

Board of Zoning Appeals

Groh- Variance Request

July 15, 2009

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

Roll found: Manley, Fox, Hoop, Zeleznak, Sullivan, and Mainzer and Sullivan present. Also present: Zoning Inspector Pope, Trustees Schulte and Catherwood and Mr. Jim Kamps.

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. Please note that a person is guaranteed the right to attend this meeting but not necessarily the right to be heard. Any person may request that a schedule or agenda be mailed to them by providing a self addressed stamped envelope in advance.

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 that the meeting is being taped for transcription purposes only. The written minutes and any attachments will serve as the official record of this meeting. He also noted that relevant documents 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. 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. Evidence and testimony must be pertinent to the particular hearing and the chairman may limit comments. No personal attacks, editorials or opinions etc. will be permitted. Notice of the application was properly given in local newspapers, and the application has been available for public review and comment. He then asked the Hinckley Township Zoning Clerk whether she has received any documents that relate to this hearing.

Ms. Garrett stated that no written or verbal comments had been received. Clerk Garrett read the legal ad.

Ch. Manley announced that an application for variance was submitted by Janet and James Groh, 2424 Country Brooke Blvd. requesting a variance to construct an accessory building at the above address that creates an excess of the 1800 square foot allowance for accessory buildings. (p.p. 16-03C-07-007)

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

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

Ch. Manley polled the Board as to whether they inspected the property at 2424 Country Brooke Drive.

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

Mr. James Groh, 2424 Country Brooke Drive was sworn in accordingly:

Mr. Groh: The overall plot plan that I have distributed shows where each of the 4 accessory buildings are. We have an existing barn at the back of the property which is 152 square feet, we have a detached garage which is 30' by 42', 1260 square feet, a cabana which is 441 sq. feet and a gazebo which is 2 x 24 square feet and I received a variance for 91 sq. ft. on this. These are the 4 out-buildings we have on our property. We came in last October to seek a variance for an addition of a 4-car detached garage with an attached breezeway. This variance request in front of you today is for a much scaled down version of that same situation. We have a 217 square foot breezeway and a 442.5 foot single car garage proposed. It is a 56 percent reduction from what I proposed last year that was turned down. These 4 structures we have on our land are for seasonal use. The barn is for landscape equipment. I have large tractor cutting machines, I have close to 4 acres of grass that I personally take care of as well as maintain the property. The octagon gazebo is for summertime use that we enjoy in combination with the cabana during the pool season. Other times of the year they are shut down. The detached garage is used year-round and has access through the winter. We have a main garage that is also attached to our house. It houses 2 cars, children's toys and all the normal stuff people store in their garage such as a refrigerator and other storage. These are our main storage areas. I have shown my plans to my neighbors and asked for their input so see if they had any objections. Each and every neighbor stated that they had no objection. Each and every one of them were very enthusiastic about it. The proposed garage addition which would be attached to the existing garage cannot be seen from the road. There is no one living behind that can see it. There is no one to the side of it or in front of it that can view it. It has very limited visibility from the street looking in. There is no one behind it. There are solid woods. The property is actually a Hinckley Township parcel that has Kobak ball fields on it. Behind us there are neighbors but they are solid mounds of pine trees as well as woods in between. I am fully aware that I am in excess of the 1800 square feet. I am seeking a variance in exception to the rule based on the things that I have laid out in my variance letter. One of the things I look at is density and population on the acreage. Currently my neighbor that owns 2 acres has a total of 1800 square feet of outbuildings that are permitted by code. The green or open space that would be covered would be 2.07 % of outbuildings where he is taking away land. Currently we have used .8 % of our property because we have almost 7 acres. If this variance is approved, we would use 1.02% of green space coverage of building on that same acreage. We are still less than half of coverage of open space compared to what other people of have covered when permitted by code in a 2 or 2.5 acre parcel. I did this analysis to prove that, although I am in excess of the building square footage, I am asking for an exception because we do have a collection of cars. We do not want to store these

