

Board of Zoning Appeals

Cancelliere – Variance Request

Ridgemont Properties – Conditional Request

September 24, 2008

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Cancelliere Variance Request

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

Roll found: Manley, Fox, Hoop, Zeleznak, Huff, Sullivan and Mainzer present. Also present: Jim Kamps, Trustees Schulte, Catherwood and 1 guest.

Ch. Manley polled the board as to whether they reviewed the application packets for the Cancelliere Variance request.

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

Ch. Manley polled whether the Board inspected the property at 225 Somerset Drive.

**Response: Manley – yes Fox – yes Hoop – yes Zeleznak –yes
Huff – yes Sullivan – yes Mainzer – 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 that a schedule or agenda be mailed to them by providing a self addressed stamped envelope in advance.

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

Ch. Manley noted that the Board of Appeals does not accept as testimony 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. He also noted 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. 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.

Photographs of the fencing (Exhibit A-1) were submitted for the record by Mr. Cancelliere.

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Mr. Brian Cancelliere of 225 Somerset Drive was sworn in accordingly: When I initially contracted with Styx Valley Fence Company, they informed me that no permits were required in Hinckley Township. I have since found that there are some rules regarding installation of fences. When I discovered that my fence was in violation, I called the fence company and they came out to the property to move the fence. The lawn irrigation company came out to mark those water lines. The fence company stated that they could move the fence back 45 or 50 feet but that would have put the fence in the middle of the front yard. This would not look appropriate. I told them to move the fence back as far as they thought feasible. They stated that it would be just short of 30 feet. When I received a second letter from the Zoning Office, I contacted Mr. Pope. He notified me that the fence was still too close to the road, hence my variance request.

Ch. Manley: The board has measured it and determined that the fence is about 6 feet too close to the street right of way.

At this time the board had no additional questions.

Mr. Chuck Pope, Zoning Inspector was sworn in accordingly: I have nothing to add. This has been an ongoing situation. I measured 5'4" short. I measure from the center of the road. I realize that the fence is bowed. I do not have any drawings indicating the utilities or sprinkler pipes. I do not know if it could or could not be moved back.

Ch. Manley: Does the Township have a utility right-of-way?

Mr. Pope: In some instances we do. I do not know if it is the same as in other subdivisions. In some there is a 12-foot offset from the pavement that the utility companies work within.

Mr. Zeleznak: What is the road right-of-way figure?

Mr. Pope: Thirty feet from the centerline of the road. In the newer developments the center of the road is centered.

Mr. Zeleznak: Is there a utility easement and a road right-of way?

Mr. Pope: They work in the road right-of-way.

Ch. Manley: So you don't pay attention to the maintenance box location?

Mr. Pope. No.

Mr. Sullivan questioned whether any government services would be affected by the fence.

Mr. Pope: I can't answer that question because I do not have the resources that they do. We do not have the maps that they do.

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Mr. Zeleznak: We really don't know where the utilities are, do we?

Mr. Pope: No, we do not. I was not the zoning inspector at that time. That was probably done when they laid out the original development.

Mr. Jim Kamps, chairman of the Zoning Commission: Apparently the fence company did begin the installation of the fence without obtaining any permits. The previous inspector did ask the fence to be moved, and the fence was moved. Most of the developments these days have 60 feet road right-of-way plus another 10 or 12 feet of utility easement behind it. It would be proper to have the correct utility company flag where the underground utilities are located.

Ch. Manley distributed a letter dated November 21, 2007 that was written to Mr. Pope from the Medina County Prosecutor James Bennett. The letter states that it must be determined if the County owns the R-O-W or if the County only has an easement. If the County owns the road R-O-W than a sign cannot be located In the R-O-W without obtaining the county's permission. This may be a similar situation. (See letter attached to minutes dated 11/21/2007)

Mr. Kamps: I believe that that would be county property there because most all of the developments with dedicated roadways belong to the county.

Mr. Cancelliere: The only way the fence company could have moved it back further and avoided the utility lines it would have to be moved well past the utility box. At that point it would look rather silly in the middle of the property. It was never my intention to go against zoning, I moved the fence. I didn't think that a few feet would matter.

Ch. Manley asked if the board would be in favor of granting a recess so that Mr. Cancelliere could check with the county. Mr. Manley is not sure that this is a case that should be heard by the Board of Zoning Appeals.

Mr. Cancelliere: I checked with the Prosecutor and he stated that is was an issue that I needed to resolve with the Township.

Ch. Manley: Would you be in agreement to have it reconvene in November (November 12, 2008) so you could check again with the Prosecutor?

Mr. Cancelliere: Do you know who I should contact?

Ch. Manley: At this time it would be Brian Richter at the Medina County Prosecutor's office.

Mrs. Fox made a motion to continue the hearing to November 12, 2008.

Mrs. Huff second.

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

Hearing adjourned at 7:53 pm

Ridgemont Properties Conditional Use Request.

Ch. Manley called the Ridgemont Property hearing to order at 8:00 pm.

Roll found: Manley, Fox, Hoop, Zeleznak, Huff, Sullivan and Mainzer present. Also present: Jim Kamps, Trustees Schulte, Catherwood and 1 guest.

Ch. Manley polled the board as to whether they reviewed the application packets for the Ridgemont Properties Conditional Use request.

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

Ch. Manley polled the Board as to whether they inspected the property at 1921 Ridge Road.

**Response: Manley – yes Fox – yes Hoop – yes Zeleznak – yes
Huff – yes Sullivan – yes Mainzer – 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 that a schedule or agenda be mailed to them by providing a self addressed stamped envelope in advance.

Ch. Manley asked if the zoning office had received any written or verbal communication pertaining to this hearing. Ms. Garrett reported that a letter from Diane Dermody, of the Highland Library was received. Clerk Garrett read the letter aloud. Ch. Manley stated 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.

Ch. Manley noted that the Board of Appeals does not accept as testimony 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.

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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.

Because there were no representatives of the Kass party in attendance the Board voted to continue the hearing to November 12, 2008. The Board has many questions for the parties involved such as future ownership of the property, maintenance on the driveway and whether there have been any complaints logged by the police department.

Mrs. Fox made a motion to continue to the hearing to November 12, 2008.

Mrs. Huff second.

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

Hearing adjourned at 8:16 pm.

Work Session

Minutes of the June 25, 2008 work session were reviewed.

Mrs. Fox made a motion to accept the minutes as presented.

Mr. Hoop second.

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

Ch. Manley reminded the board that the next hearings would take place on October 22, 2008, site inspections for those hearing would be Saturday, November 18, 2008 at 10:00 am.

Work session adjourned at 8:30 pm.

Patty Garrett, Zoning Clerk

Minutes Approved _____, 2008

David Manley, Chairman

Dottie Fox, Vice Chairman

Jeff Hoop, Member

Dave Zeleznak, Member

Melissa Huff, Member

Kevin Sullivan, Alternate Member