

**MEDINA TOWNSHIP  
BOARD OF ZONING APPEALS  
PUBLIC HEARING  
JUNE 26, 2007**

**PUBLIC HEARING**

Chair Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:38 p.m. All Board members were present except for Horst Becker. Alternate member John Bostwick sat in for a full Board. Alternate member Steve Euse was also in attendance. Chair Morel introduced the Board members and explained the public hearing procedure to those present.

**VARIANCE REQUESTS**

**Kerns variance request-2815 Plum Creek Pkwy.**

Chair Morel reviewed the file. Secretary Ferencz read the application. The applicant and property owners are Michael and Connie Kerns. The Present Zoning is RR. Previous Variance Requests-Yes, Accessory Bldg. Variance granted. The variation requested this evening is of Section 401.3F. Rear Yard Depth-40 ft. Rear Yard Depth requested-25 ft. Variance Requested-15 ft.

The reason for the variance request stated, "A. The strict application of the provision would require that the pond be too narrow which would lead to two problems. 1) Because of the presence of a leach field to the west (see drawing), the pond would become and unattractive narrow slit in the earth as opposed to a more natural looking shape that is consistent with the natural topography of the surrounding lots, and 2) making the pond this narrow would inevitably limit the depth that one can achieve due to bank incline restrictions. A shallower pond becomes more likely to have algae growth issues and eventually becomes either an eyesore or a maintenance nuisance.

B. The proposed location is a natural low point in the surrounding area, making it ideally suited for an excavated pond. Other "non-excavated" or dammed ponds require large dikes which are more disruptive to the natural topography, and present more of a risk in the cause of a potential failure. This excavated pond will be situated in a natural basin that currently exists as a marshy area for many months of the year. It is wet to the extent that a large portion of the area is often not mowable due to the wet ground. Creation of a pond in this location will alleviate this problem area and even serve a water retention function to some extent after heavy rains.

C. Granting of this variance will not be detrimental to the public interest in several ways:

- 1) We are asking to locate the pond the same distance from the east property line as the south property line (25-ft.). Since the south property line distance of 25 ft. is not in need of a variance allowance, application of the same 25-ft. guidelines to the east property line would not be any more detrimental to public interest.
- 2) Construction of this pond will serve as a water retention area, eliminating storm runoff that naturally collects in this area and flows out through the southeast corner of

- 3) our lot. In addition, a periodically marshy area will be eliminated in favor of an attractive and natural looking pond.
- 4) There is a mature evergreen tree line present to the east of the pond which further isolates the effect of the variance on neighboring properties to the east.

The applicant, Michael Kerns was sworn in. He stated the topography slopes to the southeast corner of the lot. It is a low point which is often has standing water 4-5 inches deep after a heavy rain and is always wet and muddy during the late winter/early spring. The proposed pond will serve as a retention basin to some extent and alleviate that problem.

Mr. Kerns continued that his neighbor to the south had a dammed pond where the dam is as high as 5-6 ft. His pond would be excavated and very natural.

Chair Morel asked how large the pond would be? Mr. Kerns stated approximately 1/4 to a 1/3 acre.

Santhj Ram was sworn in. She stated she owned two lots in Trophy Club and received a letter from the Township about the variance request. She stated she also had the same problem Mr. Kerns spoke about on her current property when it rains but was planning on putting in drainage tiles to address the wetness and standing water and was opposed to Mr. Kern's variance request to solve the problem. Ms. Ram stated she and her husband were going to build their home in Trophy Club but have changed their minds and now the lots would be put up for sale. She continued that she did not know how Mr. Kerns proposed pond would affect the value of the lots and added that some prospective buyers with children may not want a pond by them. This is going to be a huge pond and had the potential to be very noisy with individuals water skiing.

Mr. Kerns responded it was not a huge pond by any stretch, as a matter of fact it was small as ponds go and there would not be any water skiing or jet skiing. Having a pond there would be much quieter than him operating his lawn mower to mow the grass where the proposed pond was planned.

Mr. Kerns asked where Ms. Ram lived. It was determined that her property was not in the near vicinity of where Mr. Kerns was proposing his pond. Ms. Ram also testified that she did not know where Mr. Kern's property was or where the proposed pond would be built.