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cars off-site. One, it is double the insurance cost; two, within the last year there was a fire in Sharon Township where a storage facility burned down. I am not sure if they ever found the cause. The collector cars were lost. Boats were lost. Irreplaceable vehicles were lost. Out of your control there are bad things that usually happen. If you own collector cars and other cars you would understand the personal attachment that you have to these items, that you really don't want then out of your control. Yes, it is inconvenient to have them out of your control but it is also very expensive to have them out of your control because of the insurance costs. It is substantially more when it is not on your own property. It would be in a secure environment, a heated garage. It would be under alarm, monitored. There are all sorts of things that go hand-in-hand with that. That is the reason for the request. We don't have enough vehicle space. The proposed garage, we are not putting a second floor in. It is a single car garage that we will put a lift in it so that we are able to put multiple cars in the garage. There will be 2 vehicles stacked on top of each other. The rest of the information I submitted with the application.

Mr. Sullivan: Have you given any consideration to approaching the Zoning Commission or the Trustees to try to get a change in the zoning regulations?

Mr. Groh: I did. Knowing that the code was changed I believe in 2005, I don't think they would be open to much of a change. Yes, I did give it consideration. Certainly it was an option I had. But, the variance proceeding is for an exception. I thought instead of making something universal for everybody, that is why there is a variance proceeding. I feel that my property, based on the surrounding properties is unique. Everyone else around me has 2 to 2.5 acres. We have nearly 7 acres.

Mr. Sullivan: On the attachment to your application, the pages are not numbered. What happened to numbers 1 through 4?

Mr. Groh: That is part of your attachment. Numbers 1 thru 4 are on your variance form. I said, "See attached sheet on your variance form."

Mr. Sullivan: On paragraph 6A, you talked about the green space calculation a minute ago, what do you mean by green space?

Mr. Groh: Open space. Green or open space.

Mr. Sullivan: Can you tell me how you did your calculations?

Mr. Groh: An acre is 45,230 square feet. So if you have a 2 acre lot, take that times 2 and divide that by 1800 square feet. That gives you the percentage of coverage.

Mr. Sullivan: Correct me if I am wrong, you didn't subtract out the square footage of your house did you?

Mr. Groh: No. This is dealing with out-buildings. This code related to your accessory buildings.

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Mr. Sullivan: It just seems to me that if you were trying to calculate a percentage of green space and if you define green space as open space, you would subtract all the non-open space and then make your division.

Mr. Groh: I would agree with you but this is in relation to a specific code of 1800 square feet maximum with no distinguishing between a 2 acre lot and a 7, 10, 15 or 20 acre lot. I was just doing it in relation to that. Everyone's house would be different.

Mr. Sullivan: Since every house is different, looking at these numbers doesn't tell us much in terms of an overall standard. It is simply a mathematical calculation and I wanted to understand how you arrived at it.

Mr. Groh: I would agree with you that it is a mathematical calculation based on the specific piece of legislation in the Hinckley Township Zoning Ordinance of 1800 square foot maximum. The person next door to me has basically the same size house and he lives on 2.24 acres and he can build 1800 square feet and has significantly less green space. That was the point of my calculation. When you look at Richfield Township they base it on this formula exactly. Each of these townships are different, I understand that I live in Hinckley Township. Sharon, Richfield and Granger Townships all exceed what Hinckley allows. They all allow more. If I lived in Richfield with the same parcel I would be entitled to 6300 square feet of outbuildings.

Mr. Sullivan: You mentioned that your existing accessory buildings are 2333 square feet. That would be about 1.3 times the 1800 square feet allowed?

Mr. Groh: I didn't do that math.

Mr. Zeleznak: It is 29.6% over the maximum now.

Mr. Sullivan: Your current request is for an additional 659½ square feet?

Mr. Groh: That is correct, a single car garage with a connecting breezeway.

Mr. Sullivan: If this were granted that would be a total of 2992.5 square feet.

Mr. Groh: Yes, that was in my submittal.

Mr. Sullivan: I just want to get that on the record.

Mr. Zeleznak: That would be 66.3% over the maximum allowance.

Mr. Sullivan: Would you agree with that?

Mr. Groh: If that is the way the math comes out.

