To the Clerk: THIS IS A FINAL APPEALABLE ORDER.
Please serve upon all parties not in default for failure to appear; Notice of the Judgment and its date or entry upon the Journal

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Sept. 6, 2024 Case No. 24CV212024

DENNIS REASER, *et al.*
Appellants

Michael J. King
Appellants' Attorney

VS

GRAFTON TOWNSHIP, OHIO, BZA
Appellee

Tonya J. Rogers
Appellee's Attorney

This matter is before the Court on an Administrate Notice of Appeal filed by Appellants on April 4, 2024. The Administrative Record of Proceedings was initially filed with the Court on July 19, 2024, and the Corrected Administrative Record of Proceedings was filed on August 21, 2024.[1] The Brief of Appellants was filed June 21, 2024; Appellee's Brief in Opposition was filed July 19, 2024; and, Appellant's Reply Brief was filed August 2, 2024.

THE COURT RULES AS FOLLOWS:

The Grafton Township Board of Zoning Appeals ("BZA") decision denying Appellants' application for a zoning permit was arbitrary, unreasonable, and capricious, and not supported by the preponderance of reliable, probative, and substantial evidence. That decision is hereby OVERRULED, vacated, and Appellant's appeal to this Court is SUSTAINED.

Accordingly, the BZA is hereby Ordered to grant a zoning permit to Appellants consistent with their application and this Court's ruling.

See Judgment Entry. No Record.

JUDGE D. Chris Cook

cc: King, Esq.
Rogers, Esq.

[1] The Court identified a number of mislabeled exhibits in the Administrative Record that was originally filed and Ordered the parties to file a corrected record.

LORAIN COUNTY COURT OF COMMON PLEAS
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JUDGMENT ENTRY
Hon. D. Chris Cook, Judge

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I. INTRODUCTION

This matter is before the Court on an Administrate Notice of Appeal filed by Appellants on April 4, 2024. The Administrative Record of Proceedings was initially filed with the Court on July 19, 2024, and the Corrected Administrative Record of Proceedings ("ROP") was filed on August 21, 2024. The Brief of Appellants was filed June 21, 2024; Appellee's Brief in Opposition was filed July 19, 2024; and, Appellant's Reply Brief was filed August 2, 2024.

II. PROCEDURAL HISTORY

The following dates are pertinent to the procedural history of this matter:

March 6, 2023 – Appellants, Dennis Reaser and Amanda Reaser ("The Reasers"), file an application with the Lorain County Planning Commission ("County Planning Commission") seeking to split a piece of property they own located in Grafton Township, Lorain County, Ohio, into two lots. These two resulting lots were designated as the "New Home Lot" (35.7674 acres) and the "Existing Home Lot" (2.4389 acres). (Exhibit "D," Para. 6, Verified Petition for Writ of Mandamus, ROP[2].)

March 14, 2023 – The County Planning Commission disapproves the application to split the lot. (Exhibit "F," Letter from the County Planning Commission, ROP.)[3]

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[2] Corrected Record of Proceedings before the Grafton Township Board of Trustees.

[3] This Exhibit is improperly dated on the Index of the Record of Proceedings as "March 14, **2024**." (Emphasis added.)

April 4, 2023 – The Reasers file a notice of appeal of the denial of the lot split to the County Planning Commission. (Exhibit "D," Para.12.)

April 27, 2023 – A hearing on The Reasers' appeal is held by the County Planning Commission. (Exhibit "D," Para.13.)

April 27, 2023 – The County Planning Commission votes to approve The Reasers' lot split application. (Exhibit "D", Para.17.)

May 1, 2023 – The County Planning Commission provides a letter of approval for the lot split to The Reasers. (Exhibit "E," Letter from the County Planning Commission, Exhibit "D," Para.18.)

