

The Tuesday June 16, 2009 meeting of the Delhi Township Board of Zoning Appeals was called to order by Chairman Robert Ashe at 7:00 p.m. at the Administration Building with the Pledge of Allegiance to the Flag.

Members present:

Robert J. Ashe  
Joseph Scherer, Jr.  
Charles Brigham III  
Robert Hendon

Also present:

Thomas R. Stahlheber, Director of Development Services  
David C. Lane, Law Director

Mr. Stahlheber certified that the requirements of Section 121.22 of the Ohio Revised Code and the rules adopted pursuant thereto had been completely complied with as they concerned the meeting.

**Resolution 2009-1**

Mr. Brigham moved and Mr. Scherer seconded to approve the minutes of the Boards' April 1, 2008 meeting but to dispense with the reading. Mssrs. Ashe, Scherer, Hendon and Brigham voted Aye. Motion carried.

**Resolution 2009-2**

Mr. Brigham moved and Mr. Ashe seconded to approve the minutes of the Boards' October 28, 2008 meeting but to dispense with the reading. Mssrs. Ashe, Brigham, Scherer and Hendon voted Aye. Motion carried.

The hearing in Case VA2009-01 (5181Delhi Pike) was convened.

Mr. Stahlheber (sworn) advised that on May 6, 2009 the Department of Development Services received a zoning certificate application filed by Kroger Limited Partnership 1 for the construction of a ground sign at 5181 Delhi Pike. He commented that the application was denied on May 6, 2009 and the applicant notified of the denial by a personal service letter on May 6, 2009. He noted that in the letter were stated the reason for the denial which included: the premises know as 5181 Delhi Pike is located in Delhi Township, Hamilton County Ohio and in the "E" Retail district as shown on the maps of the Township Zoning Resolution; the submitted application and drawings indicated a proposed sixty-one square foot double sided ground sign, situated centrally between the two curb cuts serving the subject property, having a ten foot (10') north front yard setback; the Township Zoning Resolution prohibits ground signs greater than fifty square feet per side, and those having less than a fifteen foot (15') front yard setback, in the "E" Retail district. The denial was also based on the following Sections of the Zoning Resolution: 51, 51.1, 52, 101, 102.24, 310.1, 311, 311.1, 311.12, 311.12-1, 311.14, 314, 314.3, 191, 192, 194, 251, 281, 282 and 291. Pursuant to Article XVIII of the Zoning Resolution the applicant had the right to file an appeal of the denial within twenty days of the action with an

appeal being filed in the form of an application received May 6, 2009. Pursuant to the requirements of the Ohio Revised Code the hearing was advertised in a newspaper of general circulation at least ten days before the hearing and those parties of interest were notified by first class mail at least ten days before the hearing.

Exhibit "A" - application

Exhibit "B" - site plan

Exhibit "C" - elevation drawings

Exhibit "D" - letter from County Engineer

Thomas Jones (sworn), Kroger Limited Partnership 1, advised that the fuel center just recently opened on Delhi Pike and they would like a variance so they can construct a ground sign at the property. He commented that when the project first started he met with Mr. Stahlheber who explained the various zoning regulations that they needed to comply with. He noted that Mr. Stahlheber commented to him that the Township was working on a Delhi Pike Corridor Study which may result in revised signage regulations, perhaps encouraging ground signs, and that Kroger would like to voluntarily comply with the intent of the Corridor Study even though it has not gone into effect. He noted that insufficient space exists at the location of the proposed sign to meet the setback requirement. He advised of checking with the Hamilton County Engineers Office regarding the proposed reduced sign setback and that they issued a letter stating that the reduced sign setback would not result in any safety issues. He commented that the sign meeting the required setback would negatively affect fuel supply trucks accessing and serving the property. He noted that it is Kroger's intention is to be good corporate citizen in the Township and, having invested over a million dollars in the fuel center, that they want it to be as attractive as possible.

To Mr. Scherer's question as to what are the dimensions of the sign Mr. Jones advised approximately ten feet (10') wide, eight feet (8') tall.

To Mr. Brigham's question as to what is going on with the neighboring Jiffy Lube site to the west of the fuel center Mr. Jones advised that Kroger is negotiating with Jiffy Lube to purchase the property so to install a driveway connection to Mt. Alverno.

To Mr. Herndon's question as to why the variance was requested so late into the development Mr. Jones advised that initially a pole sign was applied for and approved, but that utilization of a ground sign was later determined to be preferred.

To Mr. Hendon's question as to could the fuel pumps have been located further south on the site Mr. Jones responded in the affirmative, noting that they already had been installed when the change to a ground sign was decided.

To Mr. Hendon's question as to if this particular site was smaller than normal Mr. Jones responded in the negative, noting that their sites range from 0.6 to 1.0 acres and that this particular site is right at 1 acre.

To Mr. Hendon's question as to if, in reference to Exhibit "C", the rectangle at the bottom of the sign was its base Mr. Jones responded in the affirmative.

To Mr. Hendon's question as to if the proposed ten foot (10') setback was from the edge of the sign or the sign base Mr. Stahlheber responded from the edge of the sign, measured from the back edge of the public sidewalk.

