

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
AUGUST 16, 2006**

Vice Chair Dave Dufala called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:30 p.m. All Board members were present except for Chairman Ed Morel. Alternate member Robert Erickson sat in for a full Board. Vice Chair Dufala introduced the Board members and explained the public hearing procedure to those present.

Russell Realty variance request-3848 Granger Rd.

The Vice Chair reviewed the file. Secretary Ferencz read the application. The applicant is Scott Hixon from Bob Cutler Signs. The landowner is J & RR Investments LLC. The address of the property requesting the variance is 3848 Medina Rd. The variation requested is of Section 605 I-1. The business has 36' of frontage and is requesting a 51 sq. ft. sign; as well as Section 605 I. -1 to allow for a second sign to read, "Russell Park" to be located on the clock tower.

Secretary Ferencz interjected that at last night's Commission meeting, Russell Realty presented two signs to be considered for approval. The first sign was for Russell Real Estate Services and the second sign was for "Russell Park" to be located on the clock tower. The Commission stated that they could only approve 1 sign. The applicant then asked what sign they wanted the Commission to approve; which the applicant, Mr. Ron Russell, owner of J & RR Investments LLC, stated the sign reading "Russell Real Estate Services. The Commission then approved the sign for "Russell Real Estate Services" and denied the second sign stating "Russell Park" which was not permitted per the Zoning Resolution. Secretary Ferencz continued that therefore the variance request for "Russell Real Estate Services" was a mute point and would not be considered this evening.

The explanation for the variance request for the sign for Russell Park stated, "If approved this sign would tastefully display the name of our building. The sign would give a perfect finishing touch to our offices without creating an eyesore to the community.

The owner, Mr. Ron Russell, was sworn in. Mr. Russell stated that in the back of this building there is another 6 ½ acres he would like to develop. "Russell Park" is not just the name of the building but would be the name of the entire development. There is also 20 acres to the east of this building that is located in Montville Twp. but access is in Medina Twp. The variance request is for a sign on the clock tower to bring the project and building together as a whole and make it as attractive as possible.

Vice Chair Dufala asked if there were plans to put up a ground sign as well. Mr. Ron Russell stated Pat Catans was suppose to move next door but withdrew their option as ODOT was giving them problems about access onto Rt. 18. The intention was to share a ground sign with Pat Catans. That not being the case, Mr. Ron Russell stated they were

looking into putting up their own ground sign. He added that on the original plan he submitted for this building, it did show a ground sign and that was their intention.

Mrs. Strogin, Chair of the Zoning Commission was sworn in. She stated that though the sign may have been on the site plan submitted, the Commission did not approve the sign, only the use of the building. She went on to say that regarding Secretary Ferencz's comments about the signage that was approved by the Commission last evening, the signage that was originally submitted for Russell Real Estate Services was calculated incorrectly and the Board tabled them to correct the error but, in the meantime, they filed a variance request with the BZA. When the math was done correctly the result was that the business has 61 ft. of linear frontage and was requesting a 51 sq. ft. sign which is permitted under the Zoning Resolution therefore, that variance request before the Board this evening for that sign is no longer applicable.

Mr. Floyd Baum was sworn in. He stated he lived across from the property in question. Mr. Baum stated he was concerned about the sign that would be placed in front of the building. He stated he hoped this would not be a large obtrusive sign by the road. He added the sign that was recently erected in front of Signature Square was very tastefully done. Mr. Baum stated he was not sure if what was done with a ground sign by the Township would not set a precedent. He continued that though this is a commercial business it is near a residential area and added that traffic issues needed to be taken into consideration as well. Mr. Baum stated the owner should not be granted a larger sign because the land sits so far back from the road. That was the property owner's decision to buy that land.

Board member Erickson asked if it was the applicant's intent to have an identification sign out by the road. Mrs. Strogin stated that though the 20 acres to the east and rear to be developed is in Montville, the entrance to the property is in Medina Township and felt that the applicant would want an identification sign and not just a ground sign which was allowed to be only 32 sq. ft.

Mr. Jeff Russell stated that they were not looking to place a large sign on the front of the road identifying the businesses in "Russell Park". The location of the hill on Rt. 18 was something that needed to be taken into consideration. Vice Chair Dufala stated when a motion was made, the Board could put conditions on the approval regarding future signage for the rest of the development. Mr. Ron Russell stated he had no issues going on the record that they would only request a modest identification sign (they were looking at a 6'x 8' sign) for Russell Realty in lieu of any additional signage request. Mrs. Strogin stated the sign could only be 32 sq. ft.

