

## **Board of Zoning Appeals**

November 22, 2006

- Michael Jadach – Variance Hearing
- Neil Gacom – Variance Hearing

1

Ch. Manley called the hearing to order at 7:30 pm.

Roll found Huff, Zeleznak, Hoop, Dick, Tamulewicz, and Manley present. Mrs. Fox had an excused absence.

Also present: Trustee Schulte, Jim Kamps and Zoning Inspector Livingstone.

Ch. Manley polled each member of the Board of Zoning Appeals to respond yes if they have received and reviewed the contents of the application submitted by Mr. Jadach.

**Response: Huff – yes Zeleznak – yes Dick-yes Hoop – yes  
Tamulewicz – yes Manley – yes**

Ch. Manley polled the members inquiring if they have inspected said property.

**Response: Huff – yes Zeleznak – yes Dick-yes Hoop – yes  
Tamulewicz – yes Manley – yes**

Ch. Manley stated that the Hinckley Township Board of Zoning Appeals acts within the regulation of Section 519 of The Ohio Revised Code and exercises its powers as provided under Section 7 & 13 of The Hinckley Township Zoning Regulations.

Ch. Manley asked Clerk Garrett whether the zoning office received any written or verbal communication pertaining to this hearing. Ms. Garrett received no additional correspondence.

Ch. Manley noted for the record that the Board of Appeals as testimony does not accept non-written communication made by known or unknown persons, not under oath at a properly noticed hearing. He explained to those present that the meeting is being taped for the record. In addition he noted for the record that the documents that relate to this application might include written communications from persons who are not present this evening.

Ch. Manley also announced that written communications from persons not present this evening include communications that are not made by affidavit. Because persons not under oath make these communications, this Board does not accept them. He also noted that written communications might include some writing by affidavit, by persons that are not present this evening and, therefore cannot be subjected to cross-examination. These affidavits, therefore, will not be given much weight, if any, in the decision of the Board on this matter. In addition, the audience was informed that they must state their name, address, and be sworn in. All testimony will be given from the podium.

## Board of Zoning Appeals

November 22, 2006

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- Neil Gacom – Variance Hearing

2

Clerk Garrett read the legal notice as it appeared in the Medina Gazette.

Mr. Michael Jadach, 2114 Galilee Oval, Hinckley Twp., was sworn in: When you were out to inspect the property, Mr. Tamulewicz asked me to inquire as to an estimate of a surveyor of the property and possibly move the lot line from 194' to 175' to make it the minimum on the one lot. The surveyor proposed the following changes: The legal description of both lots would be revised to accurately reflect the revised bearings, distances, and acreage of each parcel, the plat will be revised to match the legal description, a new mylar will be created, the property pins will be reset – the estimated cost for this work is between \$600 and \$800.

Mr. Tamulewicz: The lot comes up just short of .66 acres. That is more than half an acre.

Ch. Manley: Although Mr. Livingstone is not here, he acknowledges that he did give the advice and he did sign off on this along with the trustees. It was later discovered that it was measured improperly from the center of the road rather than from the right-of-way. This changed approximately 6 years ago.

Mr. Zeleznak: If Lot A was moved to 175', Lot B would still fall short of 2 acres based on the measurements from the road right-of-way?

Mr. Jadach: Correct.

Mr. Tamulewicz: If you want to look at the substandard lots as a guideline, section 6r1.4C2 allows sub-standard lots to be built on as long as they are 66,000 square feet in area. If 19.54 feet are added to parcel B, he will be 66,674 square feet. This is for lots recorded before 1975.

Mr. Livingstone, Zoning Inspector: I did talk to a man at the Tax Map room. The planning commission currently reviews all lots. Pat Thekan advised to leave it as drawn on this map if the Township would approve it at all. The lot with the house would be under the rules of 2 acres in excess of the right-of-way square footage, leave that one slightly under the 2 acres, leaving the new lot having more than 2 acres. She said this would be better than trying to even them out.

