

Chairman J. Calabro called the May 27, 2020 Board of Zoning Appeals Public Hearing to order at 7:00 p.m.

Ch. Calabro noted that this meeting is being taped for transcription purposes only and the written minutes and attachments, if any, will serve as the official record of this meeting.

Ch. Calabro stated that any Board member that has any monetary interest or has a conflict including ex parte communication should disclose at this time.

Roll found: Calabro, Hoop, Zeleznak, Mainzer, Budd. In the audience: Alternates Wolny and Schaefer, Trustees Schulte and Burns and Zoning Inspector Wilson.

Ch. Calabro stated that out of an abundance of caution, and under the current circumstances of the COVID 19 Pandemic, you will note that we are conducting this meeting abiding with the CDC protocol of social distancing and wearing masks. So if everyone on the Board and in the audience would keep comments and testimony to the point and pertinent to this hearing, it would be appreciated by all.

The recording secretary read the legal ad and confirmed that the legal notice was mailed to the applicant and adjacent property owners

Ch. Calabro stated that the purpose of this public hearing is to review a new subdivision concept plan that is requiring seven variance requests all relating to wetland setback for 7 lots for the development of Pine Hills Subdivision. This property is zoned R-2 Residential. The R-2 District is established to provide single-family residential development with a minimum lot size of 32,670 square feet, (3/4 acre).

Therefore, the proposed Pine Hills Subdivision is within our current zoning code under Section 6R2 and complies with our current Hinckley Township Comprehensive Plan.

Ch. Calabro stated that the Hinckley Township Board of Zoning Appeals acts within the authority of Section 519 of the Ohio Revised Code and exercises its power as provided under Chapters 7 and 13 of the Hinckley Township Zoning Regulations. All public hearings are open to the public. All persons wishing to testify must do so from the podium, must identify themselves and give their address and must be sworn in. Evidence and testimony must be pertinent to the hearing. It is the Chairperson's discretion to limit personal comments, personal attacks, opinions, editorializing, and/or repetitious statements or testimony or evidenced previously given. Disruptive persons will lose their right to remain at the hearing. Personal attacks will not

be tolerated. Any person may request a schedule or an agenda be mailed to them, providing a self-addressed and stamped envelope be included with request.

Ch. Calabro noted that the applicant has submitted an application to this Board of Zoning Appeals and has also submitted certain documents in support of his application.

Ch. Calabro stated that notice of the application was properly given in local newspapers, and the application and supporting documentation has been available for public review and comments. The Recording Secretary polled the Board as to whether they received the packet of information. A formal site inspection was not conducted.

Response: Calabro – yes, Hoop – yes, Zeleznak – yes, Mainzer – yes, Budd – yes.

Ch. Calabro noted that each member of the Board of Zoning Appeals has been provided a copy of the application and supporting documentation.

Ch. Calabro asked the Recording Secretary if there was any correspondence regarding the project and the Zoning Secretary responded that no letters/correspondence were received, there were 5 calls to the Hinckley Township office to learn about the sub-division and there was 1 call for copies of the application packet and 1 resident visited the office..

Ch. Calabro noted for the record that non-written communication or written communication made by known or unknown persons not under oath and not properly given during the hearing are not accepted by the Board of Zoning Appeals as testimony.

Ch. Calabro stated that the Board has the power to grant an applicant's request for variance.

Ch. Calabro stated that all people that wish to give testimony will be sworn in individually and testimonies, if any, shall be given from the podium.

Chris Bender, 22700 Royalton Road, Strongsville, OH.

Mr. Bender, applicant, was sworn in accordingly.

Ch. Calabro asked Mr. Bender to provide to the Board a brief summary of his request.

Mr. Bender stated he is the developer and he introduced Travis Crane, the civil engineer for the project and will answer the technical questions. Mr. Bender stated they recognize the beauty of the property and they worked very hard with Township and County personnel. Mr. Bender stated they decreased the number of lots and increased the size of the lots so they do exceed the code by a significant amount on many lots. They are sensitive to the topography of the

property and the natural setting. Mr. Bender stated that the variances requested would require less wetlands to be filled in, there are wetlands that are closer to the proposed roadway and they have to cross those to get to the lots, the lots are much farther back. Mr. Bender explained that they would like to limit the cut-through in the wetland area, minimize the cuts and leave wetlands on both sides, but this will require some relief to the riparian set-back. This will allow the trees closer to the road to stay. The properties will be deed restricted so they can't be cleared later. They are not asking for more lots and they are not discussing any category 3 wetlands. They designed a subdivision to protect main valleys and stream areas. They would like to limit the permitting and filling of the wetland areas.

