

Ch. Calabro called the July 28, 2021 Board of Zoning Appeals continued Public Hearing for Tire Max to order at 7:00 p.m.

Ch. Calabro noted that this meeting is being taped for transcription purposes only and the written minutes and attachments, if any, will serve as the official record of this meeting.

V.Ch. Hoop stated that any Board member that has any monetary interest or has a conflict, including ex parte communication, should disclose at this time.

Roll found: Calabro, Hoop, Zeleznak, Schaefer, Budd (Mainzer had an excused absence)

In the audience: Trustees Kalina, Burns and Augustine (virtually) and Zoning Inspector Wilson

Ch. Calabro stated that Alternate Wolny continues to be recused, he is present but not as a member of the Board.

Ch. Calabro asked the secretary to read the legal notice.

Ch. Calabro stated that the Hinckley Township Board of Zoning Appeals acts within the authority of Section 519 of the Ohio Revised Code and exercises its power as provided under Chapters 7 and 13 of the Hinckley Township Zoning Regulations. All public hearings are open to the public. All persons wishing to testify must do so from the podium, must identify themselves and give their address and must be sworn in. Evidence and testimony must be pertinent to the hearing. It is the Chairperson's discretion to limit personal comments, personal attacks, opinions, editorializing, and/or repetitious statements or testimony or evidence previously given. Disruptive persons will lose their right to remain at the hearing. Personal attacks will not be tolerated. Any person may request a schedule or an agenda be mailed to them, providing a self-addressed and stamped envelope be included with request.

Ch. Calabro stated this is a continuation of the hearing upon the application of Tire Max of Ohio as potential buyers of property owned by Emil Wolny Properties of Center Road, Hinckley, Ohio for a conditional use permit from the enforcement of certain Hinckley Township Zoning Resolution Sections to property owned by the Applicant.

Ch. Calabro noted that each member of the Board of Zoning Appeals has been provided a copy of the application and supporting documentation.

Ch. Calabro stated that a revised site plan was submitted on June 28, 2021 and a revised landscape plan was also submitted on June 28, 2021. A narrative or a statement supporting the revised site plans was also submitted on June 28, 2021.

Ch. Calabro stated that for the record an email was received from Angela Chesnick and Nikki Long.

Ch. Calabro stated that written communication from persons not present this evening may include communication that are not made by affidavit because these communications are made by persons not under oath they are not accepted by this Board. Written communication may include writing by affidavit by persons not present this evening and therefore cannot be subjected to cross examination. These affidavits will not be given much weight, if any, in the decision of the Board on this matter.

Ch. Calabro stated that this Board has the power to grant an applicant's request for a conditional use permit.

Ch. Calabro asked the applicant to step to the podium and discuss the project.

**Applicant Mr. Don Lydon - 22730 Fairview Center Dr. Fairview Park representing Tire Max.**

Mr. Lydon was sworn in accordingly.

Mr. Lydon stated that he is here tonight for a conditional use permit request for a proposed TireMax to be located at the corner of Route 303 and W. 130<sup>th</sup> Street.

Ch. Calabro asked what changes were made to the revised plan.

Mr. Lydon stated they shifted the main driveway off of center road to center on the proposed retention basin in order to avoid moving utility poles and that allowed them to access both the proposed Tire Max site on the east end and to provide a single driveway off of Center Road for the access to the remaining parcel on the corner for future use. At the time they have no plans for the development of the corner, their plan is to purchase the entire site and submit for a lot split to keep Tire Max as a separate parcel. Additionally, they shortened the retention basin and changed dimensions to have a driveway around the back of the retention basin for drop offs and deliveries, this alleviates the need for the trucks to back up to get out.

Ch. Calabro asked if deliveries are by the dumpsters and Mr. Lydon stated yes. Mr. Lydon further described the delivery/drop off process. Mr. Lydon stated the largest truck they get is

typically a 30 foot box truck, typically when tires are delivered they go directly into the building. They own 2 sites one in Aurora, which is comparable to this proposed site and one in Kent which is a tad larger.

Ch. Calabro asked the sizes of the structures in Kent and Aurora. Mr. Lydon stated the Aurora site is almost a carbon copy of this proposed site, square footage is almost identical and the Kent store is one bay larger.

