

Board of Zoning Appeals

Mark Iacona – Beechmont Properties Variance Hearing

(Tamarijn Meadows)

June 13, 2007

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Ch. Manley called the inspection portion of the hearing to order at 6:30 pm for the site inspections. The board inspected the property and returned to the town hall and commenced the hearing.

Ch. Manley called the hearing to order at 7:00 pm.

Roll found: Huff, Fox, Hoop, Zeleznak, Tamulewicz and Manley present. Mr. Pope of the Zoning Commission, Trustees Schulte and Garapick and Mr. Mark Iacona were also in attendance.

Ch. Manley announced that Mr. Iacona has submitted a request for 3 variances for property owned by Beechmont Construction and the Apple Group, Inc., 3113 State Road, Medina, Ohio, requesting

- 1) a building front yard set back variance for proposed lot #1 at 2220 Stony Hill Road, Hinckley Twp.,
- 2) a building front yard set back variance for proposed lot #26 at 2164 Stony Hill Road, Hinckley Twp. and
- 3) a pond front yard set back variance for proposed lot #26 at 2164 Stony Hill Road, Hinckley Twp.

Manley polled the board as to whether they reviewed the packets containing the information regarding the application.

**Response: Huff – yes Fox – yes Zeleznak – yes Hoop – yes
Tamulewicz – yes Manley – yes**

Ch. Manley polled the Board as to whether they inspected the property at 2220 and 2164 Stony Hill Road.

**Response: Huff – yes Fox – yes Zeleznak – 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. All hearings are open to the public and any person may request a schedule or agenda be mailed to them by providing a self addressed stamped envelope in advance.

Ch. Manley inquired if the zoning office had received any written or verbal communication pertaining to this hearing. Ms. Garrett reported that no comments had been received.

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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 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.

Clerk Garrett read the legal notice.

Mr. Mark Iacona was sworn in accordingly. Mr. Iacona stated that this development property was acquired from the G & G Construction Company.

Ch. Manley asked Mr. Iacona if he was aware of that EPA violations have been claimed on part of this property.

Mr. Iacona stated that he did not know of these claims. He was out of town and his partners, G & G Construction, most likely received the notice. G & G's Stony Hill Subdivision property ran into some problems. G & G contacted Mr. Iacona and the Apple Group which owns several acres north of this piece to become partners in the land development. Final plat approval has not been received.

Mr. Iacona: The development will be one development owned by 2 parties. Sublots 1 thru 14 will owned by Beechmont Construction, formally G & G Construction and sublots 15 thru 39 will be owned by the Apple Group.

Mr. Iacona was given a copy of the EPA letter listing the violations. (See attached letter)

Discussion of the violations listed.

Discussion of the retention basins.

Mr. Iacona: G & G Construction has been almost out of the picture. I have mostly dealt with the bank on this development now to make sure that it gets built. I have not heard from G & G at all regarding these violations. The existing right-of-way is the way it is today. The Medina County Engineer requires that we dedicate 10 additional feet

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from the land that we are developing to the right-of-way. The plat has not been recorded. The 10 extra feet have not been dedicated.

Mr. Iacona: At 2220 Stony Hill, I am looking for a variance from the front yard setback from the proposed right of way. Currently it is 35 feet from the proposed right-of-way, 45 feet from the existing right-of-way. The second variance at 2164 Stony Hill Road is part of the property owned by the Apple Group, formally the Dusek's Farm. The house is an existing structure. There are no violations for the house as far as side-yard or back-yard setbacks. At this time, the house is 82 feet from the existing right-of-way, 72 feet from the proposed right-of-way.

Ch. Manley: We measured 89 feet from the edge of the road to the front step or 93.5 feet to the front door. The drawings you have submitted state that it is 82 feet from the building. Eventually this would be 72 feet, is that correct?

Mr. Iacona: Correct. On variance #3, the pond is actually on subplot #27. The engineer has calculated that there is a certain amount of water that must be retained. If we fill in this pond in order to be in accordance with Hinckley zoning, we will lose the volume and then we will not conform to the regulations of the Medina County Engineers. We are creating another pond to the west but this is a critical pond to assist with the water coming off this land. The pond is not very deep towards the road, it has been silted in.

James R. Kamps was sworn in accordingly. The pond is a non-conforming pond that has been there for 40 – 50 years even before zoning. The quantity of runoff is part of the Soil and Water Phase 3 plan. Ponds must be in place to hold the water when houses are built, concrete streets are built, lawns etc, there will be more water and it will runoff faster. The pond must be there so the water doesn't runoff the property any faster than it did yesterday. After they get done with the engineering they may have to deepen that pond to hold the necessary quantity of water. The EPA Storm Water Act requires a certain level of water quality. The pond has to have a filtering affect. I believe this development will be under the watchful eye of the EPA since they have already made a report on it. There should be easements to the ponds and retention basins so that they can be maintained. This is all part of the post-construction, Soil & Water Phase 3 Plan. They are designed to catch the silt that flows with the runoff. The homeowners associations or someone else must be required to maintain these. If the variance is denied, then he may have to fill in the pond and relocated it back further. It probably would require the pond to be much deeper to maintain the correct volume and also keep it on one lot. The county does like to keep ponds on one lot.

