

**MEDINA TOWNSHIP
BOARD OF ZONING APPEALS
PUBLIC HEARING
June 18, 2014**

Chairperson Ed Morel called the public hearing of the Board of Zoning Appeals to order at 7:32pm. The sitting Board this evening consisted of Carey Blakemore, Robin Gray, Ed Morel, Mike Stopa and William West. Alternate Boris Williams was also in attendance. The Board members were introduced and Chair Morel explained the procedure to all those present.

VARIANCE REQUESTS

Puto Variance request – 3006 Sutton Lane

Chair Morel reviewed the application. The applicants are Steven and Lisa Puto. The address of the property is 3006 Sutton Lane, Medina, OH 44256. Present zoning: RR. Previous variance requests – none. Variance being requested: Sec. 401.3 D. 100' required minimum front yard setback. Pond will be 27' from front yard setback requesting 73' variance (corner lot). The reason: (applicant attached letter and drawing for dimensions, along with approved pond permit dated 10/4/11) Applicant noted the two water features explained in letter will be connected.

Secretary Shoemaker read the attached letter: Dated May 15, 2014, Dear Medina Township Zoning. In the following proposal of a variance; we will explain the reason and added benefit to the community and our home over all. We propose landscaped mounds with water features not 100' over from Hamilton Center. The purpose of the third mound is to keep true to the existing style of landscaping while providing safety for passing vehicles on Hamilton Road. Mound will block from water feature. Water feature is to have water plants and filtration systems put in place to filter the water without chemicals using gravel, water plants and perennials in tandem with existing natural background with a water fall to encourage oxygen flow through a pump and a spill way into the existing 40' drains. Feature will be approximately 40" long and 20" wide and/or smaller to match the style and size of a swimming pool but with a more natural rectangular shape – irregular. The water feature is proposed to be 4-5" deep. A matching smaller landscaped water feature with a filtration (natural) system for Koi fish and annuals and perennials with a pump system and over flow to keep water flowing and clean to prevent stagnation and algae build up. Medina County engineers approved in 2011 blocking/covering the first 40' drain spillway with over flow to the second drain spill way to work in tandem with the water feature to prevent an over flow to prevent any unnecessary hazard of flow water. We will follow all Medina County Engineers guidelines and requirements. In the end this proposal is to ask for a variance while providing the following:

1. Block and safety hazard from oncoming vehicles/traffic on Hamilton Road with the additional third mound.
2. Provide additional beauty following the already existing natural setting of the tree mounds.
3. Providing a natural chemical free filtration system with all properties above at Sutton Place flowing with fertilizers, lawn chemicals etc. This will better the environment before water enters the drains and the water system of Medina County.
4. Safety as the water feature will be farthest away from (although not structured as a safety hazard) existing homes while still providing the beauty. We understand it is written in the zoning and understood we are able to flip location to other side of our yard and place same feature and mound opposite as long as within 25' of border which we are prepared to do but would not benefit as well for #1-4.

This proposal will be a benefit to the environment and neighborhood's overall in beauty for the water systems of Medina County.

After Shoemaker read the attached letter, the applicant acknowledged a typo within the letter and stated "40" long and 20" wide" should have been 40' long and 20' wide.

The applicant, Steven Puto, 3006 Sutton Lane, Medina OH, was sworn in. Chair Morel then asked the applicant if he could clarify some things on the drawing. Chair Morel asked the applicant to verify there were two mounds on the street and not one continuous mound. The applicant confirmed and said there is a separation between the two. Chair Morel asked if they were going to fill in between the two and how is the one going to drain into the other? The applicant stated there will be a pump and confirmed one is higher than the other. The one that's 8' x 15' is a smaller Koi type pond. Steven Puto also clarified that the larger water feature is 40' x 30' and will be the higher of the two.

Chair Morel then swore in Steven's wife Lisa Puto, 3006 Sutton Lane. Ms. Puto stated that it hasn't been decided if the larger water feature will be the higher of the two because of the way the filtration works with the gravel and the plants. The Koi will be in the smaller one with a small separation between the two so the water can filtrate properly. The third mound will be further into the lot so it's not directly over the two drains. The drain is now directly in between, closer to the road, of the two larger mounds. Mr. West stated this property is directly across from the par three of Pleasant Valley Golf Course.