Ch. Calabro asked if there is a Marcs near both sites and Mr. Lydon stated there is a Marcs near Aurora, the site is on a private street, probably about 200 yards away, it is a commercial area. Mr. Lydon stated there are office buildings on both sides of them. Mr. Lydon stated he didn't know if there is a Marcs near the Kent store.

Ch. Calabro stated the request for the Tire Max to come to Hinckley started on June 2, 2020, an email was sent from Mr. Lydon to Tom Wilson stating he was looking at southeast corner for a new TireMax Complete Car Care Center and on June 18, 2020 Tom Wilson stated that it was clearly stated in the initial meeting with Tire Max representatives that 50% of the location will be car repair activities. There was another email from Mr. Matt Marzullo who visited the Aurora store and he stated that the retail space is tiny and in comparison to the entire building there was very little retail; there were many seats for customers waiting for their cars to be repaired. He stated that in his opinion it seems to meet the current definition of automobile service station.

Ch. Calabro stated that was all she could find regarding when this started. Ch. Calabro stated that back on the 23<sup>rd</sup>, Mr. Lydon stated that typically 60-75% of customers are coming in for the purchase of tires and also they consider themselves a step above Conrads. Ch. Calabro asked Mr. Lydon to explain that.

Mr. Lydon stated that Conrads is very large in northeast Ohio, they run a good operation and their stores are a little older. Mr. Lydon stated their Aurora store is nicer and cleaner.

Ch. Calabro asked if it has anything to do with the service that is provided by Conrads and Mr. Lydon stated he feels his guys do a better job than Conrads, that is just his opinion. Mr. Lydon stated essentially they are in the same business, they sell and install tires, brakes and shocks and their website lists everything they do, but mostly it is tires, brakes, shocks and oil changes.

Ch. Calabro asked how Mr. Lydon came up with the 60-75% number. Mr. Lydon stated that is a percentage of their annual sales, tire sales and installation is the number one sales item.

There are no cars left in bays overnight, they don't tend to do major repairs because it ties up the bays too long.

Ch. Calabro stated that according to their website it seems like one of the things they do is sell tires, there are many other services and tires is close to the bottom. Ch. Calabro asked if he stated they refer major repairs to someone else and Mr. Lydon stated that they can do transmission service but if a repair is beyond their scope of their mechanics they will have people take their care elsewhere, they advertise complete car care but if they can't do the job they refer it out.

Ch. Calabro asked if anyone else had any questions or comments.

Mr. Zeleznak stated he had done a lot of research and he has a lot of comments.

Mr. Zeleznak stated with the Board's indulgence he would like to present a quick basic overview of the duties of the Board of Zoning Appeals for everyone who is interested in this hearing. The duties of the Board of Zoning Appeals are outlined in the Hinckley Township Zoning Regulations, Section 13.2 which references Chapter 519 of the Ohio Revised Code. This is found in the Ohio Revised Code, Title 5 Townships, Chapter 519 Township Zoning Section 519.14, Powers of Township Board of Zoning Appeals. Part C of this section, which relates to our hearing tonight, states: "The Township board of zoning appeals may (C) grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution.

Mr. Zeleznak stated that with that said our board's primary duty is to rule on the application of the existing laws as opposed to passing new laws. We are to make decisions based upon facts presented in the record rather than opinions. It is not the role of the Board of Zoning Appeals to attempt to change zoning regulations or policies. This is the job of the Zoning Commission.

Mr. Zeleznak stated that now for the application we are hearing tonight, Tire Max of Ohio is requesting Conditional Use permit AP0255 to construct a single-story commercial building for a tire retail and car repair facility per subsection 6B.3(C)(1). The supporting documentation with the application from Meraki Architects, LLC states that the proposed tire dealership facility offers complete auto care/repair in addition to tire sales and that the proposed use is consistent with the allowable uses specifically listed as conditionally permitted in Section 6B.3 Automotive Service Stations. During the public hearing of June 23, 2021, Mr. Don Lydon stated for the record that "they believe their use as a Tire Max store is a permitted use as a retail establishment and that their primary use is selling and installing tires on vehicles. They do

perform vehicle service relating to tires such as brakes and shock absorbers. <sup>They</sup> The do not do major mechanical repairs, basically only something involved with tires.” Mr. Lydon also stated that “obviously a gas station would be a permitted conditional use, they, Tire Max, don’t sell gas and oil. The only thing that gets them close to an auto service station is adding oil to a car and minor auto repairs, but they feel they would fit in some part of the definition as a conditional use. Mr. Lydon stated that a conditional use should be allowed if one of the permitted items from the list is met. Mr. Zeleznak stated that this, of course, is an opinion.

