

Chairman J. Calabro called the March 24, 2021 Board of Zoning Appeals continued Public Hearing for Pride One to order at 7:03 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 exparte communication should disclose at this time.

Roll found: Calabro, Hoop, Zeleznak, Mainzer, Budd. In attendance either present or virtually were Alternate Schaefer, Trustees Burns, Kalina and Augustine and Mr. George Smerigan, Certified Planner, and Zoning Inspector Wilson and Assistant Zoning Inspector Zablotny.

Ch. Calabro stated that Alternate Wolny continues to be recused from this hearing and is not present this evening in that capacity.

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 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 or virtually, 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 stated that this is a continuation of the hearing for a request submitted by applicant Pride One Construction on behalf of Emil Wolny Properties, LLC and Hinckley Land Ltd., property owners of W. 130<sup>th</sup> property and Center Road property, Hinckley, Ohio requesting two side yard setback variances for a new Senior citizen Residential Facility at said properties, that does not meet the minimum side yard setbacks of 100 feet required by the Hinckley Township Zoning Regulations.

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 this Board is continuing the public hearing of February 24, 2021 that was tabled and further discussion and actions were deferred until this evening.

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.

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 were any letters, phone calls or emails received and the Recording Secretary stated that there were multiple emails, correspondence, and phone calls received since February 24, 2021, copies of which are on file in the Hinckley Township Administrative Office.

Ch. Calabro stated that written communications from persons not present this evening may include communications that are not made by affidavit. Because these communications are made by persons not under oath, they are not accepted by this Board. Ch. Calabro noted that written communication may include some writing by affidavit, by persons that are not present this evening and, therefore, cannot be subjected to cross examination. These affidavits, therefore, will not be given much weight, if any, in the decision of the Board on this matter.

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

Ch. Calabro asked if the applicant had anything to add and that the applicant was still under oath from the February 24, 2021 public hearing.

Ben Weirnerman, applicant, introduced **Mr. Dave Firestine, attorney with Witschey Witschey & Firestine, 405 Rothrock Road, Akron, Ohio, legal counsel for Pride One Construction**

Mr. Firestine was sworn in accordingly.

Mr. Firestine stated that he did not attend the first hearing, but has listened to the first meeting and would like to make a few comments and direct conversation in an area that he thinks will comply with law in Ohio. Most of the objections raised in the last meeting related to the use of the property, lots of commentary on traffic, location in the township and changing the rural character of Hinckley. It is important to remember the reasons we are here is variance

applications. The majority of objections raised are improper considerations for a simple area variance. In his view the Board needs to focus its attention on how changing a 100 foot setback to a 50 foot setback stands up to scrutiny under the Duncan Factors. Ben presented facts to support each of the Duncan Factors and he would be happy to respond to any in particular.

Ch. Calabro stated regarding the Duncan Factors they will go through for each variance.

Mr. Firestine stated he would rather address their concerns. He would encourage the board to think back to the testimony from last meeting and how much of it spoke to the Duncan Factors. He would ask why they would reject the opinion of their own paid land planning consultant in favor of testimony of citizens that don't speak to the Duncan Factors. Mr. Firestine stated in an area variance the greatest consideration is distance between structures and having shrubbery and ponds within a variance is much less impactful. The distance between the nearest structures, Mr. Bindofer's garage and the nearest apartment would be 98 feet from structure to structure, only 2 feet less than the setback requirement. The vast majority of the testimony in last meeting pertained to a general dislike of density and the property being used as senior housing in a rural township, despite the fact that it is allowed by the Township's Resolution. If the variances are denied, Pride One will seek to table its Conditional Use application and resubmit a plan that excludes the Hinckley Land Ltd. lot and it will require no variances and the BZA will have a plan before it that is conditionally permitted use and for which the BZA can only impose reasonable targeted restrictions based on substantial credible and reliable evidence as set forth in the zoning resolution. Many people who complained in the last meeting are saying they are speaking on behalf of residents of Township and that is a brazen statement for any individual in a township of 8000. While there may have been 30-40 voices in the last meeting there are thousands in the Township that did not weigh in against the project. He would submit that the Zoning Resolution as adopted by the elected Trustees is what speaks for the Township and the Zoning Resolution expressly provides for senior apartments on this property. There is a statement in the area of conditional uses that is cited in cases that a community cannot arbitrarily deny a property owners conditional use application simply because the use is no longer considered desirable. Mr. Firestine stated that he doesn't think this use is no longer considered desirable so he won't even give that, his understanding is that the Comprehensive Plan was done around 2015 and the property was rezoned in 2017 and it falls within a conditional use provided in the resolution for senior housing. The project will proceed and Hinckley Land Ltd. will be left with a 66 foot wide lot, if the plan is modified to exclude that lot and no variances will be required. Hinckley Land Ltd. will be left with a 66 ft. wide lot zoned B-1 with a 100 foot setback on its east side or Hinckley Land Ltd. could seek to be rezoned R-1 and it would have 30 foot wide side yard setbacks, which leaves a 6 foot wide building envelope. This

