

Board of Zoning Appeals

Nash – Variance Request

May 12, 2010

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Ch. Manley called the hearing to order at 7:00 pm.

The Clerk called the roll and asked the board members to state if they had received the application materials: Mainzer - yes, Calabro-yes, Zeleznak-yes, Sullivan-yes, Fox – yes, Ch. Manley - yes. Also present: Trustees Catherwood, Mr. Nash and 7 residents.

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.

The clerk read the legal ad.

The Clerk polled the board as to whether they reviewed the application packets for the Nash request.

Response: Mainzer – yes Calabro – yes, Sullivan – yes Zeleznak - yes Fox – yes
Manley – yes

Mr. Raymond Nash, owner of the property located at 1259 Arborcrest Drive, Hinckley, Ohio was sworn in accordingly.

Mr. Nash explained to the Board that his goal is to build a garage to store cars. Before he bought the home he spoke with the HOA and the HOA told him that they need the zoning permit to say "attached". Mr. Nash stated he spoke with Bill Schaefer, Hinckley Township Zoning Inspector, and they discussed what was necessary to obtain a zoning permit for this building. Mr. Nash stated Bill Schaefer told him he would have to apply for a variance for vocabulary, not for anything else. Mr. Nash stated it is mainly a technicality, the HOA needs the permit to read "attached". Mr. Nash stated that they are not building anything in excess they just need the zoning permit to read "attached."

Ch. Manley read the section of the Hinckley Township Zoning Regulations that addressed the accessory buildings that are attached. Ch. Manley asked Mr. Nash if what he is asking is for the BZA to change the definition from 20 feet to 24 feet so Mr. Nash will have an accessory building that is considered attached.

Mr. Nash stated that the HOA needs the zoning permit to read "attached" as opposed to "detached" because they turned someone else down for similar reasons.

Ch. Manley stated that there is a movement addressing the size of accessory buildings and if that is approved then Mr. Nash's building would be within the limits. Discussion followed regarding

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the size of the accessory building and what is acceptable now and what will be acceptable once the new zoning regulations are approved.

Mr. Sullivan asked what is the square footage of the existing attached garage? Mr. Nash stated that the square footage of the existing attached garage is 850 square feet; it's a 3 car garage. Mr. Sullivan then asked what the square footage of the breezeway is.

Ch. Manley swore in Tom Wallace, the architect for the project.

Mr. Wallace stated the breezeway is 31 feet, 6 ½ inches long from existing garage to the new garage.

Mr. Sullivan asked if the setbacks had been measured. Mr. Wallace stated that they hadn't yet but they intended to. Mr. Sullivan then asked if the location of the garage had been measured from the right of way and Mr. Wallace stated they had not been measured. Discussion followed.

Ch. Manley swore in Mr. Bill Lewis, 1207 Arborcrest Drive, Hinckley, OH.

Mr. Lewis stated he is a member of the Design Review Committee for the HOA board and the situation arose because a decision had been made that all new outbuildings should be placed behind the principal structure on the lot or attached to it. Mr. Nash submitted his drawings and they were acceptable to the Design Review Committee and the HOA, however, the HOA has no provisions for granting an exception. Mr. Lewis stated that per Township Ordinance because the proposed building is more than 24 feet from the house it is considered a detached structure; however the HOA needs the permit to read attached. The HOA is asking the Board to grant the variance from detached because the HOA does not have a process to do that. Mr. Lewis stated it is a sticky situation because someone else had been interested in purchasing the house before Mr. Nash and that person wanted to do the same thing, however, the HOA asked them to attach the structure and the people didn't want to do that so the deal fell through. Now the HOA is worried that if they find out it could be a problem, basically the HOA is asking the BZA to grant the variance for them. Discussion followed.

Mrs. Mainzer asked what the HOA uses as a definition of detached and attached and Mr. Lewis stated they would like to refer to the Township's definitions. Mr. Lewis stated the HOA has nothing written regarding this.

