

## **Board of Zoning Appeals**

B-N-T Enterprises – Variance

Hawkins - Variance

September 12, 2007

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### **B-N-T Variance**

Ch. Manley called the hearing to order at 6:30 pm for site inspections of the two properties on tonight's agenda. After the site inspection, the members returned to the Town Hall. Ch. Manley reconvened the hearing at 7:06 p.m.

Roll found: Sullivan, Fox, Huff, Hoop, Zeleznak, Tamulewicz and Manley present. Also present: Ken Livingstone, Zoning Inspector, and 6 guests in the audience.

Ch. Manley announced that an application for a variance was submitted by Mr. Tim Noonan of B-N-T Enterprises, requesting a variance to construct a road that will be less than the required 50 feet setback from an existing building at 1545 W. 130<sup>th</sup> St. Hinckley Township.

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

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

Ch. Manley polled the Board as to whether they inspected the 1545 W.130<sup>th</sup> St. property.

**Response: Sullivan – yes Fox – yes Huff – 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. Mrs. Huff, acting as clerk for the evening in Clerk Garrett's absence, reported that no correspondence was received.

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 transcription purposes only and the written minutes and all attachments will serve as the official record of the meeting. 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

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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.

Mrs. Huff read the legal notice.

Mr. Tim Noonan was sworn in accordingly.

Mr. Tamulewicz: What is the width of the proposed road?

Mr. Noonan: I am not sure; it was designed to Medina County standards.

Mr. Tamulewicz: Is your measurement from the right-of-way or from the road?

Mr. Noonan: I think it is from the right-of-way.

Mr. Zeleznak: It is 60 feet wide.

Mr. Noonan: Sounds about right. Basically the road is going straight down the middle of the property.

Ken Livingstone, zoning inspector, sworn in accordingly: The road right-of-way is 60 feet with a 30-foot radius on the entrance. All setbacks meet our requirements or more except for the one that is being requested tonight for the variance.

Mr. Michael Sherba, 1515 W. 130<sup>th</sup> St., Hinckley Twp., was sworn in accordingly: I do not have any objections and I rechecked it today, it is 55 feet.

Mr. Tamulewicz made a motion to grant a variance of five (5) feet from the 50-foot setback requirement of Hinckley Zoning Regulations.

Mrs. Fox second.

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

Ch. Manley stated that this board has the power to grant an applicant's request for a variance. Only after the applicant has proven by a preponderance of reliable substantive and probative evidence all the items stated in the basic conditions for variance in Hinckley Township Section 13.3A.3a. 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 grounds that this decision was unreasonable or unlawful. They have 30 days from the date that the minutes of the hearing are journalized. In this case the minutes will be most likely be journalized on September 26, 2007. The applicant has 90 days after the

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minutes are journalized to commence construction on this project. Please call the zoning office to verify the signing of the minutes.

Mrs. Fox second.

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

## **Hawkins Variance**

Ch. Manley called the hearing to order at 7:45 pm.

Roll found: Sullivan, Fox, Huff, Hoop, Zeleznak, Tamulewicz and Manley present. Also present: Ken Livingstone, Zoning Inspector and 6 guests in the audience.

Ch. Manley announced that an application for a variance was submitted by Mr. William E. Hawkins, II, of 2255 Country Brooke Blvd., Hinckley Twp., requesting permission to construct a pond less than the required 50' from the road right-of-way at the above address.

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

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

Ch. Manley polled the Board as to whether they inspected the property at 2255 Country Brooke Blvd.

**Response: Sullivan – yes Fox – yes Huff – 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. Mrs. Huff, acting as clerk for the evening in Clerk Garrett's absence, reported that no correspondence was received.

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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.

Mrs. Huff read the legal notice.

Mr. Donald Dobson was sworn in accordingly.

Ch. Manley: I understand that you are the contractor on this job for Mr. Hawkins. You are aware of the information that the Township has provided to you regarding soil conservation, etc.?

Mr. Dobson: Yes. By your own zoning book, any amount of dirt is considered an embankment. The County states that an embankment is at least 3 feet high. If it is not 3 feet high, it is not considered an embankment. It is a little more than 3 feet now because there is extra dirt piled there now for a landscape mound. This is one reason we have a problem, I went by the 3-foot rule.

Ch. Manley: Is this the drawing that was submitted with the application?

Mr. Dobson: It should have been 80 feet not 130 feet. It is a mistake.

Mr. Manley: Did you contact the building department to correct this error?

Mr. Dobson: I didn't notice it. By the time we got the permit, it was staked out. It was a mistake. There is no way to measure from the ROW. It is not marked. The 80 feet was from the center of the road.

Mr. Tamulewicz: We measured 62 feet from the top of the bank to the center of the road. It should have been 80 feet per your admitted mistake.

Mr. Dobson: It would have been 80 feet to the water line.

Mr. Tamulewicz: Ok, that is to the water line.