To Mr. Scherer's question as to how high the base proposed sign was Mr. Stahlheber advised two feet (2').

To Mr. Scherer's question as to if Mr. Stahlheber was concerned with egress visibility from the site Mr. Stahlheber advised that that was the reasoning behind requesting comment from the County Engineer.

To Mr. Brigham's question as to what type of sign would be utilized if the variance was denied Mr. Jones responded that they feel the proposed ground sign would be more aesthetically pleasing.

Mr. Stahlheber advised that the original application submitted included a pole sign. He commented that that sign was thirty five feet (35') high, the bottom of which would be ten feet (10') from grade, included both logo and price signage, and would be situated with a ten foot (10') front yard setback..

To Mr. Brigham's question as to could they still build the pole sign Mr. Stahlheber responded in the affirmative.

Mr. Scherer's commented that the infraction on the size of the sign is very minimal.

Kathy Ahlers (sworn), 5120 Mt. Alverno Road, advised gas price signs are mounted on the sides of the canopy now. Mr. Jones advised that if they install the proposed ground sign that the gas price signs on the east and west sides of the canopy could be removed.

To Mr. Brigham question as to if the Township currently has a master/strategic plan, other than the current zoning regulations, for Delhi Pike that is presented to prospective businesses requesting that they develop and conform with Mr. Stahlheber responded in the negative.

Mr. Brigham commented that he liked the image projected by the proposed ground sign and thanked Kroger for investing in the community.

### **Resolution 2009-3**

Mr. Scherer moved and Mr. Brigham seconded to grant the variance as requested in case VA2009-01. Messrs. Hendon, Scherer, Brigham and Ashe voted Aye. Motion carried.

Finding of Fact:

1. The case number was VA2009-1.
2. The date of the action by the inspector was May 6, 2009 where a zoning certificate was denied for the construction of a ground sign located at 5181 Delhi Pike for the reason that said sign being situated less than fifteen feet from the right of way and containing greater than fifty square feet of sign face per side is prohibited.
3. The Appellant's name was Kroger Limited Partnership 1 and it caused this appeal to be filed by Thomas Jones, its Real Estate Manager, on May 6, 2009.
4. The address of the subject premises was 5181 Delhi Pike, Delhi Township, Hamilton County Ohio.
5. The Zone District of the subject premises was "E" Retail District.
6. Sections of the Zoning Resolution on which the denial was based included: 51, 51.1, 52, 101, 102.24, 310.1, 311, 311.1, 311.12, 311.12-1, 311.14, 314, 314.3, 191, 192, 194, 251, 281, 282 and 291.
7. Sections of the Zoning Resolution authorizing the Board to grant or deny the appeal are: 183, 184, 184.2, 184.6, 185 and 186.
8. The Appellant did not cite any sections of the Zoning Resolution as authorizing the Board to grant the appeal.
9. There was no opposition present at the meeting.
10. There was no error on the part of the Zoning Inspector.
11. The Board finds that practical difficulties exist as a result of an area zoning requirement with respect to the following non-exclusive factors:
  - a) The property owner purchased the property with knowledge of the zoning restrictions.
  - b) Though the property owner's predicament can feasibly be obviated through some other method other than a variance, utilization of the proposed ground sign is in the best interest of the business district and community as well as the spirit of possible sign regulation modifications.
  - c) The variance is not substantial.
  - d) Existing site conditions, including the ingress only restriction placed on the west curb cut by the County Engineer and the location of the underground storage tanks, limits the setback of the proposed ground sign.
  - e) The essential character of the neighborhood would not be substantially altered nor would adjoining properties suffer a substantial detriment as a result of the variance.
  - f) The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance.
  - g) The variance will not adversely affect the delivery of government services.
  - h) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
12. The granting of the appeal would not be contrary to the public interest, the general welfare or adjoining landowners for the reason that the increased square footage of the proposed sign face is not substantial and allows for utilization of applicant's standard sign face, and as the reduced front yard setback provides for the installation of a preferred ground sign in lieu of a pole sign at the same setback.
13. The Board wishes to review any alterations regarding the variance.

Old Business:

- Mr. Stahlheber advised that the Zoning Commission has started work on text amendments concerning paving materials and accessory garage sizes, and that he hopes to have such amendments finalized by the end of the year.

New Business:

- Mr. Stahlheber advised that Chip Brigham has been reappointed to the Board.
- The Board received revised rosters.
- Mr. Stahlheber advised his department is now involved with the implementation of the Delhi Pike Access Plan, and that he anticipates further text amendments to be necessary as a result thereof concerning signage and parking regulations.
- Mr. Stahlheber advised that there was one case pending. The Board set tentative meeting dates of July 7, 14 and 21, 2009.
- To Mr. Stahlheber's question as to if the Board was interested in changing the starting time for their meetings to 6:00 p.m. the Board decided to discuss the matter at their next meeting when Mr. Kearns would be present.

There being no further business on motion of Mr. Scherer and seconded by Mr. Hendon the meeting was adjourned at 7:40 pm. Messrs. Ashe, Hendon, Scherer and Brigham voted aye.

Board of Zoning Appeals:

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Thomas R. Stahlheber, Secretary