May 22, 2023 – The Grafton Township Zoning Inspector ("The Zoning Inspector") denies The Reasers' zoning permit application for a Building Permit to build a residence on the New Home Lot. (Exhibit "H," ROP[4], Denial of Plot Plan and Zoning Permit.)

May 23, 2023 – The Zoning Inspector denies The Reasers' zoning permit application for a Building Permit to build a residence on the New Home Lot because the permit application was "incomplete." (Exhibit "G," ROP, Letter from the Zoning Inspector.)

June 11, 2023 – The Reasers submit an amended application seeking a permit ("Building Permit") to build a new residence on the New Home Lot. (Exhibit "D," Para.21.)

June 20, 2023 – The Zoning Inspector again denies The Reasers' zoning application for a Building Permit. (Exhibit "C," of ROP; Exhibit "D," Para. 23.)[5]

August 14, 2023 – The Reasers file a Verified Petition for Writ of Mandamus in the Lorain County Court of Common Pleas. (Exhibit "D.") The action is assigned to the Honorable Judge Christopher Rothgery ("Judge Rothgery").

December 12, 2023 – Judge Rothgery dismisses the Mandamus action. (Exhibit "B," ROP, Judgment Entry of Dismissal.)

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[4] This Exhibit is improperly dated on the Index of the Record of Proceedings as "May **23**, 2023." (Emphasis added.)

[5] This Exhibit is not identified as a marked exhibit in the ROP index, but is part of and attached to Exhibit "D," the Verified Petition for Writ of Mandamus.

January 12, 2024 – The Reasers appeal the dismissal to the Ninth District Court of Appeals.[6] The appeal remains pending, but has been stayed by agreement of the parties awaiting the outcome of this matter.

April 4, 2024 – The Reasers file the instant action.

III. STATEMENT OF PERTINENT FACTS

Based upon the (rather sloppy) Certified Record of Proceedings before the Grafton Township Board of Trustees, the attached exhibits[7], the briefs of the parties, and the applicable law, the Court finds the following pertinent facts, *which are not in material dispute*, supported by the record.

After acquiring the approximately 38.2 acres of property at issue in Grafton Township, the Reasers split it into two separate lots, one approximately 2.4 acres, the Existing Home Lot, and the remainder approximately 35.8 acres the New Home Lot. The Reasers current residence sits on the Existing Home Lot.

The larger lot, the New Home Lot, is mostly farmland with a large pond. It is on this lot that the Reasers desire to build a new home, to wit: their "Dream Home."[8]

As outlined above, the Reasers endeavored to obtain the necessary building permits in order to begin construction of their Dream Home on the New Home Lot. Ultimately, the permits were denied and the Reasers filed both a civil suit in this court[9] and this pending administrative appeal.

It appears that during this process, the County Planning Commission initially disapproved the lot split but after an appeal, the lot split was approved and completed. Thereafter, the Reasers submitted a zoning permit in order to build their Dream Home. The zoning permit was denied by the Grafton Township Zoning Inspector.

While the mandamus action was still pending before Judge Rothgery, the Reasers sought two alternative options to complete construction of the Dream Home: 1) they appealed to the Grafton Township Board of Zoning Appeals to reverse the Zoning Inspector's decision; and 2) they requested three variances to satisfy the Zoning Inspector's concerns.

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[6] See case No. 24CA012071.

[7] This Court specifically reviewed the Hearing Minutes (Exhibit "A," ROP), and Exhibits "B" through "J" of the Record of Proceedings. Further direct references to the record are intentionally omitted hereafter.

[8] Hence, of course, its designation as the New Home Lot.

[9] The Mandamus action.

The Zoning Inspector denied The Reasers' zoning application on the ground that their property lacked the required 200 feet of frontage. An appeal to the BZA was not successful, thus, this appeal was filed.

IV. STANDARD OF REVIEW

Appellants, The Reasers, bring this action pursuant to R.C. 2506.04. That statute reads, in pertinent part, as follows,

> If an appeal is taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505 of the Revised Code.

