

Board of Zoning Appeals

Morgan – Variance

Gacom - Variance

Klapwijk – Variance

Szychowicz – Variance Hearing

October 24, 2007

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Roll found: Sullivan, Fox, Huff, Hoop, Zeleznak, Tamulewicz and Manley present. Also present: Charlie Pope, Zoning Inspector, James Kamps, Ch. of the Zoning Commission and 11 guests in the audience.

Morgan Variance Hearing, 1557 Bellus Road

Ch. Manley called the hearing to order at 7:30 pm. The site inspection was held on Saturday, October 20, 2007 at 10:00 am.

Ch. Manley announced that an application for a variance was submitted by Todd and Kathy Morgan requesting a variance to permit a swimming pool to remain in its present location at the above address, which is less than the minimum setback from the street right of way and less than the minimum side yard width.

Ch. 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 1557 Bellus Rd. 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 has 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.

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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 if they wish to give testimony. All testimony will be given from the podium.

Mrs. Huff read the legal notice.

Mr. Todd Morgan was sworn in accordingly. Mr. Morgan paraphrased the letter that he submitted with his application. He explained that his builder informed him that a permit was not needed in Hinckley to construct a pool. He has lived in Hinckley for 4 years. The location for the pool was chosen because of flooding of the yard.

Mr. Morgan submitted Exhibit A – a petition from neighbors and Exhibit B - a letter from a neighbor. Ch. Manley explained that since these residents were not present to give testimony as well as be cross-examined, they would not carry much weight, if any, in this hearing.

Ch. Manley stated that the board measured 31 feet to the center of the road.

Discussion of the measured distances. Discussion the layout of the yard.

Mr. Tamulewicz discussed the Duncan Factors:

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.

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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?

No

Factor #6

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

No, unless the pool is removed.

Factor #7

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

Mr. Tamulewicz stated that this was an independent decision to be made by everyone of the BZA.

Mr. Morgan: We were thinking about putting a fence around it.

Mr. Pope stated that it is not a regulation but it is a good idea for safety.

Mr. Tamulewicz made a motion to grant a variance to allow the swimming pool to remain in its present location approximately 16 feet from the road right-of-way on Laurie Lane.

Mr. Hoop 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 13.3.A.3.a. 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 most likely be journalized on November 14, 2007. Please call the zoning office to verify the signing of the minutes. The applicant must commence construction within 90 days after the meeting at which the Board of Zoning Appeals grants the variance (i.e., 90 days from this October 24, 2007).

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

The variance was approved 5 – 0.

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Gacom Variance Hearing, 2369 Hunter's Creek Circle

This hearing was called to order at 7:55 pm.

The site inspection was held on Saturday, October 20, 2007 at 10:00 am.

Ch. Manley stated that a variance request was submitted by Neil Gacom, 2369 Hunter's Creek Circle, requesting to construct an accessory building with a setback (less than the principle building) 50 feet from the right of way and 15 feet from the rear yard property line. Zoning Code requires a minimum of 90 feet setback from the street right of way and a rear yard minimum depth of 50 feet.

Ch. 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 2369 Hunter's Creek Circle.

**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. Neil Gacom was sworn in accordingly.

Mr. Gacom: Last time when I was awarded the variance, I misunderstood and assumed that I was not to pull the building permit until I was ready to begin construction. I thought that I had ninety days to begin construction once I pulled the permit, and if construction was not begun, I could lose the permit. It was my misunderstanding. It turned out to be the opposite. I later discovered that I had ninety days from the time the variance was approved by this board to pull the permit. By the time I had arranged for a contractor to build the building, it was summer: I got busy with my kids. Time went by, and by the time my contractor came into the zoning office to pull the permit, he discovered that my variance had expired. That is why I am before you tonight. I am applying for another variance. It is the exact same plan. I have not changed anything. The pins are the same pins in the same location as the last time. The purpose is also the same.

Ch. Manley: Do you understand that you must start to do something within the 90 day period? Actually you have done something, but after the fact.

Mrs. Yvonne Wallrath, 2297 Weymouth Rd., was sworn in accordingly: We never received notification of the previous variance request which has now expired. (See attached Exhibit A – protest letter). Our property has been misrepresented as land-locked back-land in these variance requests, although it has 200 feet frontage on Hunter's Creek Circle and nearly 4 acres of beautifully wooded land. We have it listed for sale. (See also the letter submitted from Caldwell-Banker - Exhibit B). Our real estate agent feels this variance will reduce the sale value of our property. We protest the variance.

Mr. Arthur Wallrath, 2297 Weymouth Rd., was sworn in accordingly: I have had an opportunity to look at the property. According to the map it shows 50 feet from the street right-of-way, 15 feet from the back line and 80 feet from the sideline. A visual inspection of the prepared land is actually 30 feet from the side line. If his map shows 80 feet from the side lot line, isn't this something he should have to comply with instead of the 30 feet.

