

**Board of Zoning Appeals**  
**Gaffney – Variance request**  
**December 27, 2017**  
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Ch. Calabro called the meeting to order at 7:16 p.m.

Roll Found: Calabro, Hoop, Zeleznak, Mainzer and Budd present. Also present were Alternates Members Schaefer and Boleman, Trustee Schulte, Zoning Inspector Wilson, Mr. David Lewis, Mr. Brian Giovinazzi, Mr. Shawn Gaffney, Ms. Caryn Gaffney, Ms. Audria Golembiosky and Mr. Neil Haverly.

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 Gienger read the legal ad.

Ch. Calabro clarified that the only item the Board of Zoning Appeals would be granting a variance for at this hearing is the shared driveway. They are not permitted to grant a variance on splitting of a parcel.

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 Shawn Gaffney, property owner of 330 Ridge Road, Hinckley, Ohio (Permanent Parcel #01603A15001) requesting to permit two new residential lots to be created such that the new lots and existing residence will all share a common access driveway at the stated address, which does not meet the driveway requirements pursuant to the Hinckley Township Zoning Regulations.

Recording Secretary Gienger polled the Board as to whether they received the packet of information and inspected the property at 330 Ridge Road, Hinckley, Ohio (Permanent Parcel #01603A15001)

**Response: Calabro – yes and yes inspected on 12/23/17, Hoop – yes and yes inspected on 12/23/17, Zeleznak - yes and yes inspected on 12/23/17, Mainzer - yes and yes inspected on 12/18/17, Budd – yes and yes inspected on 12/23/17.**

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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. She asked Recording Secretary Gienger if any letters, phone calls or emails were received. Mr. Gienger noted there was no additional information received for the hearing.

Mr. David Lewis of Lewis Land Professionals, 8691 Wadsworth Road, Wadsworth, Ohio, was sworn in accordingly.

Mr. Lewis stated Mr. Gaffney hired him to do a boundary survey of the property and split the property into additional lots. Mr. Lewis stated the typical process when a property is on a state route is to send the information to ODOT, then to the township and then to the county. He sent the information to ODOT and was informed that they could not add additional driveways and that they had a new policy that there could only be one drive per parcel on a road that is considered a category 3 highway for a low emphasis access facility. At that point is when he came to the township requesting the variance to share the driveway since they cannot do it per the township regulations. He noted that Medina County allows up to 3 residences on a shared driveway, which is why they are planning to just add two new lot splits. He noted that he included an aerial image showing the existing home plus the two proposed lots. It also includes a 50'W ingress/egress easement and a 20'W drive, both Medina County requirements. He noted they are showing circular driveways at each proposed residence to allow ease of government vehicles to access and turn around on the properties. He noted that there will be proper signs at the drive entrance and there will be a driveway maintenance agreement made for each residence who would be sharing the driveway. He also noted that technically there is frontage for 6 lots if ODOT would allow more drives but they are only requesting a total of 3 lots. He noted that Mr. Gaffney was not aware of this regulation when purchasing the property.

Ch. Calabro asked Mr. Lewis when this process started. Mr. Lewis noted it started approximately two years ago when Mr. Gaffney purchased the property and contacted him about splitting the lots.

Ch. Calabro asked Mr. Lewis if it was Mr. Gaffney's intention to split the lot at the time of purchase. Mr. Lewis stated that is correct.

Ch. Calabro asked Mr. Lewis that if the ODOT requirements are for a drive to be 495' apart if he could have two drives on this property. Mr. Lewis stated they could not since the first drive is already in place and the next drive would have to be 495' from that drive, and there is not enough distance for that to occur.

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Ch. Calabro asked Mr. Lewis if he asked ODOT if they had an appeals or a variance process and if he could pursue that avenue. Mr. Lewis stated he was told that was no appeal process and that they are allowing only the one driveway. He said ODOT told him he needed to pursue a shared drive or a public roadway.

