

## **Board of Zoning Appeals**

Bodnar – Variance Request

Groh – Variance Request

October 22, 2008

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### **Bodnar Variance Request**

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

Roll found: Fox, Hoop, Zeleznak, Huff, Sullivan and Mainzer present. Ch. Manley and Mrs. Huff had excused absence. Trustee Catherwood and Zoning Inspector Pope were also present.

V. Ch. Fox 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. Please note that a person is guaranteed the right to attend a public meeting but not the right to be heard. All persons wishing to testify must do so from the podium, must identify themselves, give their residence address and be sworn in. Evidence and testimony must be pertinent to the hearing. It is the chairman's discretion to limit personal comments and attacks, opinions, editorializing, and or repetitious statements, testimony or evidence previously given. Disruptive persons will lose the right to remain at this hearing.

V. Ch. Fox 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. She explained to those present that the meeting is being taped for transcription purposes. In addition she noted for the record that the documents that relate to this application might include written communications from persons who are not present this evening. 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. She 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.

Clerk Garrett read the Bodnar legal notice.

V. Ch. Fox 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 public.

V. Ch. Fox appointed alternates Mr. Sullivan and Mrs. Mainzer to voting positions in the absence of Mr. Manley and Mrs. Huff.

The applicant has submitted an application to this board of appeals and certain documents in support of their application. The applicant has submitted the following: Application for Variance to the Board of Zoning Appeals, map of property and legal descriptions.

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The applicant has stated on the application that “because of the location of a proposed septic system, location of a proposed house needs to be positioned ninety feet off the street and nearer the side-line property line than the zoning codes allows. The original application for the building permit was denied. The reason for denial was the proposed house would be positioned less than the minimum lot width at the building line of 175 feet and less than the minimum side-lot width of 30 feet.

V. Ch. Fox: The notice of this application was properly given in local newspapers and the applicant and the application has been available for public review and comment.

Clerk Garrett stated that there has been no correspondence relating to this application.

Vice Chairman Fox polled the board as to whether they reviewed the application packets for the Bodnar variance request.

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

V. Ch. Fox polled the Board as to whether they inspected the property at 1362 River Ridge Oval, Hinckley Township on October 18, 2008.

**Response: Fox – yes Hoop – yes Zeleznak –yes he Board of Zoning Sullivan – yes Mainzer – yes**

Mr. Ken Bodnar, 1352 River Ridge Oval, was sworn in accordingly: The reason I am here tonight is we took 2 lots and combined them into one lot. I purchased an additional three acres and now have almost 10 acres of property. We would like to sell our house and include approximately 6 acres with it. We will then have 3 acres remaining to sell separately. I do not want to build on that lot but sell it so someone else may build a house. The Medina County Planning Commission refuses any further approval pending variance approval from Hinckley Township. I want to be able to say to a prospective buyer that the 3 acres is a buildable lot.

V. Ch. Fox: So the lot you have at this time is not a legal buildable lot?

Mr. Bodnar: My application for the house on the 3 acres was denied.

Mr. Sullivan: Have I heard you correctly, you have not split that lot off as of yet?

Mr. Bodnar: That is correct.

Mrs. Fox: I am concerned about this Board’s jurisdiction in this case. The lot has yet to be legally split. How can we grant an appeal to something that does not exist?

Mr. Bodnar: I am in a catch-22. I have someone interested in the original house but I cannot tell them if the 3 acres is for sale separately or not. The new requirement for a drip septic system is the problem. If it was the old system I would have been fine. The

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Planning Department said that I could not get grandfathered in on the older system. The double drip septic system will take up a large amount of space. At this time, I currently have a ground level regular septic system, not a mound.

Mr. Sullivan: The problem is that in the future, if a person does decide to build a home, no one knows what the septic system requirements would be in the future. We would be only speculating as to whether there is a need for the variance or not because a different system may be in effect.

Mr. Bodnar: I am just trying to form a lot that is saleable.

Mr. Zeleznak: This is just too open-ended. This is similar to creating zoning. This board cannot create zoning.