Mr. Becker stated what was really being requested was for a total of 111 sq. ft. of signage for an area of 36 ft. That is a lot of signage. Mr. Ron Russell stated that the reason for the other sign was because of the configuration of the building. It is not a straight across designed building but rather it was "L" shaped. It really was not that there was so much

verbiage, but rather due to the shape of the building. Mr. Becker stated he was not totally in favor of the variance.

Secretary Ferencz read a letter from Chairman Ed Morel (see file) in which he responded to 7 Duncan Factors as follows:

1. Will the property yield a reasonable return or a beneficial use without the variance request? Chair Morel responded, There is a temporary sign hanging above the front door which can clearly be seen from Rt. 18 so the property can yield a reasonable return without the variance.
 2. Is the variance substantial? Chair Morel responded, The variance request for the sign is double the legal limit. I would call this substantial.
 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 responded, Our zoning is applied equally to all businesses. This gives everyone a level playing field. Other businesses could claim it would negatively impact them.
 4. Will the granting of the variance adversely affect the delivery of governmental services? Chair Morel responded, No, it would not.
 5. Did the property owner purchase the property with the knowledge of the zoning restrictions? Chair Morel responded, I would certainly hope that a business called "Russell Real Estate Services" would have knowledge of where they are building and the zoning requirements.
 6. Whether the problem can be solved by some other manner other than the granting of the variance? Chair Morel responded, I see no evidence that there is a predicament. Just a wish list.
 7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? Chair Morel responded, the spirit and intent is to keep our township from sign clutter, yet let businesses have reasonable signage. This is not reasonable.
- I clearly think after review of the Duncan Factors, these requests do not meet the requirement for granting a variance.

Vice Chair Dufala stated he was not in favor of additional signs but I felt that in lieu of a future monument sign identifying all the individual business in the complex the applicant be permitted to have a ground sign to identify Russell Realty, and the sign variance for "Russell Park" on the clock tower.

Mr. Baum stated he did feel the businesses that would be located in the back 6 acres would go along with not having signage by the road identifying they were in the building complex. Vice Chair Dufala stated that if that was how the Board wished to word its motion then that would be the way it was handled. If the land in the rear is ever developed it was landowner's responsibility to inform the potential tenant about the signage. The landowner Mr. Russell is present this evening and has agreed to this on the

record and has the obligation to inform any of his future tenants what the regulations are in his development regarding the signage permitted.

Mr. West made a motion to grant a variance of Section 605 I-1 to allow for a second wall sign stating "Russell Park" to be located on the clock tower of the building located at 3848 Medina Rd. as submitted. Specifically conditioned upon the "on the record" waiver by Russell Realty (J & RR Investments LLC) of any right under the Zoning Resolution of Medina Township the request for any identification sign for Russell Park and or any future tenants of Russell Park. It was second by Mrs. Karson.

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

John Hudak, Inc. variance request-Sublot 57 Whispering Woods Phase 3, 4161 Mallard Bay

The Chair reviewed the file. Secretary Ferencz read the application. The applicant is Attorney Gregory Happ on behalf of the property owner, John Hudak, Inc. The property requesting the variance is Sublot 57 Whispering Woods Phase 3-4161 Mallard Bay. The area variance being requested is of Section 403.3 (D)-Lot and Yard Requirements Minimum Front Yard Depth-50 ft. The reason for the variance stated, "The reason for this variance is to allow the construction of a residential structure with less than a 50 ft. front yard depth. The actual encroachment of the proposed residential structure is shown by the drawing attached hereto. It should be noted that the variance is not for the full frontage only so much of the frontage of Sublot 57, necessary to situate the proposed structure.

Applicant notes that the proposed residential structure will be within 25 ft. of the edge of the existing lake. There is no prohibition in the Medina Township Zoning Resolution preventing the construction of a home within 25 ft. of a lake or pond, only a prohibition against constructing a pond or lake within 25 ft. of the main building. (Section 308 A. Medina Township Zoning Resolution). However, if the Board of Zoning Appeals determines that it is necessary to issue a variance from Section 308 A, in order to approve the variance from Section 403.3 (D), such variance is also requested.