Alliss Strogan, Chair of the Medina Twp. Zoning commission was sworn in. She confirmed the property had 100' on the front and 100' on the side because it was a corner lot. Mr. West confirmed the applicant was looking to fill in the two current existing mounds to make it one landscape mound.

Ms. Puto stated the gentleman who did the original plans said this was the safest way to block the view for the vehicles passing on the road. Ms. Gray asked if there was a home owners association. Chair Morel said the man to answer Ms. Gray's question was present.

Jeff Bramley, 5020 Bachtell Rd., Medina OH, was sworn in. Mr. Bachtell stated he was an attorney in town and represents Ken Cleveland in Stonegate Center LLC which developed the property. There are restrictions and protective covenants that have been filed with the Medina County Recorder and approved by the Prosecutor, Engineer and the Township, back in 2005. He stated there is no monthly fee for the Home Owners Association but there is an architectural review control board and he can make it available to the BZA members. Under Item 3, Section 2, it states (considering building) "no fence, wall or other structure shall be erected, placed or altered within the Sutton Place subdivision until the plans and specifications showing the nature, kind, shape, height and materials and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to the surrounding structural topography by the Medina Township Zoning Commission by either the declarant, which in this case would be Mr. Cleveland, or by a representative appointed by the declarant."

Mr. Bramley stated they have received no plans, and Mr. Cleveland is the architectural control person who needs to be contacted. He's put a lot of money and effort into drainage in this development, pursuant to the County's requirements. Another section of the documents, under easements, Section 4, provides that "no structure, planting or other materials, shall be placed or permitted to remain or subsequent grading or altering of the contour of the surface of the ground which may damage or interfere of the installation and maintenance of utilities, or which may obstruct, impede, or retard the flow of water through drainage channels, or which may change the direction of the flow of water over the surface of the earth. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements therein for which a public authority or public utility is responsible."

Mr. Bramley continues to state they are very concerned about the flow of water being altered and the structures and mound changes. This is the first time he and Mr. Cleveland saw the plans. Mr. Cleveland has been a developer in Medina Twp. for many years and he still owns three lots in Sutton Place. The applicant's property is at the entrance and he doesn't want something to go in there that might detract from the harmony of the development. He also doesn't want something that may cause damage to adjoining homeowners in the development.

Chair Morel stated he thought we had two different issues. We have our zoning, which Ms. Puto is asking for 27' setback, and the Home Owners Association has their rules which are totally separate from our rules. He stated they have the legal right to stop them from proceeding but that part does not concern the BZA. Chair Morel stated the BZA cannot make a ruling based on the Home Owners Association rules and doesn't see how the two are intermixed.

Mr. Bramley stated that Mr. Cleveland is a homeowner in the Sutton Place subdivision and would be directly affected by what the applicants are proposing. Chair Morel stated that he would have every right to stop this because of the Home Owners Association.

Ken Cleveland, Stonegate Center LLC, 1949 Plymouth Oval, Hinckley OH, was sworn in. Mr. Cleveland stated he thought the two issues do tie together. Every time he puts a subdivision in, they set up rules and regulations for a Home Owners Association and this HOA does not collect fees. Chair Morel stated the BZA never rules on HOA's. We have our zoning book and we can give variances on that. HOA's have stricter rules but the BZA is not here to enforce those rules, we are here to enforce Township rules.

Mr. West asked Mr. Bramley to characterize the document he was reading from, covenants that run with the land or a governing document. Mr. Bramley stated it was covenants that run with the land. Mr. West stated that the homeowner would be on notice of those documents and Mr. Bramley confirmed. Mr. West stated he understood their point but the issue of architectural review board documents, as well as the other various water requirements from the county, all go to the issue of whether the essential character of the neighborhood will be substantially altered. Mr. West believes they do, although ultimately the Board could decide to grant the variance subject to whatever Home Owners Association rules may apply.