Mr. Livingstone: When I approved this, I was measuring from the centerline of the highway and then I did it from the outside of the right-of-way. My numbers coincide with the engineers.

Mr. Zeleznak: So what you are saying is that the way this is drawn up, it is 2-acres.

Mr. Livingstone: And the deed description, everything matches.

## Board of Zoning Appeals

November 22, 2006

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- Neil Gacom – Variance Hearing

3

Mr. Zeleznak: So this is good as far as the way it is drawn up.

Mr. Livingstone: That is correct.

Mr. Tamulewicz reviewed the Duncan Factor worksheet:

### Factor #1

Will the property yield a reasonable return or  
Can there be a beneficial use of the property without the variance?

*Yes. It is one house rather than a lot split.*

Can the property be sold for a reasonable amount without the variance?

*Maybe.*

Can the property be used without the variance?

*Not the vacant lot unless it is for farming.*

Is the variance substantial?

*Yes.*

Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment if the variance is granted?

*No.*

Will the variance adversely affect the delivery of governmental services?

*No.*

Did the property owner purchase the property with knowledge of the zoning restrictions?

*He purchased the property based on incorrect advice.*

Does the variance preserve the “spirit and intent” of the zoning requirement and will “substantial justice” be done by granting the variance?

*Yes. In granting an area variance, the proof is to show practical difficulty.*

Mr. Tamulewicz asked the Board members if they wanted to vote on this as presented without asking Mr. Jadach to add 19.45 feet to parcel B. That would increase the frontage if that parcel already has 349 feet of frontage, 70 feet of sidelines; it is fine for the existing house. Mr. Manley expressed that he would like to go with it “as is” because of potential problems when someone goes to build a house and finds out that he is 25 feet short of the requirement.

Mr. Zeleznak’s opinion is that it should be kept as presented.

## **Board of Zoning Appeals**

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4

Mr. Tamulewicz made a motion to accept the plans for the lot split as presented by Michael Jadach. Job # 060817, creating a Parcel "B" that will be 2.0 acres conforming to prior Hinckley Zoning measured to the centerline of the right-of-way rather than from the setback line. Accepting Parcel "A" as submitted as 2.846 acres, 194.54 frontage per the attached plans submitted with the variance application. Also noted for the record is that this variance is granted based on the prior decision of the zoning inspector.

Second by Shirley Dick.

**Vote: Dick-yes Zeleznak – yes Hoop – yes Tamulewicz – yes Manley – yes**

Ch. Manley stated that any person adversely affected by this decision of the Board of Zoning Appeals might appeal to the Court of Common Pleas of Medina County because such decision was unreasonable or unlawful. They have thirty (30) days from the date the minutes of the appeal are journalized. The minutes of this hearing will be journalized on December 13, 2006.

Mr. Zeleznak made a motion to adjourn this hearing at 7:52 pm.  
Mrs. Dick second.

### **Neil Gacom – Variance Hearing**

Ch. Manley called the hearing to order at 7:30 pm.

Roll found Huff, Fox, Zeleznak, Hoop, Dick, Tamulewicz, and Manley present.  
Also present: Trustee Schulte, Jim Kamps and Zoning Inspector Livingstone.

Ch. Manley polled each member of the Board of Zoning Appeals to respond yes if they have received and reviewed the contents of the application submitted by Mr. Gacom.

**Response: Huff – yes Zeleznak – yes Dick-yes Hoop – yes  
Tamulewicz – yes Manley – yes**

Ch. Manley polled the members inquiring if they have inspected said property.

**Response: Huff – yes Zeleznak – yes Dick-yes Hoop – yes  
Tamulewicz – yes Manley – yes**

## **Board of Zoning Appeals**

November 22, 2006

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5

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Clerk Garrett read the legal notice as it appeared in the Medina Gazette.

Mr. Neil Gacom was sworn in accordingly: I plan to store personal items in the garage, toys, and cars that I have collected, lawn mower, etc. I work at Don's Brooklyn Chevrolet and have collected cars for years.