would give Hinckley Land Ltd. a strong argument that their property has been taken and derived of all economic value by the]is Board's decision. So Mr. Firestine asked the Board to take a moment, stop and look down the road, if you deny these variances on what basis are you going to deny the conditional use application, there is no good basis so you only fix the problem for one person and at what expense. There will still be senior housing on this property in this area and all those that complained about traffic and the rural character of Hinckley will be dissatisfied by the Board's decision and if they are they should talk to the Trustees and go through the difficult process of rezoning properties rather than objecting to them on basis for which there is an express conditional use permitted. In short, it is a bad idea for the BZA to proceed down this path because senior apartments will be developed on this lot, it is what the comprehensive plan and zoning resolution called for. So right now the Board has the opportunity to grant reasonable variances and impose reasonable restrictions to make the plan as good as possible for everyone including Mr. Bindofer or you can push this into a clumsy procedure that will result in a less desirable plan being constructed at considerable time and expense to the Township. Thank you.

Ch. Calabro thanked Mr. Firestine and stated that much of what he said is related to the conditional use. What is the relevance of denying the variances to the Hinckley Land Ltd. lot, is that the reason that the Board should grant the variances and not because there is a hardship.

Mr. Firestine stated that the Board should focus the examination into the area variance itself. There was a lot of conversation that went beyond the bounds of an area variance. At the point the use becomes relevant there is no argument, it is properly zoned for this use and the Board should focus on the variances.

Ch. Calabro and the Board agreed that they are concentrating on the variances.

Ch. Calabro asked if there was anyone in the audience that wanted to speak.

**Lisa Rushworth –**

Lisa Rushworth was sworn in accordingly. Ms. Rushworth asked what the hardship or practical difficulty is.

Mr. Firestine stated that the practical difficulties are comprised in the Duncan Factors and he could go through each one.

Ch. Calabro asked for a summary of what Mr. Firestine feels is important and what their hardship or practical difficulty.

Mr. Firestine stated the hardship is all the Duncan Factors together. There is one that was mentioned a few times, people were complaining that Pride One and Hinckley Land came to these properties with knowledge of the setback requirement and imposed the hardship upon themselves and case law calls this a self-imposed hardship and there is clear case law that says it is not a determinative factor for an area variance.

Ch. Calabro asked if they were not aware of the zoning restriction and Mr. Firestine stated they are aware but it is not as relevant in an area variance as in a use variance. Ch. Calabro stated the applicant did testify they were aware of it.

Ch. Calabro stated they will limit all repetitious statements.

Lisa Rushworth stated the application doesn't state what beneficial use is being precluded.

Ch. Calabro asked if there was anything else and the meeting proctor stated someone asked about the conditional use and Ch. Calabro stated that they are not discussing that at this time.

Mr. Firestine stated that to address Mrs. Rushworth's question what is unique to this property, it is Hinckley Land Ltd. lot which was rezoned to be able to participate in a project like this and the hardship would be that the 100 foot setback adjacent to an R-1 is different than in other areas of the Township. It does present a unique situation for Hinckley Land Ltd. because if they are not included in this project they have a lot that is not useable. Mr. Firestine stated that the Township's own paid land planning consultant, which was paid for by Pride One, was in favor of this and the residents should have an opportunity to hear from a paid professional that looks at these things every day.

Ch. Calabro stated that what she is hearing is that the Board needs to put a lot of weight on the fact that the lot has changed from an R-1 to a B-1 and if we deny the variances Pride One will eliminate the lot and there will be an issue with that and that's the biggest consideration for the Board if they grant the variances or not and that's what she is hearing.

