, although if you plan construction it is recommended you wait the 30 days before proceeding. The challenge could reverse or negate our decision. At the time you receive your permit you must also comply with all other requirements of Newbury Township zoning”.

The board agreed to hold hearings on the first and third Tuesday of the month. These minutes will be signed on June 7, 2016.

Lou Tomsic adjourned this BZA hearing at 9:45 p.m.

Marge Hrabak Secretary

Signatures of the Newbury Board of Zoning Appeals:

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Lou Tomsic, Jr., Chairman

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Chris Yaecker,

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Karen Endres,

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Ed Meyers, V. Chairman

\_\_\_\_\_  
Mary Lee Brezina

\_\_\_\_\_  
Marge Hrabak, Sec’y BZA  
Date: \_\_\_\_\_