This Court begins the analysis with the presumption that the regulations of Appellee, the Grafton Township BZA, are constitutional.

> . . . zoning regulation is presumed to be constitutional unless determined by a court to be clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community. The burden of proof remains with the party challenging an ordinance's constitutionality, and the standard of proof remains "beyond fair debate." See *Cent. Motors,* 73 Ohio St.3d at 584.

In re Goldberg Companies, Inc. v. Council of the City of Richmond Heights, 81 Ohio St. 3d 207, 214 (1998).

Similarly, as noted by both parties, the Court presumes that the decision of the BZA is "reasonable and valid."

> In reviewing appellee's decision, a court is bound by the nature of administrative proceedings to presume that the decision of the administrative agency is

> reasonable and valid. *C. Miller Chevrolet, Inc. v. Willoughby Hills* (1974), 38 Ohio St.2d 298. Courts evaluating the decision of an administrative body must weigh the evidence in the record in order to determine whether there is a preponderance of reliable, probative, and substantial evidence supporting the decision. R.C. 2506.04 and *Dudukovich v. Lorain Metro. Hous. Auth.* (1979), 58 Ohio St.2d 202, 207. However, a reviewing court should not substitute its judgment for that of the agency. *Dudukovich, supra.*

Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals, 66 Ohio St. 3d 452, 456 (1993).

And, in a recent decision, the Ninth District Court of Appeals instructs,

> Under R.C. 2506.04, a trial court considering an administrative appeal reviews the order at issue to determine whether it is "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record." "R.C. Chapter 2506 confers on the common pleas courts the power to examine the whole record, make factual and legal determinations, and reverse the board's decision if it is not supported by a preponderance of substantial, reliable, and probative evidence." *Cleveland Clinic Found. v. Cleveland Bd. of Zoning Appeals*, 141 Ohio St.3d 318, 2014-Ohio-4809, ¶ 24, citing *Dudukovich v. Lorain Metro. Hous. Auth.*, 58 Ohio St.2d 202, 207 (1979).

Homeless Charity, et al., v. Akron Board of Zoning Appeals, 9th Dist. Summit No. 30075, 2022-Ohio-1578, ¶ 9.

And regarding the scope of intermediate appellate review, the Ninth District continues,

> The scope of this Court's review of the trial court decision, however, is "narrower and more deferential":
>
> > [T]he standard of review for courts of appeals in administrative appeals is designed to strongly favor affirmance. It permits reversal only when the common pleas court errs in its application or interpretation of the law or its decision is unsupported by a preponderance of the evidence as a matter of law.
>
> *Cleveland Clinic Found.* at ¶ 25, 30. When reviewing a trial court's decision in an administrative appeal, this Court must determine whether, as a matter of law, the trial court's decision is unsupported by a preponderance of reliable, probative, and substantial evidence. *Independence v. Office of the Cuyahoga Cty.*

Executive, 142 Ohio St. 3d 125, 2014-Ohio-4650, ¶ 14, citing *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34, (1984). *See also Cleveland Clinic Found.* at ¶ 25 ("The courts of appeals may review the judgments of the common pleas courts only on questions of law; they do not have the same power to weigh the evidence.").

Id.

V. ANALYSIS

THE TRIAL COURT

The Reasers first argue that they requested "area variances" from Grafton Township ("The Township") and as such, the "practical difficulties" standard applies. According to The Reasers, this is a lower standard in which to receive a variance than a "use variance" because, ". . . neighborhood considerations are not as strong as in a use variance case . . ." The seminal case on this issue appears to be *Duncan v. Middlefield,* 23 Ohio St. 3d 83 (1986).

The *Duncan* decision provides much guidance on the matter,

> . . . the "spirit" rather than the "strict letter" of the zoning ordinance should be observed so that "substantial justice [is] done * * * In observing the spirit of an ordinance and attempting to do substantial justice, a zoning board of appeals or a reviewing court necessarily must weigh the competing interests of the property owner and the community. When an area variance is sought, therefore, the property owner is required to show that the application of an area zoning requirement to his property is inequitable.

