

Board of Zoning Appeals

Zirker – Variance Request

January 13, 2010

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

Ch. Manley stated that the first order of business was approval of the minutes from the October 14, 2009 worksession.

Mrs. Fox made a motion to approve the minutes from the October 14, 2009 worksession.

Mr. Hoop second.

No further discussion .

Sullivan – yes Mainzer – yes Hoop – yes Fox – yes Manley – yes

Roll found: Manley, Fox, Hoop, Mainzer and Sullivan present. Also present: Zoning Inspector Schaefer and Mr. Jim Kamps, Trustees Catherwood and Schulte, the applicants Mr. and Mrs. Zirker and 1 guest.

Clerk Stupka polled the Board as to whether they inspected the property at 2706 Boston Road, Hinckley Township. (Parcel # 017-03A-01-002)

Response: Sullivan – yes Mainzer – yes Hoop – yes Fox – yes Manley – yes

Ch. Manley stated that Mr. Sullivan is a voting member of the Board in place of Mr. Zeleznak who is not present.

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. All persons wishing to testify must do so from the podium, they must identify themselves giving the resident's address and they must be sworn in. Evidence and testimony must be pertinent to the hearing at hand and it's Ch. Manley's discretion to limit personal comments and Ch. Manley will not permit personal attacks and opinions.

Ch. Manley stated that the hearing tonight is for an application submitted by Larry and Mary Ann Zirker for a property at 2706 Boston Road, they would like to construct an accessory building.

Clerk Stupka read the legal ad.

Clerk Stupka polled the board as to whether they reviewed the application packets for the Zirker request.

Response: Sullivan – yes Mainzer – yes Hoop – yes Fox – yes Manley – yes

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Clerk. Stupka stated that no written comments had been received, but a representative from US Bank had requested information.

Mr. Larry Zirker, owner of the property located at 2706 Boston Road, Hinckley, Ohio was sworn in accordingly.

Ch. Manley: You actually have two issues before us here. Let's deal with the 60% one first. Is there any additional information you would like to provide us with other than what came in the packet we received.

Mr. Zirker: The 60% being what.

Ch. Manley: Our Regulation 6.B.4.C.2 only permits that 60% of the property be built on, the building on the gas thing and the size of the building you are proposing exceeds that by 7 or 8%.

Mr. Zirker: That includes the gas building?

Ch. Manley: Yes.

Mr. Zirker: There's not a whole lot I can do about that.

Ch. Manley: Why don't you have a seat and I will call you back.

Ch. Manley requested the Zoning Inspector, Bill Schaefer come to the podium. Zoning Inspector Bill Schaefer was sworn in accordingly.

Ch. Manley: You are the Zoning Inspector for Hinckley Township?

ZI Schaefer: Yes.

Ch. Manley: Go ahead.

ZI Schaefer: You were just mentioning the gas building. I did include them just in case they should be included but it's kind of a moot issue because they come up to .0047 and he's at .613 so it's a moot issue.

Ch. Manley: For the record, the County Prosecutor through one of the Trustees advised me that we cannot count the building.

ZI Schaefer: That's why it's a moot issue.

Mr. Sullivan: So is he calculating the current percentage of the lie area occupied by buildings and parking at 61%?

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ZI Schaefer: Not currently, it's with the new building on it.

Mr. Sullivan: Do you know what it is currently?

ZI Schaefer: With the addition it comes to 61.3%.

Ch. Manley: Any other questions? Thanks Bill. Anyone else want to make comment from the audience, if they do, please step up to the podium. Now the second one. The second request, we have a 100 foot side and back yard set back, and we estimated you were about 10.8 – 10.6 away from the side yard, so subtracting it gives you 89.4. Before we get into this do you want to present why you are doing this?

Mr. Zirker: We are going to have patio furniture, lawn mowers and all kinds of other stuff. Originally, I thought we would store it in the building, but we cannot store this near the food so I thought I would put it in the building in the back. Probably the right way to do it would have been to include it in the plans originally but I didn't want to muddy the waters. Another reason is because it will cover up for the people to the East, they won't have to look at the gas meters, the building will cover up the view of that.

