

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
AUGUST 20, 2008**

Chairman Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:30 p.m. All Permanent Board members were present. Alternate member Steve Euse was also present. Alternate Board member John Bostwick was absent.

MISC.

Secretary Ferencz stated she sent a letter and pertinent minutes to the Trustees regarding the recommendations the Board made for the attendance of members for workshops, seminars etc. and has not received a response back as of this date. Secretary Ferencz also handed out request sheets to the Board members for the attendance of workshops, seminars etc. that require a fee. These request sheets would need to be submitted for approval by the Trustees to pay for any such workshop, seminar etc. Secretary Ferencz stated that the questions she had were if the requests would be able to be acted on before such a workshop/seminar took place and if the Trustees do approve such a request, how the Board member would be notified of their action. This would need to be determined by the Board of Trustees.

CONTINUANCE

DISCUSSION ON SCHROETER REQUEST- Pearl Rd.

Chair Morel stated that Mr. Schroeter requested and was granted a variance on a commercial piece of property. The motion of the Board was to grant the 50 ft. side yard variance for the construction of the new building with the condition that the existing building (garage) be removed within 60 days of the new building being completed. Since that time, Mr. Schroeter would like to keep the existing building and fix it up to be able to use it to rent out to a local contractor. He then came back before the Board with an application for consideration of the original variance request. The Board tabled action until it was determined by the Pros. Office as to if this would be considered res judicata. Secretary Ferencz called Mr. Thorne about this issue and he stated that if the Board would have voted differently if they knew at the time that Mr. Schroeter wanted to keep the existing building (garage) then it would be up to the Board to determine if this evidence would warrant the variance being reconsidered.

Chair Morel stated that since the full Board is present this evening that heard the original request, he would like each Board member to vote on paper as to whether they felt that this new evidence would warrant the variance being reconsidered. A vote of yes would mean one was in favor of re-opening the variance request. A vote of no would mean one did not believe there was enough evidence to re-opening the variance request.

ROLL CALL-West-no, Karson-no, Morel-no, Dufala-yes, Becker-no.

Bilinovich Variance Request-4766 Lake Forest Trail

Chairman Morel reviewed the file. Secretary Ferencz read the application. The applicant is KNL Custom Homes Inc. The property owner is Mike Bilinovich. Property requesting the variance-4766 Lake Forest Trail. Present Zoning-UR/PUD. Previous Requests: None. Variance requested: Section 403.4.D.3 Minimum Rear Yard Setback Required-30 ft. Requesting Setback at 19.49 ft. for deck. Requesting Setback at 21.65 ft. for the house. Requesting Variance of 10.51 ft. for deck and house.

The justification for the variance request:

A. The variance we are asking for, if not granted, will result in hardships for the overall construction of this house. Due to the existing grade of this lot, this house can only be built with a left side garage. We have tried to incorporate the design with a walkout basement and a "lower basement garage" to adhere to the existing grade.

B. Exceptional circumstances for this lot would be the way the rear yard property line does not follow the water's edge as it does on the other properties. The rear yard property line starts at 30' off of the water on the left side of the lot. It slowly comes into this property and on the right side is over 60' off the water and into the body of this lot. Keeping the rear yard set back of 30' would make the back of this house 90' off the water edge.

C. The granting of this variance will not affect any public interest or any other property owners. This is only in the rear yard and will not even be a visible variance given the position of the other homes in this development.

Attached was also a letter from the Lake Medina Reserve Homeowners Association, which stated:

Re: Lake Medina Reserve Sublot 28 (4766 Lake Forest Trail)

Dear Mr. and Mrs. Bilinovich:

The Architectural Review Committee of the Lake Medina Reserve Homeowners' Association has reviewed the design and topography submitted for 4766 Lake Forest Trail (Sublot 28) Lake Medina Reserve. The ARC will approve a variance from the 30 foot rear boundary line setback to a 19.49' rear boundary line setback for the deck; 21.65' rear boundary setback for the house; and a front boundary line setback from 75' to 50' pursuant to section 9.4.1. of the Declaration of Covenants, Conditions, Restrictions, and Reservations of Easements. The variance is allowed based on the following facts:

1. The variance, if granted, will not adversely affect the adjacent property owners.
2. The property along the rear boundary line is land locked and not buildable.
3. The only access to the property along the rear boundary line is via Lake Medina.