The explanation for the request for the variance stated as follows:

This application is for an "area variance" and not a "use variance". Therefore the standard is "practical difficulties" under the seven factors set forth in Duncan v. Village of Middlefield. In order to demonstrate "practical difficulties" applicant addresses the "seven Duncan Factors" as follows:

1. Will the property yield a reasonable return or a beneficial use without the variance request?

Without the variance, no house can be situated on the lot that is consistent with the other residences of Whispering Woods Subdivision.

2. Whether the variance substantial?

Given the curve of Mallard Bay, much of the proposed structure will meet the minimum front yard depth. It is only a portion of the proposed residence that will be less than 50 ft. from Mallard Bay. The proposed placement of the residential structure on Sublot 57 will minimize the encroachment by the structure.

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?

The neighborhood will not be affected by granting of the area variance. The only structure being contemplated is a residential home with a garage consistent with other residential structures along Mallard Bay and within Whispering Woods Subdivision. Due to the curve of Mallard Bay along the frontage of Sublot 57, no adjoining properties would suffer any substantial detriment to their property from the proposed variance.

4. Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage)

There is nothing in regard to the proposed area variance that would adversely affect the delivery of governmental services.

5. Whether the property owner purchased the property with knowledge of the zoning restriction.

The configuration of this lot was formed as the subdivision and the lake were constructed. However, until a house is proposed by a contractor or homeowner, the specific layout of a residential structure on the lot cannot be fully foreseen on this lot due to the curve of Mallard Bay and the lake submerging much of Sublot 57.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.

The layout of a residential structure is dictated by both the curve of Mallard Bay and the lake on Sublot 57. It is impossible to change the curve of Mallard Bay and extremely difficult to change the shoreline of the lake to allow a greater set back for the proposed residential structure.

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

The spirit and the intent of maintaining a 50-ft. front yard depth will be observed for a majority of the frontage of Sublot 57 and the proposed residential structure. Due to the curve of Mallard Bay along the front of Sublot 57, a minimal variance for a portion of the garage seems to best maintain the intent behind the zoning requirement and to make the residential structure consistent with the other residences in the Whispering Woods Subdivision.

The property owner, Mr. John Hudak was sworn in. Attorney Gregory Happ addressed the Board.

Mr. Happ asked Mr. Hudak the following:

Mr. Happ: What is your capacity at Hudak, Inc.?

Mr. Hudak: President.

Mr. Happ: Do you own Sublot 57 in Whispering Woods?

Mr. Hudak: Yes I do.

Mr. Happ: Do you know when this phase in Whispering Woods was subdivided.

Mr. Hudak: sometime in 1999.

Mr. Happ then entered into the record Exhibit A which was the recorded plat of Whispering Woods Subdivision Phase 3.

Mr. Happ: In regards to the lake in Phase 3, was the lake constructed prior to Phase 3?

Mr. Hudak: The lake was constructed prior of Phase 3.

Mr. Happ: So when this land was subdivided you knew it would come back for a variance?

Mr. Hudak: When the flood plain was approved, I was not 100% sure there would need to be a variance because the lot was approved to be a buildable lot. I have all the signatures and also from the County.

Mr. Happ: But you didn't know what building you would put on the lot?

Mr. Hudak: That is correct.

Vice Chair Dufala stated the drawing that was submitted as part of the application does not give specific reference to how much of the house would require a variance.

Mr. Happ stated he would like Mr. Michael Hudak sworn in who would construct the residence.

Mr. Michael Hudak was sworn in. He stated the 50-ft. minimum setback line was marked. Mr. Becker stated that a majority of the house on the drawing was shown to be in front of that line. Mr. Michael Hudak responded that the more you restrict the depth in one location, the more the width would be impacted. When we came up with this home design we tried to come up with a balancing act of what house design and where it was located where it would give the least impact. Mr. Happ entered as Exhibit B the design/floor plans Mr. Hudak would like to build on the lot in question.

Mr. Michael Hudak stated the house would be a story and a half. There would be 2 bedrooms, a bath and a small loft area upstairs. The square footage on the first floor would be 1,879-sq. ft. and on the second floor 757-sq. ft.

Mr. Happ stated for the record, that Mr. Hudak has laid out multiple structures on this lot. Mr. Hudak stated they have exhausted every possible design to see what the best possible balance would be. He added he went to see Mr. Happ and asked him how much of a variance could be given, to which Mr. Happ replied, the least amount possible. Mr. Hudak stated they have gone back and forth and even tried putting the living space in the

back of the garage all the way across and that made it less than 14.5 ft. they showed on the plan.

