

Board of Zoning Appeals
Ramnytz – Variance request
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Acting Ch. Zeleznak called the meeting to order at 7:26 p.m.

Roll Found: Zeleznak, Hoop, Budd, Mainzer and Schaefer present. Also present was Alternate Member Boleman, Trustee Schulte, Trustee Augustine, Zoning Inspector Wilson, Ms. Stephanie Wernet, Ms. Sandra Wernet, Ms. Laurie Kimball, Mr. Brett Kimball, Mr. Dave Sabol, Mr. Ben Ramnytz, Ms. Elizabeth Bunerostro, Mr. Andrew Eggeman, Mr. Jason Sheldon, Mr. Jeff Baker, Mr. Jim Groh, Mr. Rob Ramnytz, Mr. Mark Wernet, Mr. Shawn Wernet, Ms. Debra Thompson, Ms. Sabra Sheldon, Ms. Jean Esposito, Ms. Sue Smith, Mr. Roger Spotswood and Mr. Jeff Powell.

Acting Ch. Zeleznak noted that this meeting is being taped for transcription purposes only and the written minutes and attachments, if any, will serve as the official record of this meeting.

Recording Secretary Gienger read the legal ad.

Acting Ch. Zeleznak stated that the Hinckley Township Board of Zoning Appeals acts within the authority of Section 519 of The Ohio Revised Code and exercises its power as provided under Section 7 & 13 of The Hinckley Township Zoning Regulations. All public hearings are open to the public. All persons wishing to testify must do so from the podium, must identify themselves and give their address and must be sworn in. Evidence and testimony must be pertinent to the hearing. It is the Chairperson's discretion to limit personal comments, personal attacks, opinions, editorializing, and/or repetitious statements or testimony or evidenced previously given. Disruptive persons will lose their right to remain at the hearing. Personal attacks will not be tolerated.

Acting Ch. Zeleznak stated the hearing is for a variance submitted by Benjamin Ramnytz, potential property owner of 411 River Road, Hinckley, Ohio (Permanent Parcel #01603B15058) requesting two variances. The first variance request is to construct a principal building (new home) at the stated address, in a location that does not meet the minimum lot width at building line of 200 feet as required by the Hinckley Township Zoning Regulations. The second variance request is to construct an accessory building at the stated address in a location that does not meet the minimum side yard setback of 50 feet as required by the Hinckley Township Zoning Regulations.

Recording Secretary Gienger polled the Board as to whether they received the packet of information and inspected the property at 411 River Road, Hinckley, Ohio (Permanent Parcel #01603B15058).

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Response: Zeleznak – yes and yes inspected on 3/18/17, Hoop – yes and yes inspected on 3/18/17, Budd – yes and yes inspected on 3/18/17, Mainzer - yes and yes inspected on 3/20/17, Schaefer – yes and yes inspected on 3/20/17.

Acting Ch. Zeleznak stated that notice of the application was properly given in local newspapers, and the application has been available for public review and comment. He asked Recording Secretary Gienger if any letters, phone calls or emails were received. Mr. Gienger noted there was no additional information received from the applicant but there was a phone call received and a visit to the office.

Mr. Ramnytz (potential buyer), Mr. Andrew Eggeman (contractor) of 7056 Mears Gate Drive, North Canton, Ohio and Mr. Jason Sheldon (current property owner) of 4338 Kirby Avenue, Cincinnati, Ohio were all sworn in accordingly.

Acting Ch. Zeleznak asked Mr. Ramnytz if he had any additional information he would like to submit. Mr. Ramnytz stated he had no additional information to submit.

Mr. Budd noted that it is quite a hike back to the property and one item of concern would be having emergency vehicle access back to the property. He asked how that would be obtained. Mr. Eggeman noted they will maintain and widen the driveway to about 12' wide all the way back to the house. Mr. Schaefer noted that they need to make sure there is a sufficient turnaround area for an emergency vehicle back at the property. Mr. Eggeman noted he will verify the needs and make sure that there is sufficient turnaround space.

Acting Ch. Zeleznak asked Mr. Ramnytz if the drive would have any curves to even out the drive. Mr. Ramnytz noted that they will pretty much use the drive as it is cut out currently but it will have a little turn up toward the house.

Mr. Eggeman asked if there was any additional information needed on the house design. Acting Ch. Zeleznak noted their only concern is with the footprint of the house.

