

Board of Zoning Appeals

Slater – Variance Request

July 22, 2009

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

Roll found: Manley, Fox, Hoop, Zeleznak, Sullivan and Mainzer present. Also present: Zoning Inspector Pope and Mr. Jim Kamps, Trustee Schulte, the applicant Mr. Warren Slater, and 2 guests.

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 names and addresses, 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 Warren Slater of 4306 W. 62nd St. Cleveland, Ohio 44144 requesting a variance of 8.8 feet and 10 feet for a lot split of parcel # 016-03B-03-048 on Oakwood Lane, Hinckley Twp., Ohio.

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

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

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Fox – yes Manley – yes

Ch. Manley polled the Board as to whether they inspected the property on Oakwood Lane, Hinckley Township, at 1755 Mattingly Road. (Parcel # 016-03B-03-048)

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

Notices are mailed to the contiguous property owners surrounding the applicant's property. One contiguous property parcel in question did not have a mailing address. Unknown to Clerk Garrett, this parcel was owned by the Applicant's son. Another parcel which was next to the contiguous one but not listed in the contiguous properties did in fact have a mailing address. Clerk Garrett did not see that the names were the same therefore Mr. Slater's son did not receive a notice.

Mr. Warren J. Slater, 4306 W. 62nd St. Cleveland, Ohio was sworn in accordingly.

Mr. Zeleznak: Do you have one or 2 legal lots?

Mr. Slater: Right now I have 1 lot.

Mr. Zeleznak: Were these lots surveyed? How were these calculations arrived at?

Mr. Slater: They have been surveyed by Dean Culp. There is parcel A and parcel B.

Mr. Zeleznak: How will these lots be described legally on the tax records?

Mr. Slater: It is still the gross acreage.

Mrs. Fox: Under 6R1.4A #1 the minimum lot area is 87,120 square feet, 2 acres, and public roads will not be included in area requirements. For some reason, the person that drew the map subtracted road area from the 2 acres which gave you a net area. This makes it look like the lots are less than what they are. So according to our zoning code, public roads will not be included in the area requirements.

Mr. Slater: They took the public road off. Originally I owned the public road. Eminent domain that road put under the Township. The road is maintained by the Township. When I bought the place it was not this way. It has only been in the last few years that the road was put under the Township. I think Valleaire Golf Course bought the right-of-way to go straight through to Boston Road. Otherwise the road originally went from State Road all the way to Ridge Road. Now you cannot go across Valleaire. It is a private road. When we took care of the road ourselves, it was dirt and mud.

Ch. Manley: Therefore, parcel B is not a 2 acre lot.

Mr. Slater: Both of them are 2 acre lots.

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Mrs. Fox: Not according to this.

Mr., Slater: I am not a surveyor. The surveyor said they are both over 2 acres. Originally it was over a 4-acre parcel. The only thing that is changed is the frontage. Instead of 175 feet it is 166 feet and 165 feet. That is the only difference, they are both 2 acres.

Mr. Zeleznak: If you take the net area and add them together and divide by 2 you will still arrive at 2 acres. Although, this is not the way it is laid out here. Legally, you may have a problem with the 2 acres.

Zoning Inspector Pope was sworn in.

Ch. Manley: Would you conclude that parcel B is not in compliance with the 2-acre requirement?

Insp. Pope: According to what is on there, the road area is .075 which would make the lot 1.959 which is not 2 acres.

Mr. Sullivan: Is that the way you normally do it? When someone comes to you and they have exactly the same lot, would you tell them it is not 2 acres?

Insp. Pope: On Oakwood Lane, he owns to the center of the road. That is the way the 2 acres is calculated. He owns two 2-acre parcels.

Mrs. Fox: In the Zoning Regulations it states: Section 6R1.4a1 Minimum lot area States, 87,120 square feet (2 acres) public roads will not be included in the area requirements.

Ch. Manley: Do we consider Oakwood Lane a public road?

Insp. Pope: Yes.

Ch. Manley: Then this should be reconfigured.

Mr. Zeleznak: I don't know about that. This does not make sense. The majority of the properties are to the center of the road.

Ch. Manley: Where is the center of the road there? Is it across the street? I know there's something different about that road.

Insp. Pope: I do not know. I am not a surveyor.

Mr. Zeleznak: Would you consider these 2 acre lots based on your opinion?

Insp. Pope: Yes.

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Mr. Jim Kamps, Chairman of the Zoning Commission was sworn in.

Mr. Kamps: It may be possible that our zoning ordinance may not be entirely accurate. It was written many years ago. Medina County has changed their method for calculating the acreage. Several years ago it was amended. All lots went to the right-of-way line. It is especially true in the newer subdivisions. The older lots, prior to 1985 all went to the center of the roads. That is where the acreage was measured, to that point. In today's parlance, subdivisions' lots are divided so that the roadway is subtracted; it is subtracted from the lot acreage. In this case, I am guessing, that the tax maps probably say that the lot does go to the center of the road. I believe that statement was included in our zoning code in reference to what the tax maps depicted. Even recently this has been a topic for discussion.

Ch. Manley read parts of the legal description of the newly surveyed lots as written by Dean Culp:

The above described parcel contains 2.0343 acres of land of which .0750 acres are in the right-of-way of Oakwood Lane as surveyed.

Ch. Manley: So the parcel contains the roadway?

Mr. Kamps: Yes. He is indicating for tax map purpose, subtracting out the tax for the road. It is the standard to not be taxed for the road right-of-way.

Mr. Sullivan: So interpreting 6R1.4A the public roads would not be included. It would seem that we are to interpret that to mean, except where the property owner owns to the middle of the right-of-way.

Mr. Kamps: I would have to believe that you are correct and I can't swear to that.

Mr. Sullivan: It seems logical.

Mr. Kamps: I have just determined that we have another zoning matter to clear up.

Mrs. Fox made a motion to approve variances of 10 feet for Parcel A and 8.8 feet for Parcel B for a lot split of parcel #016-03B-03-048 on Oakwood Lane, Hinckley Twp., Ohio submitted by Warren J. Slater as shown on the drawing submitted.

Mr. Hoop second.

Ch. Manley led the discussion of the Duncan Factors;

Factor #1

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

Vote:

Sullivan – Yes

Zelesnak – Yes

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Hoop – Yes

Fox – Yes

Manley – Yes

Factor #2

Is the variance substantial?

Vote:

Sullivan – No.

Zelesnak – No

Hoop – No

Fox – No

Manley – No

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, the variance is minor.

Zelesnak – No

Hoop – No

Fox – No

Manley – No

Factor #4

Will the variance adversely affect the delivery of governmental services?

Vote:

Sullivan – No

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 do not know.

Zelesnak – I do not know.

Hoop – I don't know.

Fox – I will say No from the testimony given.

Manley – No.

Factor #6

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

Vote:

Sullivan – No

Zeleznak – Yes, by not splitting the lot.

Hoop – No

Fox – Only one problem would be solved by keeping one parcel at 2 acres with 175 feet frontage.

The 2nd lot would still have the problem. I will say No.

Manley - No

Factor #7

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

Vote:

Sullivan – Yes

Zeleznak – Yes

Hoop – Yes

Fox – Yes.

Manley – Yes.

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

The Motion passed by a vote of 5 to 0.

Ch. Manley adjourned the hearing at 8:02 pm.

Signatures on following page

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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