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Newbury Township

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Board of Zoning Appeals Meeting

Record of Proceedings

March 21, 2023

Members Present: Lewis Tomsic Jr., Ed Meyers, Mary Lee Brezina, Chris Yaecker,
Mike Fenstermaker, Scott Koller

Members Absent:

Other Officials: Greg Tropf, Newbury Township Trustee
John Boksansky – Zoning Inspector
Lorraine Sevich, Zoning Secretary

Guests:

Mary Ann Wervej, Senior Vice President of Retail Development for Zaremba Group,
14600 Detroit Avenue #1500, Lakewood, OH 44107

Mike Wohlwend, P.E., Wohlwend Engineering Group, Ltd. - 4216 Karg Industrial
Parkway, Kent, OH 44240

David Cox, Zaremba Group - 14600 Detroit Avenue #1500, Lakewood, OH 44107

Gretchen Zajdek – 9953 Kinsman Road, Novelty, OH 44072

Joe Zajdek – 9953 Kinsman Road, Novelty, OH 44072

Alan Goodman, 9963 Kinsman Road, Novelty OH 44072

Jim Stanek, 14750 Kinsman Road, Novelty, OH 44072

Roger Dawson, 14970 Sperry Road, Novelty, OH 44072

Russell Garganta, 15082 Sperry Road, Novelty, OH 44072

Bob Meyer, 15061 Sperry Road Novelty, OH 44072

Tom Sloe, 15118 Sperry Road, Novelty, OH 44072

BZA Chairman Lewis Tomsic Jr. called the meeting to order at 7:06 p.m., and said:

“Good evening. This is a meeting of the Newbury Township Board of Zoning Appeals. Before proceeding, I will read a brief overview of tonight’s hearing. The Board of Zoning Appeals is a quasi-judicial body, and as such, its role is similar to a Judge – in a court case. We hear evidence and make decisions based upon the facts presented, the rules set forth in the resolution and the principles of law.

Everyone who wishes to present evidence or testimony will be sworn in. The applicant will be asked to present his/her evidence to support the appeal, and the Board may then ask questions. After the applicant’s presentation, and the Board completes its questioning, we will invite members of the audience to present evidence, bearing on the appeal, and to ask questions regarding evidence that the applicant has presented. Please keep in mind that the applicant has the burden to produce evidence in support of the application, and the burden to persuade the Board that the evidence justifies the action being asked to take. The Board will not make the applicant’s case for him. This meeting will be recorded. In order to prepare appropriate meeting minutes, each person who speaks will slowly state for the record his/her name and address. Both the Board and the applicant may request to continue a matter to a future date.”

Tomsic asked all audience members, if they wanted to speak, to raise their right hand. Tomsic swore in everyone who raised their hand, and said to let the record show that everyone had been sworn in.

The Board Secretary conducted a roll call.

Tomsic said the hearing tonight was for an application identified as number AV 23-001, submitted by Mary Ann Wervey of The Zarembo Group. They request an area variance be granted for 35 parking spaces, where 64 parking spaces are required. This is for the property located at 9939 Kinsman Road in Newbury.

Tomsic asked Wervey if she would like to speak. Wervey stood up and said, “Yes. Good evening. I am Mary Ann Wervey with the Zarembo Group, and I was here about a year ago. If you remember, coming before you for variances for a Dollar General at the same location that I am coming before you tonight. Um, at the – a year ago, we were purchasing a portion of the property. The entire property is an 8 acre piece. We were purchasing 3 acres out of the 8, and um, by splitting the lot, created a need for a multitude of variances. We came before the Board, and most of you are familiar faces. I see a couple of new faces, I think. But, we presented and we understood that the Board felt we were asking for too many variances, and so we um, dropped the project, and then um, I would say, maybe 4 months ago, the property owner contacted us, and decided they were willing to sell the entire 8 acres, because we knew that was the only way that we could put together a project that would come close to meeting the requirements that the Township was looking for.”

“So, we heard a lot of comments from the residents. At that time, our access drive was at the time, last time, exiting and entering off of Sperry. And we know that was not something that the homeowners down Sperry were interested in seeing. So, we’ve made quite a few revisions to the plan. Minimized the number of variances that we are asking for and uh, basically led us to coming before you to ask for one variance at this time. It’s a variance that would be the reduction in the number of parks. That would be the only variance, everything else um, meets code, and if you’d like, I’ll have my engineer run through the site plan with you, so he can highlight the critical portions of the plan. And then, open it up for any questions that you may have concerning the plan. And uh, see what you think about this proposal. Thank you very much.”

Tomsic thanked Wervey.

Mike Wohlwend stood up and introduced himself, and said, “Good Evening everyone, my name is Mike Wohlwend, Wohlwend Engineering Group. Um, as Mary Ann said, we are here tonight to discuss the same property that we were looking at last year, but now we are buying the entire 8 acres. So, all the way down Sperry, um and then basically twice as far to the east. There’s a house, a garage, and another out building right here, (he was pointing to a visual aid he brought) so we’re taking all three buildings down. Um, we are meeting all of the required setbacks off of Sperry – front, rear, building, parking, um – all the setbacks for both Sperry and Kinsman Road. Um, we talked to ODot (Ohio Department of Transportation), specifically Mr. Melvin Stafford, so I talked to him about the Township’s requirement to have access points on Kinsman Road, versus the Township side roads. Um, they are agreeing with our current location at this point, um, as far away from the intersection as possible. They’ve agreed to let us put our driveway on Kinsman Road, so that was good. We’re going to reuse the existing septic systems that are in the back, there will be no other clearing or additional disturbance back here (pointing to the visual aid). The building is located about in the middle of the site, and we selected that location because it meets the front setbacks for both sides. We’re pinched in by an existing pond that’s down here (pointing to the visual aid). So, we can’t move the building any farther to the east – we’re kind of working around that pond that’s down here now. Um, the front door of the building will be facing Kinsman Road. The service drive for the deliveries and for the dumpster enclosure will be on the east side of the site, accessed by this side driveway (pointing to the visual aid.)”