Ch. Manley: Let me ask you a hypothetical question. He is a car collector. Would it be better if he parked those cars over there, which of course he could do?

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Mr. Wallrath: That is not the issue. I am a mechanic and I understand that he collects cars. I have no objection to him. I have dealt with cars all of my life. It is not so much what I may object to; it is when I try to sell my property. It is what others may object to. This issue is where he is planning to put the building.

Mrs. Wallrath: The property has been for sale since we received our recent tax bill. This property is our nest egg. We are concerned about what that building will do to our property's value.

Discussion of the various pieces of property in the vicinity,

Discussion of whether the Wallraths were notified of the first variance application.

Mr. Zeleznak: Who stated that this variance, if approved, would reduce the value of your land or make it unmarketable? Was this your opinion or the opinion of the Coldwell-Banker Realty?

Mrs. Wallrath: They did not say that they could not sell the property. They said that it would lower the property's value.

Mr. Wallrath: I was not familiar with the code. I didn't know for sure, how far from the property line it was supposed to be. He was clearing the land and he put gravel down. I did not receive the notice at that time. Now that I have received notice I have checked out the code.

Ch. Manley stated that since the author of the letter from Coldwell Baker was not present, the letter could not be taken as testimony but it would be made a part of the record.

Mr. Chuck Pope stated that he had no further comments since the variance was approved earlier this year.

Mr. Tamulewicz: Mr. Gacom is entitled to an accessory building. We inspected the property, we walked the property. He has no other place to put it.

Mrs. Wallrath: We had to come here and at least try to protect our property value.

The Board reviewed the Duncan Factors:

Factor #1

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

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Yes.

Factor #2

Is the variance substantial?

No.

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?

Mr. & Mrs. Wallrath have stated “yes”

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.

Factor #6

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

No.

Factor #7

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

The Board felt that this was open for interpretation.

No further discussion of the Duncan Factors.

Mr. Tamulewicz made a motion to grant the requested variance with the setbacks to remain the same as the ones listed in the January 10, 2007 hearing.

Mr. Zeleznak second.

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

No further discussion.

Variance was granted by a vote of 5 for and 0 against.

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

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and probative evidence all the items stated in the basic conditions for variance in Hinckley Township Section 13.3.A.3.a. 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 November 14, 2007. The applicant must commence construction within 90 days after this official decision by the Board of Zoning Appeals (i.e., 90 days from October 24, 2007).

Mr. Tamulewicz: Mr. Gacom, you heard your neighbors' concern. I am sure that they would appreciate some screening: pines trees, shrubbery.

Hearing adjourned at 8:20 pm.

Klapwijk Variance, 835 Bellus Road

Ch. Manley called this hearing to order at 8:30 pm. The site inspection was held on Saturday, October 20, 2007 at 10:00 am.

An application for a variance was submitted by Arnoud Klapwijk of 1864 Hinckley Hills Rd., Hinckley Township, Ohio requesting permission to construct an addition to the principle building at 835 Bellus Rd. (pp #016-03D-16-021) which will be less than the minimum setback from the street right-of-way of 75 feet for this substandard lot and to construct a garage at the same address which will be located less than the 15 feet minimum rear depth and less than the minimum set back from the street right-of-way of 75 feet.

Mr. Klapwijk was sworn in accordingly.

Mrs. Fox: Did you consider adding on to the back of the house?

Mr. Klapwijk: The kitchen is on the back side so I would have to reverse everything inside the house.

Mrs. Fox: Could you bring the proposed garage forward?

Mr. Klapwijk: The distance is tight. It would be difficult to get a vehicle in and out. I am going to leave the driveway where it is, and I going to make it a right turn. It is probably not more than 10 feet off the driveway as it is.

Ch. Manley: I would like to enter into the record that there is an existing garage on this property, approximately 20' x 20' that will be torn down. Part of the garage appears to be on the neighbor's property.

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Mr. Klapwijk: It appears to be but it is vague. I tried to measure. I do not think anyone knows where the middle of the road is anymore. I tried measuring it, and if it is correct then the house is sitting in the right-of-way.

Mr. Tamulewicz: Why did you buy this house?

Mr. Klapwijk: To fix it up. I knew what the zoning regulations were. This is a sub-standard lot.

Mr. Zeleznak: What will happen with the house once it is livable?

Mr. Klapwijk: It will be a rental property.

Mr. Zeleznak: You are asking for 5 feet from the fence. Right now you have a neighbor that is happy with your improvements. Will you be able to maintain this garage with only a 5 foot area?

Mr. Klapwijk: Yes.

Mr. Tamulewicz: You do not have the right to trespass onto your neighbor's property to maintain yours.

Mr. Krause, 1763 Elaine Ct., was worn in accordingly: I do not have any problem with this construction plan at all.