Chair Morel stated he walked the area and behind Mr. Kern's lot it slopes up and where the pond is being proposed also slopes up. There is a dammed pond to the south. The land where the pond is proposed is a low point on the property. The lots in Trophy Club go up. Chair Morel asked if Mr. Kerns if he could move the pond forward 10-ft. Mr. Kerns stated as they slope from the front to the back if the pond is brought forward, it would only raise the height and make a dam required.

Mr. Bostwick then asked if there was a lake to the north? Mr. Kerns stated yes, and one corner of the shoreline was on his property.

Mrs. Strogan, Chair of the Zoning Commission was sworn in. She stated that per the Zoning Resolution, lakes were not allowed to be divided on properties. A lake/pond is considered a structure, and they are required to be 25 ft. from the property line. She asked if the lake was draining onto Mr. Kern's property and added that as a general statement, when there are wet areas on a property they are usually wetlands and they are supposed to be there. Sometimes it is even in one's deed that such areas are not to be filled in. The Board should also consider the pond next to this property and the lake that was just mentioned.

Chair Morel stated that it did not matter if Mr. Kern's neighbors have ponds or lakes on their properties. If Mr. Kerns wants to put in a pond it is his land and he is entitled to do so. Chair Morel added however, that he thought 15-ft. on a 40-ft. rear yard setback is getting to be a substantial variance in terms of size. Chair Morel stated that Mr. Kerns was correct though that the further the pond is pushed forward then banks would need to be implemented. Chair Morel added that Mr. Kern's property was not heavily developed with various structures it, this a low spot on the property and Trophy Club development does substantially slope up. Chair Morel continued that he would entertain a smaller variance than what was being requested.

Mrs. Karson asked about the wetland issue Mrs. Strogan mentioned and asked if that was not under the jurisdiction of the County Engineer's Office? Mrs. Strogan stated she believed if the area was a ¼ acre in size or under this generally is not all that important to them. She added she mentioned the wetlands because often low spots/wet areas on someone's property were there for a purpose and not necessarily a bad thing.

Ms. Ram stated one of the reasons she bought the lots in Trophy Club because it was quiet. These lots were expensive and added she did not want to lose any prospective buyers and did not want the variance granted.

Mr. Dufala asked Mr. Kerns what he planned on doing with the pond? Mr. Kerns stated he planned on using it to fish. Mr. Dufala asked how deep the pond would be? Mr. Kerns responded, as deep as he could make it.

Mr. Kerns asked why a 25 ft. setback is required for the side and 40 ft. for the rear. Chair Morel stated that when zoning was created, most lots are shaped like rectangles and in a RR District the front yard setback is 80 ft. from the road. A 40 ft. rear yard requirement allows individuals to put decks, pools, patios etc in their backyards and still not intrude on their neighbors. A 40 ft. side lot requirement on a 200 ft. wide lot was not realistic. Mr. Kerns stated the rear yard setback should be proportional to the depth of the lot. Chair Morel stated using that reasoning Mr. Kerns would need a larger variance.

Mr. Kerns then asked if there were regulations on putting up a fence for livestock? Mrs. Strogin interjected that particular type of fence can go right on the property line but individuals are advised to put them at least a foot inside their property line for maintenance purposes.

Mrs. Strogin stated the purpose of setback requirements is that there be a green area around every lot; between neighbors, and to provide safety and fire access in the event of an emergency. Structures are to be kept out of those areas and a pond is considered a structure.

Mr. Bostwick suggested the east edge of the pond be moved 5 ft. to the east and the result would be for the pond to be 25 ft. from the side lot line and 30 ft. from the rear.

Chair Morel commented that he understood Ms. Ram statements about the rules but that was the purpose of this Board, to hear requests that do not conform to the code. Mr. Dufala stated if the variance were granted, it would not effect Ms. Ram's properties.

Mr. Bostwick made a motion to approve a 10 ft. rear yard setback variance for the construction of an excavated pond on the south east portion on the property located at 2815 Plumcreek Parkway. It was seconded by Mr. Dufala.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated it was 25%.
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 Board stated no.
4. Will the granting of the variance adversely effect the delivery of governmental services? The Board stated no.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated yes, no pond constructed.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes. Chair Morel added that this property is not an over developed property and a pond with actually water in it and not a mosquito collection bin was a step in the right direction.