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Mr. Sullivan: Do you believe that if we would apply the same relative ratio of 1.7, if you had a 10 acre parcel then under your theory you would be able to build an accessory building of 4443 square feet.

Mr. Groh: Mine is not a theory. I am here to get an exception to the zoning ordinance to exceed the 1800 square feet to build a single car garage. Each property and parcel is different. As part of the variance proceedings you look at the merits of the case. I am not comparing myself to anyone else. I am not comparing myself to what someone else would be entitled to. They would have to go through the same due diligence.

Mr. Sullivan: I understand that sir. You have to understand, too, that while you are coming here as an individual, we sit here as a board representing all the people in Hinckley. What we do for you is a precedent going forward and we can't act in an arbitrary manner. If someone comes in with similar circumstances to you and wants to build an accessory building and he has a 7 acres and wants to build the same size, it makes it rather difficult for us to say anything other than yes. I am not saying that there aren't individual circumstances. I am pointing out that we have an obligation to look both at your unique circumstances but also what our determinations do to the community as a whole.

Mr. Groh: In the last 5 years has anyone made a request for this?

Mr. Manley: I can think of 2 others.

Mr. Sullivan: You are here to answer our questions; I am not here to answer yours. Let's go forward with this.

Mr. Manley: How long have you lived in Hinckley?

Mr. Groh: We moved here in 1997. We built. Bought the property in 1996.

Mr. Sullivan: Do you have an estimate what it will cost to build this breezeway and garage?

Mr. Groh: Yes.

Mr. Sullivan: What figure would that be?

Mr. Groh: What does that pertain to?

Mr. Sullivan: Are you refusing to answer our question?

Mr. Groh: No sir. What does that matter to this proceeding of this board?

Mr. Sullivan: Would you please answer?

Mr. Groh: About \$100,000.

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Mr. Sullivan: How many cars are in your collection?

Mr. Groh: I have 8 cars. No different from last October.

Mr. Sullivan: Where are they now?

Mr. Groh: The majority of them are either at my place or at my place of business.

Mr. Sullivan: So you have 6 at your home?

Mr. Groh: I have 5 at home.

Mr. Sullivan: You have 5 at home and 3 at your business?

Mr. Groh: Yes.

Mr. Sullivan: Of the 5 cars at home are they all located in the detached garage?

Mr. Groh: No. Three are in the detached garage and 2 are in the main garage.

Mr. Sullivan: Where are the vehicles that you drive everyday?

Mr. Groh: They are part of the 8 cars. They are in my main garage.

Mr. Sullivan: So part of your collection you drive every day?

Mr. Groh: We have everyday use cars, my wife drives one also. I own a total of 8 cars.

Mr. Sullivan: How many cars in your car collection?

Mr. Groh: Six plus the 2 that we drive everyday.

Mr. Sullivan: So there are 6 that are the antique cars that you are talking about storing. The 2 you drive every day you store in the attached garage. Of the 6 that are the collectors 4 are in the attached garage and 2 stored at your place of business.

Mr. Groh: That would be 3 in the attached and 3 at my business.

Mr. Sullivan: There are places that you can store cars other than your place of business such as storage facilities?

Mr. Groh: Yes, they burn down, I know.

Mr. Sullivan: Homes burn down too.

Mr. Groh: Not with the proper security and no access to anyone else.

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Mr. Sullivan: What are you going to do with the cars if we do not grant this variance?

Mr. Groh: That matter will be discussed later.

Mr. Sullivan: Do you know?

Mr. Groh: I do not understand. Why are you asking that?

Mr. Sullivan: Because it goes to the necessity of having the variance.

Mr. Groh: Why? I do not understand the question.

Mr. Sullivan: All I am asking you is do you know what you will do with your cars if this variance is not granted.

Mr. Groh: I do not understand the question.

Mr. Sullivan: In your application you stated that if this variance is granted it will enhance the value of your property and your neighbors. Can you describe for us the basis of your statement?