Mr. Budd asked if they have modified since the original presentation, as it was stated at the first meeting and Mr. Bender stated that they have done that and what they have presented today is what went to Medina County Planning Commission.

Travis Crane, Engineer, 1310 Sharon Copley Rd., Sharon Center, OH

Mr. Travis Crane was sworn in accordingly.

Mr. Crane explained that the zoning could accommodate approximately 40 or more lots, but their initial submittal was for 36 lots. Once they received the County approval they realized they had more wetlands to deal with and they decided to make the lots bigger, which reduced the number of lots to 31.

Mr. Crane stated they are basically asking for variances for riparian setbacks for 7 of the lots, they wanted to have the setbacks as part of the master plan so the individual property owners did not have to come back to the Township to ask for variances. Mr. Crane stated he would like to discuss the interpretation of Zoning Code Section 17, because after reading Section 17 again his interpretation is that he will only have to ask for 3 of the setback variances. Paragraph 4 Subsection b under Section 17, his interpretation after reading that section – they have category 1 and 2 wetlands on the property – his interpretation is that the 30 foot setbacks only apply to wetlands contiguous to a riparian corridor, and none of the wetlands are adjacent to a riparian corridor. Mr. Crane illustrated his explanation on his drawing.

Mr. Budd asked if he could summarize, the 4 sublots that they feel they don't need a variance for are not close to where the watershed goes through the property, and now they don't need the setbacks because it's not adjacent to the watershed. Mr. Budd asked if it still has type 2 wetlands, Mr. Crane stated yes, and Mr. Budd asked if he is saying "but these rules only apply if adjacent".

Mr. Crane explained that where any part of a wetland is in a minimum riparian setback and extends beyond the minimum riparian setback, so for an example, where there is a riparian setback and it is in a wetland in the riparian setback, which there is, and it extended beyond the riparian setback, which it does, it would be extended to the end of the wetland and have the setbacks of 50, 30 or 0 depending on the classifications in the Section. Mr. Crane feels the wetland setbacks only apply if contiguous within a riparian setback. They are not asking for setbacks for wetlands in a riparian corridor and it is his opinion he can remove 1-4 Variance requests.

Discussion followed regarding the location of the wetlands and the location of streams on the property.

Ch. Calabro asked Zoning Inspector Wilson to comment on Mr. Crane's interpretation.

Zoning Inspector Wilson stated they don't deal with riparian setbacks very often and he considers Mr. Crane an expert. Zoning Inspector Wilson stated he is not an expert and he is listening to what Mr. Crane has to say.

Mr. Budd asked if Mr. Crane's interpretation would be consistent with how the EPA would look at the property with respect to the wetlands.

Mr. Crane stated his opinion is that this is 2 different subject matters. The EPA would classify it as a wetland but don't have setbacks, that is strictly a Township matter. He believes the way the Hinckley Township Code is written the variance request is not applicable to the wetlands they are discussing.

Mr. Budd asked who is the final authority on the interpretation on the Code.

Mr. Crane stated he believes it's the Zoning Inspector for the Zoning Code. Mr. Crane stated Mr. Bender still needs to get authorization from Army Corp and EPA to fill wetlands. This Board cannot authorize Mr. Bender to fill wetlands.

Ch. Calabro asked if there is a difference if the variance are dropped or granted.

Mr. Crane stated that the intent of the riparian setbacks is to protect variances and complying with Hinckley's Zoning Code would require filling more wetlands than he feels is necessary, so if he gets the variances, it requires more fill. The intent of the Code is to protect wetlands, but in this case it would actually require more than necessary.

Mr. Zeleznak asked if the wetlands are constantly wet. Mr. Crane stated they are wetlands and there are 3 categories of wetlands 1 is the lowest and category 3 is pristine, like a Mentor marsh. The wetlands discussed here are category 1's and 2's which means the soil has a certain water content and soil type, Mr. Crane stated he is not a wetlands expert.

Mr. Zeleznak asked how will this impact the property. What happens if someone buys a lot and there's a swamp area, will they come back to the Township? If it's a wetland, there must be a wet area, how is this taken care of when building.

Mr. Crane stated none of the variance requests are for building envelopes, the only thing going through these areas will be driveways. Mr. Zeleznak asked if these will be driveways with wetlands on either side. Mr. Crane stated that it will be a driveway winding through the woods because the houses will be set back at least 75 feet. The woods will be prepared, there will be woods in front yard to the street.