ROLL CALL-Bostwick, Dufala-yes, West-yes, Karson-yes, Morel-yes

**McAfee variance request (3868 Boxelder Dr.**

Chair Morel reviewed the file. Secretary Ferencz read the application. The application read as follows: The applicant/property owner is Victoria McAfee. The address of the

property requesting the variance is 3868 Boxelder Dr. Present Zoning-R-2 Forestview Estates. Previous variance requests-None. The variation requested is of Section R.2.B.5.B Rear Yard Setback Forestview Estates-40 ft. Proposed pool will not meet the setback requirements. The existing deck does not meet the setback requirements. The variance requested is 34' for the pool and 10 ft. for the deck. Explanation for the variance request stated, "It is impossible for me to install a pool in my backyard when the rear of my home currently sets on the 40 ft. rear yard setback line. The pool will be located 11 ft. from our left sideyard and 54 ft. from the right side yard. We have contacted all surrounding neighbors with no objections. Built home in 1994 with builder. Deck was on original blueprints and off model home-builder was to get all permits to build-was not our responsibility. We received our occupancy and thought everything was taken care of. Builder did not get permits for construction of deck.

Chair Morel clarified that the request was just the opposite. The proposed pool would be 6 ft. from the rear property line, and the existing deck is 30 ft. from the rear property line.

The applicant, Ms. Victoria McAfee was sworn in. She stated she never thought to get a permit for the deck as she bought a model home and thought this was handled by the builder. Ms. McAfee stated she was the original owner and has owned the home since 1994.

Mr. Dufala asked if the pool was already up? Ms. McAfee stated yes she had it scheduled and then the hearing was canceled and they could not reschedule the installation until August.

Mrs. Strogan stated the house is set back at the maximum to the rear lot line and therefore there really is no rear yard to put any structures on technically. As far as the deck is concerned, many of the builders in this development did things without obtaining the necessary permits. Now there would be two structures encroaching into the setbacks.

Mr. Dufala asked the size of the pool. Ms. McAfee responded 24 ft. in diameter. Mr. Dufala asked if the pool could have been placed behind the other section of the house next to the deck and brought up closer to the house. Ms. McAfee stated the pool was as close to the deck as it could be. Mr. Dufala stated there were a lot of issues with this development, (Forestview Estates) and the Township agreed to allow sheds to be 10 ft. from the rear and side lot lines and that was pushing the envelope. There is a pool in this development that the Board granted a 12 ft. variance from the property line previously but a 6 ft. variance was extreme.

Mr. Dufala asked if next spring the pool could be set up again closer to the other side of the house so it would be farther than 6 ft. from the property line? Ms. McAfee stated there were electrical lines, and closer to the neighbors there was a 20 ft. sewer easement.

Cheryl Darrish (3860 Boxelder) was sworn in. She stated she was the neighbor to the left. She had no problem with the variance request.

Mr. John Hetherington (3876 Boxelder Dr.) was sworn in and stated he had no issues with the variance request.

Chair Morel added that even if the builder puts a house right to the maximum setback and the Township warns them that the building envelope won't accommodate any decks, pools, patios etc. if it meets zoning the Township is obliged to approve it. Builders have to realize that their potential buyers will want certain accessory structures as part of their way of life. Now the Township is faced with variance requests that really should not have occurred.

Chair Morel stated he did not consider a pool a necessity. Mr. Dufala stated given the lot is on a cul de sac and the storm water easement, the lot was not conducive to have other structures on it.

Mrs. Stogin stated the applicant could put an 18 ft. pool in. Ms. McAfee interjected that she had 5 kids and wanted them to be able to enjoy their yard.

Mr. West asked if there was anyone from the development behind this one present this evening. No one responded.

Mr. Dufala stated he did not like the fact of the pump running all the time and the fact of it being so close to the neighbors in terms of noise. Ms. McAfee stated the pump was really quite quiet.

Chair Morel stated he did not think a pool would be allowed to be this close to the property line in the City. The deck was one thing being 30 ft. from the property line, but a pool only 6 ft. from the line was extreme to say the least.