Mr. Groh: Anytime you add to your property and it is done tastefully and correctly and it's done architecturally well, and all my buildings are as they are all brick, they will appreciate in value. I have not lost a penny of anything I put into my property. I would expect that to continue. I pay additional real estate taxes which benefit the schools of Hinckley Township. It would increase the value of surrounding property as well because my property is worth more.

Mr. Sullivan: So you are saying that it will increase the value of your property and if your property value goes up your neighbors will go up?

Mr. Groh: That is how it typically works, yes.

Mr. Sullivan: Do you have any other basis for your statement?

Mr. Groh: The federal government has appraisal studies.

Mr. Sullivan: Have you any other basis for your statement?

Mr. Groh: I know my value has appreciated from the additional buildings that I have constructed. I have had appraisals.

Mrs. Fox: You said that you moved there in 1997?

Mr. Groh: Yes.

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Mrs. Fox: When you moved in, in 1997, were you aware of the zoning laws?

Mr. Groh: At that time, no. I certainly learned then by getting the code. I got the permits at the township and built my buildings. No zoning reference was made to me. I didn't know until I started to build the cabana and found out then. It was something one seeks and finds. We obviously made additions to our house. In 2002 we made it larger and had no issues with permits. We had a contractor build the garage and we will have a contractor if this somehow gets approved. It was when we were building the cabana that I discovered we had an issue with the 1800 square feet regulation. When the gazebo was 11 years old and the wood was rotting we decided to rebuild it in brick and designed it to match our house. When we found out the walls had to be constructed a certain way to match the code, we discovered that the thickness of the walls caused the gazebo to be 91 square feet too large. I presented a variance request in front of the board and obtained a variance. When that took place I was never told to not return for a variance request again. I thought these proceedings were based on the merits of what you do and the property owned and what is being presented. I am here today for this board to look at the merits of what I am presenting, the uniqueness of what I have done to our property and the estate that I have created. I am not building shacks or pole barns on my property. This single car garage cannot be seen from the street. No one can see it unless they pull into my driveway. There are woods all around it.

Mr. Zeleznak: I go by the Hinckley zoning regulations for R1 district. This restriction is for a 2 acre minimum lot. On B3 it states that in no case shall the aggregate total square footage of all accessory buildings and any attached structures and garages exceed a total of 1800 square feet?

Mr. Groh: That is why I am asking for an exception as a variance to the code to exceed that number.

Mr. Zeleznak: At this point you would have more than 66% more than the 1800 square feet. Even though you know this, you chose to come here for a variance instead of approaching the zoning board?

Mr. Groh: I do a lot of zoning work for my job. In my job we are always exceeding zoning because their facilities are much larger than the typical business. Variances are for exceptions to proved why they're unique cases and why there should be exceptions. I am not proposing to change the zoning code of Hinckley because I have a need. I do not think Hinckley would want to change because they are set in their ways. "Small town with big hearts," but I do not think they would be too open for a zoning change. I looked at the minimum that I could get away with: a single car garage. The breezeway is a convenience. Aesthetically it looks better than several separate buildings. I originally brought in plans for a 4 car garage. I understand the board's position. Variances are granted from the code.

Drew Deserto, 2421 Country Brooke Dr. was sworn in accordingly: I am the immediate neighbor. I have no problem with this proposed addition. I see no downfall. He will be paying more in real estate taxes. I have 2.4 acres.

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Doug Krzywicki, 2451 Laurel Road was sworn in accordingly: Of all the neighbors, my property is the closest to Groh's. I would see this garage in the winter. It adds to my value. All the property owners in the neighborhood are here.

Mrs. Fox: What if the Grohs move and the new neighbors use the garage to repair cars?

Mr. Krzywicki: As long as they are following the zoning rules. I would be concerned about noise late at night.

Ch. Manley: This is a township, we do not have a noise restriction.

Mark Alexander, 2395 Country Brooke Drive was sworn in accordingly: I am here in support of this addition and I echo the comments made by the other 2 neighbors. When Jim Groh builds something he wants to do it correctly. He will do anything he can under the zoning rules. When he has these projects done at his home, I cannot even tell if the contractors are there or not. When they are finished it causes the house to appreciate in value. I am in the mortgage business, I do know a little bit about appraisals and what can be done to enhance the properties around. I have been here since 1997 and have 2.2 acres. I do not have a problem with what he is doing. He explained it to me and I understand what he is talking about. I cannot even see this from my property. I can only see the front of his house. Even the addition he put on his house is well done.