Ch. Calabro questioned if a variance is needed for these 4 lots and is there an advantage to dropping these 4 variances.

Mr. Crane stated the only advantage to removing them is optics, it just reduces their ask. It doesn't make a difference in how they will proceed. They were hoping to get an opinion from the Board that he is right in his interpretation.

Ch. Calabro stated she believes this Board cannot give him an answer regarding interpretation.

Mr. Budd asked if a possible resolution could be withdrawing their request for variance on the 4 lots.

Mr. Crane stated he would like to get an opinion from Zoning Inspector Wilson.

Zoning Inspector Wilson stated the interpretation would be for the Zoning Commission and he could talk it through with the Zoning Commission.

Mr. Bender stated their consultant tells them it's definitely a Category 1 wetland, so they could over permit to work around the code conflict and then trees would be cut and graded down and they want to avoid that. He wants to avoid allowing subsequent homeowners of clearing the trees and widening driveways, that would affect the characteristic of the neighborhood. There should only be one wetlands permit issued and that should be to the developer.

Mr. Crane stated they are assuming a 12 foot wide driveway and 4-5 feet on each side for utilities. Mr. Bender stated this would allow more for a country drive feel.

Ch. Calabro stated this Board cannot give an interpretation on the Zoning Code.

Mr. Bender and Mr. Crane asked if they could table variance request nos. 1-4 and move forward with variance request nos. 5-7.

Ch. Calabro stated Variances 5, 6 and 7 for the improved buildable area will be voted on and everyone was in agreement. Ch. Calabro asked Mr. Crane if he wanted to add anything regarding variances 5, 6 and 7. Mr. Crane stated no.

Mr. Zeleznak asked if they are in the same category. Mr. Crane stated there is a stream that runs through the property in that section, it will be part of Phase 2. Mr. Zeleznak asked if there could be standing water in that area and Mr. Crane stated there won't be a flooding problem, there is a slope that will help.

Ch. Calabro asked if there was anything else from the Board and there were none.

Bill Schaefer, 1733 Stony Hill Road, Hinckley, OH

Mr. Schaefer was sworn in accordingly.

Mr. Schaefer asked if the developer was going to do anything about waterflow on the property so the wetlands would possibly dry up.

Mr. Crane stated these are isolated wetlands and there shouldn't be any problems, they should function properly. There won't be any driveway issues, these wetlands will be behind the houses.

Mr. Zeleznak asked if the wetland flows into a pond or lake at bottom. Mr. Crane described how the wetland flows, eventually ending up on Pine Hills Golf Course.

Mr. Zeleznak asked how far behind the houses the wetlands will be. Mr. Crane pointed out on the drawings where the wetlands will be. Mr. Zeleznak asked if building could come within 10 feet of the wetland. Mr. Crane stated yes. Mr. Zeleznak asked if there will be any stability issues or problems. Mr. Crane stated no.

Mr. Zeleznak asked if it will be in the deed that there are wetlands so the prospective owner will know what he is getting into.

Mr. Crane stated sometimes it is and sometimes not. Discussion followed.

Mr. Zeleznak asked if a prospective buyer is not told, will it mess up their plans when they find out afterward.

Mr. Bender stated he believes in over-disclosure, so on the plat, before it is recorded, there will be setback lines for riparian. The Covenants and restrictions will cover entire subdivision and there is a requirement that purchaser must make themselves familiar with entire subdivision and the final plat and before a house can be built a surveyor or civil engineer must prepare a topographical map which has to be approved by Zoning Inspector. Discussion followed.

Ch. Calabro asked if anyone from the audience would like to speak.

Diane Healey, Forest Drive, Hinckley, Ohio

Ms. Healey was sworn in accordingly.

Ms. Healey stated that she has been a resident for over 30 years and was unaware that a development was going in. Ms. Healey asked how is that property zoned R-2 and when was this decided. Is it a done deal?

Ch. Calabro stated that it is an R-2, it's been in the Zoning Code.

Ms. Healey stated she is upset that the rural atmosphere is not being preserved, there is a lot of wildlife and plant life and what is going to happen to that. Ms. Healey stated Hinckley is a Township and it is rural. Ms. Healey is also concerned about the increased traffic which could add to the dilemma of trying to exit onto W. 130th Street.

Ch. Calabro stated she appreciates Ms. Healey's concerns but the Board of Zoning Appeals does not address those issues.

Ms. Healey asked when the property was zoned R-2 and Trustee Schulte stated since the 1960s.

Kelly Sexton, 2627 Forest Drive, Hinckley, Ohio

Ms. Sexton was sworn in accordingly.