Mr. Bostwick asked if the pool could be moved to the other side of the deck and right up against the house. Ms. McAfee stated that was where all the power lines were located for the house.

Mr. Dufala stated that both neighbors were present and testified they had no issues with the request. He added that no one living behind this development, though notified, were present to say they oppose the request. This development has been an issue since its inception. He added he did not like the size of the variance but the pool was already up.

Mr. Dufala made a motion to approve a 10 ft. rear yard setback variance for the existing deck located at 3868 Boxelder Dr. It was second by Mr. West.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated it was approximately 25%.
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 Board stated no.
4. Will the granting of the variance adversely effect 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 stated in the case of the pool, yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? Chair Morel stated yes, the deck could be removed.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

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

Mr. Dufala made a motion to approve a 34 ft. rear yard setback variance for the placement of an existing pool at 3868 Boxelder Dr. It was second by Mr. Bostwick.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated yes.
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 the current neighbors have no issues with the variance request.
4. Will the granting of the variance adversely effect 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 stated the applicant was aware.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated they did not feel the applicant has exhausted all options i.e. pool can be removed, size of pool could be reduced etc.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? Mr. Bostwick stated he felt justice would be done because of the fact that this development was improperly designed. The cul de sac should not have been there which would have permitted this house to be moved forward on the lot. Chair Morel stated the plan had to be approved if it meets zoning no matter how bad it was laid out. Mr. Dufala stated justice would be done by granting the variance as the land this development is on could have been annexed to the City. Mr. West stated he did not feel the spirit and intent of the Resolution would be upheld by granting the variance.

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

Mr. Greg Campbell was sworn in. He asked if an 18 ft. pool could be put up instead. Mr. Dufala stated if that was the case that should have been requested. Mr. Campbell interjected that in the previous variance request, the Board gave the applicant the option of moving his pond and could this option be offered to Ms. McAfee this evening. Chair Morel stated a new application would need to be submitted. Mr. Campbell asked if another fee would have to be paid? Chair Morel stated that was up to the Trustees.

Ms. McAfee stated before she applied for this variance, she studied everybody's pool in the development and there is a pool at the corner of Hanover and Grande Blvd. that is 3 ft. from the sidewalk. The Board stated that if that was the case, then the pool was in violation of the code and therefore it becomes an enforcement issue for the zoning inspector.

Chair Morel stated if the applicant requested a 12 ft. setback variance instead of 6 ft. it would be not be res judicata. Mr. Campbell again asked why a smaller size pool could not have been offered as was offered to the applicant regarding his variance request for his pond? The Board stated Mrs. Strogin did mention a smaller pool and Ms. McAfee responded she had five kids. Mr. Campbell stated he did not believe Ms. McAfee understood this was her option to take at the time.

The Board stated they would re-open the hearing.

Mr. Dufala made a motion to grant a 28 ft. rear yard setback variance for the installation of an 18 ft. pool to be 12 ft. off the rear property line. The existing 24 ft. pool will be removed and an 18 ft. pool installed within 30 days of this approval. It was second by Mr. Bostwick.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated yes.
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 half as much as they would have with the pool being 6 ft. from the property line.
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 stated it the case of the pool yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated yes.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? This is closer in intent and spirit than the pool being only 6 ft. from the property line.



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

**Madden variance request-4584 Foote Rd.**

Chair Morel reviewed the file. Secretary Ferencz read the application. The application read as follows: The applicant/property owners are Tommy and Donna Madden. The address of the property requesting the variance is 4584 Foote Rd. Present Zoning-UR/Non-PUD. Previous variance requests-None. The variation requested is of Section 403.3D Front Yard Depth-80 ft. Need addition at front yard setback of 56.4 ft. Need a 28.6 ft. variance. The explanation for the variance request stated, "Because of the location of the existing structure this is the only place to put an addition. It will not interfere with anything because almost the entire house is less than 80 ft. from the right of way. The house was built in or around 1946.

The applicants, Tommy and Donna Madden were sworn in. They stated they bought the house 15 yrs. ago and were not planning on having any children and now they have two. They like where they live and just wanted to add onto the home i.e. bathroom, laundry room and living room. The addition would be even with the setback of the existing structure. The addition would be two story and approximately 1,000 sq. ft.