Duncan, at 86.

Duncan also provides practical guidance to trial courts when applying the practical difficulties test,

> The factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of his property include, but are not limited to: (1) whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance; (2) whether the variance is substantial; (3) whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; (4) whether the variance would adversely affect the delivery of governmental services (*e.g.,* water, sewer, garbage); (5) whether the property owner purchased the property with knowledge of the zoning restriction;

(6) whether the property owner's predicament feasibly can be obviated through some method other than a variance; (7) whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. See, generally, 3 Anderson, American Law of Zoning (2 Ed.1977), Variances, Section 18.47 *et seq.; Wachsberger v. Michalis* (1959), 19 Misc.2d 909, 191 N.Y.S.2d 621.

Id.

According to The Reasers, each *Duncan* factor should be considered in light of the degree that they cut in favor for, against, or neutrally, of granting the variance.

In urging that the BZA made both legal and factual errors in denying The Reasers' requests for area variances, they posit two primary arguments.

1) THE REASERS SHOULD NOT HAVE BEEN REQUIRED TO SEEK A ROAD FRONTAGE VARIANCE

In this argument, The Reasers advance two points. First, that the doctrine of *res judicata* applies to bar the Grafton Zoning Inspector from disregarding the decision of the Lorain County Planning Commission.

Second, once the Township's position was rejected by the Planning Commission and The Reasers' new lot of record was approved, the Zoning Inspector, ". . . refused to give effect to that decision . . . and effectively invalidated the Reasers' new . . . lot," because it did not meet the frontage requirements of the Grafton Township zoning ordinance.

In response, The Township rejects The Reasers' *res judicata* argument and posit that if either party is entitled to it, it is The Township. As for The Reasers' second arguments, The Township urges that the Zoning Inspector has exclusive authority to interpret zoning resolutions and issue zoning certificates and that the Planning Commission has no authority to interpret The Township's zoning resolutions.

This Court agrees with The Township on both accords.

THE *RES JUDICATA* BATTLE

Interestingly, both parties are wrong in their respective approaches to this issue.

The Reasers' argument that *res judicata* applies to bar the Zoning Inspector from issuing a determination *contra* the Planning Commission is without merit.

As clearly articulated by The Township, and explained by Judge Rothgery in his Entry dismissing the mandamus action,[10] the roles, duties, and responsibilities of The Township's Zoning Inspector are not superseded by the county Planning Commission.

Each entity has a separate and distinct mandate – it is the pervue of the Planning Commission to interpret and enforce county subdivision regulations. It is the responsibility of a township's zoning inspector to interpret zoning resolutions and issue zoning certificates.

In essence, the granting of The Reasers' lot split into a minor subdivision by the county Planning Commission did not divest The Township's Zoning Inspector from passing on The Reasers' building permit applications. To reach any other conclusion would, effectively, abrogate the authority of township zoning inspectors.

That noted, The Township gets it wrong as well.

The fact that Judge Rothgery dismissed the mandamus action does not implicate *res judicata* in its favor for two reasons. First, The Reasers have appealed the dismissal of the mandamus action and that appeal remains viable in the Ninth District Court of Appeals, stayed, but viable. As such, finality of the dismissal has not attached and *res judicata* cannot be invoked as a bar to this appeal.

Second, while there is *dicta* in the dismissal entry, as noted above, about the roles of the Zoning Inspector and Planning Commission, the primary thrust of, or basis for, Judge Rothgery's decision to dismiss the mandamus action stems from the fact that The Reasers had alternative remedies of relief available to them, and as such, mandamus was inapposite.