Mr. Sheldon noted that he is the current owner and believes there is sufficient information that has been submitted in order for the Board to render a decision.

Being no further questions, Mr. Ramnytz, Mr. Eggeman and Mr. Sheldon were seated.

Mr. Roger Spotswood of 417 River Road, Hinckley, Ohio, was sworn in accordingly.

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Mr. Spotswood noted he is the current neighbor to the west of the property. He noted that he would like to see any plan modifications that are made to accommodate emergency vehicle traffic. He noted that when he bought his property, he had a written agreement with Mr. Sheldon to have walking rights on that property to the south of the boundary. Mr. Budd asked Mr. Spotswood if he has discussed this with the potential owner. Mr. Spotswood noted he did have initial discussions. Mr. Spotswood indicated on a plan the approximate location of his walking rights and it was submitted into evidence. Mr. Schaefer asked if Mr. Spotswood could bring in the letter showing his walking rights so it can be submitted into the record. Mr. Spotswood noted he will do so.

Mr. Spotswood asked why there was a need for a variance other than it doesn't meet current zoning codes. He noted he has been a resident for over 20 years and assumes the regulations are made for a reason and when changing the regulations, it sets a precedent moving forward. Acting Ch. Zeleznak and Mr. Schaefer noted that state law states that the BZA cannot set a precedence. Mr. Spotswood asked then if the Board could just do whatever it wanted. Mr. Schaefer stated it can within reason and noted that he will have 30 days to appeal the decision if he doesn't agree with the Board's decision. Mr. Schaefer noted the good part of the reason is most of the property is a flood plain and cannot be built in that area and is the main reason he is proposing that location. He stated the potential buyer has a right to buy that property and get reasonable use out of it, including presenting in front of this board requesting a variance from current regulations. It doesn't mean that the board has to agree with him, however. Mr. Spotswood noted that how the property was subdivided created the problem and it should have been divided differently so there wasn't this issue. Mr. Schaefer noted that the property has been subdivided already and it is a moot point he is making and that he is helping make the point that Mr. Ramnytz's proposed house location is the only place really for him to build on that property. Acting Ch. Zeleznak noted the property is what it is and that cannot change.

Being no further questions, Mr. Spotswood was seated.

Mr. Mark Wernet of 381 River Road, Hinckley, Ohio, was sworn in accordingly.

Mr. Wernet stated he is located to the north of the proposed property location and noted he bought the property in 2005 and did so because of the rural nature of the community and love the community. He stated the purpose of the zoning regulations in Hinckley Township is to prevent to the excessive concentration of population. He noted at the time they were looking at property in the area, Mr. Sheldon gave him a map of this parcel, a map that Mr. Wernet submitted, in which it indicates locations on where he would build a house on said parcel. He noted the highlighted outline shows his parcel in yellow, Mr. Sheldon's parcel to be sold in green and the intended house locations highlighted in orange. He noted the map shows the house was intended

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to be placed in the southeast corner of the property, downstream of the gorge and water fall area. Since they couldn't afford said property, they bought the property to the north. He noted it took them 2 years to design their house and place it on their property different than the location Mr. Sheldon suggested with the goal to be further away from surrounding neighbors in order to help preserve the rural feel of the area. He stated Mr. Ramnytz is now asking to build a house not in the southeast corner but in the narrowest part of the property in question, which is 165' wide, 35' narrower than zoning regulations allow. In addition he wants a 30' setback from their property line, which is 20' narrower than allowed. In total he is requesting 55' variance in a 165' wide space. To be clear, Mr. Namnytz has not bought the property yet so he has no hardship. He noted in the case of Duncan vs. Middlefield state of Ohio laid out 7 requirements in order to determine whether a variance should be granted. He noted 5 items:

- Whether there could be any beneficial use without the variance - Mr. Sheldon points out per his document that the house could be sited without the need for a variance in the southeast corner.
- Whether the essential character of the neighborhood would be substantially altered or if the adjoining property would suffer substantial detriment if the variance is granted - he noted that Mr. Ramnytz house would only be 80' from Mr. Spotswood's house which given that it is 7 acres, it seems it is essential change to the rural character of the community as well as detracting from Mr. Spotswood's property value.
- Whether the variance is substantial - 55' in a 165' area is definitely substantial.
- Whether the problem can be solved in another method other than granting the variance - he noted Mr. Sheldon recommended building the home in the southeast part of the parcel and give that it is a 7 acre parcel, cannot imagine that that is the only place that a house can be built, that given adequate resources and a will, a house could be built in another location on that property.
- Whether the spirit and intent of the zoning requirements and if substantial justice will be done in granting the variance - Mr. Wernet noted he believes this extreme granting of this variance goes against the original design of the parcel but detracts from the rural nature of the area, which is why he and many others bought property in this area. He also believes that legal grounds could be established in detracting from his and Mr. Spotswood's property values should the variance be granted, noting this variance places the house only 80' from Mr. Spotswood's house.

