

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
HEARING
JUNE 20, 2012**

Chair Morel called the hearing to order at 7:30 p.m. All Board members were introduced and Chair Morel explained the hearing procedure to all those present. Permanent Board member Ruppelli was absent. Alternate member Williams sat in for a full Board.

Gavlak variance request-4289 Hamilton Rd.

Chair Morel reviewed the application. The applicant is Bret Gavlak. The property requiring the variance-4289 Hamilton Rd. Present Zoning-RR. Previous variance requests-none. Variance Requested- Section 401.3E-Minimum Side Yard Width-25 ft. for the construction of a pole barn at the property located at 4289 Hamilton Rd. The variance request is 20 ft. to construct a pole barn 5 ft. from the side property line.

The reason for the variance request-Due to my lot being so narrow, the present zoning of 25' will put the building too far into the center of the lot.

Minimum frontage for Medina Township lots currently are 200'. Pre-existing for my lot is 81' frontage.

Variance granted will not be visible to the public from the street; it will be at least 100' from any building/house. It will be next to neighbors pond bank/pine trees, will allow more room in the backyard and is the most ideal place with septic and ravine in thought.

The applicant, Mr. Bret Gavlak was sworn in. Chair Morel stated the variance was huge. The request is to be 5 ft. from the side yard lot line and the requirement is 25 ft. Chair Morel stated he had the same type of lot i.e. long and narrow. When he wanted to build an accessory building he had the same issue as well but ended up building his barn within the required setbacks.

Mr. Gavlak stated he chose the proposed location because he could extend his drive from the side of the house as well as it was the most level spot on the property.

Mr. West asked Mr. Gavlak if he was testifying this evening that he could not build the barn in the center of the lot or just did not want to? Mr. Gavlak stated he would prefer not to because then there would not be enough room for the kids to play.

Mr. West stated there is 150 ft. from the house to the proposed barn which, besides where the existing tree is located, is open and clear. Mr. Gavlak said yes but the septic was located in that general area and he wanted to build the barn behind the septic.

Chair Morel stated being 25 ft. away from the side lot line is not going to put the barn in the center of the property. He added that either way the proposed barn was going to block the view of the woods.

Chair Morel explained that there are different setback requirements for the different residential districts in the Township i.e. rural residential, suburban residential, urban residential etc. To only be 5 ft. way from the side yard was not even close to any of those setback requirements.

Chair Morel explained that the Board used the Duncan Factors as the litmus test in determining if a variance should be granted. He then went through the factors.

1. Will the property yield a reasonable return or whether there is a beneficial use without the variance? Chair Morel stated the barn could be built but it would be closer to the center of the lot. Therefore there is a beneficial use of the property without the variance.
2. Is the variance substantial? Chair Morel stated the variance is enormous.
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 neighbor might not care if the variance is granted but the new neighbor who moves in might.
4. Will the granting of the variance adversely affect the delivery of governmental services? Chair Morel stated this factor was not applicable.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? Chair Morel stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? Chair Morel stated some grading might need to be done but the barn can be built within the setback requirements.

Mr. Gavlak stated he did not want to build the barn per the setback requirements and added he wanted a large space in the yard for his kids to play.

7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? This property is located in the rural residential district which is large lots with specific setback requirements i.e. 25 ft. from the side yard.

Chair Morel stated the Board of Zoning Appeals was created to hear cases for relief of the zoning requirements. This is to be for extreme cases of relief from the code such as topographical features that would prevent a property owner from being able to meet those requirements. An example would be you live on Weymouth Rd. where the houses were built much closer to the street. You are old and you need a wheelchair ramp but it would be too close to the front yard setback requirements. In that case a variance would be in order. Chair Morel stated he did not want to lecture but wanted to explain to the applicant about the nature of the Board.

Mr. Becker stated he was concerned with a future neighbor who might not be pleased with the variance granted.

Mr. Stopa stated he understood what Mr. Gavlak was trying to accomplish but felt the variance request was too extreme. The barn could be built within the setback requirements and there would be open space on either side.

Mr. Williams asked if the barn were moved how much grading would need to be done? Mr. Gavlak stated he did not look into that.