Mr. Bodnar: Do you think it would s be appropriate to tell the planning commission that this was discussed with the Hinckley BZA and that if someone was ready to build, it would be likely approved? I cannot sell this lot if I cannot say for sure that it is a buildable lot.

V. Ch. Fox: How much investigation have you done regarding the typed of septic systems that are available?

Mr. Bodnar: From what I understand, that is the only spot on the property that can be used.

V. Ch. Fox: Have you thought of changing the shape of that lot?

Mr. Bodnar: Because of that topography, there is a pond to the north and east of it, also a large ravine, disturbed earth between the ravines because of land bridges that were installed, and a gas line, there is not a good spot. The only area is directly behind my house and that is not a good area. It is not practical and I am trying to keep it close to 3 acres.

Mr. Zeleznak: I just do not believe we can vote on an unknown situation

Mr. Bodnar: Can I get something from you to satisfy the planning commission?

Mr. Zeleznak: I do not think we could give anything to them to say that house is permitted on that proposed lot.

Mr. Bodnar: We have a problem here and I am looking for a solution. I have gone through every channel that I am aware of. What can we do to get to the next step? I have 3 acres that would be a beautiful home site; I'd like to give somebody the opportunity to buy that lot.

V. Ch. Fox: Have you thought about changing the size of that lot and including more land?

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Mr. Bodnar: Some of that land has been disturbed too, especially where the gas line runs. I think it would be an issue.

Mr. Hoop: How did this become an issue?

Mr. Bodnar: I thought this was going to be a simple thing when they came out and did tests for a septic. They thought that a typical mound system would not work. I brought in Kathy Bender, engineer. She came up with using a double drip system. This system needs to be located on a very specific section of that lot. I designed a house with three bedrooms and this was the system that was recommended.

Mr. Sullivan: There is nothing here to act on. We can't grant a variance when we do not know all the facts. What you are asking us to do is give an advisory opinion. This would be pure speculation. If we go forward with this, and deny it, what would you do? You might be totally out of solutions then. You may want to withdraw your appeal and have the county record your deed. Sell the property and let the new owners decide where their house will be located and allow them to request a variance. But at this time, this is not an issue for this board at this time.

Mr. Bodnar: Can we talk off the record.

Mr. Zeleznak: No.

Mr. Bodnar: If I return to the Medina Planning Commission and I inform them that we had this discussion and I decided to withdraw, I still need the lot recorded. The new owners would still require a variance unless a new septic system would be invented in the meantime, what is the likelihood that a variance would be granted at that time?

V. Ch. Fox: We cannot predict that.

Mr. Zeleznak: These are all unknown. We have to uphold the zoning. We cannot make any decisions or give opinions on something that at this time is unknown. Have you tried selling the property in its entirety?

Mr. Bodnar: No. I built it 17 years ago and at this time I am planning on taking a loss if I sell it in its entirety. If I split it off I might make a little bit of profit.

V. Ch. Fox: At this point we need a decision from you.

Mr. Bodnar: I would hate to have it denied therefore I will have it withdrawn. If you were going back to Medina County Planning, what would you do? I need to get this lot recorded.

Mr. Zeleznak: We cannot give that type of advice.

Mr. Hoop: There is more than one type of septic, do some investigation, see if another type of septic system could be used, and speak to someone else.

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V. Ch. Fox: We don't have a suggestion for you. You need to make a decision at this time.

Mr. Bodnar: Yes, I will withdraw my appeal.

V. Ch. Fox: You can always come back.

Mr. Bodnar: Thank you.

Hearing was adjourned at 8: 00 pm.

At this time the board took a brief recess.

### **Groh Variance Request**

V. Ch. Fox called the hearing to order at 8:05 pm.

Roll found: Fox, Hoop, Zeleznak, Huff, Sullivan and Mainzer present. Mr. Manley and Mrs. Huff had excused absences. Trustee Catherwood and Zoning Inspector Pope were also present.

