

ELLETTSVILLE BOARD OF ZONING APPEALS

November 19, 2002

Board members present: Jack Neal; President, Terry Baker, Bill Evans.

The Ellettsville Board of Zoning Appeals held a public hearing at the Ellettsville Town Hall. Robert Double requested a variance to build an attached garage at his home at 610 Robin Drive. The garage will be 7 feet from the property line instead of the required 10-foot set back. Mr. Double notified the contiguous property owners, none of which were present to object. Bill Evans stated that he felt it was not legal to grant a variance and wanted to contact the attorney for interpretation. Mr. Spencer's response is as follows:

The question is whether or not the board of zoning appeals can grant a setback variance to a property owner desiring to build a garage on his property when the building of the garage would violate a setback requirement found in the subdivision's covenants and restrictions. The board of zoning appeals may grant the variance. According to Indiana Case Law "Zoning laws are enacted under the police power in the interest of public health safety and welfare; they have no concern whatever with building or use restrictions contained in instruments of title and which are created merely by private contracts". In fact Indiana cases have determined that building restrictions in deeds are "wholly irrelevant" in an appeal to an appellate court on the questions on weather a variance should have been granted.

According to Yodley, Zoning Law and Practice "In the realm of zoning administration, consideration will not be given to the enforcement of restrictive covenants merely to protect the rights of private property owners." One zoning law treatis in fact indicates that "not is it proper for an administrative body to consider the existence of a private covenant upon an application for a variance of a special exception, the only applicable requirement for these being those set forth in the enabling act of the ordinance."

It is therefore the obligation of the board of zoning appeals to consider the variance in light of the standards that have been set out in Indiana statutes which standards are included in Ellettsville's petitions For Variance Of Development standards.

Enacting the variance does not vitiate the effectiveness of the covenants and restrictions. It simply means that such building would not violate any town ordinances. Since it apparently would violate a covenant and restriction, the property owners in the subdivisions could file an injunction based upon the covenants and restriction and thus prevent the petitioner from building the garage.

The Board of Zoning Appeals after hearing the request will grant a 60-day variance with the condition that there will be no water hook up or sewage hook up. They may have an electrical hook up for lights and fan until they can locate a place to park the camper trailer. They may not have longer than 60 days. As soon as they can move to proper location they will notify town clerk.

The Board of Zoning Appeals granted the variance. They also requested a fire wall be built between the garage and the house.

Jack Neal
President and Secretary

Terry Baker

Bill Evans