

Ch. Calabro called the February 10, 2021 Board of Zoning Appeals regular meeting to order at 7:45 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 due to the COVID 19 pandemic, this meeting is being conducted abiding by the rules of social distancing and will be as brief and to the point as possible.

Roll found: Calabro, Hoop, Zeleznak, Mainzer, Budd

Also in the audience: Alternates Schaefer and Wolny and Trustees Augustine and Burns and Zoning Inspector Wilson attended virtually.

Ch. Calabro asked Alternate Wolny if he would like to recuse himself. Mr. Wolny stated he would like to recuse himself from the discussion regarding the Pride One Senior Housing Variance Request (AP0252) and the Conditional Use Permit (AP0251). Mr. Wolny asked if he could leave the meeting and Ch. Calabro excused him.

Ch. Calabro asked if everyone had received and reviewed the minutes from the December 9, 2020 Board of Zoning Appeals regular meeting and if there were any questions, comments, additions or deletions. There were none.

Ch. Calabro asked for a motion to approve the minutes from the December 9, 2020 Board of Zoning Appeals Regular Meeting. Mr. Zeleznak moved and Mr. Budd second. There was no further discussion. The Board was polled and all were in favor.

Ch. Calabro asked if everyone had received and reviewed the minutes from the December 23, 2020 Board of Zoning Appeals Public Hearing and if there were any questions, comments, additions or deletions. There were none.

Ch. Calabro asked for a motion to approve the minutes from the December 23, 2020 Board of Zoning Appeals Public Hearing. Mr. Schaefer moved and Mr. Zeleznak second. There was no further discussion. The Board was polled and all were in favor.

Ch. Calabro stated there will be a virtual public hearing scheduled for February 24, 2021 at 7:00 p.m. the site inspection is scheduled for February 20, 2021 at 10:00 a.m. Ch. Calabro stated there are two hearings, a variance request for Bonanni and the second hearing will be for the Pride One Senior Housing proposal. Ch. Calabro stated the next regular meeting will be March 10, 2021.

Ch. Calabro introduced Mr. George Smerigan, certified consultant and stated that Mr. Smerigan is in attendance for the purpose of providing guidance to the members of the Board. Ch. Calabro stated she wanted to make it clear they will not be discussing the specifics of the upcoming hearing, but simply getting guidance. Ch. Calabro stated again that the specifics cannot be discussed this evening, the applicant is not in attendance, so they cannot discuss any specifics of the request.

Ch. Calabro asked for questions.

Mr. Zeleznak stated he has an issue that he would like to discuss with the Board members. Mr. Zeleznak stated he has a problem with the upcoming public hearing itself. Mr. Zeleznak stated that the Board's role in many cases is to interpret the intent of the current zoning laws and they do not establish new regulations. Mr. Zeleznak stated he does not believe there is a clear standard for the upcoming hearing regarding the senior housing for the conditional use permit. Mr. Zeleznak stated he searched the following words in the Zoning Regulations and they did not show up with respect to housing: rent, lease, lessee, lessor, tenant, landlord. Mr. Zeleznak stated that none of these words are in the Resolution and his contention is the rental apartments are not covered in the zoning regulations and the Board of Zoning Appeals cannot hear the case. Mr. Zeleznak stated he believes this is a matter for the Zoning Commission to address and not the Board of Zoning Appeals because it's not defined as far as rentals. Mr. Zeleznak stated that he would like to discuss this with the Board and he asked if any other Board member had any comments.

Mr. Budd stated that he ran into the same problem and he has had discussions with Ch. Calabro and George Smerigan. Mr. Budd stated he doesn't see how they can review the matter in the way it was presented to the Board. Mr. Budd stated he had a discussion with Mr. Smerigan regarding the Board's job, and the legislative body, the Zoning Commission, decides the property use for land in Hinckley. Mr. Budd stated he felt they needed a clarification from the Zoning Commission before they could review the request.

Mr. Zeleznak stated he felt that apartments are not covered in the Resolution. Mr. Budd stated he read the senior housing zoning regulations and it's very vague. Mr. Budd stated they need a lot more understanding and definition before they can proceed. Mr. Zeleznak stated it has been discussed before Mr. Budd became a member of the Board but the discussion was regarding residential ownership. Mr. Zeleznak feels this should be defined before anything can come before the Board of Zoning Appeals.

Ch. Calabro stated the reason it came to the Board of Zoning Appeals is because it is in a B-1 district, and in the Resolution it states that senior citizen residential facilities are allowed in a B-1, and it doesn't say anything about rental or ownership. Ch. Calabro stated that because it is stated in Section 6.B.3.f.3 in the Resolution that it would only go in as a conditional use and the Board of Zoning Appeals approves conditional uses, it's her understanding that's why this came before the Board of Zoning Appeals. Ch. Calabro stated she understands why there is concern regarding the rental and Mr. Zeleznak stated there is nothing defined in the Resolution regarding rental or leasing.