Mr. West stated the Duncan vs. Middlefield case where the Duncan Factors were created also stated that when an area variance is sought the property owner is required to show that the zoning requirement for that property is inequitable. That there is some good reason why the zoning requirement should not apply; not just that I would rather have it in this location as opposed to that location. He added that he did not see that any such evidence has been offered by the applicant.

Mr. Alexander (4277 Hamilton Rd.) was sworn in. He stated that he was the neighbor directly to the east of the Gavlak's, which is where the proposed barn would be built. Mr. Alexander stated there should be a survey done of the property and he and Mr. Gavlak have agreed to split the cost. Mr. Alexander continued that there are ash trees close to the property boundary and he did not want to be held responsible if one of those trees falls on the proposed barn. He added that he would like to get something in writing from the Gavlak's before construction begins that if a tree surgeon would be required and a tree would have to be taken down it would not be at his expense. Mr. Alexander asked the Board to consider the granting of the variance request or to consider granting a lesser variance than what was requested as a compromise.

Ms. Carey Gavlak was sworn in. She stated that their drive was on the side of the house and they just wanted to extend it straight back and build a barn. If the Board would even consider a 10 ft. variance they would not have to bring the drive all the way back and across to get to the barn.

Ms. Gavlak continued there is also a large ravine in the rear of the property and therefore they only had the area between the septic and the ravine to build the barn. On the left side of the property there is a garden that runs almost the entire length of the property.

Chair Morel asked if the 14x16 shed that is currently on the property is going to remain? Mr. Gavlak stated yes. Chair Morel asked if that shed was there when the Gavlak's purchased the property? Mr. Gavlak said yes.

The Board then reviewed the Duncan Factors.

1. Will the property yield a reasonable return or whether there is a beneficial use without the variance? 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? Now probably not but in the future-maybe.
4. Will the granting of the variance adversely affect the delivery of governmental services? The Board stated this factor was not applicable.
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 the barn could be built to meet the setback requirements.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution?

Mr. West made a motion to deny the sideyard^{set} back variance for the construction of a 25' x 25' accessory building for the property located at 4289 Hamilton Rd. It was seconded by Mr. Stopa.

Mr. West stated the applicant needs to meet the burden of establishing that this is inequitable or the zoning code as applied to this property is unreasonable and I don't think the applicant has met that burden. Chair Morel stated he agreed.

ROLL CALL-West-yes, Stopa-yes, Williams-yes, Becker-yes, Morel-yes.
The variance request is denied.

Mr. Gavlak asked if there could be any compromise. Chair Morel stated no, that the applicant failed to meet the burden or present evidence as previously stated by Mr. West. Mr. Gavlik stated when he contacted the Zoning office they said the variance would probably be granted. Chair Morel stated the consideration of granting or denying a variance request is the authority of the Board of Zoning Appeals and wished the applicant would have been discouraged from applying when having no more evidence that just, I want to put the shed here instead of there.

ZI Ridgely stated she told the applicant that there are 5 members on the Board, and she was not one of them. The current frontage requirement is 200 ft. and Mr. Gavlik's lot only had 81 ft. and that the Board would look at that. The applicant has a right to apply for a variance whether factors seem unfavorable in the consideration of a variance request.

Minutes

The May 16, 2012 meeting minutes of the BZA hearing were approved as written.

Misc.

Mr. Hudak then addressed the Board. He stated he thought the Board made an error in approving a variance last month on Remsen Rd. He stated the present shed is 3.5 ft. from the property line

and felt the shed should be removed since the variance request was granted for him to build a garage. He stated that he was planning on building his house next door and he would have a shed and garage right outside his window. (Note: Mr. Hudak has not built a house on the property at this time) The Board and Zoning Inspector stated they thought the present shed would physically have to be removed in order for the garage to be built but it was not stated in the motion.

Mr. Hudak said the present shed was in violation of the code. The Board and Zoning Inspector told Mr. Hudak that he would need to show that the shed was built after 1984, which is when zoning was enacted in the Township. Mr. Hudak said he might have that information. The Board stated that any enforcement issues were the job of the zoning inspector so Mr. Hudak would have to follow up with ZI Ridgely and file an official complaint for her to act upon.

Having no further business before the Board, the meeting of the Board of Zoning Appeals was officially adjourned at 8:55 p.m.

Respectfully Submitted,

Kim Ferencz
Zoning Secretary


Ed Morel, Chair

William West