Ms. Sexton stated she has been a resident for 12 years, and would like to know if there is a plan for removal of wildlife and protected wild flowers. Is there a plan to transfer wildlife safely? Ms. Sexton stated she wanted to express her concerns and she is also concerned about the stream that runs through there.

Mr. Bender stated there are federal protected species and the permitting is subject to adherence to federal rules. Mr. Bender stated he is not aware of any plan to transfer wildlife. Mr. Bender's anticipates that most people will buy the lots because of the wooded nature and will want to keep that area as natural as possible. Mr. Bender doesn't cut any tree that he doesn't have to.

Mark Sanders,

Mr. Sanders was sworn in accordingly.

Mr. Sanders stated he is concerned because of the amount of traffic on W. 130th and it's very dangerous. He is concerned that he won't be able to get out of his driveway.

Ch. Calabro stated the Board understands the concerns. Mr. Sanders requested the Township look into the situation.

Zoning Inspector Wilson stated they would mention it to the County Planning Commission so they could look into the situation.

Brian Benner, 2465 Forest Drive, Hinckley, Ohio

Mr. Benner was sworn in accordingly.

Mr. Benner asked how long are the proposed driveways for the sublots 24, 25 and 26? It looks like it's 75 feet, why not shorten the driveways. Mr. Bender stated the Code requires a 75 foot setback from the street.

Mr. Benner stated he lives at the back end of Forest Drive and the back of his property does get very wet, he backs up to the wetlands. Mr. Benner stated that the map doesn't make much sense to him and they have walked toward the golf course and the back-rear area is very wet, even in the summer. Mr. Benner is concerned with how wet it does get and if houses are put in, will the area be even wetter.

There were no further comments.

There being no further testimony offered, Ch. Calabro asked for a review of the Duncan Factors for Variances 5, 6 and 7 and Variances 1, 2, 3 and 4 will be tabled.

Factor #1: Will the property yield a reasonable return or can there be a beneficial use of the property without the variance?

Vote for Variance #5:

Calabro – Yes
Hoop – Yes
Zelevnak – No
Mainzer – Yes
Budd – No

Vote for Variance #6:

Calabro – Yes
Hoop – Yes
Zelevnak – Yes
Mainzer – Yes
Budd – No

Vote for Variance #7:

Calabro – Yes
Hoop – Yes
Zelevnak – Yes
Mainzer – Yes
Budd – No

Factor #2: Is the variance substantial?

Vote for Variance #5:

Calabro – Yes
Hoop – Yes
Zelevnak – N/A
Mainzer – Yes
Budd – Yes

Vote for Variance #6:

Calabro – Yes
Hoop – Yes
Zelevnak – N/A
Mainzer – Yes
Budd – Yes

Vote for Variance #7:

Calabro – Yes
Hoop – Yes
Zelevnak – N/A

Mainzer – Yes
Budd – Yes

Factor #3: Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment if this variance is granted?

Vote for Variance #5:

Calabro – No
Hoop – No
Zelevnak – No
Mainzer – No
Budd – No

Vote for Variance #6:

Calabro – No
Hoop – No
Zelevnak – No
Mainzer – No
Budd – No

Vote for Variance #7:

Calabro – No
Hoop – No
Zelevnak – No
Mainzer – No
Budd – No

Factor #4: Will the variance adversely affect the delivery of governmental services such as fire or ambulance?

Vote for Variance #5:

Calabro – No
Hoop – No
Zelevnak – No
Mainzer – No
Budd – No

Vote for Variance #6:

Calabro – No
Hoop – No

Zelesnak – No
Mainzer – No
Budd – No

Vote for Variance #7:
Calabro – No
Hoop – No
Zelesnak – No
Mainzer – No
Budd – No

Factor #5

Did the property owner purchase the property with knowledge of the zoning restrictions?

CH. CALABRO STATED THAT FACTOR #5 IS NOT APPLICABLE TO ANY OF THE VARIANCE REQUESTS SO A VOTE IS NOT NECESSARY.

Vote for Variance #5:
Calabro –
Hoop –
Zelesnak –
Mainzer –
Budd –

Vote for Variance #6:
Calabro –
Hoop –
Zelesnak –
Mainzer –
Budd –

Vote for Variance #7:
Calabro –
Hoop –
Zelesnak –
Mainzer –
Budd –

Factor #6

Can the problem be solved by some manner other than the granting of a variance?