Mr. Dobson: The homeowner wants the pond to be as big as possible because he has a lot that is close to being an R2, it is barely an R1. It is 4 acres.

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Mr. Ken Livingstone was sworn in the previous hearing.

Ch. Manley: Did you inspect the stakes when they were put in?

Mr. Livingstone: Not right away, it would be several weeks.

Ch. Manley: Are we supposed to inspect them prior to digging?

Mr. Livingstone: Yes. We are also supposed to inspect them when digging begins, that will be known as the second inspection.

Mr. Manley: Did you issue a permit?

Mr. Livingstone: Yes. The service department called me and reported that a lake was dug that looked to close to the street. I went to look at it and then gave them a citation. There are actually 2 separate lots there. One is 2.1 acres and the other is 2 acres. It is listed on the subdivision as 2 parcels. If they were combined, we did not get a Mylar on it.

Mr. Zeleznak: Where the pylon cone is, in this picture, this should be a minimum of 50 feet and it is only 17 feet now. Is it 17 feet from the ROW to the base of the mound?

Mr. Dobson: Yes.

Mr. George Jindra, 1646 Stony Hill Road, was sworn in accordingly: This mound abuts the back of the Hawkins property. His pond and the dirt that was removed are actually now against my property line. I am in full support of the pond as it is now. I think their pond looks beautiful. I have spoken to the 4 neighbors, I have spoken to 2 of them and they have no objections. If the others had an objection, they would be here tonight to voice it. If the purpose of zoning codes are to maintain property values, enhance safety and maintain aesthetics, I do not believe this pond is a threat to any of these things. It is safe due to the embankment and it is far enough off the road. When it is landscaped, there will be yet another barrier between the road and the pond.

Mr. Tamulewicz: When you filled out the application, regarding that you certified that all information was accurate, did you just sign it or did you read it?

Mr. Dobson: To be honest, I did not look at the drawing in your zoning rules regarding the pond. I know Ken did tell me to call him. I did not call him. I know I am in error on that. I did not look at the paper very well before I signed it.

Mr. Tamulewicz: What do you have to do to that pond in order to be in compliance?

Mr. Dobson: it would have to be filled in 20 feet. Right now the toe of the pond is about 30 feet from the ROW because I rearranged the dirt and made the bank steeper. If you

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look at the picture, you will see that the bank is much more gradual. Your code states that the slope cannot be steeper than 2½ : 1, right now I am closer to 3:1. The dam can only be 8 feet wide and right now I am at 12 feet to 15 feet. This does make a better dam. If I crunch the numbers, I can make an 8 foot dam, 2 ½ : 1 slope and fill in 20 feet. If you really think this would be a better pond, then that is the way it has to be. The acreage of the pond is about one third of an acre.

Mr. Tamulewicz: It is 32 feet from the ROW to the toe of the dam. We are like 33 feet short.

Mr. Will Hawkins was sworn in accordingly: Some mistakes were made no question.

Mr. Livingstone: The centerline of survey of the road that is where the ROW comes from.

Mr. Zeleznak: We measured 15 feet from the ROW to the toe of the mound. That is a 35-foot variance.

Duncan Factor Review:

### **Factor #1**

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

*Yes.*

### **Factor #2**

Is the variance substantial?

*Yes.*

### **Factor #3**

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

*No.*

### **Factor #4**

Will the variance adversely affect the delivery of governmental services?

*No.*

### **Factor #5**

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

*Yes*

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### **Factor #6**

Can the problem be solved by some manner other than the granting of a variance?

*Yes*

### **Factor #7**

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

*Yes*

Mr. Tamulewicz made a motion to grant a variance to Mr. W. Hawkins to allow for construction of a pond less than the required 50-foot setback from the road right-of-way. Mr. Zeleznak second.

No further discussion.

Ch. Manley stated that this board has the power to grant an applicant’s request for a variance. Only after the applicant has proven by a preponderance of reliable substantive and probative evidence all the items stated in the basic conditions for variance in Hinckley Township Section 13.3A.3a. 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 grounds that this decision was unreasonable or unlawful. They have 30 days from the date that the minutes of the hearing are journalized. Construction must commence 90 after the signing of these minutes. In this case the minutes most likely will be journalized on September 26, 2007.

**Vote: Huff– yes Zeleznak – no Hoop – yes Tamulewicz – yes Manley – no**

Motion passes by a vote of 3 to 2.

### **Work Session:**

The minutes of the July 11, 2007 hearing were reviewed.

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

Mr. Hoop second.

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

Mr. Tamulewicz made a motion to adjourn the work session at 8:15 pm.

Mr. Zeleznak second.

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

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Patty Garrett, Zoning Clerk

Minutes Approved: \_\_\_\_\_, 2007

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David Manley, Chairman

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Tom Tamulewicz, Vice Chairman

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Jeff Hoop, Member

\_\_\_\_\_  
David Zeleznak, Member

\_\_\_\_\_  
Dottie Fox, Member

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

\_\_\_\_\_  
Mr. Sullivan, Alternate Member