V. Ch. Fox 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. Please note that a person is guaranteed the right to attend a public meeting but not the right to be heard. All persons wishing to testify must do so from the podium, must identify themselves, give their residence address and be sworn in. Evidence and testimony must be pertinent to the hearing. It is the chairman's discretion to limit personal comments and attacks, opinions, editorializing, and or repetitious statements and testimony and evidence previously given. Disruptive persons will lose the right to remain at this hearing.

V. Ch. Fox 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.

V. Ch. Fox 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

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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.

Clerk Garrett read the legal notice for the Groh hearing.

V. Ch. Fox 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.

V. Ch. Fox appointed alternates Mr. Sullivan and Mrs. Mainzer to a voting position in the absence of Mr. Manley and Mrs. Huff.

The applicant has submitted an application to this board of appeals and certain documents in support of their application. The applicant has submitted the following: Application for Variance to the Board of Zoning Appeals plans for the accessory building. The owners are Jim and Janet Groh of 2424 Country Brooke Drive, Hinckley Township. The request for the variance states: *they need additional space for storage of historical cars and are proposing to add onto the existing detached garage for additional space for a car collection.*

V. Ch. Fox: The notice of this application was properly given in local newspapers and the applicant and the application has been available for public review and comment.

Clerk Garrett stated that a letter and maps were received from Mr. Groh after the original application was filed. These documents were distributed to the board. Clerk Garrett also stated that she has not received any verbal communication regarding this application.

Vice Chairman Fox polled the board as to whether they reviewed the application packets for the Groh Variance request.

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

V. Ch. Fox polled the Board as to whether they inspected the property at 2424 Country Brooke Drive, Hinckley Township. The Board of Zoning Appeals inspected the property on October 18, 2008

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

Mr. James Groh, 2424 Country Brooke Dr. was sworn in accordingly. We have a unique property. We live on approximately 7 acres. We currently have approximately 2333 square feet of outbuildings consisting of a small storage barn for landscape equipment; we have approximately 4.5 acres of grass. I have a seasonal cabana around the pool. It has a bathroom and changing rooms. We have a gazebo and also a free standing garage. I am seeking a variance to construct another garage. The garage will be 30 feet by 42 feet, a four-car garage. All of the building materials to match the existing garage are still available. I am set approximately 350 feet back. It was originally 2 lots that we combined into one. We never intended to put 2 houses on those lots. We love the area

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and wanted to enjoy acreage. I have made some additions to a car collection and I am out of storage space. I would like to keep these prized possessions close to me and that is why I am seeking this variance. The variance consists of the garage which is 30 ft. X 42 ft. and a breezeway where it would be connected to the other garage. My contractor made an error. The garage is 1260 square feet; the breezeway is 260.2 sq. feet. The total addition would be 1522.2 sq. feet. It is in the letter I submitted, at the bottom. It notes that we have 2333 square feet. In the line above it says "with the addition of the new garage and breezeway and in parenthesis is has 1854 sq. ft. It is actually 1522.2 sq. ft. That breaks it down to the garage which is 1260 sq. ft, 30 x 42, the breezeway which is 8 x pie-shaped which comes to 260 sq ft. This breezeway consists of basic storage area and a way for us to connect the two garages. We are planning on opening a wall from the old garage to the new garage. The new total would be 3855.2 square feet of accessory buildings. We have met all the other required zoning codes. Basically this garage will be not be seen from the street. There are woods in front of it. At this point I will be happy to answer any other questions you may have.

Mr. Sullivan: What is the height of the proposed building?

Mr. Groh: It is the same as the older garage. It is not on my plans.

Mr. Sullivan: Is the current square footage of the existing accessory structures 2333 sq. ft?

Mr. Groh: Yes.

Mr. Sullivan: And is there an attached garage?

Mr. Groh: Yes.

Mr. Sullivan: How many bays are in the attached garage?

Mr. Groh: Four.

Mr. Sullivan: How many bays are in the existing detached garage?

Mr. Groh: Four.

Mr. Sullivan: How many antique cars do you own?

Mr. Groh: I own 8 cars.

Mr. Sullivan: Do you store fuel on the premises?

Mr. Groh: No, only in the gasoline tank of each car.

Mr. Sullivan: Do you work on these cars?

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Mr. Groh: No.