Tomsic asked if Wohlwend could turn his visual aid so the people in the audience could see a little bit better.

Wohlwend continued and said, “Back up a little bit – so the driveway will be east of Sperry Road, was about as far as we can go. Trucks will come in, and back down into this service area here. We’re as far away from Sperry Road as we can be, meeting all the setbacks. We’re pinched into an existing pond that’s right here, so we’re kind of locked into this location here. We kept it up as tight as we can to the north, to try to maximize all the trees that are going to stay. There’s a little bit of clearing we need to do here...for grading, but all the trees up here (pointing to the visual aid), all of the trees along Sperry Road, all the way up to here will all be remaining. So, when you come up Sperry Road, you probably won’t even see the building, because of all of these trees that will remain. In the previous plan, that was all coming down. All the way down to this pole. So, we are able to reevaluate and shift everything over.”

“The parking lot is in the front of the building for a double loaded row. It’s actually lower – banked down a little bit so the cars will actually be hidden when you’re looking over from Sperry Road. Just with the way the grades for the building laid out. So, a lot of that parking will be hidden from the Sperry Road side.

Storm water ponds – we’re looking at a couple of options – this current plan has it back here. I think we’re going to end up, after we talk to Soil and Water, is going to be enlarging the existing pond that’s there, up into this area, which will let all of these trees stay as well. So, our goal is to move this storm water detention area up to here (pointing to the visual aid.)

We’re here tonight to ask for a parking count variance, and the reason we think that is a fair request is – the additional runoff that is created by all that extra parking – extra 30 parking stalls – creates a lot of extra storm water runoff. And a normal Dollar General only uses in the mid 30’s; most of the stores we do. So, this is more than enough parking to meet the needs. We don’t think it’s a good use of the land to build additional parking that will never be used and will just be creating additional storm water runoff. That’s why we’re here tonight. I’d be happy to answer any questions you have.”

Audience member Al Goodman said his neighbors were right up against that pond, and said he was next to their property. He asked where that water would leach out. Wohlwend, pointing to the visual aid, said, “It comes back to the creek that’s back here, farther to the south and comes this way (pointing to the visual aid.)” Wohlwend displayed a topography map, and said, “So it shows that the low area is this continues to fall all the way back to the creek that’s down here....so this pond – we’ll put a new outlet structure in it – a new catch basin that lets the water leave. We’ll get rid of the water – we’ll let the water exit the pond here and will discharge back towards the existing creek that’s back here farther to the south.”

Werverey said, “So, the existing pond remains, if that was your question.” Goodman was concerned the water would be let loose, and then it would go....and Werverey said, “No, no, no, no.” Wohlwend said, “No, no, no, no.” Goodman clarified that the water would go down into the creek. Werverey said “It’s going to go down.” Goodman said the water had to swing somewhere. Werverey said, “It’s going to go down...we would own 8 acres of property and that – there’s an existing um ditch on the property, right?” Goodman said, “Kind of. Yea. Mother Nature put one there.” Werverey said, “Yea, so, the discharge of drainage will be a controlled release to the existing ditch at the rear of the property.” Wohlwend said, “Which that goes across Sperry Road.” Goodman said it did swing across Sperry. Underground. Wohlwend said, “There’s a culvert right here (pointing to the visual aid). So, the stormwater design and the rules and regulations that we size these ponds is all controlled by the County – Soil and Water. We’ve already reached out to them and had some preliminary conversations. That’s where we talked about potentially enlarging this pond versus building a new one. So, again, those are options on the table. Um, conceptually, they’re happy – Carmella Shale – is her name – uh, we talked about this and it seems like a reasonable use to extend that existing pond. Put a new outlet structure in it to control that outlet. So that will all be handled during our next phase, as we get into construction drawing, or technical review of drawings.”

Goodman asked if the water would be dammed up, so it did not come into his and his neighbor's property. Wohlwend asked Goodman, "Going which way?" Wervey said, "He's the neighbor to the east, right?" Wohlwend said, "So, we're going to extend the pond to the north, so we will dig out this area up here (pointing to the topography map). I'm trying to find a good place to stand that everybody can see. So, we're going to dig out this area up here, the area to the north, and then, if we need to create an embankment along this east side, just to make sure we have a couple of feet of 'freeboard' they call it – just to – two feet of extra height. Um, we can do that. I don't think it's really going to be necessary because I think we're gonna lower the water level down in the existing pond and put an outlet structure right here. An outlet. So, I think – the plan is to lower the existing water level down a couple of feet, because that's the storage.."

Goodman interrupted and said, "The exit is on 87."

Wohlwend asked Goodman to repeat what he just asked, and Goodman asked if the water was going to exit on 87.

Wervey replied no.

Wohlwend said, "No, it exits to the south."

Goodman asked, "To the back?"

Both Wervey and Wohlwend replied, "To the back." Wervey said, "Yea."

Goodman asked, "Around those septic mounds?"

Wervey said behind the mounds.

Wohlwend repeated, "Behind the mounds. The mounds will stay and we will be reusing the mounds."

Tomsic noted that in the drawing provided to him, he did not see any septic tanks and noted it said they were going to reuse the mounds. Tomsic asked if they had any data on flow, and what they were planning on putting in for tanks.

Wohlwend replied, "So right now, the existing tanks are right here (pointing to the visual aid), they come down through this selection valve and is selected to each mound from there. At this point with our conversations with the Ohio EPA, these tanks are all going to come out. We're going to size new tanks for what we need, which are generally the same size as there, just a better location for the building. Um, the mounds are greatly larger than what we need, because a residential house produces a lot more flow than a commercial building of this size."

Tomsic noted those mounds were put in under very, very small constraints to begin with, that's why he was questioning.

Wohlwend said, "We have all of the calculations with the EPA, we've talked about it, so it's a lot – a Dollar General we size for a couple hundred gallons a day, and a normal house is 600, 700, 800 gallons a day for something like this."

Tomsic thought those were rated for 270 gallons per day.

Wohlwend said, "We have a calculation – we've been talking about it with the EPA, so, yea – it'll all be permitted by the EPA before a shovel is put in the ground."