**George Smerigan**

Mr. Smerigan was sworn in accordingly. Mr. Smerigan stated that the applicant had made a comment relative to the one lot but made no reference to the basis for the practical difficulty for the lot with the requested 7 foot variance because that is not associated with the lot they raised the question about. What is the basis for the practical difficulty of the lot with the requested 7 foot variance.

Mr. Firestine stated with respect to the rear lot, the distance between any structure is far in excess of 100 feet so in that instance it is more similar to area variances he discussed earlier, non-structural variances. It impacts the overall constructability of the project so the remaining factors that they went through in the first hearing would apply to this one as well with a much lower hurdle to clear.

Mr. Smerigan stated he would agree that variance is not substantial and it's not going to impact governmental services, however, when the point is addressed if it can be obviated by something other than a variance, you have several different sized units and the units can be swapped out with other units you are proposing to build, so the variance is not necessary.

Mr. Firestine stated yes they could make the units smaller, but the project lives and dies on the number and size of the units and the purpose of the variance is to grant flexibility in the zoning code where a literal interpretation of it will unfairly impact the party, so a 7 foot variance on the back of 550 long lots with nothing but trees behind them is insubstantial, especially since they are trying to bring a nice development to the community.

Mr. Smerigan asked if they are trying to swap buildings with different depth on the north side that will materially affect the project?

Mr. Weinerman stated that yes that will affect the project because they would have to reduce the number of units.

Ch. Calabro stated that what she is getting is that the practical difficulty is that they cannot maximize the number of units that can be constructed. Originally it was Mr. Weinerman's testimony that there was another option without the variances.

Mr. Firestine stated that is not right, the overriding practical difficulty is that they have a 100 foot setback between two residential uses and that is unreasonable. Ch. Calabro stated that is what is in the Code and Mr. Firestine stated not everywhere because it's different in a B-2 and Ch. Calabro stated this property is B-1.

Mr. Firestine stated that in his view the literal and strict enforcement of the zoning resolution has a result that is not logical with respect to the Township's overall plan and therefore is a good reason to have a variance granted.

Ch. Calabro asked if there was anyone else in the audience that would like to speak.

**Mark Taylor – 75 Valleybrook, Hinckley**

Mark Taylor was sworn in accordingly. Mr. Taylor stated he has been a real estate agent for 21 years and one of the biggest complaints in Hinckley is that people are downsizing and there is no where they can go at a lower cost. They are willing to rent but there is nothing available. Mr. Taylor's question is, if the Board says no to this project where can people go when they want to sell. Mr. Taylor feels this would be a good option.

Ch. Calabro stated that this project is not limited to Hinckley residents.

**Shawn Pepera - 988 Westwind Trace, Hinckley**

Shawn Pepera was sworn in accordingly. Ms. Pepera stated that variances are supposed to be the exception and not the rule. She is hearing that the hardship is financial and that is not a hardship. Ms. Pepera stated that there was almost a threatening nature to the statements before and that it is felt by many.

Ch. Calabro stated that the variances granted in the past, each is granted on its own and doesn't set a precedent on the next.

Ch. Calabro recognized Mr. Bindofer who was sworn in previously. Mr. Bindofer stated he knows and talks to a lot of people in Hinckley. Mr. Bindofer stated that a surveyor came out to the property and he spoke with him and Pride One is planning to put in a driveway next to his property at the 100 foot variance. Mr. Bindofer stated they can't change their format because they are stuck with bad property.

Ch. Calabro thanked him for his testimony and stated they hear his concerns and they are with him only in the sense that they are going to vote based on the zoning code and what's in front of them.

Ch. Calabro asked if anyone else had anything and there was nothing.

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 grounds the decision was unreasonable or unlawful.

There being no further testimony offered, Ch. Calabro asked for a review of the Duncan Factors.

