



CASE NUMBER 25-2024 BZA

8250 OLD KELLOGG RD – WOODLAND MOUND PARK

FOR CONSIDERATION BY THE BOARD OF ZONING APPEALS ON NOVEMBER 7, 2024

APPLICANT: Expedite the Diehl LLC, on behalf of Hamilton County Park District Board of Commissioners, property owner

LOCATION & ZONING: 8250 Old Kellogg Rd (Nordyke Rd Entrance in 500-102-36)
(Book 500, Page 21, Parcels 7, 12, and 14; Page 22, Parcels 7, 13, 14, 16, 18, 20, 21, and 22; Page 31, Parcel 14; Page 101, Parcels 9 & 17; Page 102, Parcels 4, 6, 7, 8, and 36; Page 103, Parcels 5, 6, 7, and 11; Page 104, Parcel 3; Page 113, Parcel 40; Page 114, Parcel 22; and Page 185, Parcel 2) – “AA” Residence

REQUEST: A variance request for a proposed freestanding sign, size 80.5 sq. ft. where 40 sq. ft. is the maximum allowed per Article 5.5, F, 4 of the Anderson Township Zoning Resolution.

SITE DESCRIPTION:

Tract Size: 1069 acres total for the park.
Frontage: 4,622.00’ along Nordyke Rd
Topography: Hilly, Nordyke Rd travels in a small valley through the park with hills rising approximately 100 ft. on either side of the road.
Existing Use: Woodland Mound Park

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	“AA” Residence	Single Family Residence
South:	“AA” Residence	Woodland Mound Park
East:	“AA” Residence	Woodland Mound Park
West:	“AA” Residence	Woodland Mound Park

PROPOSED DEVELOPMENT: The applicant is requesting to replace an existing, compliant, freestanding sign for Woodland Mound Park with a sign, size 80.5 sq. ft., a height of 8’ and maximum width of 14’. The sign will be a combination of aluminum, wood, and steel construction.

Per Article 5.5, G, 1, h, iii, signs taller than 6’ include the whole structure in the surface area calculation. Since the sign is 8’, the total surface area of 80.5 sq. ft. is used rather than the sign area of 12.47 sq. ft. Additionally, per Article 5.5, F, 4, freestanding signs for parks in residential districts are limited to 40 sq. ft.

HISTORY: The land was originally purchased by Hamilton County Park District in 1975. A zoning certificate is on file from 1989 for the Seasongood Nature Center located in the park.

FINDINGS:

To authorize a variance after public hearing, the Board of Zoning Appeals shall make the findings that a property owner has encountered practical difficulties in the use of his/her property. The findings shall be based upon the general considerations set forth in Article 2.12, D, 2, b of the Anderson Township Zoning Resolution.

Staff is of the opinion that the variance is substantial. The sign is twice the size of the maximum surface area allowed in a residential district which is a significant deviation.

Staff is of the opinion that the essential character of the neighborhood would be altered. The proposed sign is larger than the existing sign by at least 40 sq. ft. Additionally, it will extend 24' from the road which will put it into the trees on the side of the road, potentially detracting from the natural character of the neighborhood if trees are to be cleared to maintain visibility of the sign.

The variance would not adversely affect the delivery of governmental services.

Staff is of the opinion that the property owner's predicament could be feasibly obviated through some method other than a variance. Per Article 5.5, G, 1, h, iii of the Anderson Township Zoning Resolution, freestanding signs 6' or less in height will be measured based on sign area, not total surface area. If the applicants' sign was 6' from grade, the sign could be approved administratively.

Staff is of the opinion that the spirit and intent behind the zoning requirement would not be observed by granting the variance. The intent of these regulations is to maintain balance between the neighborhood character and nonresidential uses that can operate in the residential zoning districts. Granting this variance would disrupt that balance by prioritizing a non-residential use.

Additionally, the applicant suggests that the Township should be flexible in its zoning due to the sign advertising a public rather than commercial use. However, the Township's sign regulations are intentionally designed to be content neutral, and granting a variance on this basis would not align with this purpose. Conditional use signage, such as parks or churches, in residential districts are already accounted for in the Zoning Resolution and have sign regulations specific to these uses as found in Article 5.5, F, 4.

**STANDARDS TO
BE CONSIDERED:**

The aforementioned variance requested should be evaluated on the following criteria:

- (1) The property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
- (2) The variance is substantial.
- (3) 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.
- (4) The variance would not adversely affect the delivery of governmental services (i.e. water, sewer, garbage).
- (5) The property owner purchased the property with knowledge of the zoning restrictions.
- (6) The property owner's predicament can be feasibly obviated through some method other than a variance.
- (7) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Disclaimer: This staff recommendation is based on the facts known to the author at the time the recommendation was made. Staff attempted to use those known facts to analyze the relationship of those facts to the standards set forth in the Zoning Resolution for the particular issue and property before the BZA, and in keeping with past decisions of the BZA. The BZA members have an obligation to consider all of the evidence that is entered into this case during the BZA hearing through the sworn testimony of the witnesses, as well as the documents submitted as part of the witnesses' testimony. The staff recommendation should be considered as part of the evidence before you. The Zoning Resolution empowers the BZA to make reasonable interpretations of the Zoning Resolution, to judge the credibility and reliability of the witnesses, and to decide each case based on the evidence presented during the BZA hearing process.