Wervey laughed and said, "You're just our first stop. Variance first, and then full construction drawings, and then all the necessary permits – ODot, EPA. They'll confirm that."

Newbury Township Zoning Inspector, John Boksansky added, "Soil and Water." Wervey repeated, "Soil and Water. So, we understand, but obviously, you're our first stop."

Tomsic asked the BZA members if they had any questions or statements. BZA member Mike Fenstermaker said he was good.

BZA member Mary Lee Brezina said, "I'd like to know why you think we need another Dollar General within 2 or 3 miles of each other."

Wervey's response was, "So, we are real estate developers, who work on behalf of Dollar General. Dollar General has a marketing department that studies, uh the areas and determines where they, uh, believe they have a need. They know the volume of their other stores surrounding, and uh, they tell us 'We would like to be at this particular location.' And then we would source a spot for them, uh, to meet their criteria. So, Dollar General believes this area could support a second store, so then they have a store on the east and a store on the west. They've been pretty successful in their uh, sighting's, so, um, if they didn't believe that they could support another store, I would not be here."

Brezina said, "I remember at our last meeting, there were comments about the size of the lot, and evidently they've decided to go back and purchase the whole 8 acres. Is that basically to get the driveway off of Sperry Road, and appease the residents that live there?"

Wervey answered, "Uh, purchase of the 8 acres was the only way you could, uh develop the property and not need so many variances. The last time I was splitting the lot, and purchasing 3 acres...with that, uh, your code is very restrictive, when it comes to setbacks and items. You have very big setback requirements, which is unusual." Wervey laughed and said, "But, it is what it is, and so, in order to meet the many requirements of your code, you had to buy more land, or get a variance. And so, um, we ended up, uh making an agreement with the current owner to purchase the entire 8 acres."

Goodman asked if they have done that already. Wervey replied, "No. No, no, no, no. I'm under a purchase agreement. But no, I don't own it yet."

Tomsic addressed Wervey and said, "You're the developer."

Wervey replied, "I am."

Tomsic said, "Dollar General is the owner."

Wervey said, "No."

Fenstermaker said, "They lease the property."

Tomsic clarified Dollar General was going to lease the property. Tomsic asked Wervey to explain to him how this all worked. He asked if Wervey was working for Dollar General, and once the building was complete, if it was leased to a third party.

Wervey said, "Dollar General. No, when everything is complete, Dollar General will be our tenant. So, our company, the Zarembo group, uh, will be the owner of the building and the land, and Dollar General will be our tenant. But what we are called, we are called...Dollar General calls us a 'preferred developer', so they have um, a handful of developers that they use to find them property, build the building and then lease it to them. So, I have a lease with Dollar General."

Tomsic said OK.

Wervey continued and said, "For them to lease the building on this particular piece of property, if I build it."

Tomsic confirmed that Wervey was buying the property from the other owner and Wervey replied, "Yes sir. Yes."

Tomsic said he was trying to figure out whose skin was in the game, when it doesn't work out. He wanted to know who ended up with an empty brown building.

Wervey said, "Dollar General will have a 15-year lease, so they'll have to pay on."

Brezina said in her mind she still had a problem with, and she asked to be corrected if she was wrong. If it didn't work out, Dollar General leaves. Wervey will still have a piece of property that doesn't have enough parking spaces for perhaps another building or another business that wants to go in there. Brezina noted they would still be facing a situation that is the same as it is right now. Somebody wants to put a business there and they won't have what they need, so they would have to come to the BZA for a variance - they would still need a variance. Brezina felt they were looking at a situation where Newbury Township had a Sohio gas station on every corner, in the world, and gas stations have gone out, and now they will have Dollar General's on every corner. Brezina noted that Newbury could not support a grocery store, a meat market and they have lost their drug store - but they need another Dollar General. Brezina said she had a problem with that.

Tomsic asked Wervey if the other Dollar General was theirs as well. Wervey said it was not; she did not develop that one.

BZA Vice-Chairman Ed Meyers stated what BZA members were concerned about, and unfortunately, were not in a position to object to, and that is what would happen if they have an empty building, like the Dollar General on Route 6. Meyers noted that an audience member mentioned Dollar General in Chardon - they just walk away. Meyers said they would then have a vacant building at the corner of Sperry and Route 87, and was not something they could speculate and rule on, but it nevertheless troubled him. And he shared Brezina's concerns about another Dollar General within about a 5 minute run from the existing Dollar General. Meyers noted that first Dollar General didn't seem to have a lot of activity going on when he drove by it; it wasn't like the parking lot was overflowing. Meyers said he guessed the Dollar General people were smarter than they were and they knew where to put a store. Meyers didn't know if it would work.

Wervey said, "It's a big investment in capital."

Meyers said, "That doesn't make it right."

Wervey said, "I'm just saying they wouldn't invest if they didn't think they could make it work."

Meyers noted they made the investment in the Dollar General in Chardon, and it didn't work.

Wervey said she didn't know about that one, so she could not speak to that.

Meyers said he didn't think that store ever did well, and now it was vacant. Meyers noted that was not part of the BZA consideration, unfortunately.

Tomsic said, "In a way it is; in a way, it is. Because - the general welfare of the community, we have to look out for the guy that's running that Dollar General down the street. If someone else is going to come to town and put him out of business..."

Meyers said they were the Board of Zoning Appeals.

Tomsic said the BZA had to look out for the health, safety and general welfare of the community and Tomsic felt the first Dollar General store was part of the community.

Meyers said he hoped Tomsic was right. Tomsic said if it was the same company, it wouldn't be an argument. Tomsic noted Dollar General did own both stores. Tomsic said, "Whether you know it or not, that store is closed 3 days a week – they can't find employees. I can't tell you how many times I've pulled in the parking lot and there's a sign on the door saying 'WE'RE CLOSED.'" Tomsic said they did not have enough people to run the store.

Wervey said, "Yea, I know. That's a big problem with not enough people with all sorts of companies."