Mr. Wernet noted he has no ill will toward Mr. Ramnytz and would like to have them as neighbors but he wants to maintain the spirit and intent of the neighborhood. He noted he will reimburse Mr. Ramnytz of his cost of the variance submission cost should the verdict be rendered against them in this variance request.

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Mr. Budd asked Mr. Wernet where this second location is on the plan. Mr. Schaefer pointed it out to Mr. Budd on the plan.

Mr. Zeleznak asked Mr. Wernet if he has been on this part of the property and if it is higher and flat ground. Mr. Wernet stated it is not the highest ground but it is flat ground and not in the riparian area and it a suitable site. He noted that there are houses on the west side of River Road that are built on steep cliffs and there is nothing there to preclude building there and are granting an extreme variance when given another plan or buyer, a variance would not be required. He noted he did not move to Hinckley to live in a subplot. He noted that he did research before buying and building on his property and noted that the width of that lot was only 165' wide and unbuildable there based on the regulations. He noted he also did research to make sure there were no mineral rights reaching onto his property either and made sure everything was cleared prior to purchasing his property.

Mr. Schaefer noted that the location he is proposing would be a substantial drive with approximately 30' drop from the building site being suggested.

Mr. Wernet stated by Mr. Sheldon making that lot only 165' in that location, he created his own hardship. Mr. Schaefer noted that Mr. Sheldon when dividing that lot, did so while meeting zoning regulations. Mr. Schaefer noted that based on the current zoning regulations that there could be houses that are potentially 80' from each other based on a 50' setback for a rear lot and 30' setback from a regular lot so the 80' distance is a moot point.

Being no further questions, Mr. Wernet was seated.

Mr. Sheldon retook the stand.

Mr. Sheldon submitted a letter that he had sent to all the neighbors asking if anyone wanted to buy the property and that everyone said no. He noted that with respect to the 2nd house location, the property would have to raise approx. 50' but it is also limited due to the drive and elevation. He also noted that the proposed location of the house would do the best to preserve the character and nature of the gorge, creek and water falls on that property. He noted should the other location be proposed, it would do the most disruption to the area.

Mr. Budd asked Mr. Sheldon if he discussed the 2nd location with the potential buyer and if a variance would be required. Mr. Sheldon said he did not think a variance would be required at the 2nd location but it would be very cost prohibitive for a driveway and utilities back to that location.

Being no further questions, Mr. Sheldon was seated.

Mr. Jeff Powell of 487 River Road, was sworn in accordingly.

Mr. Powell noted he purchased his property from Ms. Sabra Sheldon in 1995 and owns 7.4 acres. He noted he originally bought 4.4 acres and then an additional 3 acres behind his property. He noted that he had it written that he had the first right of refusal for the land behind his property. He noted he was also given walking rights of the same land as Mr. Spotswood by the Sheldon's but wasn't sure if he had it in writing. He agreed with Mr. Wernet's statements and noted that there are zoning regulations for a reason and wants them to be adhered to. Mr. Powell stated he was not aware of or received a copy of the letter Mr. Sheldon was discussing where he stated he was asking the neighbors to purchase that property. A copy of that letter was then given to Mr. Powell.

Mr. Zeleznak asked Mr. Powell if that 2nd location would do more detriment to the beauty of the property than the proposed house location. Mr. Powell agreed that the 2nd house location being discussed would create more of a disruption to the nature of that lot.

Being no further questions, Mr. Powell was seated.

Mr. Ramnytz retook the stand.

Mr. Schaefer asked Mr. Ramnytz why he wanted a detached garage. Mr. Ramnytz noted it is more of a want than a need and wouldn't be necessary but it would conform to a 30' setback that normal lots have to adhere to. Mr. Schaefer noted that he doesn't have a normal 2 acre lot and as the people testifying have stated, the zoning is there for a reason. Mr. Ramnytz noted he still will have an attached garage but would like to have the accessory building if possible.