Mr. Becker suggested they keep the lot green space. The lot is too tight to build on. A third of the lot was underwater. Mr. Hudak stated the bottom of the footer would be above the water level. That in conjunction with the higher second overflow for a 100-yr. flood, he was comfortable with this location.

Mr. Paul Karla was sworn in. He stated he lived at 4160 Mallard Bay which was across the street. He stated this was the first time he has seen the proposal as he had been on vacation for the last 2 wks. He added that he was concerned because there were restrictions in the declarations and covenants for this development for the setbacks and the size of a home. He added that one of the reasons he and his wife bought in this development was because of the control of these regulations. Mr. Karla stated he wanted to go on record that this is an attractive home proposed but in 1991 when this was laid out there were originally 5 lots on this side of the street. This lot in particular was at least 20-25 ft. wider at the wide end. When the property was re-platted in 1999, there were two lots added on that side of the street and this lot became smaller. The setbacks and restrictions existed since 1991, and are still applicable today. Mr. Karla stated a two-story home could more than likely fit on the lot without a variance. He added that the restrictions in the declarations and covenants were known since 1991.

Mr. Erickson asked what the minimum square footage was for this development. Mr. Karla stated the requirements were different for a ranch, a two story etc. Mr. Mike Hudak stated it was easy to say just build a two-story home however, then the square footage goes up proportionally and it would still be an issue. The footprint would need to grow or remain the same and encompass the entire second floor.

Secretary Ferencz read the BZA minutes from August 12, 1998 which stated,

Hudak Custom Builders, Inc.-property located west of 4144 Mallard Bay Dr. and known as SL #45-The Board reviewed the file for the variance request. Member Robert Rae read the variance request to the public. Mr. Mike Hudak was present to explain his request. The applicant is requesting a variance of the Medina Township Zoning Resolution Section 403.3F (Rear Yard Setback-30 ft.) If granted, the applicant would be able to construct a single family dwelling 14'14" from the rear lot line. Mr. Rae also read a letter from Mr. and Mrs. Kenneth Sullivan of 4144 Mallard Bay stating their imposition of a setback of 14'1". Mr. Hudak explained that he has an older couple that desires a ranch style home. The lot to the west is currently vacant. The land to the rear is parkland. The setback requirements for the UR District are 30-rear, 15-side, and 50 -front. Mr. Hudak stated that any home built on this lot will need a variance. The Board suggested he combine the lot with the lot to the west. Mr. Hudak stated there is a 40' easement that runs between them that can't be built on. Mrs. Sullivan was present and stated her opposition of a variance. She stated that they have a blank slate now and there should be

no need for a variance. She desires privacy in her back yard on her deck and feels that the proposed house, being an "L-Shape" would be blocking the view she desires. She showed the Board pictures from her deck looking over where the home would be. Chairperson Strogin asked why the home has to be "L-Shaped". They need to find a lot that it fits on. Mr. Hudak explained that they don't want a high maintenance yard and this lot meets their needs. Chairperson Strogin asked why they created a lot that will need a variance for a home. Mr. Hudak stated that because of the lake and placement of the road, it made this lot different. Being that there is no residential development behind the lot, and the home would be 10 ft. lower than the existing home located at 4144 Mallard Bay, he felt the minimum square footage requirement for this development is 3,000 sq. ft.-2,300 sq. ft. for a ranch. The Township does not require a minimum of 3,000 sq. ft. They should have to get a variance from their own subdivision regulations to build a smaller home, not a variance from the Township to build a home on a lot that is too small. Chairman Morel explained that the lot is big enough to build a home on. There is about a 40' x 180' place to build a home with no variance. Mr. Hudak asked if he could be granted anything other than the 14'. Trustee Huffman explained that he would have to reapply. Assistant Zoning Inspector Gene Wagner stated that he has a vacant lot and needs to put a home that fits. Chairman Morel stated that he would be more in favor of granting a variance of 5' in the front, 5' in the rear, and taking 5' off of the house. Chairperson Strogin discussed the fact that Mr. Hudak would not grant a variance for the home to be smaller than 2,300-sq. ft.- why should the Township grant a variance for the setback? Mrs. Sullivan stated that she doesn't have a problem with a variance being granted, but a 14' variance is too big. There being no further comments, Mrs. Charlotte Karson made a motion to deny the variance request. Mr. Robert Rae seconds the motion.
ROLL CALL-Karson-yes, Rae-yes, Dufala-yes, Morel-yes.