Chair Morel stated the HOA rules are stricter. Mr. West had a bigger concern that they are covenants that run with the land as opposed to procedural documents that's intended to run a Home Owners Assoc. Mr. Blakemore stated the variance was for 73' which the board agreed was a significant variance. He also stated the board is here to hear a variance and its responsibility is to decide whether or not to approve that variance.

Ms. Puto stated their first concern was going against any rules or regulations which is why their first step was to go through the very difficult process of getting approval from the Medina Co. Engineer. She stated the County Engineer explained, as long as they follow the guidelines, building the water structure would in no way hurt the water. She stated she felt the structure will be gorgeous and in her opinion would only help with property values in the future. The pond will not be seen as you enter Sutton Place and will be tucked away

on their property due to the mound blocking it. I was told by the Medina County Engineer it would not hinder the draining or the stability of water system of Medina County.

Chair Morel stated her next step, if the variance was approved by the BZA, would be to convince Mr. Cleveland. Mr. Cleveland stated he hasn't received drawings or plans so they have nothing to go on. Chair Morel stated, if the BZA approved a variance, their next step would be to go to Mr. Cleveland and he would have every right to say no. Without a variance they couldn't even go to the next step. Mr. Cleveland asked the board make their approval subject to the HOA documents. Mr. West stated it would be subject to their approval under the law no matter what the board decides.

Mr. Stopa asked if the Puto's had knowledge of the covenants before this. Ms. Puto stated they did, but was told to go to the county first then to Medina Township Zoning Inspector, Elaine Ridgley. Ms. Ridgley spent a great deal of time telling them what the zoning rules were and was a great help. Ms. Puto also stated she wanted to go through the proper steps first then go to Mr. Cleveland. Chair Morel stated he felt that, as a homeowner, the proper steps would be the county engineer, the Township for the variance and the Zoning Inspector for the pond permits, then Mr. Cleveland for final approval before they do anything.

Ms. Puto stated, as simple as the drawing seems, which Mr. Cleveland referred to earlier, that's just what it is. They are working with Ray Johnson, who has built several ponds in the county. He told her they don't want to do any complex drawings now until they find out exactly what can be done. Chair Morel addressed Mr. Cleveland, explaining the Puto's point in not wanting to spend thousands of dollars on drawings only to find out it couldn't be done. Mr. Cleveland was concerned that nobody has talked to the surrounding homeowners. Chair Morel stated all adjacent homeowners were notified prior to this meeting.

Steve Antill, 3000 Sutton Lane, Medina OH, was sworn in. Mr. Antill stated he lives adjacent to the Puto's and although they are great neighbors, he has great concerns about the drainage. He feels this pond will block the drains and his basement will be flooded. Mr. West asked where he saw the drain would be covered. Mr. Antill stated he saw somewhere on the application something to the effect the drain will be blocked.

Ms. Gray stated she had gone out to the Puto's home and she also had a concern about the swale and the drain, having personally gone through a lot of damage from the water we had last spring. She could she see the width of the swale, of where that swale came through and to the drain that was by the road. She stated if they build the mounds, which are up on a slope, they will cover that whole area with dirt. Ms. Puto stated they will be in more toward the land so the water can go around it, they will not be covering the drain. Ms. Gray agreed they would not be covering the drain but asked where the water would go. Ms.

Puto stated water has never rushed through there, there is gravel there naturally. The slope around the drain will not be affected if they follow the guidelines according to Medina County. When their house was built, there were 80' setbacks so no matter what they do it's awkward. When they purchased the house, they asked whether building a pond was a valid thing to pursue and the Medina County Engineer said it would be fine and they approved it.

Mr. West asked Ms. Puto to talk a bit about flipping the lot and putting the pond on the other side. Ms. Puto stated she wanted to keep it away from the other houses for safety reasons but still visible so there wouldn't be that mystery of being enclosed and nobody knows what's going on. It will not be deep, it's just a water feature.