4. The difficult topography of the property makes it undesirable to orient the home in any other manner.

Our variance is subject to Medina Township Zoning Department approval. Once their approval is obtained approved copies of the topography and Home Design will be transmitted.

Please contact me if you have any questions.

William J. Bailey

Also included were the DUNCAN FACTORS as responded by the applicant.

1.A. Given the current zoning on the rear yard set back of 30' on this specific property, it makes the building envelope on the right side of this property very narrow. Without this variance request, this house cannot be built on this lot.

2 A. Given the amount of area to the waters edge, we do not feel this variance is substantial. The foundation portion of this home is approximately 26% into the rear yard setback.

3 A. Granting this variance will not alter any adjoining property owners or make them suffer a substantial detriment. This variance will not be visible given the nature of the setting of this house.

4 A. No, this variance will not affect the delivery of governmental services.

5 A. No, the property owner had no knowledge of the rear property line being that far into his building envelope. This was only discovered after the survey was complete and we were trying to position this house on the lot.

6 A. This problem can only be solved by altering this house plan. This will dramatically affect the design of this house. We have minimum sq. ft. allowance for this development that we are trying to uphold. We feel the house design will keep the integrity of the neighborhood, both in design and aesthetics.

7. Yes, we feel that granting the variance will uphold the spirit and intent of the zoning resolution. We would ask the Board of Zoning Appeals to agree with us on this request.

The applicant, Mr. Todd Folden from KNL Custom Homes Inc. and the property owner, Mr. Bilinovich were sworn in. Mr. Folden stated it was hard to tell by the pictures but with the topography of the property the rear of the property is 9 ft. below the street from the front of the house to the rear of the house. Mr. Dufala asked the square footage of the home. Mr. Bilinovich stated right now the house is 4300 sq. ft.

Mr. Bilinovich stated prior to buying the lot, he found the left front stake of the property but never did locate the rear of the right stake on the property. Mr. Bailey stated it was 35 ft. all the way along. Mr. Bilinovich continued that while he and his contractor were figuring where to put the house on the lot, they had a survey done and found out they came in 65 ft. Mr. Folden interjected that it would therefore be difficult to put a house on

that lot without a variance. He added that there were some homes on the lake where the property lines go into the lake.

Chair Morel stated that the front and side yard setbacks are correct the rear setback is encroached only for a very small area of the home. Most of the encroachment is the deck. He also asked if the house plans submitted were the final plans. Mr. Folden stated that was correct.

Mr. Dufala stated the only issue he had was that the response to Duncan Factor # 5 Did the property owner purchase the property with the knowledge of the zoning restrictions? Dufala commented, "Why would anyone purchase a piece of property like this; spend upwards of \$200,000 not knowing if this house could be placed on the property?" Mr. Bilinovich stated he relied on the word of the developer Mr. William Bailey and probably should not have. Mr. Dufala responded that the Board gets the "I didn't know about the zoning" response all the time. It seems people just write a check and hope the Township grants a variance. Mr. Dufala continued that Mr. Bilinovich could build a 2,000-sq. ft. home on the property. Mr. Bilinovich responded no he could not; there was a minimum square footage requirement by the developer or he would have to sell the lot. Mr. Folden interjected that the thing that was different about this lot was that there were only two rear corner property pins in the very rear of the property so the line you are seeing coming across there is no demarcation of that line whatsoever.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or can there be a beneficial use without the variance request? Chair Morel stated yes, but it is practical.
2. Is the variance substantial? A 10-ft. variance on a 30-ft. setback is substantial. However, given the nature of how much of the house actually sits on it, it is only 80-sq. ft. of 4300 sq. ft. I believe that changes how substantial it is. Mr. Dufala also added that given the fact there is a lake behind the house and nobody can build there is another factor.
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? Chair Morel stated that per the letter submitted that was gone through in great depth with the review before the HomeOwners Association.
4. Will the granting of the variance adversely affect the delivery of governmental services? The Board stated no.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? Chair Morel the property owner knew there was zoning he was just not aware of where the lot lines were given this unique situation.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board yes it is always possible but not always practical.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

Mr. West made motion to approve a 10.51-ft. rear yard setback variance for a house and a deck to be built on the property located at 4766 Lake Forest Trail per the drawing submitted. It was second by Mr. Dufala.