Mr. Budd stated that what he thought should be done is the Project should go to the Zoning Commission because they know what the intent of the language was and if any consideration was given to rental, the Board needs an interpretation from the Zoning Commission because they are the authors. The Board of Zoning Appeals shouldn't fly in the dark without knowing the intent and without getting an official ruling.

Ch. Calabro stated she also looked up the definition of apartment because the way it is presented, it states apartment submittal and there is nothing in the Resolution about apartments. Ch. Calabro also spoke with Brian Richter, Medina County Prosecutor regarding this matter. Ch. Calabro stated that

because Senior Citizen Residential Facilities is a conditional use in a B-1 district, which is the case here, they are required to hear it. Mr. Budd stated that they are not arguing whether they should hear it, but they need interpretation to be able to hear it. They need to know if apartments are in or out.

Ch. Calabro stated hopefully they will be able to get some guidance from the Zoning Commission but since they invited Mr. Smerigan they should allow him to speak. Mr. Zeleznak stated he can't see legally how they can move on this project.

Mr. Budd shared information he had received from Trustee Schulte regarding Senior Housing and an outline of the approval process. Ch. Calabro stated this project has already been approved by Medina County and they are the next step.

Ch. Calabro stated that there is a vague definition of Senior Housing and Mr. Zeleznak stated he thinks it is too vague. Mr. Budd agreed it is too vague to process this particular request. Mr. Zeleznak stated the Board of Zoning Appeals judges yes or no, they are a judicial board, and he doesn't think their Board should be hearing this.

Mr. Budd stated that he is not objecting to hearing it, but the Board of Zoning Appeals needs interpretation and understanding of the senior zoning regulations to hear it properly.

Ch. Calabro asked Mr. Smerigan for his comments.

Mr. Smerigan stated he understands their concerns. He stated the Resolution is set up with senior housing listed as a conditional use and the Board of Zoning Appeals has the responsibility and authority for reviewing and approving or denying conditional use permits. In the special standards for Senior Residential Facilities there is no limitation in the design of the project. The way the Resolution is written the configuration of the housing can be anything the applicant wants to propose. But the Board of Zoning Appeals has the right under the Resolution to configure the housing any way they want subject to review. The Resolution doesn't give authority to decide ownership. Zoning can regulate style, etc. but cannot regulate ownership through zoning. That is not an authority given under State statute. Discussion followed regarding what is in the Resolution regarding owner-occupied. Mr. Smerigan stated again, the Board cannot control the ownership of the unit.

Mr. Smerigan stated that the hearing is an administrative action. The Resolution already permits this as a conditional use and the Board is looking at the design to make sure it meets the criteria and one of the criteria is that those buildings have to be senior. Mr. Smerigan stated there is a lot of flexibility given to the Board.

Mr. Budd stated that they don't agree with Mr. Smerigan and he would like a second opinion. They are not questioning ownership, they want to know what senior housing includes so they can proceed from there.

Mr. Smerigan stated that in Subsection f it indicates what they are looking at as far as senior housing and Mr. Budd stated he would like to hear it from the Zoning Commission.

Mr. Smerigan stated that senior housing is included in the Zoning Resolution and the Board has to work with the law the way it is. Senior housing is a conditionally permitted use in a B-1 and the applicant has a right to apply and the Board has an obligation to hear them and decide if they comply with the criteria. Mr. Budd stated they are not arguing that but they want an interpretation from the Zoning Commission or the Planning Commission.

Mr. Zeleznak stated that as a judicial board they have to interpret what they are reading and there isn't enough information to be able to interpret.

Mr. Hoop stated that this project is in front of them as a Conditional and that is the Board's responsibility.

Further discussion followed regarding the interpretation of the zoning.

Mr. Smerigan stated that if there was a provision in the Regulations that the units cannot be rented it would be unconstitutional. If the applicant is not allowed the due process there will be a problem. The Board is going to review a preliminary plan for how this lays out and the final plan will go to the Zoning Commission and the Zoning Commission doesn't have the authority to approve without the Board of Zoning Appeal's stamp of approval. It's listed as a conditionally permitted use, so it has been determined to be okay but subject to the conditions the Board of Zoning Appeals puts on it. Mr. Smerigan stated the Board has to be reasonable, but there is a lot they can do.

Trustee Augustine read Brian Richter's correspondence regarding the matter which is on file in the Hinckley Township Administrative office.