Mr. Sullivan asked if the HOA could amend their by-laws and Mr. Lewis stated it would be a very difficult task.

Ch. Manley swore in Rebecca Halloran, 1184 Arborcrest Drive; she is the Treasurer of the HOA Board. Mrs. Halloran stated there are building restrictions for the community, but they do not define detached or attached, there are setback rules, so they rely on Hinckley's zoning. Ch. Manley asked if they have anything in writing concerning attached and detached and Mrs. Halloran stated no they do not. Mrs. Halloran stated that in Section 5 of their restrictions they

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have the right as the Board to approve or disapprove plans. Mrs. Halloran discussed the same issues regarding attached and detached.

No one else asked to speak. Mr. Nash then stated that if his variance was not granted he will need a variance for height.

Ch. Manley led the discussion of the Duncan Factors:

Factor #1

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

Vote:

Mainzer – Reasonable Return – yes; Beneficial Use - No

ZeleznaK – Yes, Yes

Sullivan – I don't think we have authority to change the definition, I think we have to accept the definition of the zoning code otherwise what we are in fact doing is amending or changing the zoning by definition and our job is to grant variances to ameliorate hardship from the zoning requirement and when we start changing definitions we have no touchstone, we have no basis for making decisions, we are rewriting the regulations and I don't think we have authority to do that and so consideration of the Duncan Factors as to the attached variance request is maybe superfluous, but having said that – Yes, Yes

Fox – Yes, Yes

Manley – Yes, Yes

Factor #2

Is the variance substantial?

Vote:

Mainzer – Yes, by changing the word of the definitions.

ZeleznaK – Yes the variance is substantial because to grant it would be changing the zoning and I don't believe we can change zoning.

Sullivan – Yes for reasons stated before and also substantial in terms of square footage because the proposed structure would be 1500 sq. feet and the max is 1500 sq. ft. for attached accessory buildings and if you include the existing garage you are up to 2300 sq. ft. plus the breezeway so I would say it is substantial on that basis.

Fox – Yes

Manley – Yes, changing our zoning is substantial.

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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:

Mainzer – No.

Zelesnak – No

Sullivan – No

Fox – No

Manley – No

Factor #4

Will the variance adversely affect the delivery of governmental services?

Vote:

Mainzer – No

Zelesnak – Possibly, would have to look at height of overhang, it may.

Sullivan – That could be a possibility, other than that no.

Fox – I agree

Manley – Yes

Factor #5

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

Vote:

Mainzer – No.

Zelesnak – Based on the testimony, no.

Sullivan – Yes.

Fox – Yes

Manley – Not sure.

Factor #6

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

Vote:

Mainzer – Yes

Zelesnak – Yes.

Sullivan – Yes

Fox – Yes, the HOA is expecting us to solve their problems, they need to solve the problem.

Manley - Yes

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Factor #7

Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Vote:

Mainzer – No

Zelevnak – No

Sullivan – No

Fox – No.

Manley – No.

Mrs. Fox made a motion to approve the variance application submitted by Raymond and Christina Nash, 1259 Arborcrest Drive, Hinckley, Ohio (permanent parcel # 016-03A-33-039) requesting a variance from the definition of “Attached Garage”.

Mr. Zelevnak second.

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 received by the applicant via certified mail.

Vote on the Motion: Mainzer – No Zelevnak – No Sullivan – No Fox – No Manley – No

Ch. Manley stated that the board cannot change zoning.

Discussion followed regarding Mr. Nash’s request for a height variance, it was decided he would come back in 60-90 days to ask for the height variance.

Ch. Manley adjourned the hearing at 7:40 pm.

The regular meeting was convened at 7:50 p.m.

Ch. Manley asked if everyone reviewed the minutes of the April 14, 2010 meeting, there were no comments.

Mr. Zelevnak moved to approve the minutes of April 14, 2010 and Mrs. Mainzer second.

Mainzer – yes Zelevnak – yes Sullivan – yes Fox –yes Manley yes

The meeting was adjourned at 7:52 p.m.

Signatures on following page