Ch. Manley: Well it seems when I look at McDonalds and Burger King they don't have those kinds of out buildings and they must have stuff they have to store. They don't have that size, some of them do have outbuildings, but not that size.

Mr. Zirker: Well I could make it smaller, but I thought that was the perfect place, I'd rather go with bigger now.

Ch. Manley: Any questions from the Board?

Mr. Sullivan: I have a couple. Do you know how many feet it is from the property line to the fence around the gas facility back there?

Mr. Zirker: From the property line to the edge of the gas metering station? It has to be 35 feet.

Mr. Sullivan: Do you know what the minimum shed size you would need to accomplish your purposes?

Mr. Zirker: I could probably go 25 feet, or I could extend it and make it deeper and not as wide. That is commercial land behind it and that's kind of like dead space back there. It's about 58 feet from the edge of that gas metering station and then I think that's commercial land behind it that goes all the way over to W. 130th.

Mrs. Zirker: Can I interject here?

Ch. Manley: We will let you. Any other questions?

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Mr. Sullivan: What will you do if we don't grant the variance with your lawnmowers and patio furniture?

Mr. Zirker: I will store it at my daughters. She lives in Brookside Estates.

Mrs. Foz: Mr. Zirker I would like to ask you what this is a drawing of.

Mr. Zirker: I think it's footers.

Mrs. Fox: To the building? It looks like something is divided here.

Mr. Zirker: This doesn't belong with this. It's just molding on the inside.

Ch. Manley: Anything else from the Board at this time?

Mrs. Zirker was then sworn in accordingly.

Mrs. Zirker: I just wanted to add a little to what Larry said pertaining to the outbuilding. We need storage for the patio furniture, it cannot be out there all winter. Because of the size of the patio out back and the patio out front there will be a number of pieces of tables and so forth. Our daughter lives around the corner but there's no way in God's green acres that this can be stored over at her place and needless to say as you went out to see the site, you saw all those beautiful trees and the grass and so forth that you couldn't see, and all that requires maintenance and McDonalds yes does not have a shed but they don't have outdoor furniture for people to enjoy their ice cream cones and their coffee outside and they don't have that kind of landscaping that we have to take care of. All that requires housing in a neat little package when it comes to this outdoor stuff and I just wanted to add that to what Larry said.

Mr. Sullivan: Is there going to be any addition to the shrubbery when the new building is put in? You had mentioned the line of trees down the property line and my question is if the building is built is there going to be any extension of those trees to block the view of the proposed building.

Mrs. Zirker: It will be at the end of where those trees are.

Mrs. Fox: Perhaps if you look at the drawing, is it going to be exactly the way the drawing is here?

Mr. Zirker: No, the trees are back here and this should be back here.

Mr. Sullivan: This is for the record when you say "this" or "that" it has no meaning. What you have to say is yes or no I'm going to put trees on the east line, the south line, whatever.

Mr. Zirker: Yes we are going to put trees on the east line all the way along here and in front of it also.

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Mr. Sullivan: In front of the outbuilding?

Mr. Zirker: Yes we can only go so far because the gas lines come this way, from the gas metering station the gas lines come east after it comes up the west side. The landscaper wanted to put something there but we're waiting for the gas company to tell us exactly where those lines are at because they don't want to dig and hit that line and it's been a nightmare going up that west side as it is.

Mr. Sullivan: While you are up there answering questions I have one more and I think you mentioned it but I just want to be clear, is there no room in the actual ice cream store itself for storage of this type.

Mr. Zirker: There's not room for anything. My wife is still on my back because she wanted another bathroom and if I had made room for a lawnmower instead of a bathroom

Mrs. Zirker: I don't know if you walked through the facility on that day, it's really, the working part of it is really a small working area, the back room is small, there is no room for storage, and of course this building is meant to hold nonperishable types of thing in there because you know yourself it's better to get a price break with 500 cups and saucers versus 25 so that will be storage for non-perishable items.