Mr. Zeleznak stated that the one thing that stood out to him was the conflicting information between the application and testimony. To clear up some of this Mr. Zeleznak stated that he visited the Tire Max of Ohio website for Tires and auto repair in Aurora and Kent, Ohio. The website claims: more than just tires at Tire Max, complete car care, your local choice for tires and auto repair in Northern Ohio. Vehicle maintenance and repair is more than just oil changes and wheel alignments. Ensuring that your case is at its peak means that there will be no loss of performance or safety integrity. Automotive repair and maintenance services are important and that’s why Tire Max Ohio aims to provide Aurora and Kent Ohio with the best automotive repair services at the most affordable prices. Our full-service list offers auto repair services like brake repair, AC conditioning repair, tire repairs, batteries and much more. Visit a Tire Max Ohio store near you today. They then list: Air Conditioning Repair, Brake Repair, Cooling system Repair, Driveline Repair, Muffler Repair, Suspension Repair and Electrical Systems. They then say Tire Max Ohio has top quality electrical systems inspections including alternator repair and battery replacement.

Mr. Zeleznak stated that based on their website they do more than just perform vehicle service relating to tires such as brakes and shock absorbers as testified.

Mr. Zeleznak stated that it is noted that the Tire Max application references Sub-Section 6B.3 Schedule of Permitted Uses in District B-1, General Business District of the Hinckley Township Zoning Regulations. C. Automotive Uses 1. Automobile Service Stations “C” (Conditional Use) The Definition of Automobile Service Station is a place where gasoline, kerosene, or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles including greasing or oiling on the premises. A portion of the building may be used for repair to motor vehicles and in which there is no paint of cars or body or fender work done.

Mr. Zeleznak stated that his finding is that the Tire Max facility use does not meet the definition of an automobile service station. During the testimony on June 23, 2021 Mr. Don Lydon stated

for the record that they believe their use as a Tire Max store is a permitted use as a retail establishment. The definition of retail establishment is an establishment engaged in the selling of goods or merchandise to the general public for personal or household consumption which is open to the general public during regular business hours and which has display areas that are designed and laid out to attract the general public. In determining a use to be a retail use, the Township Zoning Commission may consider the proportion of display area versus storage area and the proportion of the building face devoted to display windows.

Mr. Zeleznak stated that although that is not what the application was submitted for, his finding is that the Tire Max facility use does not meet the definition of a Retail Establishment. Mr. Zeleznak stated he wants to make it clear that his findings of fact have not been previously discussed with anyone including the other board members and that he is only 1 of 5 members of this Board. The other four members may agree or disagree with his findings. Mr. Zeleznak stated he also wants to make it clear that this is not an endorsement against or for Tire Max of Ohio it is simply his findings of whether or not this type of facility meets the requirements of a permitted conditional use in the general business district 6B1.

Mr. Zeleznak stated he did a lot of research and in his opinion he feels this does not meet the zoning code.

Ch. Calabro asked what percentage of the 6800 feet is retail. Mr. Lydon stated that in terms of the area where things are sold, there is a waiting area with tire displays, it is primarily a waiting area, so probably the retail waiting area is probably 15-20%.

Ch. Calabro stated that she thinks what is difficult for the board is this proposed building is basically the entrance to the Township and personally she doesn't have a problem with the look of the building, it is attractive, but it does set the tone for the rest of the area.

Ch. Calabro asked if they go ahead would Mr. Lydon be willing to use more natural materials for the building to give it a more rural look. Mr. Lydon described the proposed building materials and discussion followed. Mr. Lydon stated he feels this is a very nice looking building and they have the ability to do some additional landscaping to shield the view of the garage doors and the office portion. Mr. Lydon stated they want it to look nice. Ch. Calabro stated it is not up to this Board to decide on the look of the building.

Ch. Calabro asked if Mr. Lydon would be willing to do solid fencing on the side by the proposed senior housing and Mr. Lydon stated yes they could do that in addition to mounding.