Tomsic said, "So then, now we've got another one and you're fighting over the same clientele and you have one that can't stay open a full 5 days a week." Meyers said it was very interesting. Tomsic said to him, that was a huge red flag.

Wervey said, "There are lot of people that are having issues with uh, staffing at this point in time. You know, unprecedented times. Coming out of a pandemic."

Meyers addressing Wervey, said, "If you are an employee of Dollar General, it's hard to work from home, is what you're saying." Wervey said, "Yes sir."

Brezina noted someone has also just put in a Mini Mart in the Sunoco station at the intersections of Routes 44 and 87. And they're selling sandwiches and all sorts of other items.

BZA member Chris Yaecker clarified with Wervey that they talked to Melvin Stafford at ODot. Wervey replied, "My engineer did." Yaecker said OK and asked when that occurred.

Wohlwend said, "Ahhh, that was – the last email we had was May of 2022, when we were exploring the option."

Yaecker asked, "Last year?"

Wohlwend answered, "Yea. With this current site plan, but."

Yaecker said OK, and said that he called ODot, and remembered talking to Melvin Stafford, and he wasn't familiar with the access on Route 87, Yaecker noted that Wohlwend spoke to him last year, so he didn't remember, obviously. Wohlwend said, "He doesn't remember, but we sent him the plan and we have correspondence about this specific site plan with him. Again, we haven't made our detailed submission yet for a permit." Tomsic said OK. Yaecker thought it probably slipped Stafford's mind; he was sure he deals with these every day. Wohlwend thought the permit coordinators talk about hundreds of projects a day. Yaecker concurred.

Yaecker asked Wohlwend if they would be tearing down the 3 structures, including the little sheds on the property as well. Wervey said, "Yes we will." Yaecker stated they were all coming down.

Yaecker asked what the round objects were in the center of the drawings. Wervey said, "Yea, that will come out too; I don't know what that is, it's like a foundation for something." Yaecker thought perhaps it was a silo or something. Wervey said that's what she was wondering, but said the radius wasn't very big. She stated they will be removing that as well, as part of their demo.

Yaecker asked Wervey - what they submitted with the site plans, topography maps and the drainage - that was what they were going to stick with, except for maybe moving the storm water retention pond. Wervey said that was correct. Yaecker stated, "So nothing

has changed.” Wohlwend said, “The parking and building location will not change.” Yaecker said OK.

Yaecker asked about the elevations and architectural drawings – those weren’t what it could look like – he verified that this is what it will look like. Wervey said correct. Yaecker said OK, and said it won’t change. Wervey said no. Yaecker said OK and said the building would have a little more architectural appeal; a little more gingerbread on the front, and wrap around the sides as well. Wervey answered, “Correct, it will wrap around both sides.” Yaecker said OK.

Yaecker said Wervey brought up in the beginning of the meeting about the trees, retaining the trees. Yaecker said their maps show the delineation of trees, and they may even save more trees if they move the stormwater ponds as well. Wohlwend said, “That will save trees and putting in 30 less parking stalls will save a lot of trees.”

Audience members were talking among themselves, and Boksansky asked for quiet while people were speaking.

Wohlwend said, “So relocating the stormwater pond saves existing trees and that’s really my goal, as the engineer, is to not cut a whole bunch of more trees down and put more parking in that will never be used.” Yaecker agreed. Wohlwend said it would fit within the setbacks, um, I just don’t think it’s a good use of the land - of cutting down all the trees to put parking in that I don’t think will be used.” Yaecker said he agreed, and said there was no reason to take them down. He thought the trees were also good screening for the residences on Sperry Road; he thought that was good. Wohlwend said there would be additional land on the east side and on the west side where they could put parking in – he just didn’t think it was a good fit. Yaecker replied OK, and said that from looking at their map, there were areas to the east; if they put the pond in to the east, there probably wouldn’t be additional parking space over there, but he supposed they could put more parking in to the west; put additional parking to the west. Wohlwend said they have not done a detailed site plan on what that would look like, but he was confident that they could get there – or get a lot closer anyway. Yaecker replied OK and asked if there was enough setback in case there wasn’t a Dollar General 15 years from now – if it was another retail business and they needed more parking. Tomsic noted the Zaremba Group could not take the variance with them, and Yaecker agreed. Wohlwend, looked at the map and showed the BZA where they could add parking. Tomsic said OK. BZA alternate member Scott Koller asked about the parking and thought Dollar General could conceivably add more parking, but thought it was kind of detriment to the site to do that.

Yaecker said he looked at most of the other Dollar General’s in Geauga County – he went into Geauga REALink, he didn’t actually measure how big the buildings were; he looked at different Dollar General’s in the county, and it looked like this Dollar General was 10,600 square feet. Wervey said correct. Yaecker noted this proposed Dollar General would be the biggest one in Geauga County so far. Wervey asked Wohlwend if this store was the biggest one in the county so far. Wervey said, “Maybe.” Wohlwend said, “Probably, most of the ones that they have done in the past were 9100 square feet and this is a newer prototype that is larger.” Yaecker said he generally measured anywhere from 7500 to 9000 square feet, as the size of Dollar General stores in Geauga County. Wohlwend said that was the range of the previous prototypes, Yaecker said OK. Yaecker passed his chart on the Dollar General stores in Geauga County to the

BZA members and said it was only approximate from what he could find, he measured from Geauga REALink, and most of the parking lots were marked; the parking spaces. He added it was not precise. Yaecker said he knew parking in Newbury Township was excessive. Wervey said, "Yes." Yaecker said they have talked about that, and he spoke to Linda Crombie AICP, the Planning Director at the Geauga County Planning Commission. Crombie agreed with Yaecker that a lot of Townships have ... Wervey said, "Yes." Yaecker continued and said a lot of Townships have zoning that was taken from the model zoning, and she said it was actually an item on their agenda to work on; to reduce the amount of parking. Yaecker noted that Newbury Township Zoning was from 35 years ago, when everyone got in their cars and went to the store to buy everything that you needed. They didn't have Amazon and the internet back then.