Mrs. Fox: I have a question to go back to that outbuilding again. If you in fact are going to have shrubbery going across the front of that building going toward the gas building where is your ingress and egress out of that accessory building going to be?

Mr. Zirker: An Overhead garage door will be installed.

Mrs. Fox: So the shrubbery will not go totally across the front then.

Mr. Zirker: It will go other than where the door is, yes, but I can only go up to the fence by the gas metering station.

Mrs. Fox: I understand, I was under the impression from what you said that it was going to go straight across and I was wondering how you were going to get in and out of that accessory building.

Ch. Manley: Any other questions, is there anyone else in the audience that would like to make a comment at this time?

A member of the audience, Dave Jones, was sworn in accordingly.

Ch. Manley: Please identify yourself by name.

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Mr. Jones: Dave Jones and I live at 2696 Boston Road which is directly adjacent to the east of this property. For what it's worth, I understand the regulations you have are necessary but I have no objection to that building at all. If I go to the back of my property and see this outbuilding it certainly isn't going to bother me. If I could just interject one thing, I used to work for a contractor and I have an idea how these types of operations work. It's pretty unusual for the person who owns one Burger King, people who are owners of one franchise are the small fish and they are very compact. If a person owns only one they would have a problem storing their stuff. I just want to say that because you brought up not seeing these buildings at Burger King and that, but I only bring that up because it is something that I did for a living, so that's my position.

Ch. Manley: Anybody else in the audience. I have talked to Mr. Caldron at North Coast Gas Transmission Company and he is waiting for you to get back to him. I don't see how we can proceed. He told me and I have nothing in writing, I didn't hear from him until this morning, that he had an understanding that anything else that would go on that lot they would get an opportunity to see what it was before it went on. Now I don't know whether that's in writing, I know you've met with him and talked to him in the past. I think that both for your sake and ours we should recess this hearing until you two guys work out whatever it is.

Mr. Zirker: I have no ...

Ch. Manley: Well it's my understanding that you guys have some kind of an agreement that they would see something for anything else that would go on there.

Mrs. Zirker: How can they dictate what we put on our property?

Mr. Zirker: Nothing against lawyers, but you know he's a lawyer?

Ch. Manley: As I said, this morning was the first time I talked to him. I've talked to some other people down there and they've suggested to me that part of your driveway on the east is over the easement, just by inches, but if some kind of arrangement was made. Again I am not privy to that.

Mr. Zirker: The driveway on the west. I told them I would move it 15 feet exactly.

Ch. Manley: I'm going to stop here, Martha did you want to say something?

Mrs. Catherwood: I would just say that the gentleman you spoke to this morning should have either written the board a letter that could have been read by Judi or come tonight and spoken on their behalf. I don't think you can enter testimony on behalf of someone who does not come to the meeting themselves.

Ch. Manley: I wasn't entering testimony, I was asking to set this aside for a later date.

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Mrs. Catherwood: You are not to bring your own personal comments ...

Ch. Manley: Does anyone else have anything to say? What is the consensus of the Board?

Mr. Sullivan: I think we can go ahead.

Ch. Manley: The first issue on board here is regarding the fact that the size of the building as proposed will exceed our limit by 1.3%.

Mrs. Fox made a motion for approval of a variance for an accessory building at 2706 Boston Road, Hinckley by Lawrence and MaryAnn Zirker which would exceed the maximum site coverage of 60% that is required by Section 6B.4.C.2 of the Hinckley Township Zoning Regulations.

Mr. Sullivan second.

Ch. Manley 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?

Vote:

Sullivan – Yes, both a beneficial use of property without a variance and property would yield a reasonable return

Mainzer – Yes

Hoop – Yes

Fox – Yes, both on reasonable return and beneficial use of the property

Manley – Yes

Factor #2

Is the variance substantial?