Mr. Ramnytz noted that in hearing the testimony from everyone and how everyone has walking rights, the property has been for sale for 10 years and if they wanted to enjoy the view of the land, they should have bought it. He noted that everyone wants to enjoy the view but nobody wants to pay for it. He also noted with respect to the 2nd site location, it would require approximately a 2000' driveway with bridges and concerns for riparian setbacks should that be required with no real practical way to build the drive to that location, which would create a hardship.

Being no further questions, Mr. Ramnytz was seated.

Mr. Eggeman retook the stand.

Acting Ch. Zeleznak asked Mr. Eggeman if he could move the house any further from the proposed location. Mr. Eggeman noted that if they tried to move it any further, it would encroach the riparian setbacks.

Acting Ch. Zeleznak asked Mr. Eggeman if they looked at the second site location. Mr. Eggeman stated that the 2nd location would create great difficulties with the driveway due to the elevation changes, the falls, etc. He noted that trying to build a turnaround for safety vehicles in that area may not be possible due to the elevations. He also noted that finding a location for a septic may not be possible at that location due to the bedrock in that area. He noted he's not sure that location is even buildable.

Mr. Budd asked Mr. Eggeman then if that 2nd location created a hardship due to safety vehicles and septic issues. Mr. Eggeman stated that is correct.

Being no further questions, Mr. Eggeman was seated.

Mr. Wernet retook the stand.

Mr. Wernet stated that when the lot was divided it was stated it has to have a buildable site, so it was the division of the lot was approved as a buildable lot but it isn't buildable so wasn't this division made in violation of your own zoning regulations. Mr. Schaefer noted that is not correct. He noted that the lot is buildable to the zoning code only. It is not up to the zoning inspector to determine if the lot is buildable due to site conditions and as just stated by the builder, he isn't sure that location 2 is buildable due to the bedrock and difficulties of locating a septic system.

Being no further questions, Mr. Wernet was seated.

Zoning Inspector Wilson was sworn in accordingly.

ZI Wilson stated that when he visited the site, he asked Jeff Van Loon of Medina Water and Soil to accompany them because of their concerns with the riparian setbacks and where the house is positioned currently, there are no riparian setbacks necessary. He also asked Mr. Van Loon if there was any issues with the drive as proposed. He noted that Mr. Van Loon stated there was no driveway adjustments needed to that drive. He noted that since they are not experts on riparian setbacks, they defer to the county, which is why they asked Mr. Van Loon to accompany them to the site.

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Being no questions, ZI Wilson was seated.

Mr. Powell retook the stand.

Mr. Powell stated the reason he didn't get the letter from Mr. Sheldon is that he doesn't receive mail at his address and he uses a P.O. Box, which is why he never received the letter.

Being no questions, Mr. Powell was seated.

Mr. Spotswood retook the stand.

Mr. Spotswood noted he received the letter and stated Mr. Sheldon said the price was non-negotiable but had he dropped the price 40% as is stated now, he would have been willing to listen

Being no questions, Mr. Spotswood was seated.

Ms. Jean Esposito of 432 State Road, Hinckley, was sworn in accordingly.

Ms. Esposito noted she is here representing Hinckley Hills Golf Course and noted she is always concerned with houses that are being built close to the golf course for their safety and concern. She noted the potential builder should be aware of golfers and golf balls should he move forward with the house.

Being no questions, Ms. Esposito was seated.

Mr. Sheldon retook the stand.

Mr. Sheldon noted that in all his years on that property or surrounding area, he has never found a golf ball on that property.

Being no questions, Mr. Sheldon was seated.

There being no further testimony offered, Acting Ch. Zeleznak asked for a review of the Duncan Factors for the first variance request (principal building).

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Factor #1

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

Vote:

Schaefer – No

Mainzer – No

Budd – No

Hoop – No

ZeleznaK – No

Factor #2

Is the variance substantial?

Vote:

Schaefer – Yes

Mainzer – Yes

Budd – Yes

Hoop – Yes

ZeleznaK – Yes

Factor #3

Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment if this variance is granted?