Mr. Schaefer stated he thinks the sale of tires is definitely retail and he can see where shocks and brakes are related to the sale of tires, but everything else on the website doesn't relate to tires. Mr. Schaefer stated that he would like to see the repair work that they are doing strictly related to tires. Also, Mr. Schaefer stated he concurs with the buffering that they discussed.

Mr. Lydon stated that the Code states retail service and service is repair. Discussion followed regarding what is considered service and how it relates to car care and repairs. Mr. Lydon stated he doesn't believe the Zoning allows for specifically conditioning what services can be done.

Ch. Calabro stated she doesn't believe those conditions can be put on because there's no way to enforce it. Further discussion followed.

Mr. Schaefer stated that if Mr. Lydon wants to do all of the repairs they say they do then they belong in the I-2 District where it is permitted. Further discussion followed.

Mr. Zeleznak stated that the hearing is for the automobile service station and not retail and Mr. Lydon stated yes, they are servicing a vehicle with products sold in a store.

Ch. Calabro stated the reason she asked if they were by a Marcs is because it's more fitting in that kind of area. Mr. Lydon stated he believes the Tire Max benefits the community.

Ch. Calabro stated she has nothing else and asked if there were any more comments and there were none.

Ch. Calabro stated that before they do a motion to take a vote on this, whether a yes or no, they should set conditions. Ch. Calabro stated that one of the conditions they would ask is to do some fencing on the east end of the property where it abuts the proposed senior housing. Mr. Lydon stated he would agree to that. Ch. Calabro stated they cannot dictate the type of materials used, but could they possibly use more natural materials to keep the rural feel. Mr. Lydon stated he likes to build nice buildings and he wants all of his buildings to look good. Ch. Calabro stated that other than Mr. Lydon's word they have no evidence that 60-75% of their business is tire sales.

Ch. Calabro asked if there were any more comments and there were none.

Ch. Calabro asked for a motion. Mr. Hoop made a motion to approve a Conditional Use Permit (AP0255) submitted by Tire Max of Ohio, as a potential buyer of property owned by Emil Wolny Properties, LLC of Center Road, Hinckley, Ohio (Permanent Parcel Nos. 01703C02001,

01703C01002 and 01703C01001) to construct a single story commercial building for a tire retail and car repair facility at said property. Zoning Reference Chapter 6 subsection B.3 (B1)C.1.

The motion was seconded by Mr. Zeleznak.

Ch. Calabro stated that any person adversely affected by a decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas of Medina County on the ground the decision was unreasonable or unlawful and will have 30 days from the date the minutes are approved and posted on the Township website to appeal.

Ch. Calabro explained the voting process to the applicant as follows: Yes, simple majority with a quorum present is in favor of the applicant and a No, simple majority, or a tie vote denies the applicant's request. If the vote is favorable to the applicant, the applicant has one year from the date of the hearing to begin construction or to act on the approved request.

Vote: Ch. Calabro – yes; Hoop – yes, Zeleznak– No, Budd – No, Schaefer – No

Ch. Calabro stated that the motion was denied 3-2


The Board of Zoning Appeals Decision form was signed and a copy given to the applicant.

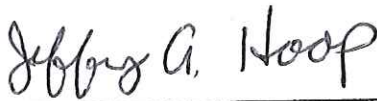
Mr. Budd made a motion to adjourn the Public Hearing, Mr. Schaefer second. All in favor.

The July 28, 2021 Board of Zoning Appeals Public Hearing adjourned at 7:56 p.m.

Minutes by: Judi Stupka, Recording Secretary

Minutes Approved: 8/11, 2021


  
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Josephine Calabro, Chairperson

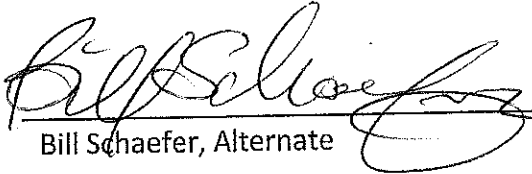
  
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Jeff Hoop, Vice-Chairperson

  
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Dave Zeleznak, Member

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Julie Mainzer, Member (absent)



  
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Bill Budd, Member

  
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Bill Schaefer, Alternate