Mrs. Karson made a motion to grant a 28.6 ft. front yard setback variance for the construction of an addition to the existing residence located at 4584 Foote Rd. It was second by Mr. Dufala.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated yes in feet, but not in terms of the existing location of the residence.
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 Board stated no.
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? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated yes.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

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

**Puljic variance request- Remsen Rd**

Chair Morel reviewed the file. Secretary Ferencz read the application. The application read as follows: The applicant is Sylvia Puljic, Trustee. The property owner is Hermine

Bender. The address of the property requesting the variance is \_\_\_\_\_. Present Zoning-RR. Previous variance requests-None. The variation requested is of Section 308. I.8-Current Medina Township code requires 300 ft. from a gas well head/pump. Parcel will be split into two or more parcels with the potential of one home on each parcel. Asking for a 100 ft. variance from a gas well head/pump. The explanation for the variance request stated, "A. The State of Ohio requirement is a 100 ft. distance from the home structure to the gas well head/pump. Neighboring Granger Township only requires a 100 ft. distance also. B. Due to the location of the gas well head/pump no residential home can be built on this property. Thereby devaluing the property and maximum potential use of vacant land/parcel. C. This 18.3 acre vacant land/parcel has a very limited building area due to the constrictions of the flood plain and ravines, gas well head/pump and pipeline right of ways.

The applicant, Ms. Sylvia Puljic was sworn in. She stated her mother, Hermine Bender is currently in a nursing home at the age of 98 and the cost is \$5,735.00 a month for her care, which does not include her medications. Ms. Puljic continued that they must sell the land in order to pay for her mother's continued care. Money is running out quickly. Medicaid won't pay for the nursing home if one owns land or insurance money. You are allowed to keep \$1500.00 and the rest must be used to pay for expenses before Medicaid would pay.

Ms. Puljic confirmed that the Township requires a distance of 300 ft. from an oil well/gas well/head for a residence to be built. She was asking to be able to construct a residence 100 ft. from an oil well/gas head.

Mr. Philip Puljic was sworn in. He stated they were proposing to sell one or two lots to build homes on. This will help pay for his mother in laws care.

Chair Morel asked about the number of lots they were trying to care the property up into? Mr. Puljic stated that down by the river on the property it was wetlands so they could not build in that area. Only 12 of the 18 acres were buildable. They would like to get 3, possibly 4 lots out of the property.

Mr. Aaron Testa (3345 S. Weymouth Rd.) was sworn in. He asked the purpose of the 300 ft. distance from a gas/oil well head regulation and commented that he did not want the rights of the applicants to develop their property to interfere or negatively impact with his right to enjoy his property. Mr. Testa stated he did not care if they sold the property but felt more than 3 homes is too many the way the property is configured and did not want the variance granted if there was a safety factor involved that would be compromised if the variance was granted.

Chair Morel stated he believed the distance requirement is for a leakage or explosion possibility, but did not know for sure. He added he looked at this property and the gas well is directly in the middle of this property.

Again there was clarification as to how close the applicant wanted to build from the gas well. Ms. Puljic stated she wanted to be able to have homes constructed 100 ft. from the gas well, therefore a 200-ft. variance would be required.

Mr. Bostwick produced a copy of a court case decided in 1992 that determined that the State of Ohio overrides any township law. The case is exactly what was before the Board this evening. A township had a 300-ft. requirement from an oil and gas well head and the State of Ohio has a 100-ft. requirement and it was ruled the State law supersedes Township law. Mrs. Strogin stated a Township can always require more but not less than the State. Mrs. Strogin continued that if the land in question was turned over to a son or daughter 3-5 yrs. ago, Medicaid would be paying right now. That was an estate planning issue. Ms. Puljic responded that they did think of that but her mother was a very independent person and it wasn't until her mother ended up in the hospital and the doctor admitted her to the nursing home that this issue became relevant. She added that her mother was legally in her right mind and there was nothing they could do.