THE GRAFTON ZONING INSPECTOR'S REJECTION OF THE REASERS' BUILDING PERMIT APPLICATIONS DID NOT "INVALIDATE" THE REASERS' NEW LOT – "THE NEW HOME LOT"

The Reasers' second argument is that by denying their building permits to construct their Dream Home on the New Home Lot, the Zoning Inspector effectively "invalidated" that lot, thereby rendering them with a lot that they "can't do anything with."

This argument also lacks merit.

First, while this Court is aware that The Reasers employ some hyperbole in arguing that rejection of the building permits renders their lot, the New Home Lot, invalid, such is

[10] Exhibit "B," ROP.

certainly not the case. There is nothing in the record that suggests that the New Home Lot has been invalidated, wiped off the map, or no longer legally exists.

Quite the contrary. The New Home Lot remains in full force and effect and of legal record. The fact that up to now, The Reasers have been unable to build their Dream Home on the lot, hardly renders the property "invalid."

Moreover, the record below suggests, as there is testimony by the Reasers, and perhaps others, that the New Home Lot, currently designated AG-Agricultural, has been, and will continue to be, used for farming beans, hay, and other agricultural commodities.

As such, the New Home Lot is not invalid or useless, it just cannot be used (for now) in the manner in which The Reasers prefer, to wit: to build their Dream Home.

2) THE BOARD OF ZONING APPEALS ERRED IN DENYING THE REQUESTED VARIANCES

In its second argument, The Reasers' position is that the BZA erred in denying their variance requests because the BZA misweighed and misapplied the *Duncan* factors.

The Township counters that 1) the Court must defer to the BZA's interpretation of zoning ordinances; and 2) that the BZA properly weighed and applied the *Duncan* factors.

On this argument, the Court agrees with The Reasers.

While it is true that a decision of a board of zoning appeals must be given "due deference" in interpreting its own resolution language, due deference is a different animal than "must defer."

On this issue, the Ohio Supreme Court has recently stated,

> A court of common pleas should not substitute its judgment for that of an administrative board, such as the board of zoning appeals, **unless** the court finds that there is not a preponderance of reliable, probative and substantial evidence to support the board's decision. This court pointed out in *Dudukovich v. Housing Authority* (1979), 58 Ohio St.2d 202, 207, "[t]he key term is 'preponderance.' "

Clev. Clinic Found. v. City of Clev., 141 Ohio St. 3d 318, 2014-Ohio-4809, ¶ 23, emphasis added.

Note the subtle, yet important manner in which The Township frames this issue. The Township correctly uses the term "defer," but conditions defer with a "must." This is not a correct statement of the law. The correct statement of the law is thus: "The trial court *should* defer to the board of zoning appeals *unless* the court finds, by a preponderance of evidence, that its decision is not supported by reliable, probative, and substantial evidence."

It is also worth noting that the Ninth District Court of Appeals gives additional guidance in reiterating that it is not this Court's role to *independently* weigh the *Duncan* factors, but instead, to review whether the BZA properly considered the *Duncan* factors and whether its decision is supported by a preponderance of reliable, probative, and substantial evidence.

> Moreover, the trial court appears to have reviewed the *Duncan* factors independently and substituted its judgment for that of the trial court; instead, it should review the Board's decision and determine whether it is supported by a "preponderance of reliable, probative and substantial evidence[.]" *Dudukovich,* 58 Ohio St.2d at 207.

Redilla v. City of Avon Lake, 9th Dist. Lorain No. 09CA009731, 2010-Ohio-4653, ¶ 14.

In any event, the guidepost by which this Court must proceed is to review the process and manner in which the BZA evaluated and weighed the seven (7) *Duncan* factors to determine whether the BZA's decision was correct.[11]

Both parties properly acknowledge that no single *Duncan* factor is controlling but that the factors should be considered *in toto*, and that no "mathematical" formula should drive the result. *Duncan,* at 83.

So, let us begin.

This Court finds that the BZA's determination that factors 3) "Essential Character of the Neighborhood," 5) "Knowledge of Zoning Restriction," and 6) "No Alternative Remedies to a Variance are Available," are supported by a preponderance of reliable, probative, and substantial evidence.

