

Ch. Calabro called the meeting to order at 7:07 p.m.

Roll Found: Calabro, Hoop, Zeleznak, Mainzer and Budd present. Also present were Alternate Members Boleman and Schaefer, Trustee Schulte, Zoning Inspector Wilson, Ms. Diane Bija, Mr. Marty Finlin and Mr. Anthony Lewicki, Jr.

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.

Recording Secretary Chism read the legal ad.

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 Section 7 & 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.

Ch. Calabro stated the hearing is for a variance submitted by Diane Bija of New Creation Builders, on behalf of property owner James Sturgil of 46 Lakecrest Blvd., Hinckley, Ohio (Permanent Parcel #01703A02045) requesting for a variance to place an accessory building, at the stated address, in a location that does not meet the minimum side and rear yard setbacks of fifteen (15) feet required by the Hinckley Zoning Regulations.

Recording Secretary Chism polled the Board as to whether they received the packet of information and inspected the property at 46 Lakecrest Blvd., Hinckley, Ohio (Permanent Parcel #01703A02045). Ch. Calabro stated that notice of the application was properly given in local newspapers, and the application has been available for public review and comment.

Response: Budd – Yes and yes inspected on 3/24/18, Mainzer – yes and yes inspected today, 3/28/2018, Zeleznak – Yes and yes inspected on 3/24/18, Hoop – Yes and yes inspected on 3/24/18, Calabro – yes and yes inspected on 3/24/18.

Ch. Calabro asked Recording Secretary Chism if any letters, phone calls or emails were received. Ms. Chism stated that a letter dated 3/23/18 was received from William and Mary Murphy, 46 Lakecrest Blvd., Hinckley, OH 44233. Ch. Calabro read the letter into record and noted that neither William nor Mary Murphy was present at the hearing.

Ch. Calabro noted that the letter has been read into the record and the applicant stated they had no problem putting the letter into record although she wanted it known that they did not put in the pool.

Ms. Diane Bija of New Creation Builders on behalf of James Sturgil of 46 Lakecrest Blvd., was sworn in accordingly.

Ms. Bija stated prior to her testimony she wanted to address the runoff water problems that were mentioned in the William and Mary letter that was read into record. She said that they were willing to work with that neighbor to alleviate any water problems that the garage, not the pool, might be causing. Ch. Calabro stated that since the author's of the letter are not present for cross-examination and the issue of the pool is not relevant, she wants Ms. Bija to only address the variance issue.

Ms. Bija stated that she made an error in her letter of apology dated 2/6/18, where she stated that between 2002 and since 2017 her company has built over 150 garages and accessory buildings when that was just an average. In fact her company actually built 278 garages in 48 cities in 2017. She wanted to correct that error on record to establish some creditability.

Ms. Bija stated that "the reason for the apology is procedural since she works in 48 cities and several townships and nobody works the same way so it is a lot on her plate to try and remember what everyone is requiring. So in many townships they require zoning separately and then buildings which allows them, in many cases to play catch-up by requesting the zoning and building permit at the same time. She is in Westlake and is only one person so she likes to do a run and done. But in this case it has ended up biting them."

Ms. Bija referred to the lot plan and mentioned when zoning was approved.

Ch. Calabro asked Ms. Bija who she is referring to when she says "zoning approval." She said it was approval from the township. Ms. Bija continued her testimony and stated that she was present when the zoning sent over the zoning permit to the building department. She said that "when they did that and changes were made from 3' to 15' no one changed out the page. So when they served me this, they served it to me with the zoning permit and my lot plan stamped approved."

Ch. Calabro asked Ms. Bija if they were her initials on the lot plan. She said yes, that "these were the initials that were submitted to the city." She then pointed out and said, "That was submitted to the county; that was zoning."

Ch. Calabro again asked Ms. Bija who did the initials on the lot plan. Ms. Bija said that "she did and when she left them, they approved it. We went to the county to pick up the permit. They faxed that over with the letter of zoning permit that nobody at the county said, whoops wrong page, and put it back, they stamped this and gave it back to me."