Susan McKiern ( 3306 S. Weymouth Rd.) was sworn in. She stated she could sympathize with her neighbors, but was concerned with the number of lots that were proposed and the indecision of that exact number. She was also concerned with the proposed homes that may be built and the change of topography in terms of potential water drainage issues and flooding.

Chair Morel stated he too was concerned with the number of lots that would be built because it could end up being quite a mess if there were more than 2 lots due to the gas wells and the wetland issues. Mr. Puljic stated he would be all right with 2 lots.

Paul Hunsaker (3287 S. Weymouth Rd.) was sworn in. He stated he lived across the street and probably lived the closest to one of the gas wells for the last 16 yrs. Mr. Hunsaker stated he could not see how the required distance from a gas well could be reduced from a safety standpoint. He added that a natural gas explosion is not a position anyone would want to put themselves in, and could not see the Township taking on that liability. Mr. Hunsaker stated there was 18 acres and there had to be another location for two proposed homes other than closer than 300 ft. from the gas well.

Mrs. Karson asked if this was a functional well and if so how many homes does it serve? Mr. Puljic stated it serves three.

Mr. Shurell (3284 S. Weymouth Rd.) was sworn in. He stated when the Board made a motion if they could set a definitive number of houses that could be built on the land that would be a good compromise.

Another concerned resident living at (3405 Nichols Rd.) was sworn in. He stated he was concerned about the wetlands and property being raised and potential water issues if

homes were built. He then produced pictures from this past fall of his house and the adjoining home and the water issues already in that area.

Mr. Steve Euse was sworn in. He stated he was concerned with the liability and the legal exposure for the Township if a variance granted to build closer than 300 ft. from a gas well/head. For the Township to put itself in jeopardy of potential litigation and expense is not a wise decision. He added he worked for the Red Cross and has seen such an explosion and such a risk is not something the Township should entertain.

Chair Morel stated he could appreciate Mr. Euse's comments, but anytime the Township makes a decision they put themselves in a position of potential litigation. If the Township would try to make the distance closer than the State that would be an issue, but the Township does have a regulation of a residence having to be 300 ft. from a gas well head.

Mr. West made a motion to grant a 200-ft. variance from the distance a residence can be built from an oil well/gas head with not more than two residential lots being created from permanent parcel #026-06B-19-044. It was seconded by Mr. Bostwick.

Mrs. Karson stated that she remembered the Township working long and hard on the 300 ft. requirement for a residence to be built from an oil well/gas head. She added she had a gas well which was close to her residence and was probably going to have it filled. Mrs. Karson continued that she had a healthy respect for gas wells and felt it was a risk to have a residence built closer than the 300 ft. distance requirement.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated the property was unbuildable the way it currently is.
2. Is the variance substantial? The Board stated yes.
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 Board stated no.
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? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated no.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? Chair Morel stated he felt that it would be.

Mr. West stated that he respected the Township requirement but added that there were many jurisdictions that follow the State 100 ft. requirement and did not feel it was a safety issue. Mr. Dufala commented that once these two lots are created the potential buyer will see the gas wells and it will be their decision to buy or not buy.

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

**Hetherington variance request-3876 Boxelder Dr.**

Chair Morel reviewed the file. Secretary Ferencz read the application. The application read as follows: The applicant/property owners are Jon and Cindy Hetherington. The address of the property requesting the variance is 3876 Boxelder Dr. Present Zoning-R-2 Forestview Estates. Previous variance requests-None. The variation requested is of Section R.2.B.5.B Rear Yard Setback Forestview Estates-40 ft. Wants setback at 30 ft. Variance needed-10 ft. Explanation for the variance request stated, "The location of the pool is in an open area. There are trees in the back yard that limit the location of the pool. The pool would be landscaped by the trees so the neighbors would not see it.

The applicant, Jon Hetherington was sworn in. Mrs. Stogin interjected that there were rectangular pools available that would bring it closer into compliance. Mr. Hetherington stated his pool was right up against the deck now. The pool was installed last week when the hearing was cancelled as with the previous applicant, Ms. McAfee. Otherwise the installation would not be until August.