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

Vote:

	Variance 50 ft.(PPN01703C02005)	Variance 7 ft.(PPN 01703C0010)
Budd	Yes	Yes
Mainzer	Yes	Yes
Zelesnak	Yes	Yes
Hoop	Yes	Yes
Calabro	Yes	Yes

**Factor #2:** Is the variance substantial?

Vote:

	Variance 50 ft.(PPN01703C02005)	Variance 7 ft.(PPN 01703C0010)
Budd	Yes	No
Mainzer	Yes	No
Zelesnak	Yes	No
Hoop	Yes	No
Calabro	Yes	No

**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:

	Variance 50 ft.(PPN01703C02005)	Variance 7 ft.(PPN 01703C0010)
Budd	Yes	No
Mainzer	Yes	Yes
Zelesnak	Yes	No
Hoop	Yes	No
Calabro	Yes	No

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

Vote:

	Variance 50 ft.(PPN01703C02005)	Variance 7 ft.(PPN 01703C0010)
Budd	No	No
Mainzer	No	No
Zeleznak	No	No
Hoop	No	No
Calabro	No	No

**Factor #5**

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

Vote:

	Variance 50 ft.(PPN01703C02005)	Variance 7 ft.(PPN 01703C0010)
Budd	Yes	Yes
Mainzer	Yes	Yes
Zeleznak	Yes	Yes
Hoop	Yes	Yes
Calabro	Yes	Yes

**Factor #6**

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

Vote:

	Variance 50 ft.(PPN01703C02005)	Variance 7 ft.(PPN 01703C0010)
Budd	Yes	Yes
Mainzer	Yes	Yes

Zelesnak	Yes	Yes
Hoop	Yes	Yes
Calabro	Yes	Yes

**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:

	Variance 50 ft.(PPN01703C02005	Variance 7 ft.(PPN 01703C0010)
Budd	No	No
Mainzer	No	No
Zelesnak	No	No
Hoop	No	No
Calabro	No	No

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 grounds the decision was unreasonable or unlawful.

Ch. Calabro asked for a motion. Mr. Hoop made a motion on an application for a variance AP0252 submitted by Pride One Construction on behalf of Emil Wolny Properties LLC and Hinckley Land Ltd., property owners of the W. 130<sup>th</sup> properties (PP No. 01703C01010 and PP No. 01703C02005) requesting two side yard variances for a new senior citizen residential facility at the stated properties that does not meet the minimum side yard setback of 100 feet required by the Hinckley Zoning Regulations 6B.5.(B-1 and B.2) The first variance is a 50 foot variance for the west side property next to residence PP No. 017-03C-02-006 subplot 27 and Pride One PP No. 017-03C-02-005 subplot 28 for a variance of 50 feet.

The motion was seconded by Mr. Zelesnak.

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 –no; Hoop –no, Zeleznak– no, Mainzer – no, Budd – no

Ch. Calabro stated that the first variance was denied 5-0

The second variance is a 7 foot variance from the stated 100 feet at the rear east end of the property where Building A4 would be located 93 feet from the property line, PP No. 017-03C-01-010).

The motion was seconded by Mr. Zeleznak.

Vote: Ch. Calabro –no; Hoop –no, Zeleznak– no, Mainzer – no, Budd – no

Ch. Calabro stated that the second variance was denied 5-0

Ch. Calabro stated anyone adversely affected by this decision has 30 days from the date of the approval of the meeting minutes to file an appeal. The minutes are typically approved at the next regular meeting and upon approval of the meeting minutes they will be posted and available on the Township website.

Ch. Calabro stated that the Board of Zoning Appeals Decision form would be emailed to the applicant.

Ch. Calabro asked the applicant if they want to move forward on the conditional use and Mr. Firestine stated they would like to table the conditional use application at this time to make changes and resubmit. Ch. Calabro asked if there was a certain time they would like to be heard and Mr. Firestine said he would let them know. Mr. Weinerman asked if there was a deadline for submission for the April 28 meeting and Ch. Calabro stated by April 12.

Ch. Calabro stated the next public hearing will be April 28, 2021 at 7:00 p.m.

Ch. Calabro asked for a motion to table the Public Hearing until April 28, 2021. Ms. Mainzer moved and Mr. Budd seconded. All in favor.

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

The March, 2021 Board of Zoning Appeals Public Hearing adjourned at 8:06 p.m.

Minutes by: Judi Stupka, Recording Secretary

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

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Josephine Calabro, Chairperson

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Jeff Hoop, Vice-Chairperson

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Dave Zeleznak, Member

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Julie Mainzer, Member

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Bill Budd, Member