Ch. Calabro asked Mr. Lewis if he considered a private drive. Mr. Lewis stated he didn't think the township regulations allowed a private drive, but if they did, they could then split the lot up to 20 separate lots, which Mr. Gaffney is not interested in pursuing.

Ch. Calabro noted their dilemma is that when someone asks for a variance, there has to be a hardship, but their hardship is created because they want to split the lots. Mr. Lewis noted he feels it is unfair that ODOT is enforcing this new regulation.

Mr. Zeleznak asked Mr. Lewis if he directly asked ODOT if there is a variance process. Mr. Lewis stated he was told by ODOT no.

Being no further questions, Mr. Lewis was seated.

Zoning Inspector Wilson, was sworn in accordingly.

ZI Wilson noted he and Trustee Schulte visited the county today to discuss the issue. He noted the county stated the same things Mr. Lewis discussed this evening, that they allow shared drives, but the township does not.

Ch. Calabro asked ZI Wilson about a private drive. ZI Wilson said the township regulations do allow a private drive and they would have to follow county regulations regarding a private drive.

Ch. Calabro noted that there really would be no difference if it were a private drive vs. approving the variance for a shared drive, there would still be only one way in/out on the properties. ZI Wilson stated this is true.

Being no further questions, Zoning Inspector Wilson was seated.

Mr. Lewis retook the stand.

Mr. Budd stated to Mr. Lewis that he could ask for a variance or build a private street and accomplish the same thing. He asked why Mr. Lewis wouldn't pursue this avenue. Mr. Lewis stated the issue with a private street is it would cost more to the client and that they could have

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the lot split in up to 20 lots and he would recommend that to his client if that is the avenue they pursued, to help pay for the drive.

Ch. Calabro stated that if this variance is approved, there would be no further development, and it would be approved as submitted. Mr. Lewis stated that is acceptable as that is all his client is interested in.

Ch. Calabro stated to Mr. Lewis that if they introduce the private drive, they wouldn't need the variance. Mr. Lewis questioned if the township regulations really allowed private drives. Mr. Budd read the section regarding private drives which states "a private drive upon approval." Mr. Lewis stated that there would be no guarantee that this private drive would even be approved.

ZI Wilson retook the stand to state that if Mr. Lewis wanted to pursue a private drive, that it would have to be approved by the Zoning Commission. ZI Wilson was then seated.

Ch. Calabro asked Mr. Lewis if the owners bought the property with the intentions to split it and didn't know this was a regulation. Mr. Lewis stated that is correct that Mr. Gaffney was not aware of this ODOT requirement, nor was he aware of this requirement up until submitting for approval, and he is an engineer who has been doing this type of work for many years.

Being no further questions, Mr. Lewis was seated.

Mr. Bill Schaefer, was sworn in accordingly.

Ch. Calabro asked Mr. Schaefer if he was speaking as a resident. Mr. Schaefer stated he was. Mr. Schaefer noted that he was Zoning Inspector at the time when Mr. Gaffney was purchasing the property and noted that he never mentioned wanting to split the lot into 3 lots at that time, or else he would have brought it up as an issue at that time. He noted that with that property, by regulations and frontage, it could be split into 6 lots. He noted that he believes there should be a deed restriction that allows only the 3 lots as stated this evening.

Mr. Schaefer discussed restrictions regarding site setbacks and site lines. Mr. Lewis noted that there is no issue with site lines, site distances or stopping distances, they are only restricted by arbitrary ODOT regulations on this highway.

Being no questions, Mr. Schaefer was seated

Mr. Lewis retook the stand.

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Mr. Lewis stated that he is against any deed restrictions on this lot, he would just like it to be approved as submitted. Ch. Calabro stated this board would not dictate deed restrictions.

Mr. Budd asked Mr. Lewis if there would be any sort of easement and also a maintenance agreement for the driveway. Mr. Lewis stated that yes there is a proposed 50' ingress/egress easement and there would also be a maintenance agreement for the driveway. He noted the maintenance agreement will include snow removal, repairs, etc.

