

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
ORGANIZATIONAL MEETING
PUBLIC HEARING
MARCH 18, 2009**

ORGANIZATIONAL MEETING

Acting Chair Morel called the organizational meeting of the Board of Zoning Appeals to order at 7:30 p.m. Permanent Board members West, DeMichael and Morel were present. Alternate board member John Bostwick was also in attendance.

Election of Officers

Acting Chair Morel called for nominations for Chairman.

Mr. West made a motion to nominate Mr. Ed Morel as Chairman of the BZA for the calendar year 2009. It was second by Mr. Bostwick. The nominations were closed.
ROLL CALL-West-yes, Bostwick-yes, DeMichael-yes, Morel-yes.

Secretary Ferencz then called for nominations for Vice Chairman.

Mr. Bostwick made a motion to nominate Mr. William West as Vice Chairman of the BZA for the calendar year 2009. It was second by Mr. Morel. The nominations were closed.
ROLL CALL- Bostwick-yes, West-yes, DeMichael-yes, Morel-yes.

Set hearing dates/Confirm hearing posting

The Board unanimously agreed to set the 3rd Wednesday of the month at 7:30 for the BZA to hold their public hearings on an as needed basis. Legal notice shall be placed in the Medina Gazette with posting to be placed on the Townhall marquee.

Chair Morel stated that the Board members are in receipt of a letter from Trustee Holt of responses regarding questions she asked the Pros. Office about the different types of variances i.e. Area and Use, when Duncan Factors are used (in area variance requests) and the different standards to consider for the two different types of variances i.e. Area-Practical Difficulties; Use-Unnecessary Hardship. (See attached to approved minutes).

Another letter from the Pros. Office dated January 2, 2009 addressed the motion format of the BZA. In sum there is no law that a motion by the BZA has to be made in the affirmative. (See letter attached to approved minutes). "The issue is for the Board to take care in formulating a motion so that they clearly resolve whatever the issue is before the Board, and if challenged, there is no need for a remand to the Board, to determine its actual intent." (See attached to approved minutes).

Chair Morel would like Mr. Thorne from the Pros. Office to come and speak with the Board about any new laws or other pertinent information that may pertain to the

functioning of the Board and to go over the standards for a Use Variance as this is something the Board probably has limited experience or knowledge on.

Secretary Ferencz stated Bill Thorne is holding a training session on the functioning of the Board of Zoning Appeals at York Township (the first half was held on March 10, 2009) and the second half of the workshop would be held on March 25, 2009 at 6:30 p.m. at York Township. All are invited to attend. Secretary Ferencz added she had a copy of the handout (which was quite extensive) that Bill Thorne is using and would make copies for the Board members if they wanted them. The Board asked Secretary Ferencz to see if Bill Thorne was available on the next scheduled BZA meeting date (April 15th) to attend the meeting for general discussion with the Board.

The organizational meeting was closed at 7:38 p.m.

PUBLIC HEARING

Chair Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:38 p.m. Board members West, Morel and DeMichael were present. Alternate member Mr. John Bostwick sat in on the Board. Chair Morel introduced the Board members and explained the public hearing procedure to those present.

Variance Requests

Sevastis variance request-5056 Grande Blvd.

Chair Morel reviewed the application. The applicant was Charles Sevastis. The property requiring the variance-5056 Grande Blvd. Present Zoning-R-2 District. Previous Requests-None. Variation Requested: R-2 District Front Yard Setback on N. Huntington Section B.5.a. Front Yard Depth 50 ft. except on N. Huntington which is 25 ft. Pool is 11 ft. from property line (right of way line) needs variance from 14 ft. from property line".

The reason for the variance request:

- A. The practical difficulty in placing the pool any where else on the property crests and issue for the 40" storm sewer easement and the pool location. If we had to place the pool on a 50' setback it would be placed in the easement which would possibly require us to potentially remove and reinstall the pool as many times as required if the storm sewer should need work over the upcoming years. This would create an unnecessary hardship on us.
- B. The special conditions that apply to this property that does not apply to others in the same district is that we are on a corner lot making this parcel unique in requiring special considerations because the house was built prior to N. Huntington St. being placed in service so when the street was built it created a situation that part of our back yard became part of our front so we could not utilize the back yard as everyone else does on our street. In addition we have a storm sewer easement that regulates certain conditions and we must provide access to our property should work be required on the storm sewer.

- C. Granting this variance will not be detrimental to the public interest, to property or improvements in the district as the pool is non-private property and in complete control by us with a safety fence around the backyard property. This request preserves the spirit and interest of the zoning requirements and will do no substantial injustice by being granted as our pool location and current setback is in the only place it could be in our back yard because of the location of the rear property line and storm sewer easement. The allowance of the variance will not affect the delivery of governmental services.

The applicant, Mr. Sevastis was sworn in. He stated when he and his family initially put the pool up 4 yrs. ago; they knew there was an easement on the property. When they looked up the rules they were told the pool had to be 10 ft. from the property line and they went 11 ft. in from the property line. Mr. Sevastis stated they were not sure about was the road right of way-Did that come off the property line or the middle of the street? Chair Morel stated the right of way could be almost anywhere. Normally it runs parallel with the street but on Rt. 18 the right of way was all over the place.

Mrs. Julie Sevastis (5056 Grande Blvd.) was sworn in. She stated they called the Township about the fence not the pool. When they went to put the pool up they went to the Medina County Building Dept. and they told them that they did not need a permit for the pool that they just had to be 10 ft. from the property line. The only permit needed was for electrical. Mrs. Sevastis continued that they assumed it was the Medina County Building Dept. that would issue the permit for a pool. They did not need a permit for the electrical because we were plugging into the house outlet outside.