Ch. Manley thanked all for their testimony.

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 the property without the variance?

Vote:

Sullivan – Yes I believe there can be beneficial use of the property. As all witnesses have testified that Mr. Groh has a beautiful home and clearly there is beneficial use being made of that that property. He has a beautiful home, pool, 4-car garage, gazebo and various out-buildings. In my opinion he has beneficial use without the variance.

Zelesnak – Yes

Hoop – Yes

Fox – Yes

Manley – Yes

Factor #2

Is the variance substantial?

Vote:

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Sullivan – Yes it would be. It would be about 1.7 times the allowed amount if the variance is granted. I do believe it is a substantial variance.

Zelesnak – Yes. Definitely. It is 66.3 % over the allowed 1800 square feet which is 1192.5 square feet over.

Hoop – Yes

Fox – Yes

Manley – 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?

Vote:

Sullivan – Again given the testimony during the hearing, I do not believe the essential character of the neighborhood would be substantially altered nor would the adjoining properties suffer substantial detriment by the granting of the variance.

Zelesnak – No

Hoop – No

Fox – No

Manley – No

Factor #4

Will the variance adversely affect the delivery of governmental services?

Vote:

Sullivan – Based upon our site visit and Mr. Groh's application I do not believe that they would be. It might affect the amount of services that are delivered but I don't think it would adversely affect their delivery.

Zelesnak – 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 think what is relevant here is whether he undertook the project with knowledge of the zoning restriction. Mr. Groh indicated during the testimony that indeed he did given his prior applications.

Zelesnak – No. Although he is now aware since he has made several variance requests.

Hoop – No on the purchase. Yes for this project.

Fox – When he purchased the property in 1997 he was not aware of it but as a resident here and doing several additions he has become aware of it.

Manley – No on the purchase however he has appeared before this board on 3 separate occasions.

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Factor #6

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

Vote:

Sullivan – *Yes. I believe that the vehicles can be stored off-site. It may not be what Mr. Groh thinks is the best way to store his vehicles and I appreciate that, but I do believe that it can be obviated through another way.*

Zeleznak – *Yes, in a long process of pursuing a zoning change.*

Hoop – *Yes.*

Fox – *Yes possibly to pursue a zoning change.*

Manley – *Yes.*

Factor #7

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

Vote:

Sullivan – *I believe that the spirit and intent of the zoning requirements would not be observed by granting this variance nor would substantial justice be done by the granting of it. Mr. Groh is asking for a variance for his property but I believe that by our granting it, we would essentially be disregarding the spirit and intent of the zoning requirement. The 1800 foot requirement is in the zoning regulations as an overall limit and it is there for a reason. For us to grant a variance which would bring the property some 1.66 times out of variance I believe is a substantial disregard of that intent and in reality what Mr. Groh essentially is requesting us to do is to disregard that requirement and to rewrite the zoning regulations.*

Zeleznak – *No and no.*

Hoop – *No*

Fox – *No. It exceeds the 1800 square feet.*

Manley – *No and No.*

Mrs. Fox made a motion to approve a variance request submitted by Janet and James Groh, 2424 Country Brooke Drive requesting to construct an accessory building at the above stated address that creates an excess of 1800 square feet allowance for accessory buildings.

Mr. Zeleznak second.

Vote on the Motion:

Sullivan –No Zeleznak –No Hoop - No Fox – No Manley – No

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.

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The minutes will be journalized on July 22, 2009.

Hearing was adjourned at 7:48 pm.

Patty Garrett, Zoning Clerk

Minutes Approved _____, 2009

David Manley, Chairman

Dottie Fox, Vice Chairman

Jeff Hoop, Member

Dave Zeleznak, Member

Kevin Sullivan, Member

Julie Mainzer, Alternate Member