Mr. Dufala made a motion to grant a 10 ft. rear yard variance request for the existing pool located at 3876 Boxelder Dr. It was seconded by Mr. Bostwick.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated no.
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 Board stated no.
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? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated yes.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

Mr. Dufala stated that though the pool was already up, the hearing was canceled and at least these property owners were honest about it and did proceed to do the right thing by asking for a variance.

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

**Bhatt variance request-3212 Champions Way**

Chair Morel reviewed the file. Secretary Ferencz read the application. The application read as follows: The applicant/property owner is Mukesh Bhatt. The address of the

property requesting the variance is 3212 Champions Way. Present Zoning-RR. Previous variance requests-None. The variation requested is of Section 401.3.D. Minimum Front Yard Depth-80 ft. Need a 10 ft. variance for a 70 ft. front yard setback.

Explanation for the variance request stated, "Our client, a resident and doctor of Medina, is building under a construction concept called Vaastu, a spiritual belief. According to this construction concept the house must set in this location on the lot and face this direction. We have worked hard with the homeowner in meeting all of the requirements that were put upon us in designing a Vaastu home and meeting all zoning requirements. The homeowner has bought a corner lot and meets the frontage requirements on his true frontage, but on the right side of his property we are required to have just as much setback as the frontage, 80 ft. What we are asking (homeowner and contractor) is to reduce the side setback by 10 ft., which would take it to 70 ft. –Classic Homes by George Ford Construction.

The contractor Mr. George Ford was sworn in. He stated this is a corner lot and they were asking for a front yard setback of 70 ft.

Mr. Bostwick made a motion to approve a 10-ft. front yard setback variance for the placement of a residence to be located at 3212 Champions Way. It was second by Mrs. Karson.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or a beneficial use without the variance request? The Board stated yes.
2. Is the variance substantial? The Board stated no.
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 Board stated no.
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? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated yes.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

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

### **Minutes**

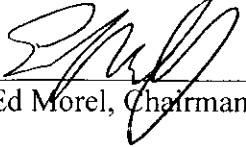
The minutes to the BZA's May 16, 2007 were approved as written.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 10:20 p.m.

Page 15 BZA 6/26/07

Respectfully Submitted,

Kim Ferencz  
Zoning Secretary

  
Ed Morel, Chairman

MEDINA TOWNSHIP  
 BOARD OF ZONING APPEALS  
 MEETING HELD *June 26, 2007*

NAME

ADDRESS

MICHAEL KERNS	<del>177</del> 2815 PLUM CREEK BLVD
GEORGE FORD	525 N CLEVELAND RD
SANTHI RAM SM Hill	4738 SALEM WAY Medina A21
DAVE DUFALA	
STEVE EUSE	4155 SHURELL
JOHN BOOTWICK	2879 FRANK LIN DR
AARON TESTA	3345 S. Weymouth Rd Medina
Mary P. Puljic	2930 Remsen Rd. Medina, Ohio
Tom & Norma Madden	4584 Focht Rd
Jim & Mary Ann	4596 Focht Rd
Kurt & Clark	3306 S. Weymouth Rd
Susan Mckernan	3306 S. Weymouth Rd
Sue Symonds	2884 Remsen Rd
Alise Anselm	Bluff
Jan & Helen <sup>Dr</sup> Hunsaker	3876 BOX ELDER DR
PAUL HUNSAKER	3287 S. WEYMOUTH RD
Brian Hunsaker	3287 S. Weymouth Rd
Mike Branch	3838 Weymouth Woods
Bob & MARLENE SHURELL	3284 S. WEYMOUTH RD
Victoria McAfee	3868 Boxelder Dr.
Dan & Nancy Bender	2908 Remsen Rd
Willie Ost	3670 Hamilton Rd.
DIANNA HUFFMAN	4025 REMSEN RD.



MEDINA TOWNSHIP  
 BOARD OF ZONING APPEALS  
 MEETING HELD May 16, 2007

NAME

ADDRESS

<u>NAME</u>	<u>ADDRESS</u>
DAVE DUFALA	
<del>John R. ...</del>	
HOT DUTCH	
MAY WEST	
STEVE EUSE	4155 SHARON
RO. RUSSELL	20246 SCOTT DR STRONGsville
ALISS STUBBIN	STAY
MARY ANNE ...	AZI
CLAUDE KIDZ	ZI