Vote:

Schaefer – No

Mainzer – No

Budd – No

Hoop – No

ZeleznaK – No

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Factor #4

Will the variance adversely affect the delivery of governmental services such as fire or ambulance?

Vote:

Schaefer – No

Mainzer – No

Budd – No

Hoop – No

ZeleznaK – No

Factor #5

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

Vote:

Schaefer – Yes

Mainzer – Yes

Budd – Yes

Hoop – Yes

ZeleznaK – Yes

Factor #6

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

Vote:

Schaefer – No

Mainzer – No

Budd – No

Hoop – No

ZeleznaK – No

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:

Schaefer – Yes

Mainzer – Yes

Budd – Yes

Hoop – Yes

ZeleznaK – Yes

Mr. Hoop stated that this is a motion for a variance submitted by Benjamin Ramnytz, potential property owner of 411 River Road, Hinckley, Ohio (Permanent Parcel #01603B15058) requesting to construct a principal building (new home) at the stated address, in a location that does not meet the minimum lot width at building line of 200 feet required by the Hinckley Township Zoning Regulations. The lot width is 165' so he is requesting a variance of 35'. This variance is conditional on the builder discussing with the fire department a proper size/layout of the turnaround needed for their vehicles. This variance is also conditional to the sale of this property to this applicant only.

Mr. Budd seconded the motion.

Vote: ZeleznaK - yes, Hoop – yes, Budd – yes, Mainzer - yes, Schaefer – yes

Passed by a vote of 5 to 0

Acting Ch. ZeleznaK 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 ground that such decision was unreasonable or unlawful and will have 30 days from the date of this meeting to appeal. A copy of the signed documents will be given to the applicant at the end of this hearing. He noted the applicant has one year to construct the building.

Acting Ch. ZeleznaK asked for a review of the Duncan Factors for the second variance request (accessory building).

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Factor #1

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

Vote:

Schaefer – Yes

Mainzer – Yes

Budd – Yes

Hoop – Yes

ZeleznaK – Yes

Factor #2

Is the variance substantial?

Vote:

Schaefer – Yes

Mainzer – Yes

Budd – Yes

Hoop – Yes

ZeleznaK – Yes

Factor #3

Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment if this variance is granted?

Vote:

Schaefer – Not substantial, but unnecessary, so Yes

Mainzer – No

Budd – No

Hoop – No

ZeleznaK – Yes

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Factor #4

Will the variance adversely affect the delivery of governmental services such as fire or ambulance?

Vote:

Schaefer – No

Mainzer – No

Budd – No

Hoop – No

ZeleznaK – No

Factor #5

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

Vote:

Schaefer – Yes

Mainzer – Yes

Budd – Yes

Hoop – Yes

ZeleznaK – Yes

Factor #6

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

Vote:

Schaefer – Yes

Mainzer – Yes

Budd – Yes

Hoop – Yes

ZeleznaK – Yes

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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:

Schaefer – No

Mainzer – No

Budd – No

Hoop – No

ZeleznaK – No

Mr. Hoop stated that this is a motion for a variance submitted by Benjamin Ramnytz, potential property owner of 411 River Road, Hinckley, Ohio (Permanent Parcel #01603B15058) requesting to construct an accessory building at the stated address, in a location that does not meet the minimum side yard setback of 50 feet as required by the Hinckley Township Zoning Regulations. He is requesting a variance of 20'.

Mr. Schaefer seconded the motion.

Vote: ZeleznaK - no, Hoop – no, Budd – no, Mainzer - no, Schaefer – no

Failed by a vote of 5 to 0

Acting Ch. ZeleznaK 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 ground that such decision was unreasonable or unlawful and will have 30 days from the date of this meeting to appeal. A copy of the signed documents will be given to the applicant at the end of this hearing. He noted the applicant has one year to construct the building.

Acting Ch. ZeleznaK made a motion to adjourn the Hearing. Mr. Schaefer moved and Mr. Budd seconded

Vote: ZeleznaK - yes, Hoop – yes, Budd – yes, Mainzer - yes, Schaefer – yes

Hearing was adjourned at 8:47 p.m.

Todd Gienger, Recording Secretary

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Minutes Approved: _____, 2017

Absent (Excused)

Josephine Calabro, Chairperson

Jeff Hoop, Vice Chairman

Dave Zeleznak, Member, Acting Chairman

Julie Mainzer, Member

William Budd, Member

Bill Schaefer, Member