ROLL CALL-West-yes, Dufala-yes, Becker-yes, Karson-yes, Morel-yes.

The Mower Shop Variance Request- 3055 Pearl Rd.

Chair Morel reviewed the application. Secretary Ferencz read the application. The applicant is Illes Architects on behalf of the owner, Ken Peters for the Mower Shop located at 3055 Pearl Rd. The present zoning GB. Previous requests: No. The variation requested is of Section 405.3.D Side Yard Width-25 ft. The existing property will not allow for expansion without a variance, front, rear or sides.

The justification for the variance request: The current utilization of the existing facility is not user friendly for employees or customers. Because of the configuration of the property and the existing buildings, any expansion would require a variance. If the variance were granted and the addition constructed most people would not even be aware that it happened because of its location to the existing building.

Note: The adjoining neighbor to the south is not opposed to the addition.

Secretary Ferencz stated she did receive documentation from the Zoning Inspectors that a previous variance was granted on October 21, 2002. The letter reflecting the Board's action read as follows:

RE: Variance of Sections 405.3. b.-Min. Side yard width-25 ft. and 405.3.D.2. (a) 2-Min. Rear lot width-75 ft., to construct an addition and accessory building at the property located at 3055 Pearl Rd. otherwise known as The Mower Shop.

Dear Mr. Peters:

At a meeting of this Board held on October 16, 2002, a motion was made to grant a 16 ft. front yard setback variance for the addition to the house so that it aligns with the front of the main building, as well as a 60 ft. south side yard buffer zone variance, a 55 ft. east rear yard buffer zone variance, and a 15 ft. north side yard setback, for the construction and placement of a 30 ft. wide by 40 ft. deep pole barn. The pole barn must be located 15 ft. from the south side yard, 20-ft. from the rear yard and 10 ft. from the north side yard. Hardsurface paving will be completed per the drawing submitted.

Chair Morel questioned the aerial photo submitted regarding the property lines for this property. Secretary Ferencz stated that the property lines could be off by as much as 10-15 ft. on the maps. This is caveat on the auditor's website.

Mr. Kerry Illes from Illes Architects and the property owner Mr. Ken Peters were sworn in. He stated the proposed addition would go between what was the original house and

existing pole building. Mr. Illes asked that Mr. Peters be allowed to explain to the Board the need for this addition.

Mr. Peters stated that what has precipitated the need for this addition is due to theft he has experienced at his business. The last incident which occurred 6 weeks ago had \$50,000 worth of merchandise stolen. He added he did not have the money to build the addition but would have to come up with it somehow, as this is the third or fourth theft at his property. This way the equipment currently outside could be in a secured building. He concluded that if he continued to have such crimes committed at his business he was afraid he would lose his insurance coverage, which was a real concern. By locating the addition as proposed it would move the service department from downstairs to upstairs. That would then open up the whole downstairs for storage.

Mrs. Karson asked what kind of security system Mr. Peters had. Mr. Peters stated chain link fence and barbwire. He added that his building was very well lit outside but that apparently has not deterred the theft. By being able to build the addition, it would put everything of value inside and secure it. Chair Morel stated he understood as he owned his own business in Cleveland, but according to the photos the addition is on the property line. Mr. Peters stated that the only pin that has been located is on the south east corner of the property so he knew where that corner of the property is. He added that he had a surveyor he did mower work for come out and show him where the front pin was within a couple of feet. Mr. Peters stated he believed the existing fence is within a couple of inches of the property line. Mr. Peters continued that if he was granted the variance, before he built the building he would have a survey completed. He went on record to state that he would not build the proposed addition to the property line.

Mr. Dufala asked how close the pole building was to the property line. Mr. Peters stated the pole barn was about 15 ft. from the south side of the property. The problem with the pole barn was that he knew where that rear pin was from what the surveyor told him but at that point and time tax map did not have the computer where one could look over and see roughly how the property laid out. Mr. Peters added that he thought the property line was parallel to the side of the house and thus parallel to the pole barn, but as one looked at the tax map you could see that was not the case. Mrs. Karson stated that in the original 2002 request, the property line does look parallel. Mr. Dufala asked Mr. Peters how far off the property line was he proposing the addition to be? Mr. Peters stated 5 ft. off the property line would be good.