Trustee Ray Schulte was sworn in accordingly: I have received this report from the EPA and I am very concerned. I am neither in favor of stopping Mr. Iacona's project nor denying these variances. But, I firmly believe that we should not give him anything until these issues are resolved. I spoke to the Chagrin River Valley group at a meeting for riparian setback planning and it is their opinion that one government agency should work with another. There are some serious violations here. I would like to see these things taken care of or some documentation addressing these issues. Before granting

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the variances at least on this part of the property we should respect the wishes of the Ohio EPA and have a written resolution. I didn't say deny it. Just hold off until these issues are resolved.

Mr. Tamulewicz: This is an area variance. According to our zoning code, all he has to do is show practical difficulty.

Ch. Manley: This development will be stalled until these violations are handled. This is an obvious practical difficulty. Are you asking to postpone this until he gets all these other issues resolved?

Mr. Schulte: I am suggesting to the board to consider holding off. When I read a report such as this with flooding and all the issues, I get very concerned. In our spirit of trying to be cooperative sometime we overlook these details until there is a big problem with flooding. Situations sometimes are not addressed when they need to be addressed.

Trustee Ron Garapick was sworn in accordingly: I strongly agree with Mr. Schulte's comments. I suggest that we look at this as a whole project considering the EPA violations. I concur with the opinion of the representative from the Chagrin River Corridor Group that we do need to cooperate with other government agencies. Even though it is not an issue that is related to the storm water, the setbacks and things like that, it is related to the entire project as a whole. If there would be one incentive to get these violations corrected, in an expedient manner, it would be to address these issues first.

Ch. Manley: I fail to see that need because he can't sell a lot until this other stuff is done.

Mr. Garapick: Is that lot part of the project?

Ch. Manley: In a sense it is but it prohibits him from selling these 2 houses.

Mr. Garapick: This should be addressed as a project as a whole.

Ch. Manley: Do you feel that this could expose us to economic problems because it will prevent him from being able to sell these 2 houses that are part of the project but are not part of the violations? I just do not see how the house is part of this. I can see the pond but not the house.

Mr. Tamulewicz: What about the Joyce property? They have an existing detention pond. Who is responsible for maintaining the retention basin?

Mr. Iacona: The retention basins are part of the county's easement, the county engineer.

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Mr. Garapick: With all due respect to Mr. Iacona, who works very well with the township, it is not preventing or denying the variance, but only to encourage the remedy to the violations to move along rapidly. We should respect the other government agency's comments.

Mr. Iacona: I do understand these points, clearly. I do not take these things lightly. I hire engineers to make sure it is done right. There are new rules, new laws coming in as we speak. I try to make sure all laws and rules are fully followed and implemented. At times several issues are talking place simultaneously while planning a development. Problems arise and they need to be fixed in every project. In every project there are violations that need to be handled almost simultaneously. To have a totally different area of this project stalled -- I just first got notice this week. Sometimes it is only after the county engineer is on the property that he notices something or after a big storm. Things are always changing. It is a matter of seeing the violations and then getting them fixed. But, the safeguard for these types of situations is that the county engineer does not sign a final plat until all these retention basins, all the storm water things are constructed per their plans and approved. Therefore, if they do not sign the plat, it cannot be filed and I cannot sell anything. It is stalled. This is the ultimate safeguard. This is one situation that arose, I need to address it and fix it in a timely fashion or I will not get to the goal of selling the lots.

Mrs. Fox: Had you been in town and if you saw the letter from the EPA would you have been able to start investigating these points? Would you have cancelled this meeting tonight?

Mr. Iacona: No, I would not have cancelled this meeting because the BZA does not really handle these issues that the EPA is addressing. I talk to the different and appropriate government departments that pertain to the issues that I have. These are issues that are governed by the EPA and the Medina County Engineers. I talk to the BZA for variances etc. That is why there are inspectors. There will be things that need to be addressed, plans get modified, and things get modified even in the field upon inspection.

Mr. Tamulewicz: You have a pond that takes up a good portion of the lot. If you needed a larger retention pond you could enlarge the pond and use the whole lot and incorporate that into the development.

Mr. Iacona: Then it would not be a build able lot? If you look at that lot, it has more useable area for a home site than most other lots I have had. If the day comes where I can't fit a home on there, can't fit a septic, then it would be unbuildable. If that happens it would be our problem to fix it or blend it.