Mr. Sullivan: Why can't you store the cars somewhere else?

Mr. Groh: With the investment I have in these cars, I prefer to have them in my control. I own 7 acres of property. I have the space on my property. There is a maximum square footage of 1800 square forage for a 2 acre property. I have a 7 acre lot. It is a little difficult to correlate the same application when my neighbor can have an 1800 sq. ft. out building and yet I can only have an 1800 sq ft. of outbuildings when I have three times the amount of property. I thought it would be better if I kept my cars here and not pay storage and additional insurance. My situation is unique; I have almost 7 acres of property.

Mr. Zeleznak: I do not think it is unique. There are a lot of properties in Hinckley that are more than 2 acres, 10 acres, 15 acres, even 30 acres. Unless it is a farm, that 1800 sq. ft. maximum applies to all of them.

Mr. Groh: My lot is unique.

Mr. Zeleznak: Why is that unique? There are other areas that have large lots.

Mr. Groh: Compared to the properties surrounding me. The surrounding properties are all 2 to 2.5 acre lots.

Mr. Sullivan: Did you calculate the height?

Mr. Groh: It is approximately 22 feet. It would be 22 feet or less.

Mr. Sullivan: What would happen if this was denied? In terms of your cars, would you keep them somewhere else?

Mr. Groh: Temporarily I would keep them offsite.

At this time Mr. Groh and the board had no further questions.

Mr. Sullivan 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?

#### **1. i.e.: Can the property be sold for a reasonable amount without the variance?**

*It is clear that there can be a beneficial use of the property. The primary residence is located there. There is beneficial use at the present time so there has to be beneficial use even if the variance is not granted.*

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### **2. Can the property be used without the variance?**

*Yes.*

#### **Factor #2**

##### **Is the variance substantial?**

*It is substantial. The variance request is 100 % greater than the 1800 sq. ft. maximum allowed by zoning regulations.*

#### **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. The owner was aware of the restrictions before undertaking this project.*

#### **Factor #6**

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

*Yes. The owner can utilize offsite storage facilities for the automobiles. It may not be exactly what the owner wants, but I see no reason why the owner can't utilize other locations.*

#### **Factor #7**

##### **Does the variance preserve the “spirit and intent” of the zoning regulations be maintained by the granting of this variance and will “substantial justice” be administered to the applicant?**

*Given the square footage and the variance of it, the difference between what the square footage would be and what is required, I think this would be contrary to the expressed intent and spirit of the zoning requirement of 1800 square feet.*

There was no further discussion.

V. Ch. Fox stated that 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 such decision was unreasonable or unlawful. They have 30 days from the date the minutes of the appeal are journalized.

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V. Ch. Fox made a motion to allow the variance for the construction of an accessory building at 2424 Country Brooke Dr. that exceeds the 1800 square foot allowance in the Zoning Regulations of Hinckley Township.

Mr. Sullivan second.

**Vote: Mainzer – no Sullivan – no Zeleznak – no Hoop – no Fox – no**

**The variance was denied by a vote of 0 – 5.**

Hearing was adjourned at 8:30 pm.

Work Session:

Minutes of the September 24, 2008 meeting were reviewed. V. Ch. Fox made a motion to accept the minutes as corrected.

Mrs. Mainzer second.

**Vote: Mainzer – yes Sullivan – yes Zeleznak – yes Hoop – yes Fox- yes**

V. Ch. Fox reminded the board that the new inspection date to view the interior of Ridgemont Properties, 1939 Ridge Road, would be Wednesday, November 12, 2008.

This is the continued conditional use hearing for Dr. and Mrs. Kass. Meet at the Town Hall at 5:45 pm.

Patty Garrett, Zoning Clerk

Minutes Approved \_\_\_\_\_, 2008

\_\_\_\_\_ *absent*  
David Manley, Chairman

\_\_\_\_\_  
Dottie Fox, Vice Chairman

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

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

\_\_\_\_\_ *absent*  
Melissa Huff, Member

\_\_\_\_\_  
Kevin Sullivan, Alternate Member

\_\_\_\_\_  
Julie Mainzer, Alternate Member