Yaecker said the last few weeks he had been looking at different Dollar Generals; and explained that with his job he goes all around Geauga County, and multiple counties. Yaecker said he counted the number of cars in every Dollar General, and so far the maximum he came up with was about 13 cars, and that was actually at the Newbury Dollar General. Wervey said she was going to guess 10 cars. Yaecker said he often saw anywhere from 5 to 8 cars. Wervey said that would be typical. Yaecker did not know if the number of cars included employee cars – he didn't know if they parked in the back or not. Wervey said, "64 is a lot of parking. It just is." Yaecker said it was a lot of parking spaces and thought there would be a lot of asphalt that would sit there unused and a lot of trees would come down for no reason at this point." Wervey said, "Needlessly - Yes."

Tomsic asked audience members if anyone would like to comment. Audience member Jim Stanek asked how far the setback was off of Route 87 and also "these people's property." Fenstermaker asked Stanek setback to what – the parking lot or the building. Stanek said the building. Wohlwend said, "So the building is currently situated 161 feet back from Kinsman Road from the right of way line to the base of the building. From our east property line, it's 152 feet from the east property line to the back corner of the building." Stanek asked what about Sperry Road. Wohlwend said, "To Sperry Road, it's 151 feet to the right of way line of Sperry." Stanek asked if that was where the pond was at. Wohlwend, the engineer, pointed to where the pond was on the drawing, and what direction north was. Stanek, pointing to the drawing, asked Wohlwend if they were going to pave all the way to these people's property line, or what. Wohlwend said, "What you see hashed is what we are proposing to pave. So, this driveway coming in, parking in the front, a few parking stalls here on the side, along this delivery drive and this is the building in the darker shade." Wervey asked Wohlwend to show the color green map, so he could see what's green. Wervey asked Stanek if that helped. Wohlwend continued pointing to the green map and explained, "So this black area is the actual asphalt that we'll be putting in." Stanek said, "It comes off of 87, right?" Wohlwend replied "Yep. Comes off of Route 87 here, trucks will come in, back into this way. Most of our customers will park in the front parking lot here, and probably employees on that side parking lot. So, this will all be green, this tree row all will remain, all these trees up here will all remain. We're going to add trees and bushes along the west side and north side of the parking lots that your code requires." An audience member who didn't introduce herself pointed to the map and asked, "Is this right here the people next door, right? That's our house? That's our house." Wohlwend said yes and pointing to the map said, "The trees that are right here will all stay."

Stanek said, "And you say that the house is going to come down, too? The small house where people are living in the house?" Wohlwend replied, "The house that's on our property – those all 3 buildings will come down. Yes." Wohlwend pointed to the map and showed where the 3 buildings were located. Wohlwend said, "That house is probably about where the driveway is – so this house is about where the driveway is. So, that's why we don't really need to clear anything else up here – is where the house is now. And then these next 2 buildings are here and here." Stanek said OK.

Yaecker said, "So the proposed parking is real close to the existing parking, or I should say driveway?" Wohlwend pointed to the map and said, "This driveway here is very close – the house that currently sits there is right about in this area, so we give you some reference where the house is now; is now where the driveway would come in." Yaecker said OK. Wohlwend explained that was from consultation with ODot – they wanted it as far away from the intersection as possible. So that's why it's not farther - more lined up here – which would be more kind of a prototype driveway, where it would be more of a straight shot. They wanted it farther away. In actuality, this is even uh, a little shorter than what they normally want. But because the property's only that wide, they're agreeable to put it right here. So, where the house is – is where the driveway would be."

Stanek said, "These people are going to have traffic – they got to listen to all that traffic coming in to that Dollar General all the time, right? The people that live next door there." Wohlwend said, "It's a commercial property – that, you know, there won't be traffic late at night; it's not an all night operation. Delivery trucks, big deliveries come once a week." Stanek said, "Early in the morning." Wohlwend said, "During business hours, when there are employees there to unload. So, 1 large delivery truck a week usually and then smaller deliveries throughout the week for potato chips and pop, and that stuff."

Stanek said, "I don't understand why you need 2 Dollar Generals in the same town. Can't you go to Russell? Or they won't let you in?" Wohlwend repeated their canned response, "It's a commercial zoned property and this is where Dollar General picked that they wanted to be in, this intersection, so that's why we're here."

Audience member Joe Zajdek asked Wohlwend if he really felt it was safe to put that driveway where the people and vehicles are coming west and east. "Do you feel that's safe? The way the traffic and trucks that we've got going through this town." Wohlwend said, "We've had a traffic study done by a traffic consultant by the name of Prime AE Group, Inc., so they've done a traffic study; a traffic assessment in ODot terms. Um, so they, uh, their results were that no turn lanes were needed, no additional traffic signals or anything else were needed. And that is required for us to submit to ODot as well. So, that will all be part of our submittal to ODot and will include that traffic study. So, they came out to the site, did traffic counts and evaluated this specific site – this specific driveway location."

Zajdek asked Wohlwend if he thought possibly a light at Sperry and Route 87 would slow down traffic...when they come over that grade, they are on top of you. And with the sun at the right angle, it was going to be scary. Wohlwend answered, "The traffic consultant, um reviewed that. There's very specific criteria that ODot has for traffic signals. Um, which you probably heard from other locations as well. Very specific criteria and this location – it doesn't meet their criteria."

Meyers added it seemed like 3 or 4 people had to be killed at an intersection before they would get a traffic light; that seemed to be the criteria. The BZA members concurred. Meyers said it sounded to him like ODot has not yet signed off on the access from Route 87. He asked Wohlwend if that was correct. Wohlwend said, "We have a conceptual sign off, yes." Meyers asked Wohlwend if they had approval to put in their driveway off of Route 87, and Wohlwend said, "We have not done technical construction drawings submitting for a permit yet, this is our first step."

Meyers said he wanted the record to show that if the Zarembo group does not get that access, they need to come back to the BZA. Because an access off of Sperry Road was not part of this proposal. Wervey said, "That's correct. We know that." Wohlwend said, "Absolutely." Meyers stated he wanted that to be a condition. Wohlwend repeated, "Absolutely, yea, that wouldn't meet your zoning code then."