Mr. Kamps: The last one to sign these plats is the Medina County Engineer. Mr. Iacona is right. We need to have cooperation with the engineer's office to make sure

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we are on the same page. The engineer is the enforcement for all the storm water issues. Hinckley does not have the authority to do that right now.

Mr. Tamulewicz: Lots 1, 2 and 26 and 27 are Phase 1?

Mr. Iacona: That is correct.

Mr. Tamulewicz: How will they sign off on 1, 2, 26 and 27 without these other problems being corrected?

Mr. Iacona: They will not sign-off on them. The county engineer is the last person to sign the plat and he will not sign that plat which will actually allow me to record and actually create these lots until everything on the construction drawing and all the storm water issues have been corrected and satisfied to the county engineer's satisfaction.

Mr. Tamulewicz: You felt that you have a legitimate buyer for Lot 1?

Mr. Iacona: There is a contract for that property.

Mr. Tamulewicz: How long will these people wait?

Mr. Iacona: A realtor sold it and Mr. Giovinazzi has the contract; I know it is contingent on this. We cannot transfer it until final plat approvals.

Ch. Manley: In my opinion, to ask that this case be delayed is over-stepping the powers that the Board of Zoning Appeals holds. All this will mean is that it conforms to our zoning for these 3 issues.

Variance Request #1:

Mr. Tamulewicz made a motion to grant a variance to allow the existing house to remain in its current location at 2220 Stony Hill Road, 45 feet from the existing road right-of-way, and 35 feet from the proposed road right-of-way. The existing accessory building to also remain in its current location. This is described as Lot 1 in the Tamarijn Meadow Subdivision.

Mr. Zeleznak second.
No further discussion.

Vote: Fox – yes Zeleznak – yes Hoop – yes Tamulewicz – yes Manley – yes

Variance Request #2:

Mr. Tamulewicz made a motion to grant a variance to allow the existing house to remain in its current position at 2164 Stony Hill Road. This house is 82 feet from the existing road right-of-way and 72 feet from the proposed road right-of-way. The existing barn, also known as the chicken coop, to be torn down.

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Mr. Zeleznak second.

No Further discussion.

Vote: Fox – yes Zeleznak – yes Hoop – yes Tamulewicz – yes Manley – yes

Variance Request #3:

Mr. Tamulewicz made a motion to allow the existing pond located at 2164 Stony Hill Road to remain as located, 31 feet from the existing road right-of-way and 21 feet from the proposed right-of-way, the rear section of the pond to be filled in so that the edge of the pond will be 15 feet from the west (rear) property line. In no way does this variance alter or amend any federal, state, county or township rules.

Mr. Zeleznak second.

No Further discussion.

Vote: Fox – 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 may appeal to the Court of Common Pleas of Medina County because such decision is unreasonable or unlawful. They have 30 (thirty) days from the date the minutes of the appeal are journalized. The minutes of this hearing will be journalized on June 27, 2007.

Hearing was adjourned by Ch. Manley at 8:31 pm.

The board took a short recess before work session commenced.

WORK SESSION

Ch. Manley called the work session to order at 8:38 pm.

Roll found: Huff, Fox, Hoop, Zeleznak, Tamulewicz and Manley present. Mr. Pope of the Zoning Commission, Trustees Garapick and Schulte were also in attendance.

Clerk Garrett informed the board that Mrs. Fantone has contacted her via telephone and has decided that a bond for \$50,000 would be cost prohibitive for her and her husband. (Fantone variance hearing – May 23, 2007) According to Mrs. Fantone, the existing home at 840 Ridge Road will be demolished before the new house is constructed at the same address.

The board reviewed the minutes of the Fantone Hearing held May 23, 2007.

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

Mr. Hoop second.

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Vote: Huff - yes Zeleznak – yes Hoop – yes Tamulewicz – yes Manley – yes

Mr. Zeleznak made a motion to approve the Summary of Fact of the Fantone hearing held May 23, 2007 as submitted.

Vote: Huff - yes Zeleznak – yes Hoop – yes Tamulewicz – yes Manley – yes

The board will meet at 6:45 pm on June 27, 2007 to inspect the Service Garage property and the Madej property prior to the hearings to be held that evening

There will be a hearing on July 11, 2007 for the Groh variance application; this is in lieu of the July 25th regular hearing date. Packets for this hearing will be distributed on June 27, 2007. There will be no meetings for the month of August

Mrs. Huff made a motion to adjourn the work session at 8:50 pm.

Mr. Tamulewicz second.

Vote: Fox – yes Zeleznak – yes Hoop – yes Tamulewicz – yes Manley – yes

Patty Garrett, Zoning Clerk

Minutes Approved: _____, 2007

David Manley, Chairman

Tom Tamulewicz, Vice Chairman

Jeff Hoop, Member

David Zeleznak, Member

Dottie Fox, Member

Melissa Huff, Alternate Member

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