Vote:

Sullivan – As to 60% I do not think the variance is substantial

Mainzer – No.

Hoop – No

Fox – No

Manley – No

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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?

Vote:

Sullivan – No I don't believe they will, as Mr. Jones indicated he seems to think that it will block his view of the gas station which is unappealing, I think if anything it might improve things.

Mainzer – No.

Hoop – No

Fox – No

Manley – No

Factor #4

Will the variance adversely affect the delivery of governmental services?

Vote:

Sullivan – No based on our site inspection, the driveway in and out and the proposed building in the back of the area, it will be accessible I don't see how it would affect that.

Mainzer – No

Hoop – No

Fox – No

Manley – No

Factor #5

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

Vote:

Sullivan – I don't know

Mainzer – I don't know

Hoop – I don't know

Fox – I don't know for sure, I will give them the benefit of the doubt although there was some comment that was made about not coming to us for so many things but I'm going to say no.

Manley – I don't know

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Factor #6

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

Vote:

Sullivan – Based on the testimony it is not easy, I think there is a significant degree of difficulty, so I do not think it can be solved reasonably.

Mainzer – No

Hoop – No

Fox – No.

Manley – Yes, size of the building could be smaller

Factor #7

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

Vote:

Sullivan – Yes, I believe that substantial justice will be done by granting the variance, but I have a problem with the spirit and intent but given that we are talking about 60%, I would say yes.

Mainzer – Yes

Hoop – Yes

Fox – Yes.

Manley – Yes.

Vote: Sullivan – yes Mainzer – yes Hoop – yes Fox – yes Manley – yes

Passed by a vote of 5 to 0.

Ch. Manley 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 hearing are journalized.

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The second request before us deals with Section 6B.5.B.2, we estimated that he needs 89.4 feet variance.

The chair will entertain a motion.

Mrs. Fox made a motion for approval of a variance for construction of an accessory building at 2706 Boston Road, Hinckley by Lawrence and Mary Ann Zirker which building would have less than the required 100 foot side set back as required by Section 6B.5.B.2 of the Hinckley Township Zoning Regulations per the record.

Mr. Hoop Second.

Factor #1

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

Vote:

Sullivan – Yes

Mainzer – Yes

Hoop – Yes

Fox – Yes

Manley – Yes

Factor #2

Is the variance substantial?

Vote:

Sullivan – The size of the variance is substantial, having said that, this is an accessory building in a business district so I don't see how this will really be a substantial change, for these reasons I would say no.

Mainzer – Yes

Hoop – Yes

Fox – Yes

Manley – Yes

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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?

Vote:

Sullivan – No I don't believe it will.

Mainzer – No.

Hoop – No

Fox – No

Manley – No

Factor #4

Will the variance adversely affect the delivery of governmental services?

Vote:

Sullivan – No

Mainzer – No

Hoop – No

Fox – No

Manley – No

Factor #5

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

Vote:

Sullivan – I don't know

Mainzer – I don't know

Hoop – I don't know

Fox – I don't know

Manley – I don't know

Factor #6

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

Vote:

Sullivan – Given the difficulty in storing materials and given Mrs. Zirker's testimony about non-perishable items I think no, it can't be solved in some other manner.

Hoop – No

Fox – No.

Manley – No.

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Factor #7

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

Vote:

Sullivan – My answer to this would be that substantial justice would be done by granting this variance and the spirit and intent would be preserved.

Mainzer – Yes

Hoop – Yes

Fox – Yes.

Manley – Yes.

Vote: Sullivan – yes Mainzer – yes Hoop – yes Fox – yes Manley – yes

Passed by a vote of 5 to 0.

Ch. Manley 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 hearing are journalized.

Ch. Manley announced the hearing is concluded.

Mrs. Mainzer made a motion to adjourn meeting at 8:15 p.m.

Mr. Sullivan second.

Signatures on following page