Audience member Russell Garganta noted that the culvert that goes under Sperry Road from this proposed property – when there was a heavy rainfall, that culvert area gets very full and the property on the other side of Sperry will flood – already, the way it currently is. Garganta wanted to know if the water retention pond would help that, or will the runoff from that increase the amount of water that goes under that culvert and flood the property across the street.

Wohlwend answered, "The reason for a storm water pond is to hold back and store that extra runoff that is generated by the property." Garganta said OK. Wohlwend continued, "So, this pond will store that water for 48 to 72 hours, typically is how these are designed. Think of it as a big bathtub. So, it rains, the bathtub fills up, the water goes out the small drain at the bottom versus just rushing off the parking lot and going down and going over that culvert."

Garganta asked if there were studies to show weather any situation could cause water to go over that culvert on Sperry. Wohlwend answered, "Well this – so we'll have to submit drainage calculations to Soil and Water that shows that we're reducing the runoff to that culvert. What happens across that culvert...." Garganta said that culvert was only sized to a certain amount right now. Wohlwend said, "Correct. So, what's happening – if that culvert isn't undersized now – it really doesn't affect anything that's going to happen on the other side of the street, I guess, as I'm thinking through that in my mind. The water that's leaving our site will be less once this project is built, than it is now; that's the whole reason for stormwater management. So, it's County criteria and Ohio EPA criteria that we have to follow with storm water management."

Garganta said one other thing, too – he said they brought this up at the last Dollar General hearing. The Dollar General (already in Newbury) still has the porta-potty in the front of the store most of the time and wanted to know why that was. Garganta asked if Dollar General had indoor plumbing, why was there a porta-potty facing Route 87 almost all of the time. To a store that is closed most of the time, how was there a need for a porta-potty in front of the building facing the street.

Wervey said, "I heard you last time." Garganta said the porta-potty was still there. Wervey said, "This time I went there and I saw it. I asked the store manager and she said she just got it there, uh, there was an issue where something got flushed down that shouldn't have got flushed down and so, uh, when I was there, the people showed up and they said that the pumps were not turning on. Period. And so, they were looking to fix it. I don't know if they were pulling the pumps out – I don't know what they were doing, but that's what they told me."

Garganta asked Wervey if they could look forward to staring at a porta-potty for most of the time.

Wervey said "No. No." Garganta asked, "How can we know that for sure – if that's the...what is happening for sure – that's a fact, over there."

Wervey replied, "Well, it's because somebody flushed something that they shouldn't flush, and I can't tell you if it's a customer, or..."

Garganta said OK, and said it seemed to happen very periodically.

Wervey said, "And so then, something happened to their pumps, and so now they're fixing it, and I'll tell you what. If it happens at the store, uh, you can call me and I can call Dollar General maintenance, and you know. So."

Garganta asked Wervey if that was because the Zaremba Group did not own the existing Dollar General.

Wervey said, "I don't know – no, they were out there working on it. I saw them, and I, I asked what was going on, because I heard your concern last time, and I saw it."

Garganta reported that the port a potty was there – a lot, and Wervey said she saw it. Garganta said it was still there a year later.

Wervey said, "It's kind of odd. Something must not be right with the pumping/pumps. You know I'm not a septic expert, but if it's a recurring problem, that means something's wrong with those pumps. I can't fix that for you." Garganta said he was not worried about that Dollar General.

Yaecker expressed to Wervey that the BZA did not have the privilege of seeing the inside of the store and asked Wervey if the Dollar General they were building would have bathrooms inside of the store. Wervey and Wohlwend both replied, "Oh yea." Yaecker asked if they were public bathrooms, or just for employees, and Wervey replied, "Oh yea, but they're locked. There's a key – you have to ask the cashier for the key and the public does use it." Yaecker said that was a good question, and thought it was discovered about 10 years ago that a business can actually have a port a potty and not a bathroom inside of a store. Yaecker said he thought the BZA discovered that with a house on Routes 44 and 87. Wervey answered, "They have restrooms." Yaecker said he believed Wervey, and Garganta's concern about a porta potty got him thinking about that.

Yaecker asked Wervey if the waste areas would be on the south side of the building, then corrected himself and said the east side of the building. Wervey replied, "Yes." Fenstermaker said the southeast corner. Yaecker repeated the southeast corner. Wervey concurred. Yaecker asked if that area would be screened from the house to the east and Wervey concurred. Wohlwend said, "With a fence. 6 foot board on board wood fence." Yaecker said OK and said he imagined there was some tree cover in the plans as well. Wohlwend said yes. Wervey said, "Existing now." Yaecker said he thought it was kind of far, behind their house; as their house was up front.

Tomsic asked if anyone else had any comments or questions.

Audience member Robert Meyer introduced himself. Boksansky observed that Robert Meyer and someone else came in late to the meeting and were not duly sworn in. Yaecker agreed. Tomsic swore in Robert Meyer, and Tomsic noted that Robert Meyer had been sworn in.

Robert Meyer asked about the watershed – and asked if the pond was going to stay. Wervey said yes. Robert Meyer asked if that was guaranteed not to change. Wohlwend said, "We're looking at a couple different options for stormwater now. One option is to – so, the current plan that is in front of the Commission tonight shows a new stormwater pond back here (pointing to the map.) This existing pond is staying. We've had some

conversations with Geauga Soil and Water. We're talking about now, instead of doing this and cutting all the trees out back here, of enlarging this pond that's here - in this area up here now. So just enlarging the pond that's there - putting a new outlet structure down towards that southern end. So, there's the two options that we're looking at - we'll evaluate that as we start doing our stormwater calculations."

Robert Meyer asked if anything would require them draining that pond, and would there be any impact on wildlife that lives in the pond. Wervey said, "We won't drain that pond." Wohlwend said, "No, we won't drain that pond. We may lower the water level a little bit, just because that gives us the volume to store the additional storm water, but we're not going to - there's no reason to empty it." Robert Meyer said OK. Robert Meyer asked if the area was expanded by the pond, if it was just excavated.