Mr. Antill stated he had further concerns and consulted with an engineering firm. After looking over the variance application, the engineer pointed out the fact they were going to have a natural filtration system that will weed out fertilization but when you get into applications for ponds it should go through the Ohio EPA. Mr. Antill is concerned the water will pool up and will it be clean? Chair Morel stated the water now goes right down the drain and asked Mr. Antill how it will make it worse? Mr. Antill stated the water could potentially pool up. Chair Morel understood, but stated it had nothing to do with the quality of the water, the Puto's are not planning on polluting the water. Mr. Antill stated the application says this will help clean up fertilization of the water but how do we know? Ms. Puto stated she was given the option of putting in a swimming pool with chlorine, a stagnant salt pond or a regular fish pond and felt those options were more damaging than the pond they chose. It's like a septic system using gravel and aquatic plants using hydroponics. Mr. West stated it was like filtration for a cistern and Ms. Puto agreed.

Ms. Strogin stated she wanted to clear up a few issues. She has heard in the past there is no Home Owners Association in this development. For the record, when a developer goes in and sets up a subdivision, those documents all have to be recorded prior to the first blade of grass being turned over. Those documents provide the developer to be the sole HOA until such time he turns the HOA over to the development and that is usually done by a percentage of developed units. Then he turns it over and that's when you have to form the HOA of the residents of the development. At this point, Mr. Cleveland is still the sole HOA and he has the power to enforce the regulations that have been approved. Part of a variance has to be a hardship, not of one's own creation.

Ms. Puto stated this is a hardship due to the water and the drains. The drains are on the other side of the road. They were told they could put it on the other side of the yard but if they do, there would be an issue of feeding the water across their yard. Also, as a neighbor, they wanted it visible so it will not be a tempting thing for someone to meander around to see what's hidden. The Medina County Engineers agreed that for safety reasons, efficiency

and for the water flow they felt that would be the best place for the pond. Ms. Puto stated the letter she prepared may have been misleading and, for the record, they put a lot of time and research into this project. It has been a lot of work and took a lot of thought.

Ms. Strogan stated she had a concern about the permit she had attached to her application for the pond. The permit was dated in 2011 and Ms. Strogan did not think the permit was still valid, as most expire within a year. Mr. West stated that if that was the case, Ms. Puto will not need to get it renewed if she doesn't get the variance. Chair Morel felt she gets the variance or the issue stops here.

Ms. Strogan asked why the variance had to be 73'. Ms. Puto stated it was not her decision but what she was told by the engineer. Her concern is that it looks good, it's safe and that the water flows properly. Ms. Strogan asked if the engineer knew of the zoning codes and Ms. Puto stated that yes, she was aware.

Mr. West asked Ms. Puto to clarify the back side of the mound is 27' from the road, Ms. Puto confirmed. Ms. Strogan stated the mound is not the issue, the water feature is the issue. Mr. West asked Mr. Puto to clarify the depth. Mr. Puto confirmed it was 4 to 5 feet.

Chair Morel stated Ms. Strogan was correct that this was a huge variance. He also said that when he weighs variances, a pond is a structure, not a barn above the ground, it is behind a mound. Also, if you go by current zoning and take a 100 foot swipe, their backyard is basically unusable. Anything that's within 20 foot from the side of their house would be illegal now. Part of that, Mr. Cleveland created the lot like that so he could build a house, which was current but the homeowners have gone through their due diligence as best they could. He understands the other homeowner is concerned about water and drainage but they rely on testimony from experts, who is the County Engineer on that part, so he can't claim it will back up. The County Engineer determines that. If Mr. Cleveland doesn't like it, then it's a done issue.

Chair Morel asked Mr. Blakemore what his opinion was and he agreed with Chair Morel. Mr. Blakemore stated this was not an eyesore and the board's job is to approve a variance and the Puto's have to go from there.

Chair Morel asked Ms. Gray what her opinion was and Ms. Gray stated she would have to go against it because the variance is too great.

Chair Morel asked Mr. Stopa what his opinion was and he agreed with Ms. Gray. He felt a variance of this size has never been approved before and does not see a reason why they need such a big variance.