Mr. John Montali was sworn in. He stated he was the property owner to the south. Mr. Montali told the Board that Mr. Peters is a great neighbor and has made a silk purse out of a sow's ear with this property. He added when he was going through his own build out 4 yrs. ago, he had several thousand dollars of tools stolen. Mr. Montali stated he also had a set of golf clubs stolen right out in front of Bunker Hill Golf Course across the street. It is a habitual area because it is so close to the highway. Mr. Montali commented that without police coverage on a continual basis and the access to the freeway this area is

highly susceptible. Mr. Montali continued that he has been through this type of theft and the only insurance company that would cover him was Lloyd's of London. He added that he would be willing to give Mr. Peters 2-5 ft. of his property for him to be able to build this proposed addition if would not effect him negatively. Mr. Montali continued that where Mr. Peter's wants to build where it abuts his property there is a cliff.

Mr. Dufala asked who the trees belong to. Mr. Montali stated he believed some were his and some were Mr. Peters. However in the middle of the tree line there is a cliff. Mr. Peters interjected that the wall on the south side needed to be a block firewall. Because the wall is going to be block the cliff is not going to be there anymore because he was going to level the cliff. Mr. Dufala stated that because the property has not been surveyed and the applicant can not definitively state where the property lines are it would be best to table the request. Mr. Peters stated he would then ask for 17 ft. instead of 15 ft. Mr. Becker stated he agreed with Mr. Dufala that the property should be surveyed before the Board took action.

Chair Morel stated the variance request was substantial. There have been numerous variances granted to this property previously. This is a commercial piece of property and the applicant is asking for the addition to be right on the property line. Mr. Dufala stated he understood Chair Morel's comments but this variance would not negatively affect the surrounding neighborhood. Also the variance would uphold the spirit and intent of the Resolution as Mr. Peters has well established business and has done much with the property.

Mr. Peters stated that if the Board gave him a 20-ft . variance, before the building was built he would have it surveyed. The problem with having the property surveyed now is that surveyors need pins to do a survey and because Pearl Rd. was asphalted over so many times the center road pins they use as a starting point are not there or are so deep in the asphalt they cannot be found. To survey this property is going to cost approximately \$2500.00. Mrs. Karson asked if Mr. Peters could just have a surveyor come out and do a pin placement in the rear. Mr. Peters stated he knew where the rear south pin was located. He added he has talked to a few surveyors and they said they would have to start down the street and work their way to him. \$2500.00 is a big gamble if the variance is not granted.

Chair Morel stated the Board was obligated to review the Duncan Factors and without knowing exactly where the property lines are the Board could not make an educated decision. Mr. Dufala again suggested tabling the request until a survey was completed. Mr. Peters stated if his request was tabled he would be out of town the next two months when the BZA hearings are scheduled. The goal is to get this built before winter. The Board stated that Mr. Peter's could authorize Mr. Illes to be his representative at the hearing.

Mr. West made a motion to table the variance request for the Mower Shop until the Board's next regularly scheduled meeting pending a survey being completed and submitted by the zoning board deadline. It was second by Mr. Dufala.

ROLL CALL-West-yes, Dufala-yes, Becker-yes, Karson-yes, Morel-yes.

MINUTES

Mr. Dufala a motion to approve the minutes to the BZA's July 16, 2008 hearing as written. It was second by Chair Morel.

ROLL CALL-Dufala-yes, Becker-abstain, West-yes, Karson-abstain, Morel-yes.

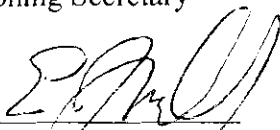
MISC.

Mr. West asked about the situation on 3868 Boxelder Dr. in which the Board required the existing pool to be removed. ZI Ridgley stated Trina Devanney from the Pros. Office was probably going to talk to the Board because she feels that the pool should remain. The people who own the house are going through bankruptcy.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 8:42 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


Ed Morel, Chairman