Vote for Variance #5:

Calabro – No
Hoop – No
ZeleznaK – No
Mainzer – No
Budd – No

Vote for Variance #6:

Calabro – No
Hoop – No
ZeleznaK – No
Mainzer – No
Budd – No

Vote for Variance #7:

Calabro – No
Hoop – No
ZeleznaK – No
Mainzer – No
Budd – No

Factor #7

Does the variance preserve the “spirit and intent” of the zoning requirement and will “substantial justice” be done by granting the variance?

Vote for Variance #5:

Calabro – Yes
Hoop – Yes
ZeleznaK – Yes
Mainzer – Yes
Budd – Yes

Vote for Variance #6:

Calabro – Yes
Hoop – Yes
ZeleznaK – Yes
Mainzer – Yes
Budd – Yes

Vote for Variance #7:

Calabro – Yes
Hoop – Yes
Zeleznak – Yes
Mainzer – Yes
Budd – Yes

Ch. Calabro stated that any person adversely affected by a decision of the Board of Zoning Appeals may appeal to the Court of Common Pleas of Medina County on the ground the decision was unreasonable or unlawful and will have 30 days from the date of this meeting to appeal.

Ch. Calabro asked for a motion. Mr. Hoop made a motion to approve a variance (AP0241) submitted by applicant North Park Developers LLC on behalf of Pine Hills Golf Club, property owners of 433 W. 130th, Hinckley, Ohio (Permanent Parcel 01703A16023) requesting Variance 5 for subplot 24 for improved buildable area, a variance of 20' from 30' to 10' which does not meet the minimum wetland setbacks of 30 feet required by Hinckley Zoning Regulations. Zoning Reference Chapter 17 Establishment of Riparian Setbacks Subsection 17.3.C.4.b.

The motion was seconded by Mr. Zeleznak.

Ch. Calabro explained the voting process to the applicant as follows: Yes, simple majority with a quorum present is in favor of the applicant and a No, simple majority, or a tie vote denies the applicant's request. If the vote is favorable to the applicant, the applicant has one year from the date of the hearing to begin construction or to act on the approved request.

Vote: Ch. Calabro – yes; Hoop – yes, Zeleznak– yes, Mainzer – yes, Budd – yes

Ch. Calabro stated that the Variance 5 passed 5-0

Ch. Calabro asked for a motion. Mr. Hoop made a motion to approve a variance (AP0241) submitted by applicant North Park Developers LLC on behalf of Pine Hills Golf Club, property owners of 433 W. 130th, Hinckley, Ohio (Permanent Parcel 01703A16023) requesting Variance 6 for subplot 25 for improved buildable area, a variance of 20' from 30' to 10' which does not meet the minimum wetland setbacks of 30 feet required by Hinckley Zoning Regulations. Zoning Reference Chapter 17 Establishment of Riparian Setbacks Subsection 17.3.C.4.b.

The motion was seconded by Mr. Zeleznak.

Vote: Ch. Calabro – yes; Hoop – yes, Zeleznak– yes, Mainzer – yes, Budd – yes

Ch. Calabro stated that Variance 6 passed 5-0

Ch. Calabro asked for a motion. Mr. Hoop made a motion to approve a variance (AP0241) submitted by applicant North Park Developers LLC on behalf of Pine Hills Golf Club, property owners of 433 W. 130th, Hinckley, Ohio (Permanent Parcel 01703A16023) requesting Variance 7 for subplot 26 for improved buildable area, a variance of 20' from 30' to 10' which does not meet the minimum wetland setbacks of 30 feet required by Hinckley Zoning Regulations. Zoning Reference Chapter 17 Establishment of Riparian Setbacks Subsection 17.3.C.4.b.

The motion was seconded by Mr. Zeleznak.

Vote: Ch. Calabro – yes; Hoop – yes, Zeleznak– yes, Mainzer – yes, Budd – yes

Ch. Calabro stated that Variance 7 passed 5-0

The Board of Zoning Appeals Decision form was signed and a copy given to the applicant.

Ch. Calabro stated that Variance 1-4 are tabled.

Mr. Bender thanked the Board.

Ch. Calabro asked for a motion to adjourn the Public Hearing. Ms. Mainzer moved and Mr. Budd seconded. All in favor.

The May 27, 2019 Board of Zoning Appeals Public Hearing adjourned at 8:26 p.m.

Minutes by: Judi Stupka, Recording Secretary

Minutes Approved: _____, 2020

Josephine Calabro, Chairperson

Jeff Hoop, Vice-Chairperson

Dave Zeleznak, Member

Julie Mainzer, Member

Bill Budd, Member