Ch. Calabro said that the county assumed that was the drawing. Ms. Bija said that "the county received her zoning permit via fax. So when she picked this up she handed it to the next person along the line. She was done with everything since she had the permit. So when they opened it up they saw three. I was the only person besides zoning and the county that knew that there were changes. And then when they got to the property, since you've all been there and seen the pictures that they submitted, it made perfect sense. Because for them to approve these plans where zoning would have projected it 15 feet away I would have been building a totally different garage. I would have had to put 6 to 8 courses of eight block to compensate for that elevation. So in my (word is indiscernible) out there, they never questioned this because logically that was the only place they could put the garage to build the garage that was approved. So I can only apologize so much. So now that it's built we just want to make it

better. And if we have to tear it down then I'm going to build this man a garage that is going to cost him \$8,000.00 to \$10,000.00 because of the block work that I am going to have to do."

Mr. Zeleznak stated that it appeared the home owner wanted a garage built and got a bid from Ms. Bija's company. He asked at the time the bid was accepted did her company go to zoning to find out where the garage could be built. Ms. Bija stated that she did that at the same time that she went to building.

Mr. Zeleznak said that when they went to the property for the site inspection it appeared fill was put in. Mr. Zeleznak asked if the homeowner put in the fill or did Ms. Bija's company. Ms. Bija stated that they do not do fill work and they only poured a monolithic slab with a twelve (12) inch footer; but they never do any prep to the ground.

Ch. Calabro asked to return to Ms. Bija's letter since it was at the beginning of the process. Ms. Bija said she filed for zoning and building permits at the same time. Ch. Calabro asked her to explain why she put in her letter "that since they were extremely busy she hired a runner who delivered the building plans, including the 2nd page to the Medina County Building Department not aware that first they needed a zoning permit. When called by the Medina Building Dept. we were reminded we needed to go to the Board of Zoning in order to complete our requested permit. And we did." Ms. Bija stated that the runner picked up the documents.

Ch. Calabro continued by stating the Medina County Building Department told her they needed to get a zoning permit. But now her testimony is that they called and the zoning department faxed over the sheet that she had initialed and the zoning permit. Ms. Bija agreed.

Ch. Calabro stated that Ms. Bija knew there was a change. Ms. Bija said that she "knew there was a change but the girl who was the runner, the owner's mother-in-law, was not aware there was a change and the change was never attached to this. The only thing they got was the zoning permit. So nobody knew that I had made changes."

Ch. Calabro asked why the garage was put where it is located and what the reason is for applying for the variance. Ms. Bija said that "zoning did not approve that. Where it is right now it is already built. The reason for the variance is because it is a hardship due to the level of the property" and if you look at the pictures there was no other place to put the garage.

Ch. Calabro said that if you looked at the property there were other spots the garage could have been located. Ms. Bija said that she has "been to the property and she couldn't see another place it could go. That it had to come in through the gates. Otherwise it would have had to come in and go down and around to the other part where they have their common area where they have their deck and their pool and other living area. So the hardship was putting it in a non-used area that was coming through the double gates and for it not to interfere with the deck and the pool."

Mr. Zeleznak explained the process and nothing should have touched the ground until the Zoning Inspector looked at the property. So he asked Ms. Bija when the Zoning Inspector came out how he did not catch the placement of the garage. Ms. Bija stated that "I don't know. All I can say is I don't know

what I can do to, let me know what you need me to do to fix it. We're very sorry. This was not deliberate or intentionally. This was just a mess on my behalf."

Being there no further questions, Ms. Bija was seated.

Zoning Inspector Wilson explained the zoning permit process in general. On this case Mr. Wilson stated that they issued a permit on 11/19/17 but prior to that the permit had timed out. So he called the building dept. and was told the building had already been constructed. Mr. Wilson said no one had called for an inspection. He then went to the home to inspect the lot at which time he discovered that the garage had been built and it was 54" off of the side lot. Mr. Wilson stated that it shows on the lot plan that the fifteen (15) foot off of both the side and rear yard setbacks was initialed by whoever picked up the package. Mr. Wilson added that he didn't know why no one called for a first or second inspection or followed the rules that they knew about because someone from the company had initialed everything.

