

Board of Zoning Appeals

Schmidt - Variance Hearing

March 23, 2009

1

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

Roll found: Manley, Fox, Hoop, Zeleznak, Huff, and Mainzer present. Mr. Sullivan had an excused absence. Also present: Trustee Schulte, Mr. C. Pope, Mr. Jim Kamps and Mr. Terry Walrath of the Zoning commission and assistant zoning inspector Shaffer.

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 Robert Schmidt of 2651 W. 130th St., Hinckley Township to allow for an existing above-ground swimming pool at the above stated address to remain less than the required 15' from the primary residence (16-03C-31-010). Zoning Reference: Section 6R1.2.B.2, Zoning Regulations of Hinckley Township

Board of Zoning Appeals

Schmidt - Variance Hearing

March 23, 2009

2

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

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

Ch. Manley polled the Board as to whether they inspected the property at 2651 W. 130th Street.

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

Ch. Manley noted that neither Mr. Schmidt nor any representatives were present at the hearing.

Ch. Manley stated that the Board of Zoning Appeals has the power to grant an applicant's request for a variance.

When asked, no one wished to testify.

Ch. Manley consulted with the board as to their opinion as to whether to vote on the case or not.

The Board decided to vote on the matter. Mr. Zeleznak stated that the variance necessary is 2 feet.

Ch. Manley reviewed the Duncan Factors:

Factor #1

Can the property be sold for a reasonable amount without the variance?

The board indicated yes.

Factor #2

Is the variance substantial?

Ch. Manley stated "no". The other members concurred and indicated that it was only 2 feet.

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?

The board stated "no".

Factor #4

Will the variance adversely affect the delivery of governmental services?

The board stated "no".

Board of Zoning Appeals

Schmidt - Variance Hearing

March 23, 2009

3

Factor #5

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

It is the Board's opinion that the pool was constructed after the house was purchased.

The board cannot be sure whether Mr. Schmidt knew of the restrictions.

Factor #6

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

The board indicated "yes, if the pool is removed".

Factor #7

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

Mrs. Fox stated "yes" because it is a very small variance and because the pool is only 2 feet behind his home.

Mr. Pope offered no further comments.

Mrs. Fox made a motion to grant a variance of 2 feet to allow an existing above-ground swimming pool to remain less than the required 15 feet from the primary residence at 2651 W. 130th Street, Hinckley Township.

Mr. Zeleznak second.

No further discussion.

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

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 hearing are received by the applicant via certified mail.

The minutes will be journalized on April 8, 2009.

Hearing was adjourned at 7:30 pm.

Signatures on following page

Board of Zoning Appeals

Schmidt - Variance Hearing

March 23, 2009

4

Patty Garrett, Zoning Clerk

Minutes Approved _____, 2009

David Manley, Chairman

Dottie Fox, Vice Chairman

Jeff Hoop, Member

Dave Zeleznak, Member

Melissa Huff, Member

_____absent_____
Kevin Sullivan, Alternate Member

Julie Mainzer, Alternate Member