Secretary Ferencz stated that she had letter from Chairman Morel to the BZA which read as follows:

"I would like Kim to read the BZA minutes from August 12, 1998 into the record. As I think you will agree this is the same thing, just a different day. Also enclosed you will find an application for the zoning permit of a legal house that was finally built on this lot. Mr. Hudak started with a clean sheet of paper when he designed his development. If he created lots that not all styles of homes would fit on it is not the Township's problem to solve. As you can see by the minutes there is always another way to skin a cat. But the simplest method is to ask for a variance."

Mrs. Strogin stated she would like to clarify Mr. Hudak's statement that the lot was approved so therefore it is a buildable lot. That is not true. The only thing the Township can say is that it is a legal zoning lot. That means it meets the acreage and dimension requirements for that specific district. The fact that the lot may have ravines or topography that does not make it conducive to building on is not a zoning issue. If a lot meets the area, acreage and setback requirements under zoning then it is legal under zoning and that is all. She added that often developers cut up the lots that are

questionable from a building standpoint and say they are approved by zoning so they are able to be built upon which is not always the case.

Mrs. Strogin commented that she felt the lot was too small or the house needed to fit to conform to the lot but rather agreed with Mr. Becker's suggestion to put a gazebo or park benches on the lot and leave it open land. However, the developer designed it and created the lot and it should not be the Township's responsibility to make the lot fit the house.

Mr. Erickson stated he felt it was a small buildable lot and why not decrease the size of the home?

Mr. Becker stated he was not in favor of granting a variance in this case as the lot is too irregular, too narrow to make something out of it. It appears 90% of the front would need a variance and 1/3 of the lot is under water with the lake.

Mr. West asked, when the subdivision was created was it created by Hudak, Inc. Mr. Hudak stated yes. Mr. West asked, when the subdivision was originally created were there two fewer lots on that side? Mr. Hudak responded all their lots were oversized. The frontage on every lot is much greater than zoning required. The lot in question has tremendous frontage but this lot has always remained the same size. Mr. West asked that the lot in question was not downsized in any way in 1999? Mr. Michael Hudak stated not to his knowledge. He added that a lot of this stems from the emergency easement. There was a request for an emergency access to Deerfield and a lot of the replatting was a result of that.

Chair Strogin stated that regarding the replatting, the County Subdivision regs require a second means of ingress/egress when 50 lots or more are built. When the subdivision was approved it was over by 1 or 2 lots and they received a variance from the County to allow them to build 52-53 lots with only 1 means of ingress and egress. Later Hudak decided they wanted to build more houses (57 or so lots) so they asked for another variance. Deerfield Subdivision backs up to the Hudak subdivision. That subdivision had a 30 ft. easement that was suppose to be an emergency break-thru to whatever would be developed next which was Whispering Woods. The County did not want to grant them another variance to allow them 57 homes on a single access. After much discussion, the County decided that the Hudak development had to put in a 30 ft. easement to match up with Deerfield's. Once that was completed the County granted them another variance to put a few more lots in and reconfigured the land to get a few more lots in.

Mrs. Strogin continued that this lot looks very developable on the plot plan but once the overlays are put on such as the lake and the contours etc. the building envelope is small. There is a big difference between a buildable and legal lot.

Mr. West again asked if Mr. Hudak designed the lot in question. Mr. Hudak stated his engineer did. He added this is a buildable lot and he was paying taxes on this buildable

lot. Mr. West stated Variance Factor #7 asked, Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting of the variance. The response by the applicant stated, **The spirit and the intent of maintaining a 50-ft. front yard depth will be observed for a majority of the frontage of Sublot 57 and the proposed residential structure.** Mr. West asked if that was really true. Mr. Happ stated no it was mis-measured and he took the word of somebody and it is wrong.

Mr. Hudak stated in regards to the hardship to the neighbor, this lot has a tremendous amount of frontage, and green area towards the right. If the neighbors across the street are complaining that they won't have a view to the lake, this house will not block their view.

Mr. Becker stated that ¼ of this lot was actually under water. Mr. Hudak stated the curvature of the road was designed the way Medina County Engineer said it had to. He added that they did try to reduce the size of the home based on the curvature of the road. Mr. Becker stated that at least 90% of the frontage of this house would require a variance. He asked that maybe Mr. Hudak should keep this in mind when an individual is looking to build on this lot, what exactly can be accommodated.