Wohlwend replied, "We would be excavating additionally to the north. So, nothing really around the south end." Robert Meyer said OK. Robert Meyer said, "I know and sometimes they do additional stormwater, and then they do an additional stormwater that's really kind of dry, um the other thing, all commercial properties have litter. Every time you go anywhere there is just always litter on the ground. People are careless, reckless, whatever. What's the - is there anything?" Wohlwend said, "So the service door where all the deliveries and such come in and out, is right here - including cardboard, that sort of thing, boxes, that they break down after unloading, so that all goes into the dumpster enclosure that's right here (pointing to the map). It's a fenced dumpster enclosure. The dumpsters will be inside behind those locked gates." Robert Meyer said OK, and noted that the wind blows and he didn't want all of the trash blowing on Sperry Road, or anywhere.

Robert Meyer said his biggest concern was maintaining as many trees as possible, aesthetically, and said he didn't know if that was his right to ask. Wohlwend said, "That's why we're here. We're asking for a variance to build less parking, and in my mind, the biggest reason to do that is to save all of these trees that are here, as well as some in this area over here (pointing to the map.)" Robert Meyer said OK. Wohlwend continued, "To add more parking to meet code, uh, we would be encroaching into those areas that otherwise would be left natural." Robert Meyer said, "Less blacktop. More green." Wohlwend said, "It's more landscaping and less stormwater runoff." Robert Meyer agreed and asked if developers, if they use existing landscaping. He said, "I live on Sperry and I walk past that all the time. There's giant boulder piles in there. Would you do anything - is that part of the development, and all the like, to maintain that stuff or not touch that stuff?" Wohlwend said, "I was not aware of that, but will certainly be happy to look at that. What we're proposing for landscaping is trees and bushes along the south side of the parking lot here (pointing to the map), as well as the north side of the parking lot. This will be kind of a slope down, so when you're coming up Sperry Road, this area will be flat up here and then it drops down to the parking lot, just because of the existing grades. So, you will almost look over the cars that are here, plus the bushes that are there. We're proposing bushes and trees, bushes and trees here. This will all be lawn around it (pointing to the map.)"

Robert Meyer felt that the plan in the front of the building was more aesthetically pleasing than the other Dollar Generals, and asked if that was what they would really see on the plans, and thought it was nicer. Wervey said, "Yea, so the design we selected is called Michia; it looks like brick and then a sandstone Michia which would frame it out and then we would add faux windows and awnings on the front, and then

we would wrap it on both sides of the building. Something a little different.” Robert Meyer concurred. Robert Meyer said, officially, he did not think Newbury needed another Dollar General. He said he didn’t know if that would change anything, but he also agreed, and noted this was his first meeting, if that meant anything. He said, “No offenses, of course.” Wervey answered, “None taken.”

Robert Meyer asked with brick and mortar on the decline, retail space on the decline, why they were putting in another Dollar General when there were so many stores and commercial property vacancies. He said commercial property vacancies were everywhere. He asked Wervey if she had information she could share as to why this Dollar General would be successful.

Wervey replied, “Dollar General is very successful, and we have been working with them for a long time, probably 10 plus years. They know what they do. They know what they’re doing, they know their locations, they study their market, people shop them. People shop them when times are good. People shop them when times are bad. They have good prices, and we find them to be locating their stores very successfully. They’re a convenience retailer at this point in time.”

Robert Meyer asked Wervey if she had any data to the opposite, like what happened to the Dollar General in Chardon. Wervey said, “Yea, I don’t know; I’m a little surprised about that, because I did not do that store, I did the CVS in Chardon, but I did not do the Dollar General in Chardon, so I can’t really speak to that – what happened there, what the circumstances were. I don’t know.”

Robert Meyer said he had one more question – he said that back in the day McDonalds used to develop property, pluck a McDonald’s in, and then buy up the property around them, as an investment. He asked if Dollar General had the same type of plan. Wervey said, “No. no.” Robert Meyer thanked Wervey, and she said, “Sure.”

Audience member Goodman said he had another question – he asked if, “food would be coming out of there, or is this strictly like the other stores. They don’t really have a spot to get lunch, or whatever? Is it strictly retail?” Wervey replied, “No, they don’t have like a deli or anything else.”

Yaecker asked Boksansky if he knew the lot coverage. Boksansky said 15%. Yaecker repeated 15%. Boksansky noted it was 8 acres. Yaecker agreed and Wervey said, “It’s a very big piece of property for a 10,000 square foot building.” Yaecker said he thought the other Dollar General at the other end of Newbury was 6 or 6.5 acres. Wervey said, “It’s still a very big piece of property for us.” Wohlwend noted the Dollar Generals were usually an acre and a half to 2 acres.

Robert Meyer asked Yaecker what the 15% meant. Yaecker said, “The footprint of parking, the building, anything that’s covered over with impermeable areas. They can cover up to 50% of the lot.” Robert Meyer asked if this was all about the parking right now, was it happening, or was it not happening. Yaecker explained to Robert Meyer that the Zaremba Group was here for a variance just for parking, he noted that Newbury required 64 parking spaces. Wervey agreed, 64 parking spaces. Koller thought that for Newbury, that number of parking spaces was unheard of at this point. Robert Meyer thought less parking was better. Yaecker agreed. Robert Meyer said he grew up in the city where everything was hot, it was always hot because of all

of the concrete and asphalt. Yaecker agreed, and said that more parking means more of that asphalt sitting there, and more water runoff.

Yaecker told Robert Meyer that he looked at (on REALink) and measured all of the other Dollar Generals in the County; approximately how big the buildings were. Robert Meyer said he was at the meeting for that part. Koller said the parking averaged 36 parking spaces across the County and Yaecker agreed.

Wervey said, "The variance we are requesting, we believe is a reasonable variance for this use, for this property, at this location."

Tomsic asked if anyone wanted to make a motion, or if they wanted to go through the Findings of Fact. Yaecker said they talked about some conditions – and asked Meyers about what he thought. Meyers said the access of route 87, in his judgement, must be a condition. Yaecker agreed. Tomsic said they could do the Findings of Fact later.

