



**CASE NUMBER 26-2024 BZA**

**7075 FIVE MILE ROAD – WITHROW NATURE PRESERVE**

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:** 7075 Five Mile Rd  
(Book 500, Page 264, Parcels 1, 2, and 3; Page 320, Parcels 11, 14, 15, 16, 17, 19, 31, and 39; and Page 330, Parcels 5, 17, 21, 22, 23, 24, 25, 30, 34, and 35) – “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:* 280.71 acres total for the park.  
*Frontage:* 1760.3’ park frontage along Five Mile.  
*Topography:* Hilly – Five Mile Rd follows the creek valley, and the topography ascends roughly 130’ to the south of the road.  
*Existing Use:* Withrow Nature Preserve

<b>SURROUNDING CONDITIONS:</b>	<u>ZONE</u>	<u>LAND USE</u>
North:	“AA” Residence	Single Family Residence
South:	“AA” Residence	Withrow Nature Preserve
East:	“AA” Residence	Single Family Residence
West:	“AA” Residence	Withrow Nature Preserve

**PROPOSED DEVELOPMENT:** The applicant is requesting approval to replace an existing, compliant, freestanding sign for Withrow Nature Preserve 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.

**HISTORY:** The property was purchased by Hamilton County Park District in 1977. Recent history includes Case 10-2001 BZA regarding a 180’ telecommunications tower in the park (Book 500, Page 330, Parcel 23), a gazebo approved as ZC 2002-577, and the existing freestanding sign, approved as ZC 2002-447.

**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 in a residential neighborhood, on residential zoned property where only 40 sq. ft. of signage is permitted. The applicant's proposal is double this amount, which is a substantial variance from the regulations.

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 is inconsistent with the more rural and historic character of the neighborhood.

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 applicant's 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.*