The Court further finds that the BZA's conclusion on factor 4) "Government Services" is also supported by a preponderance of reliable, probative, and substantial evidence. On this factor, the BZA, ". . . did not reach a conclusion in favor of either of the parties on this issue."[12] As a result of this determination, this factor is neutral.

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[11] That is, it is supported by a preponderance of reliable, probative, and substantial evidence.

[12] See Brief of Appellee, Pg. 23.

Conversely, this Court finds, as a matter of law, that the determinations made by the BZA on *Duncan* factors 1) "Reasonable Return/Economic Viability," 2) "Whether the Variance is Substantial," and 7) "Granting the Variance would Alter the Characteristics of the Area and Defeat the Spirit and Intent of the Resolution," are arbitrary, capricious, and unreasonable and are not supported by the preponderance of substantial, reliable, and probative evidence.

In reaching this conclusion, this Court is further guided by a very recent Ninth District Court of Appeals decision authored by Judge Stevenson released just a few days ago. In the matter of *Brunswick Lim. Partnership v. City of Brunswick,* 9th Dist. Medina No. 22 CIV 0746, 2024-Ohio-3351, the Ninth District stated,

> Because zoning regulations restrict the use of real property, in derogation of the common law, **zoning regulations should be strictly construed in favor of the property owners**. *Terry v. Sperry*, 2011-Ohio-3364, ¶ 19

Brunswick Lim. Partnership, supra, at ¶ 27.

Regarding *Duncan* factor 1) "Reasonable Return/Economic Viability," the BZA gave this factor short shrift in its analysis. Its position is that because the area (the New Home Lot) could be farmed, it would not suffer any economic loss by denial of the variance.

But this position completely fails to take into account that the property is zoned both agricultural and residential, thus, a single family residence is permissible. Moreover, the property would clearly have a greater economic return and economic viability if a Dream Home (whatever that actually means) was built on it.

As for *Duncan* factor 2) "Whether the Area Variance Request is Substantial," the BZA really got it wrong. In The Reaser's Reply Brief, they make a compelling argument that the reduced frontage on Grafton Road from 200 feet to 60 feet would not impact the setback anywhere near as significantly as the BZA concluded. [13]

The BZA determined that the variance was substantial because it would result in a 70% deviation from the zoning code. But this math is flawed. As noted by The Reasers, the total area of their property is approximately 1,558,027 square feet. Reducing the frontage by 140 feet and increasing the setback of the Dream House by 700 feet is hardly a substantial change when considered in light of the entire property.

[13] Recall that this frontage problem is the primary reason that the Building Inspector denied The Reasers' building permits.

And finally, regarding *Duncan* factor 7) "Granting the Variance would Alter the Characteristics of the Area and Defeat the Spirit and Intent of the Resolution," the BZA errored significantly.

In evaluating this factor, the BZA concluded that the spirit and intent of the zoning regulation would not be served because the variances amounted to "rezoning or spot zoning" outside the purview of the BZA.

First, I am not even sure what this means. After all, do not most, if not all, zoning variances have the effect of, at least to some degree, rezoning the property? That is, after all, the very essence of a variance.

But more importantly, to echo the language from the *Brunswick* decision, the BZA's decision ". . . failed to "set forth a cognizable rationale for denying the permit application . . ." *Id.* at ¶ 28. The thrust of the evaluation of *Duncan* factor 7 is how a variance might "alter the characteristics of the area," and/or "defeat the spirit and intent of the resolution."

Here, the BZA failed to address either of these prongs of the test, and, had it done so, it would have reached a different result. After all, the purpose of zoning ordinances, to begin with, are specific,

> The purpose of a comprehensive zoning plan is the promotion of public health, safety and morals. *Set Products, Inc. v. Bainbridge Twp. Bd. of Zoning Appeals* (1987), 31 Ohio St.3d 260.