Mr. Klapwijk: When Ken was still here we looked this up. We measure the right of way from the center of the road. It is actually 45 feet from the right-of-way.

The Board reviewed the Duncan Factors:

Factor #1

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

No.

Factor #2

Is the variance substantial?

No.

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?

Yes, for the better. No, they will not suffer a substantial detriment if the variance is granted.

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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.

Factor #6

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

No.

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. .

No further discussion.

Mr. Tamulewicz made a motion to grant a variance to Mr. Klapwijk to construct an addition to the house at 835 Bellus Road, with a front yard setback of 43 feet from Bellus Road, and a 15-foot setback from the road right-of-way on Elaine Court, and with a 10-foot setback from the rear yard which at this time is owned by John Krause.

Mrs. Fox second.

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 13.3.A.3.a. 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 November 14, 2007. The applicant must commence construction within 90 days after this official decision by the Board of Zoning Appeals (i.e. 90 days from October 24, 2007).

No further discussion.

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

This hearing was adjourned at 8:47 pm.

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Szychowicz Variance Hearing, 1753 Maple Hill Dr.

Ch. Manley called the hearing to order at 9:00 pm. The site inspection was held on Saturday, October 20, 2007 at 10:00 am.

Ch. Manley announced that an application for a variance was submitted by Stanley Szychowicz of 2629 Babcock Rd., Hinckley Township, requesting to construct a primary residence at 1753 Maple Hill Drive, Hinckley Township (pp #016-03A-40-039), that will be located less than the minimum setback from the street right-of-way of 90 feet, and less than the minimum side yard width.

Ch. 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 1753 Maple Hill Drive.

**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. Szychowicz was sworn in accordingly.

Mr. Szychowicz: I inherited the property from my mother last year. I was born and raised there.

Mr. Tamulewicz: Is that gravel driveway going to go all the way around the house?

Mr. Szychowicz: No the upper drive will stop and the garage and the lower drive will stop at the lower garage.

Mr. Tamulewicz: The lower driveway is actually higher up on the lot?

Mr. Szychowicz: No, the lower driveway is the first one you come to going up the hill.

Discussion of the proposed garage.

Mr. Tamulewicz: How far down is the bedrock?

Mr. Szychowicz: About a foot.

Mr. Tamulewicz: You will not need a concrete driveway.

Mr. Szychowicz: No, in fact the gas line is only beneath the bedrock about 6 inches.

Mrs. Fox: Will the home have a basement?

Mr. Szychowicz: We are hoping to. We will have no choice but to build without a basement if it comes to that.

Mrs. Fox: If you do that, can you move the house back further?

Mr. Szychowicz: No I can't. I do not want to lose the existing garage, and the original septic system is right along side the garage. We will have to install a new septic system and have a new well drilled. The original well is right behind the original house.

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Discussion of Mr. Szychowicz' cellar and how it is too short for his height.

Mrs. Fox suggested that if he built with no basement, he could move the house back behind the 90 foot setback.

Mr. Szychowicz: I could only do that if I could get a variance to build behind the garage. Then I would have to turn the house 90 degrees because the property is only 120 feet wide back there. The problem to turn the house is that I would have to have a longer driveway and gas line. I do not want to lose the garage because there is nothing wrong with it.

Mr. Tamulewicz: You cannot have an accessory structure in front of the principal residence.

Ch. Manley: There are some problems on that street as far as the road right-of-way.

Neither Inspector Pope nor Jim Kamps had any additional comments.

Mr. Paul Neff, 10363 Valley Forge Dr., Parma Heights, Ohio: The reason I am here is that I own 1755 Maple Hill. It is a sub-lot just to the east of this property. My concern is that when I build a house in the near future. It is better for me if Mr. Szychowicz' house is further forward. It will not bother my construction and it will be further from my view. I am endorsing approval of the variance. As a neighbor, it does not really affect me.

Mr. Tamulewicz led the discussion of the Duncan Factors

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?

No.

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.

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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.

Factor #6

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

It is not practical. The garage would have to be taken down.

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 moved to grant a variance for the construction of a house at 1753 Maple Hill Drive, as per the drawing submitted with the application, for the proposed house.

Mr. Zeleznak second.

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 13.3.A.3.a. 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 November 14, 2007. The applicant must commence construction within 90 days after this official decision by the Board of Zoning Appeals (i.e., 90 days from October 24, 2007).

Work Session:

The minutes of the September 12, 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

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Ch. Manley made a motion to accept the minutes of the Summary of Fact for the Hawkins hearing as presented.
Mr. Hoop second.

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

Ch. Manley made a motion to accept the Summary of Fact for the B-N-T Variance hearing.
Mr. Hoop second.

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

Work session was adjourned at 9:45 pm.

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

Mr. Sullivan, Alternate Member