

UV01,AV01c-160119-0202

Richard Wervey dba

Precious Cargo Transportation Inc.

7894 Country Lane

Chagrin Falls, OH 44023

site: 15050 Cross Creek Pkwy

site: 15113 Munn Rd.

The Newbury Township Board of Zoning Appeals public hearing was called to order by Mr. Lou Tomsic Chairman, a 7:30 p.m. on February 2, 2016 with board members Chris Yaecker, Mary Lee Brezina and Karen Endres present. He announced that this meeting was a continuance of the January 19, 2016 hearing and is being recorded. All in attendance who wished to speak at this hearing were duly sworn and reminded when testifying to clearly state their name and confirm being sworn in. He reviewed the applicant's request.

Richard Wervey, dba Precious Cargo Transportation, Inc., requests 1) a Use Variance and 2) an Area Variance to permit a maximum 6 acre parking lot expansion by purchasing adjacent 14.3 acres, a portion of parcel 23-044600 currently zoned R-1 with frontage at 15113 Munn Rd. (vs. Sec. 4.01, 5.01, 5.02, 5.05, 11.00C-E-G-H&M - not listed or permitted) and consolidating the 14.3 acres with Precious Cargo parcel 23-203210 at 15050 Cross Creek Pkwy in the M-1 Industrial District.

Mr. Tomsic announced that all the testimony had been taken and that there would be no expert witness called by the BZA. Mr. Bagley said that there had been no discussion on the Area Variance request but agreed all testimony for the Use Variance has been given.

Ms. Endres clarified that the 350 ft. setback issue pertained if the parcel was zoned industrial (M-1) but this parcel is zoned residential (R-1). She also said that questions for the prosecutor regarding deed restrictions for the Cross Creek subdivision were to be handled by Mike Joyce. Mr. Bagley said he believed there were no specific restrictions for the Cross Creek subdivision.

Mr. Yaecker asked if Mr. Bagley had talked to the Zoning Commission (ZC) – he said the earliest he could be on the agenda was February 24th 2016.

Ms. Brezina said that previous seminar speakers had told the Board to consider the proposal carefully, determine if was reasonable and decide accordingly.

She felt that granting the Use Variance was better for the township than rezoning - adding conditions gave the township more control over the property. The Munn Rd. frontage would remain residential allowing 6 new lots adjacent to the existing M-1 development whether the new lots were the minimum 3 acres or larger. She said she felt the Use Variance request was reasonable.

Mr. Bagley noted that Ed Meyers was not in attendance and asked about an alternate.

Ms. Endres told Mr. Bagley that no alternate had yet been appointed but he had the right to ask for a hearing continuance till there were five BZA board members in attendance. Ms. Endres had been an alternate but was recently appointed as a full board member.

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At this time (7:55), Ms. Endres moved that the BZA board go into Executive Session, Mr. Yaecker seconded the motion that passed by unanimous vote. (As the Board left Mr. Bagley remembered to turn off the recorder.)

At 8:15 the board returned from Executive Session. The recorder was turned on.

Ms. Endres explained that Use Variance factors were hard to meet and again asked if the applicant wanted to wait for a full five member Board – Mr. Wervey agreed to continue with these four Board members.

Mr. Yaecker asked Mr. Wervey what his time line was – Mr. Wervey answered he needed the expanded parking lot (View 5 - initial 3 acre development) to accommodate additional buses ASAP. He said the more buses he can supply, the greater the business growth.

With no more discussion, the board agreed to address the Findings of Fact.

Mr. Tomsic read the applicant's responses from Exhibit 2 – Ms. Endres presented the board a listing of the unnecessary hardship standard that applies to Use Variances – this generated a difference of opinion discussion between board members; they agreed only on #4, there was no affect on health, safety or welfare.

- a) Whether there are conditions that are unique to this lot, and not ordinarily found in the same zoning district – this lot is unique but there are similar parcels in the township with the same M-1 adjoining R-1 zoning districts.
- b) Did the applicant create these conditions – no - 10 years of business growth need to be addressed with a Use Variance for expanded parking areas.
- c) Whether the variance would adversely affect the rights of adjacent owners – no objections were raised - noise buffering conditions could be added.
- d) Whether the variance would adversely affect the public health, safety or general welfare – no.
- e) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – yes – 6 new R-1 lots are the maximum possible adjacent to M-1, with or without granting the Use Variance.
- f) Whether the requested variance is the minimum action which would afford relief to the applicant – granting the Use Variance with conditions represents a lesser impact than rezoning.
- g) What other economically viable use of the lot could be made within this zoning district – the same 6 lot residential lots would remain on this parcel – no other houses would ever be built on the rear 14+ acres.

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Mr. Tomsic said he felt the Use Variance request was reasonable and that the new R-1 owners should not have to pay for their own area buffer – the BZA could create this buffer to be paid for by the business.

Mr. Yaecker said there are better ways to handle this request – go to the ZC. Mr. Tomsic countered: if the 14.3 acres were rezoned to M-1, only 1.2 acres would be usable because of the 350 ft. setback from R-1.

Mr. Bagley said there were other legal avenues to deal with M-1 exceptions to the zoning rules.

Mr. Yaecker again questioned the economic viability of the 14+ rear R-1 acres. Mr. Tomsic responded that the rear acres have no significant value to the maximum possible 6 new R-1 lots; the parking lot would represent more value.

Mr. Bagley said he had no extra testimony to present to the Board.

With no additional questions or comments from the Board, Mr. Tomsic called for a motion stating a yes vote would grant the motion.

Ms. Brezina moved to grant the Use Variance to permit a maximum 6 acre parking lot expansion as shown on View 6 (14+ acre Boundary) with conditions for fencing and lighting per the applicant’s request; Lou Tomsic seconded the motion that was voted as follows:

Chris Yaecker	no
Karen Endres	no
Mary Lee Brezina	yes
Lou Tomsic	yes

The motion to to grant the Use Variance was not approved.

Mr. Tomsic read to the Appellant and the 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 challenge could reverse or negate our decision.” Mr. Tomsic informed the Appellant and the audience that the 30-day period commences on the date the minutes are signed by the Board which is expected in this case to be Feb. 9, 2016. They will be mailed registered return receipt to the Appellant. All persons receiving notice of the hearing will receive copies of the minutes. He further stated that at the time the Appellant receives his permit he must also comply with all other requirements of Newbury Township zoning.

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Ms. Endres moved to continue the appeal for the Area Variance till the resolution of the Use Variance has been completed; Mr. Yaecker seconded the motion that passed by unanimous vote.

Mr. Tomsic adjourned this BZA hearing at 9:00 p.m.

Signatures of the Newbury Board of Zoning Appeals:

Lou Tomsic, Jr., Chairman

Ed Meyers, V. Chairman

Mary Lee Brezina

Chris Yaecker

Karen Endres

Date: _____

Marge Hrabak, Sec'y BZA