In re Liverpool Twp. Zoning Bd. of Appeals, 9th Dist. Medina No. 2657-M, 1997 WL 760704.

So, the question the BZA should have addressed is how would granting The Reasers' a variance compromise the public health, safety, or morals of the township? Moreover, it seems to this Court, as urged by The Reasers, that allowing them to build their Dream Home on 35+ acres of property in Grafton Township would be a benefit to the community, not a detriment, after all, the vast majority of the property would remain unchanged, thus, there would be no significant "alteration" of the character of the neighborhood.

Finally, part and parcel to evaluating the decision of the BZA to deny The Reasers a variance is to consider how the BZA's decision effected "substantial justice." To do so, one must consider on where the focus is, that is to say, on justice and the spirit of zoning ordinances or the strict interpretation of the letter of the law. In this regard, both the Ohio Supreme Court and Ninth District Court of Appeals give guidance,

> . . . **the inquiry should focus on the spirit rather than the strict letter of the zoning ordinance** so that substantial justice is done * * * This requires that a board of zoning appeals or the reviewing court weigh the competing interests of the property owner and the community. *Id.*

In re Liverpool, supra, citing *Duncan* at ¶ 86.

When reviewing the "competing interests" of The Reasers and the Township, in light of the entire record and arguments of the parties, it is hard to conclude that the BZA's decision to reject The Reasers' appeal was based upon a preponderance of reliable, probative, and substantial evidence.

And, once again, keep in mind that the standard in which to grant an area variance is not as rigid as required to obtain a use variance.

> The standard for granting a variance which relates solely to area requirements **should be a lesser standard** than that applied to variances which relate to use * * *; it is sufficient that the application show practical difficulties.

Lee v. LaFayette Twp. Bd. of Zoning Appeals, 193 Ohio App. 3d 795, 2011-Ohio-2086, 9th Dist. Medina No. 10CA0077-M, ¶ 9, emphasis added.

After a comprehensive review of the mode and manner in which the BZA denied The Reasers' appeal, this Court finds, as a matter of law, that it acted arbitrarily, unreasonably, and capriciously, as the BZA improperly weighed the *Duncan* factors. Specifically, factors 1, 2, 3, 6, and 7 mitigate in favor of granting a variance. Factor 5 supports denial, and factor 4 is neutral.

Concluding that the BZA erred as a matter of law in how it analyzed the *Duncan* factors, its decision must be reversed.

> THE COURT OF APPEALS

In reaching this conclusion, the Court would be remiss to not reiterate the level of deference that the Court of Appeals must afford this Court.

Again, the Ohio Supreme Court is instructive.

> By contrast, the standard of review for an appellate court reviewing a judgment of a common pleas court in this type of appeal **is narrower and more deferential to the lower court's decision**. * * * In fact, we have stressed that the "standard of review to be applied by the courts of appeals in an

R.C. 2506.04 appeal is '*more limited* in scope.' " (Emphasis sic.) *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, (2000) * * * The court of appeals may review the judgments of the common pleas courts only on questions of law; they do not have the same power to weigh the evidence.

Clev. Clinic Found., supra, at ¶ 25, emphasis added.

VI. CONCLUSION

Based upon the Certified Record and attached exhibits, the briefs of the parties, and the applicable law, this Court rules as follows:

The Grafton Township Board of Zoning Appeals' ("BZA") decision denying Appellants' application for a zoning permit was arbitrary, unreasonable, and capricious, and not supported by the preponderance of reliable, probative, and substantial evidence. That decision is hereby OVERRULED, vacated, and Appellants' appeal to this Court is SUSTAINED.

Accordingly, the BZA is hereby Ordered to grant a zoning permit to Appellants consistent with their application and this Court's ruling.

IT IS SO ORDERED. No Record.

JUDGE D. Chris Cook

THIS IS A FINAL APPEALABLE ORDER