Mrs. Strogin, Zoning Commission Chairperson was sworn in. She stated the County maps from the Tax Map office use to show the lot going out to the centerline and then a line differentiation where the right of way is. It appears the new maps are now just showing the physical lot without up to the road right of way. Regarding this property the road right of way is basically where the sidewalk is located.

Mrs. Sevastis responded that they placed the pool 11-ft. from their property line. They did not go out on the Township website they went on the Medina County Building Dept. website. She continued that when they called the Township about the fence they were told they did not need a permit so they assumed they did not need a permit from the Township for a pool.

Mrs. Strogin stated per the drawing submitted by the applicant part of the pool was in the utility easement. Chair Morel asked if that was a problem. Mrs. Strogin stated it could be because if the utility company wants to expand or work on its lines...When TSC (at its old location) wanted to expand their building a corner of it was within 2 ft. of the utility easement and the utility company would not relocate the line. She stated she wanted the applicant to be aware that if the utility company wanted to work on its lines in the

easement the location of the pool might be an issue. Chair Strogin stated the existing shed on the property was in the 40-ft. easement.

Mrs. Sevastis stated that they only knew about the 40-ft. easement as when they bought the house they had to sign a paper that if the utility company ever had to do work in the easement the shed would have to be removed. That paperwork should be attached to the application.

Mr. Sevastis stated when he checked with zoning when all this came up they did not even know there was an easement and they placed the shed at the time. He added they have lived in the house 4 yrs. The house was built in 1999.

Chair Morel stated normally he did not like to see a variance requested for a structure (i.e. pool) that has already been erected but he understood the events that lead up to the applicants understanding of the permit process. To ask for a variance after the fact was going through the steps backwards. He continued he drove past the property and there is a 6-ft. board on board fence around the property. The property does have some slope to it so to place the pool on the other end would be less desirable and closer to a neighbor. In the rear there is a big field that goes over to the condos. The pool is 11 ft. from the sidewalk, but there is a fence and he did not feel that was detrimental.

Mr. West stated he was a bit troubled the pool was on the utility easement but understood how the applicants got to this point. He added it did not seem like the applicant ignored the code so he could believe the explanation given by the applicants as to the events that occurred. He agreed with Chair Morel's comments as to place the pool anywhere else would be in the storm drain easement.

Mr. Bostwick stated this was a corner lot and he was looking at the minimum yard requirements and the side yard width states 10 ft. The front yard depth is 50 ft. from the road right of way. He added that this house could not have two front yard depths.

ZI Ridgely responded that this is a corner lot and on a corner lot you have two fronts. There is never a rear yard line. There are two sides and two fronts. One of the Sevastis' fronts is 50 ft. and the other is 25 ft. This is because this house is in Forestview Estates, which was part of a court settlement. Chair Strogin interjected that Forestview Estates has its own zoning regulations (R-2 District) as part of a compromise of the court settlement so the Township did not lose 200 acres of property. The original site plan shows 25 ft. and 50 ft. Regarding a corner lot the setbacks had to be equal. This is under the General Regulations in the Zoning Resolution. Mr. West stated if the code applicable to Forestview Estates is not even part of the Zoning Resolution how could the Township expect the applicant to know them?

Chair Strogin then asked why the pool could not be moved close to the deck and added that the legend on the map was missing. Mrs. Sevastis stated there is a 3-ft. /4 ft. walk

around. Chair Morel stated it was it too close to move. ZI Ridgely asked the applicants if they had a deck attached to the pool? Mrs. Sevastis stated yes. ZI Ridgely stated that was not on the tax map. Mrs. Strogin asked when the deck was put in? Mr. Sevastis said the same time the pool was put in. Mrs. Strogin stated the tax map photo was taken in 2007. Mrs. Sevastis responded she did not know why it was not on the tax map as the deck was put in the same year as the pool.

Mr. Sevastis stated this whole issue with their pool came about when they called in a complaint to the Township about snow being mounded all the way to the stop sign at the corner of N. Huntington and Grande Blvd. He added his children have to wait for the bus there and they dig an area out but he called the Township to see if something could be done about the snow being piled up. That was on January 29, 2009. On January 30, 2009 this violation was filed. Mr. Sevastis stated the violation was mailed out to them on February 5th after we showed up at a Trustees meeting to ask about the snow removal.

Chair Morel stated this violation was probably found when the Township had to go out and investigate the snow piling issue. We (Medina Township) do not go out and snoop in resident's backyards. No one in this Township is vindictive. All the jobs are separate. Mrs. Sevastis stated they found out who filed the complaint about the pool. It was Celia Goe the Township Secretary who took her call about the snow complaint. She added that we were told they Googled our house. Chair Morel stated that could be done to any property in the Township. He added that if the Sevastis thought this was a backlash thing he did not believe that to be true. Mrs. Sevastis responded they did believe this to be true.

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? 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 they did not believe so.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated yes-pull the pool down or move it.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes given the nature of the neighborhood and the limited lot sizes.

Mr. Bostwick made motion to grant a 14 ft. side yard setback variance from the 25 ft. front yard property line on North Huntington for the property located at 5056

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Grande Blvd. The variance is to permit the pool currently existing to remain 11 ft. from the right of way. It was second by Mr. West.

ROLL CALL-Bostwick-yes, West-yes, DeMichael-yes, Morel-yes.

The variance request has been granted.

Minutes

No minutes were approved as there was not a quorum present this evening of members who were in attendance at the September and November meetings.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 8:45 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


Ed Morel, Chairman