Mr. Hoop asked Mr. Smerigan if there are federal standards they need to consider for this project.

Mr. Smerigan stated there is a requirement that a certain percentage of units must be occupied by people age 55 and over. The applicant said they will follow the Housing Act and keep records of people living there and design the units to meet the standards. The Housing project must be done in accordance with those guidelines. Discussion followed.

Mr. Zeleznak asked if 80% are 55 and over and there are 20% that could be families with 2 or 3 kids and they can't stop that, doesn't that defeat the idea of senior housing. Mr. Smerigan stated that they can't do anything to stop that and the feds realized this, so theoretically the Zoning Inspector can monitor the ages of the people renting those units and if they don't meet those requirements they can be asked to leave. Further discussion followed.

Ch. Calabro asked since it's in the B-1 and it's a conditional use the only thing they can do is put conditions on the project and Mr. Smerigan stated that's what they have authority for. Mr. Smerigan referred to Chapter 7, page 88 item f, they are supposed to comply with specific criteria and item f is for senior citizens. The applicant has to follow standards set forth for senior citizen housing and if they don't the Board can vote no. Discussion followed.

Mr. Smerigan stated there is a lot of information here and there is a lot to discuss regarding the conditions on this particular project. The Board will need to listen to what the applicant is proposing, ask as many questions as they need to ask, and understand they have a fair amount of discretion. Mr. Smerigan stated that the Board should be prepared to do what is reasonable and right for the Township.

Ch. Calabro asked about the recommendation that the conditional use permit is for Pride One Construction only. Is that for the construction portion only? Mr. Smerigan stated no, they are the builder, owner and operator so it can't be transferred unless they come back to the Board of Zoning Appeals. Mr. Smerigan stated that the Board wants to be sure if this project is changing hands the next owner is understanding what the conditions are. Mr. Smerigan stated that if a new entity comes in they must get approval for the transfer and they have to agree to conditions. Whoever is operating is on the hook for complying with the standards and they can't get out of it by transferring it.

Ch. Calabro asked if the variances should be considered before the conditional use and Mr. Smerigan stated they should act on the conditional use first because the variance is only valid and exists if the conditional use is effective because the setbacks are meaningless if there is no use. They can deny the variances and grant the conditional use. Mr. Smerigan stated he believes it is necessary to approve the conditional use first.

Mr. Zeleznak asked if it's possible this could go beyond one meeting and Mr. Smerigan stated yes, they should take the time they need to come to a decision.

Trustee Augustine discussed the format for the virtual public hearing. Mr. Zeleznak asked if people calling in by phone will be permitted to testify and Trustee Augustine confirmed they will be allowed to testify. Discussion followed.

Mr. Budd asked if someone from the Zoning Commission can be present and Mr. Smerigan said yes. Mr. Budd said when they wrote the senior housing regulations, they were trying to help seniors with financial benefits. Mr. Budd stated his concern is that the property owner gets the financial benefits and not the seniors and this was not really the intent of the Zoning Commission, so the Board would like more clarification. Discussion followed.

Mr. Smerigan further discussed what the Board has authority to put conditions on with this project.

Trustee Augustine asked if the Board would like to have Mr. Smerigan available to assist them through this process with this project and Ch. Calabro stated yes.

Ch. Calabro asked if saying yes to this project with as many conditions as they want will set a precedent. Mr. Smerigan stated no, as long as we are able to identify what is different about the projects.

Mr. Budd asked if the Board can require the applicant to offer the option of buying or leasing and Mr. Smerigan stated no, but the Board can ask them if they would be willing to consider some sales. Mr. Smerigan stated the Board can't force the applicant to do that. Discussion followed.

Mr. Smerigan stated that the idea of the hearing is so the Board can collect all the needed information and make the appropriate decision. Mr. Hoop asked if they pass it who makes sure all of the conditions are followed and Mr. Smerigan stated it would be the Zoning Inspector.

Zoning Inspector Wilson stated that these apartments are 1400 and 1500 square feet and they are a nice size.

Ch. Calabro asked if there were any further comments and there was none.

Ch. Calabro stated she would entertain a motion to adjourn the February 10, 2021 Board of Zoning Appeals Regular Meeting. Ms. Mainzer moved and Mr. Budd seconded. The Board was polled collectively and all were in favor.

The Board of Zoning Appeals Regular Meeting was adjourned at 9:18 p.m.

Judi Stupka, Recording Secretary

Minutes Approved: \_\_\_\_\_, 2021

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Josephine Calabro, Chairman

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Jeff Hoop, Vice-Chairman

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Dave Zeleznak, Member

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Julie Mainzer, Member

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Bill Budd, Member