Chair Morel asked Mr. West his opinion. Mr. West agreed with both sets of comments. On the one hand, you have something that isn't really a structure in the sense of what people think is a structure. On the other hand you have this extraordinary 100' set back requirement that is very clear. He felt it is the board's responsibility to start looking for ways to take what is clearly a 100' setback, and adjust it to fit an individual home owner unless it meets all the other factors that the board looks at, and felt it does not meet those. He felt what the homeowners are proposing to do may make sense for the development and may make sense for their property individually. Ultimately if they've done everything correctly through the county, it would be approved by Mr. Cleveland's group if there isn't an impact on water flow in that area but they need to start from the fact there was a good reason for the 100' setback requirement. It has a negative effect, particularly on corner lots.

Chair Morel stated, the zoning book gets put into play and he felt the board does everything to the best of their ability and they wouldn't be there if that was the end of it. If the board approves the variance, the next step is to go to Mr. Cleveland. He suggested approving or denying the variance and continue with the Duncan Factors.

Mr. Blakemore made a motion to approve the variance request of Section 401.3D, Lot and Yard requirements, for a 73' variance on the Hamilton Road side of 3006 Sutton Lane to construct a water structure. It was seconded by Mr. West.

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? Chair Morel and Mr. West stated no. Mr. Stopa was on the fence and stated yes, he doesn't think there is one but after hearing testimony from the neighbor regarding potential drain issues he felt it may. Ms. Gray said yes due to the drainage. Mr. Blakemore said 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? Chair Morel stated his opinion is following what the experts said and agreed it was the best place to put the pond. Mr. West stated it was clearly where it belongs. Mr. Stopa agreed with Mr. West. Ms. Gray did not have an opinion. Mr. Blakemore agreed with Chair Morel and Mr. West.
7. Whether the granting of the variance upholds the spirit and intent of the Zoning Resolution? Chair Morel stated he had already given his opinion earlier. Mr. West stated the setbacks need to be reviewed. Mr. Stopa and Ms. Gray had no comments. Mr. Blakemore agreed with Mr. West and felt the board is there to serve and do what is right for the people. He stated that 73' is significant but will not hurt anyone.

ROLL CALL – Blakemore – yes, West – yes, Gray – no, Stopa – no, Morel – yes.

Minutes

The February 19, 2014 Organizational meeting minutes were approved as submitted.

Bill Doraty Kia temporary sign appeal

Chair Morel reviewed a letter from Mills, Mills, Fiely & Lucas regarding Bill Doraty Kia's temporary sign permit application.

Secretary Shoemaker read the following correspondence:

This is a letter sent to the Board of Zoning Appeals, dated June 17, 2014. Dear Board of Zoning Appeals Members and Medina Twp. Zoning Inspector: My client PHN Motors, LLC dba Bill Doraty Kia, respectfully withdraws their Appeal submitted to the Board of Zoning Appeals effective this date. Thank you. If you have any questions, please do not hesitate to contact me. Until then, I remain very truly yours, Mills, Mills, Fiely and Lucas, Laura Mills.

Chair Morel made a motion to accept the June 17, 2014 request for the withdrawal of the appeal for a temporary sign permit for PHN Motors, dba Bill Doraty Kia. Mr. West seconded the motion.

ROLL CALL – Morel – yes, West – yes, Blakemore – yes, Gray – yes, Stopa – yes.

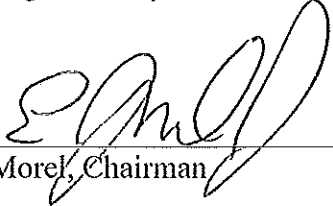
Misc.

Alliss Strogan asked if the Board Members received the email regarding the Board of Elections having a grand opening on Friday, June 20, 2014 at 3:30pm.

Having no further business before the Board, the meeting of the Board of Zoning Appeals was officially adjourned at 8:45pm.

Respectfully Submitted,

Laurie Shoemaker
Zoning Secretary



Ed Morel, Chairman



Date