Mr. Michael Hudak stated that regarding the homeowner to the left, he took into consideration in terms of how the proposed house would line up in balance with the floor plan. All this was discussed and reviewed when they drew the footprint for this house.

Mr. Hudak stated that if he reduced the size of the home under the minimum requirements of Whispering Woods Subdivision, the property owners who live there would not be pleased. Vice Chair Dufala stated that was not a valid argument as Mr. Hudak set up those requirements for this subdivision.

Mr. Mike Hudak stated currently he was looking at a depth of 42 ft. for the proposed house per the plan. Vice Chair Dufala stated that if the home were 28 ft. deep it would fit within the building envelope. Mr. Mike Hudak stated to do so would remove a lot of square footage from the first floor which would not be realistic. Mr. Becker stated maybe the answer would be to draw the plans that can fit the building envelope.

Mr. West stated given the deed restrictions for the size home that can be built in the development which were determined by Hudak Inc. and the lot that Hudak Inc. configured, no house could be built on this lot without a variance being granted. Mr. Michael Hudak stated that was correct; however, they did not come to the Township year after year requesting variances. When a client asks for Hudak Inc. to apply for a variance then that is what they do. I am being paid to represent the client's wishes. This is not the case here though, there is no client. Mr. Michael Hudak continued that they were down to 4 or 5 lots in the subdivision and needed to figure out what they could do to sell these lots. He added that they needed to come up with an answer and still keep in line with the layout of the other houses in the subdivision. In this situation, going with wider frontages on all of the lots; this one lot got by them.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? Mr. Becker stated without a variance you can't do anything. Mr. West stated he was not convinced that a house could not be designed to fit the property. Mr. Becker responded the deed restrictions for this subdivision are the problem. Mr. Hudak stated if they took that distance off the back of the house to maintain the 25 ft. you would end up with 1200 sq. ft. on the first floor, which was not enough square footage to get a 2-story house.
2. Is the variance substantial?
Vice Chair Dufala stated that 95% of the front of the proposed house would need a variance and that was substantial.
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?
Mr. Karla stated he had no issues over the view, but added it looked to him that this lot size was reduced. He added that he felt a 2-story home would probably closer meet the rendering of the house that was proposed.
4. Will the granting of the variance adversely affect the delivery of governmental services? No.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? Vice Chair Dufala stated of course he did.
6. Whether the problem can be solved by some other manner other than the granting of the variance? Vice Chair Dufala stated it would be difficult.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution?

Mr. Happ concluded that he felt that the BZA was the board to go before to try to get some kind of equity for Mr. Hudak where the developer has come and done a unique job with a piece of land that was not cookie cutter in design. The BZA is set up to grant variance to keep up the spirit of this subdivision. He added he felt this variance was the minimum that is required to put in uniquely designed home on a unique lot.

Vice Chair Dufala stated this could be looked at in two ways. The neighbor who is present doesn't seem to have a real problem with it and Hudak has not come before the Township to ask for repeated variance for this subdivision. The other side is that Hudak Inc. developed the lot configurations and set the deed restrictions for this development in regards to minimum home size.

Mr. West stated he felt by looking at the Duncan Factors it was a little bit closer call. Though a self-imposed hardship is not fatal in the determination of an area variance, it still needs to be balanced with the other factors. The variance is substantial across the front of the house and they would probably need a variance on the rear yard as well. This piece of property has been sitting for a long time and it was pretty clear what could be built on it and therefore I am not inclined to vote in favor.

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4. Will the granting of the variance adversely affect the delivery of governmental services? No.
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Mrs. Karson stated there was a point in time where not only was this a legal lot but a buildable lot as well. This has changed and you can't put an elephant on a postage stamp. Mr. Erickson stated he was inclined to agree with Mrs. Karson and added that Mr. Becker's comments about the lot being 1/3 under water with the lake was also a valid consideration.

Mrs. Karson made a motion to deny the variance for Hudak Inc. for subplot in Whispering Woods Subdivision as submitted. It was second by Mr. Erickson.
ROLL CALL-Karson-yes, Erickson-yes, Becker-yes, West-yes, Dufala-yes.

Minutes

The minutes to the BZA's April 19, 2006 were approved as amended.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 9:20 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


~~Ed Moore~~, Chairman


DAVE DUFALA