Mr. Zeleznak asked had there been an inspection the garage would never have been built in the location it now occupies. Mr. Wilson concurred that if he saw the stakes at 54" off of the side lot he never would have allowed it.

Being there were no further questions, Mr. Wilson was seated.

Mr. Marty Finlin of 56 Lakecrest Blvd., was sworn in accordingly. Mr. Finlin stated that his property faces the side of the garage and he doesn't have a problem where the garage is located. They don't have a problem with the variance being granted.

Being there were no further questions, Mr. Finlin was seated.

Ms. Bija retook the stand. Mr. Budd asked if the garage has to be moved if it could be built in a different location. Ms. Bija said yes it could but it would have to be put up on blocks due to the elevation.

Mr. Budd asked, since it could have been built at a different location, who chose the site to put the garage at the current location. Ms. Bija stated "that she was not the salesperson for the job so it was probably discussed between the homeowner and the salesperson."

Ms. Bija started talking about the contract and then said that they are in 48 cities and the procedures change everywhere. She said she could build in Lakewood, Ohio and can build 1 ½ feet off of a property line and not even have to build a fire wall. Many times the laws are interpreted differently. In Cleveland she has to stay in a full three feet. She said "when her salesperson went out and talked with the homeowner they probably both said, so the gates are coming up this way so let's do it instead of going down the (indiscernible word). Well wherever, I don't know where it would have been placed. You say is a better place. I could not see it when I went out."

Ms. Bija then referred to photographs that she took of the building showing that it was placed outside of the common area that would interfere with the pool and the deck. Ms. Bija said that "this was the most appropriate location to keep it out of the way and in line with the double gates that are going in the front."

Mr. Budd then asked if the builder made the decision on the location of the garage. Ms. Bija said that she wasn't involved with that but could only assume that the salesperson and the homeowner came up with the location. She explained the process, she gets a contract, she draws up the little plans and either she or a runner does the running back and forth. It depends how many plans she has on her desk. She said with a lot of cities and townships she knows everybody and they know the situations. She referenced the 240 garages that her company did last year and there was only one in Hinckley and going back to 2002 they probably only did one other building in Hinckley. She understands that "ignorance is no excuse and again that is why I apologize. I can't tell you an accurate answer on who picked the spot. I can only assume."

Mr. Budd stated that at the site inspection the property owner stated that the location was chosen by the contractor. Ms. Bija said that she has no knowledge if that did or did not happen but if it was her property she would want to know, it is her property it would be her decision. Mr. Budd said that the homeowner was looking to the contractor for guidance since they were the experts.

Mr. Budd made reference that during the site review the slab was completely flat and the land around it was not. He asked who did the excavation and the grading. Ms. Bija explained the process and stated that they did not do any excavation; they don't do landscaping; they only do a rough grade to the land. There was no elevation work done there. She said they never do elevation work unless they are putting up block.

Mr. Zeleznak stated that he is struggling with the time line of the project. He said that it appeared someone didn't check with the Township and after Ms. Bija found out there was a problem by needing 15 foot sidelines, someone would have gone back to the homeowner to tell them the building had to be moved and pricing. Ms. Bija said, to her knowledge that did not happen.

Ch. Calabro said that she understands that it was a procedural thing and even though Ms. Bija initialed the plan she totally overlooked the need for a Township permit. Ch. Calabro understands there will be an expense to the homeowner and yet no request for an inspection was ever made and had there been an initial inspection it would have prevented all of this. Ms. Bija said that she understands that and there will be a fine and she is humbling saying she will pay all of the fines.

Ch. Calabro asked what the hardship would be, since procedures weren't followed, for the variance. Ms. Bija stated the variance was asked for because of the elevation of the property. Ch. Calabro stated that the location of the building could be remedied; it would just be more money. Ms. Bija said "ok."

Mr. Zeleznak stated that the owner should have known of this up front.