Ch. Calabro noted that the issue with shared drives is, <sup>that</sup> there are potential issues in the future and <sup>that</sup> is the reason it is in the regulations not allowing it. Mr. Lewis agreed and stated that is the intention of the maintenance agreement.

Being no further questions, Mr. Lewis was seated.

Ms. Audria Golembiowsky, was sworn in accordingly.

Ms. Golembiowsky stated her property is to the south of Mr. Gaffney's. She noted that she was never told by Mr. Gaffney that he wanted to split the lot so she was surprised by some of the testimony stating otherwise this evening. She also noted her concern about the lake on the property and wanted assurance that there would be no harm done to the that lake as part of this work. She noted that the field has water runoff that feeds the lake and is concerned of this issue also.

Being no questions, Mr. Golembiowsky was seated.

Mr. Shawn Gaffney, was sworn in accordingly.

Mr. Gaffney stated that there is absolutely no intentions to do anything to the lake, that the lake is part of the reason they purchased the property. He also noted they paid in full to maintain the lake so there would be no reason he would want to do anything to the lake.

Mr. Zeleznak asked Mr. Gaffney about the water runoff from the field mentioned. Mr. Gaffney stated that the lake is fed by many sources but not the field as mentioned. He noted that sometimes there is flood water from that area but nothing more.

ZI Wilson retook the stand. ZI Wilson noted that <sup>Proposed</sup> the lot split was redesigned in such a way that the lake is not split between properties so there is no issue regarding who's responsibility it is to maintain the lake. ZI Wilson was reseated.

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Being no further questions for Mr. Gaffney, he was seated.

Mr. Schaefer retook the stand. He stated he feels the maintenance agreement should be approved by the county prosecutor's office. Ch. Calabro noted this is not a BZA issue. Mr. Lewis retook the stand to state that all items will be run through the county planning department for approval, including the maintenance agreement. Mr. Lewis was reseated. Mr. Schaefer noted that he was satisfied it would be reviewed property.

Being no further questions, Mr. Schaefer was seated.

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:

Budd – Speaking for the new lots, no, the value would be reduced

Mainzer – No

Zelesnak – Yes

Hoop – No

Calabro – Yes, it is still one parcel/home/drive

Factor #2

Is the variance substantial?

Vote:

Budd – Yes

Mainzer – Yes

Zelesnak – Yes

Hoop – Yes

Calabro – Yes

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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

Zelesnak – 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

Zelesnak – No

Hoop – No

Calabro – No, Mr. Lewis stated he is taking provisions for governmental service vehicles.

Factor #5

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

Vote:

Budd – No

Mainzer – No

Zelesnak – no

Hoop – No

Calabro – No per testimony

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Factor #6

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

Vote:

Budd – Yes based on discussion, private drive is an alternative means to achieve same.

Mainzer – No

Zeleznak – Yes

Hoop – No

Calabro – 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:

Budd – Yes

Mainzer – Yes

Zeleznak – No

Hoop – Yes

Calabro – 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 that such decision was unreasonable or unlawful and will have 30 days from the date of this meeting to appeal. A copy of the signed documents will be given to the applicant at the end of this hearing.

Mr. Hoop stated that this is a motion for a variance (AP0222) submitted by Shawn Gaffney, property owner of 330 Ridge Road, Hinckley, Ohio (Permanent Parcel #01603A15001) not for the creation of existing or new lots but for a variance to permit a shared/common access driveway upon creation of two additional parcels on the existing parcel.

Mr. Budd seconded the motion.

**Vote: Calabro – yes, Hoop – yes, Zeleznak - no, Mainzer – yes, Budd – yes**

**Passed by a vote of 4 to 1**



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

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

Hearing was adjourned at 8:14 p.m.

Todd Gienger, Recording Secretary

Minutes Approved: 1-10, 2018

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Josephine Calabro, Chairperson

Jeffrey G. Hoop  
Jeff Hoop, Vice Chairman

Dave Zeleznak  
Dave Zeleznak, Member

Julie Mainzer  
Julie Mainzer, Member

William Budd  
William Budd, Member