Yaecker thought a drawing should be marked Exhibit A. Tomsic said there already was an Exhibit A – a legal description and the Findings of Fact was Exhibit B. Yaecker asked if those were the exhibits of the Zaremba Group, and Fenstermaker said yes. Yaecker said he didn't know if their exhibits corresponded to the Newbury Township BZA exhibits and Tomsic thought it should not be more confusing.

Yaecker thought there should be 2 exhibits, and it should be conditioned upon what the Zaremba Group submitted. Yaecker noted they've already said that they plan on building it with the one exception of the storm water retention pond, possibly to the east, instead of to the south. Wohlwend said "Northeast, yea. Those were the 2 options for storm water." Yaecker said and making a specific condition about the access on Route 87, he thought, was a fair thing to do, even though it was already in there. Meyers said that's the way it was presented. Tomsic thought it was almost a moot point, because that was the way it was presented. The BZA members agreed, and Meyers added the Zaremba group needed to come back if they did not get the access off of Route 87.

Yaecker made a motion to accept the variance request to reduce the parking spaces from 65 to 35 spaces, with the conditions that everything is adhered to in the exhibits presented by Dollar General with the exception of possibly moving a stormwater retention pond to the east end of the property, as presented tonight.

Meyers seconded the motion. Tomsic noted the motion had been moved and seconded.

The Board Secretary conducted a voice vote roll call.

Yaecker – yes; Fenstermaker – yes; Meyers – yes . Meyers wanted to preface his yes vote, by stating that notwithstanding, all they have heard about is how smart the people at Dollar General are. Meyers thought the project was sketchy at best, and he hoped they don't have a vacant building there. Meyers thought the move to make the parking spaces fewer was a good one, so he can see no reason not to vote yes on this specific variance request. Brezina – yes – she said she was saying yes for the same reasons Meyers did, because she can't vote no, because she didn't want another Dollar General here; it was as simple as that. Tomsic - no.

Motion passed by a margin of 4 – 1.

At 8:05 p.m., Wervey said, “Thank you very much, and on to the next permitting.”

Robert Meyer asked Wervey what the estimated timeline was for completion. Wervey said, “I would like to start construction in late August. I think it’s going to take me between now and August to get all the permits. That’s what I think.”

Yaecker clarified with Wervey, that Zarembo would build the Dollar General. Wervey said yes. Yaecker said, “Own the property.” Wervey said yes. Yaecker said, “Dollar General leases it.” Yaecker said yes. Koller said for 15 years.

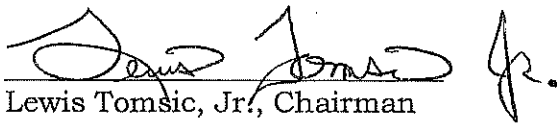
Tomsic and the BZA went over the Findings of Fact for this hearing, to go over the issues related to the facts for this case.

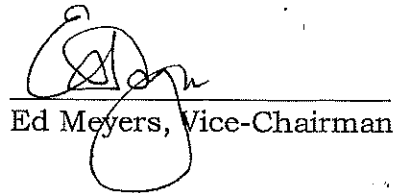
1. Whether the lot in question will yield a reasonable return or whether there can be any beneficial use of the lot without the variance? Wervey answered, “The lot is unbuildable without the requested variances.” Brezina and Yaecker did not agree. Yaecker said there were a lot of uses for that property – it was an 8 acre lot. Tomsic agreed that there were other uses.
2. Whether the variance is substantial. Wervey answered, “The variances are not substantial and are the minimum necessary to move forward with the project.” Tomsic and Brezina said they agreed with that statement. Fenstermaker said 43%. Yaecker said percentage wise, it was substantial. Tomsic said considering the 7 other variances they wanted for the first hearing, this was minimal.
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance? The applicant answered, “The essential character of the neighborhood would not be substantially altered, and adjoining properties would not suffer as a result of the variances.” Tomsic and Yaecker felt Wervey and her group presented that.
4. Whether the variance would adversely affect the delivery of governmental services? Wervey answered, “The variance would not affect the delivery of governmental services.”
5. Whether the lot owner purchased the property with the knowledge of the zoning restriction? Wervey answered, “The lot has not been purchased and is under contract.” Tomsic felt that was a ‘Yes.’
6. Whether the lot owner’s predicament feasibly can be obviated through some method other than a variance? Yaecker said sure – they could add all of the parking spaces. Boksansky said they could make a smaller building. Yaecker agreed.
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance? Wervey answered, “The

spirit and intent of the zoning requirements would be observed, and substantial justice done by granting the variance.” Yaecker said he agreed with them; he didn’t think the parking was needed, and it would save a lot of trees, and a lot less water runoff. Fenstermaker and Yaecker thought it would look better with a smaller lot. Tomsic agreed.

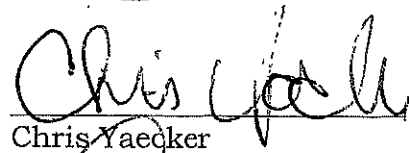
The BZA signed the minutes from the BZA meeting of December 20, 2022 – the signing of minutes from the BZA meeting of December 6, 2022 – conditional use for Walter Queisser of 10915 Cedar Road for a part-time, home based gunsmithing business.

Tomsic adjourned the meeting at 8:12 p.m.

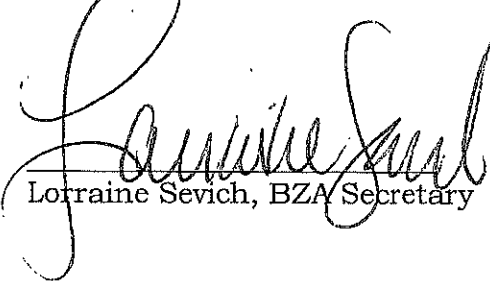

Lewis Tomsic, Jr., Chairman


Ed Meyers, Vice-Chairman


Mary Lee Brezina


Chris Yaecker


Mike Fenstermaker


Lorraine Sevich, BZA Secretary