

WESTFIELD TOWNSHIP BOARD OF ZONING APPEALS
September 19, 2007 @ 7:30 p.m.
Public Hearing – David W. Kaufman
Application for Variance – Across from 5729 Stuckey Road, Creston

Chairman Mike Schmidt called the meeting to order at 7:30 p.m. Roll call indicated five members of the Board of Zoning Appeals were present: Michael Schmidt, Kevin Daugherty, Larry Bensinger, Robert Gecking and Ron Oiler. Alternate Jack Poe was absent. Others in attendance included Trustee Tim Kratzer, Trustee Jeff Plumer, Zoning Inspector Gary Harris, Susan Brewer (9796 Daniels Road), Joyce King (5729 Stuckey Road), Wanda Halpin (5703 Stuckey Road), Mr. & Mrs. B.F. Broadbridge (10352 Wooster Pike), Herschel & Murreline Drake (10335 Wooster Pike), Mike Winkler (P.O. Box 65, Mt. Eaton) and Dave Kaufman (9277 River Styx Road).

CORRESPONDENCE

A letter dated 9/11/07 from Assistant Prosecutor William L. Thorne regarding “Frontage” was distributed to the board members for review.

PUBLIC HEARING

The applicant, David W. Kaufman applied for a variance (Article III, Section 303 H. Rear Lot Development) for the location across from 5729 Stuckey Road, Creston (40 plus acres, parcel number 42-15D-38-018/022. The variance was requested to allow the division of the parcel into two separate lots. David Kaufman was sworn in and affirmed to tell the truth.

Upon questioning by the board members, David Kaufman stated that he represents Harry Winkler (deceased) and Wilma Winkler and he was asked by the family, Mike Winkler (a son) to present this application. Mike Winkler is the family representative here this evening. Mr. Kaufman does not have a Power of Attorney for the Winkler family. The applicant stated that at this point the property is titled in the estate of Harry Winkler and Wilma Winkler trust (50% in each name).

Chairman Schmidt indicated that normally one would either have to be the property owner or have a power of attorney in order to make an application for a variance. The Board discussed this aspect and decided to proceed on the merits of the matter and any decision could be made subject to being furnished additional paperwork.

Mike Winkler stated that he is the executor of his father’s estate but he did not have a copy of the paperwork with him this evening. He further stated that his mother, Wilma, is alive but has Alzheimer’s and some days she is lucid and some days she is not. There was a trust and the father’s trust funds are in the process of being transferred into the mother’s trust. Robert Bux with Batchelder’s office is the attorney for the estate.

Wanda Halpin, a neighbor, was sworn in. She indicated she talked with John Murray yesterday as to the estate and he thought Bux had asked Kaufman to handle the property but John evidently doesn’t know the sequence of events. John hasn’t signed any papers yet that he can remember since he’s the trustee. Mike Winkler indicated that the attorney is still working on all the estate paperwork.

The Board reviewed the letter from the Prosecutor's Office relative to frontage. They also reviewed the township zoning definition of frontage. The map attached to the application was reviewed as well as the distances shown on the survey map.

Westfield Township Zoning Resolution defines the following:

- Lot, rear – a panhandle shaped lot or parcel with its widest area set back some distance from a road, and having a strip of land connecting to the road to provide legal access to the road.
- Lot frontage – lot frontage shall be the distance between side lot lines measured along the front line of the lot coincident with the right-of-way line of a public street (or a private street approved for frontage).
- Frontage – the line along which the front line of a lot and the road right-of-way line are coincident.

Upon questioning, the applicant indicated that he thought the legal frontage was the centerline of the road and when he had talked with township representatives, they told him he needed to come in for a variance for rear lot development. It seemed there was ambiguity as to which way frontage could be interpreted and that's the reason for the application.

The Board reviewed the map, distances and discussed the definitions. There does appear to be some ambiguity between the frontage terms in whether it would be measured from the centerline of the road or the right-of-way. Kevin Daugherty indicated that he thought in this instance the frontage on the west property would be 152.8 at the right-of-way and on the east property would be 130.2 at the right-of-way; in addition those two pieces happen to be more than 500' apart and based on that a variance would not be necessary. Chairman Schmidt indicated that the Board has to follow the township zoning code even though there may be some ambiguity in the county's definition of frontage. The Board all agreed with this assessment and continued the review to see if there was anything in rear lot development that would cause a problem. There was discussion about the requirement that the minimum distance between rear lot access driveway locations need to be 500' along the adjacent public thoroughfare.

Upon further questioning by board members, the applicant indicated there was some wetland area but there should be plenty of land that is buildable. The applicant further indicated that where the culvert is, if the buyer wanted to put in a drive there, the buyer would have to meet the county engineer specs for putting a drive across there. There was some concern about a safety issue on the one lot near the curve but it looks like there should be enough vision distance. Minimum lot requirements were also reviewed by the board members: minimum lot width and depth of the buildable area is 350'; access area of the lot shall have a minimum 60' of frontage on a public street and a minimum width of 60' through its entire depth; minimum set back from any lot line is 50'.

Chairman Schmidt apologized for having to go through this process but it was important to get everything clarified. We also want to be sure that everybody understands that we are going by our zoning text even though it may be a little bit different than how the county may interpret it. The applicant indicated he appreciated the clarification as well.

The secretary called to the board members' attention that the parcel number on the application was 42-15D-38-018 but when she checked the on-line county highway engineers tax map records, the parcel was shown as 41-15D-38-022. In checking with the applicant, he indicated on the county auditor's website, the parcel was shown as 41-15D-38-018. In order to avoid any problems, the legal advertisement indicated the parcel was 41-15D-38-018/022.

After further discussion, Larry Bensinger made a motion stating that a variance is not necessary; see Exhibit A attached for reference. Ron Oiler seconded the motion.

Roll Call Vote:	Larry Bensinger	- yes
	Kevin Daugherty	- yes
	Robert Gecking	- yes
	Ron Oiler	- yes
	Mike Schmidt	- yes

MOTION CARRIED.

The public hearing was closed.

OTHER

The secretary distributed the application for conditional use/site plan review submitted by The Ruhlin Company for a borrow pit. This application is scheduled for Monday, October 8, 2007.

ADJOURNMENT

Upon motion Kevin Daugherty, seconded by Bob Gecking, it was unanimous that the meeting be adjourned. The meeting was adjourned at 8:10 p.m.

Marlene L. Oiler, Certified PP, PLS
Westfield Township Board of Zoning Appeals Secretary

(Minutes approved 9/25/07.)