Mr. Tamulewicz: Did you split the property.

Mr. Gacom: No. We did have knowledge that a street would be constructed but we were not sure exactly where it would be located.

Mr. Zeleznak: There is a chance that it was already parceled off. The septic is to the right? Did you ever consider placing the building towards the house and on an angle with the door closer to the driveway?

Mr. Gacom: This is where the water flows traveling down (pointing to the map) the properties east of me drain over my property. The driveway is built up but it flows pass the sandbox, the water flows fast. We have a lake at times. I dug out the area

## **Board of Zoning Appeals**

November 22, 2006

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6

so it flows better. The neighbors have no problems with it. One of the neighbors bought one of my classic cars and they are aware of this.

Mr. Zeleznak: Where are the neighbor's homes located?

Mr. Gacom indicated the tap map where the other homes were located.

Mr. Gacom: We did approach the neighbors to purchase some of their land but they were not interested.

M. Kamps had nothing to add to the proceedings.

M. Livingstone: It was an ill-conceived road put in by Mr. Schueger. To get an extra lot out of the cul-de-sac area, they put the road in but not the right way. I tried to talk him out of it but the house was already built. It caused some drainage problems. The County has been out there a few times on the drainage issue. The lake is in the back and the septic so there is no way to put it back there without tearing the septic out and the lake. There is no room on the side either.

Mr. Tamulewicz: I would like to see a surveyor place the pins there for the building and the setbacks. We got different measurements.

Mr. Gacom: Well, it was \$300 to appear here tonight but we did not want to spend additional money if we were not allowed to do it.

Mr. Tamulewicz: Would you have any problem coming back in January with more accurate plans for the actual placement of the building?

Mr. Gacom: Are you asking me to hire a surveyor?

Mr. Tamulewicz: We found a stake on Saturday but our measurements were different from yours.

Mr. Zeleznak: To grant a variance we need exact measurements as to what we are going to vary.

Mr. Gacom: Are you talking about the setbacks from the road?

Ch. Manley: We have 86.5' from what we think is the right-of-way and 98' from the center of the road.

Mr. Tamulewicz: The edge of the road is not the right-of-way. It is the center of the road plus thirty feet. It must be surveyed and have the surveyor set the building

**Board of Zoning Appeals**

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7

stakes. It needs to be properly surveyed. The next owner would have a problem with a bank when applying for a mortgage.

Discussion of the different measurements of the building.

Mr. Manley: We will need to have these measurements exact.

Mr. Gacom: That is understandable. I did not want to spend a lot of money if I did not have a prayer of getting this variance. I agree, I want to have a drawing.

Ch. Manley announced that the hearing would be continued to January 10, 2007 beginning at 7:00pm. This is also the night of the organizational meeting and work session. Inspection of the property will be on Saturday, January 6, 2006 at 10:00 am. It is advised that the board receive a new set of plans as well.

The minutes of the work session held November 8, 2006.

Mr. Zeleznak made a motion to accept the minutes as corrected.

Mrs. Dick second.

**Vote: Dick-yes Zeleznak – yes Hoop – yes Tamulewicz – yes Manley – yes**

Mr. Kamps announced that there will be a joint meeting with Brunswick City to discuss Sexually Oriented Business zoning on January 17, 2007 at 7:00 pm in the Hinckley Town Hall.

Mr. Manley adjourned the meeting at 8:35 pm.

Patty Garrett, Zoning Clerk

Minutes Approved \_\_\_\_\_, 2006

\_\_\_\_\_  
David Manley, Chairman

\_\_\_\_\_  
Tom Tamulewicz, Vice Chairman

\_\_\_\_\_  
Jeff Hoop, Member

\_\_\_\_\_  
Dave Zeleznak, Member

\_\_\_\_\_  
Shirley Dick, Member

\_\_\_\_\_  
*absent*  
Dottie Fox, Alternate Member

\_\_\_\_\_  
Melissa Huff, Alternate Member