Ms. Bija asked, "So you are saying that I need to tear this down." Ch. Calabro said that they haven't voted on it but they need to understand and they are trying to get from her the reason for the variance.

Ms. Bija stated that the elevation was the problem with putting the building somewhere else and they believed there wasn't a better place to put it. Ch. Calabro said that was a big issue but since it would have cost the homeowner more why wasn't that discussed with the homeowner?

Ch. Calabro stated had the Zoning Inspector not followed up, the Township would have never known the garage had even been built. Ch. Calabro said that it was not just one mistake that was made which makes it difficult justifying the variance.

Ms. Bija stated that it was not just one mistake that was made, that there were many hands in the pot. She said "we obviously, when we are working in townships and not in our regular cities, we need to take a look at our procedures." She said she was standing there humiliated and embarrassed; that she is testifying for 6 other people who were involved in this.

Ch. Calabro stated that the homeowner was depending on them; that during the site inspection the homeowner said he was told that the company handled everything.

Being there were no further questions, Ms. Bija was seated.

Bill Schaefer was sworn in accordingly.

Alternate Member Schaefer stated that Ms. Bija should have known to have called the Township to find out the Zoning Permit Process. He stated that Ms. Bija signed off on the sheet. Once she discovered there would be a change, she should have called the homeowner to rebid the project. He also stated that Ms. Bija could have excavated into the hill to build the garage. And, variances are not granted for errors. He said this could have been stopped at many different times.

There being no further testimony offered Ch. Calabro said any person adversely affected by a decision of the Board of Zoning Appeals (BZA), may appeal to the Court of Common Pleas of Medina County on the grounds that such decision was unreasonable or unlawful. They have 30 days from the date of this meeting to appeal. The Chairperson will state when the minutes will be journalized.

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: Budd – Yes, Mainzer – Yes, Zeleznak – Yes, Hoop – Yes, Calabro – Yes

Factor #2 Is the variance substantial?

Vote: Budd – Yes, Mainzer – Yes, Zeleznak – Yes, Hoop – Yes, Calabro – 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: Budd – No, Mainzer – No, Zeleznak – No, Hoop – No, Calabro – No

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

Vote: Budd – No, Mainzer – No, Zeleznak – No, Hoop – No, Calabro – No

Factor #5 Did the property owner purchase the property with knowledge of the zoning restrictions?

Vote: Budd – Don't Know, Mainzer – Don't Know, Zeleznak – Don't Know, Hoop – Don't Know, Calabro – Don't Know

Factor #6 Can the problem be solved by some manner other than the granting of a variance?

Vote: Budd – Yes, Mainzer – Yes, Zeleznak – Yes, Hoop – Yes, Calabro – Yes as testified by the builder

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: Budd – No, Mainzer – No, Zeleznak – No, Hoop – No, Calabro – No

Prior to making the motion, Mr. Hoop asked if the rear set back was involved. They said at the site review the property owner showed them that the back of the building was over 20 feet from the back property line; the fence is directly behind the building. The motion should only be for the 12 foot variance on the south side of the building.

Mr. Hoop stated that this is a motion to issue AP0224 for a variance for owner James Sturgil of 46 Lake crest Blvd., Hinckley, Ohio, 44233 (Permanent Parcel #01703A02045) for a side yard variance of twelve feet.

Mr. Zeleznak seconded the motion.

Vote: Budd – No, Mainzer – No, Zeleznak – No, Hoop – No, Calabro – No

The variance has been denied by a vote of 5 to 0

Ch. Calabro handed Ms. Bija her copy of the Hinckley Township BZA Variance decision form.

Ch. Calabro made a motion to adjourn the Meeting. Ms. Mainzer moved and Mr. Hoop seconded

Vote: Calabro – yes, Hoop – yes, Zeleznak – yes, Mainzer – yes, Budd – yes

Hearing was adjourned at 7:53 p.m.

Carolyn Chism, Recording Secretary

Minutes Approved: _____, 2018

Josephine Calabro, Chairperson

Jeff Hoop, Vice Chairperson

Dave Zeleznak, Member

Julie Mainzer, Member

Bill Budd, Member