

Ch. Calabro called the January 25, 2023 Board of Zoning Appeals Public Hearing for Cadnum to order at 7:01 p.m.

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

Ch. Calabro asked that everyone save personal conversations until after the meeting as additional voices cause confusion for those attending virtually.

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, Schaefer, Wrubel. In the audience was Alternate Schrader, Zoning Inspector Wilson, Trustees Augustine, Ascherl and Swedyk.

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, 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 that this is a hearing for a request submitted by applicant Brian Cadnum, for the property located at 1085 State Road, Hinckley, Ohio requesting a variance from the enforcement of certain Hinckley Township Zoning Resolution sections to property owned by applicant.

Ch. Calabro noted that the applicant has submitted a packet that includes the original variance application, letter from the property owner, renderings from the architect and site map all related to the variance request.

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 no.

Ch. Calabro asked the Recording Secretary to poll the Board as to whether they received the packet of information and inspected the property at 1085 State Road, Hinckley, Ohio 44233.

**Response: Calabro – yes and yes inspected on 1/24/2023, Hoop – yes and yes inspected on 1/21/2023, Zeleznak – yes and yes inspected on 1/21/2023, Schaefer – yes and yes inspected on 1/21/2023, Wrubel – yes and yes inspected on 1/21/2023.**

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 written communication from persons not present this evening may include communication that are not made by affidavit because these communications are made by persons not under oath they are not accepted by this Board. Written communication may include writing by affidavit by persons not present this evening and therefore cannot be subjected to cross examination. These affidavits 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 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 and all who speak must state their name and address.

Ch. Calabro asked the applicant to give a description of the request.

**Brian Cadnum, 1085 State Road, Hinckley, OH.**

Mr. Cadnum was sworn in accordingly.

Mr. Cadnum asked if everyone on the Board had received a copy of the letter he sent and the Board stated yes, it was part of their packet. Ch. Calabro asked Mr. Cadnum if he wanted to read it for the audience and he stated it was not necessary.

Mr. Cadnum stated the house was built in 1870 and then gave a brief history of prior work done on his house. Mr. Cadnum stated they removed shrubbery from the front of the house and then realized they needed something in front. Mr. Cadnum stated their elevation is at least 3 feet higher than the road and regarding any concern of vehicles leaving the road and hitting their house, they have lived there since 1976 and it hasn't happened yet.

Mr. Zeleznak stated that the original drawing that was submitted shows a bigger porch proposed, but a second drawing was submitted that shows plans for a smaller porch and in the original packet there was an architect's drawing showing the distance between the center line and the existing house and Mr. Zeleznak asked how those measurements were obtained. Mr. Cadnum stated he helped with the measurement and they used a tape measure.

Mr. Zeleznak then asked what the 2 stakes that are in place now represent. Mr. Cadnum stated they represent the distance from the center line of the road and the other represents the edge of the proposed porch. Mr. Zeleznak asked if the house has a full basement and Mr. Cadnum stated yes. Mr. Zeleznak asked if the enclosed porch between the house and the garage is part of the living area and Mr. Cadnum stated yes.

Mr. Zeleznak stated that he noticed the right of way was not even on both sides of the road – usually it is a 60 foot right of way – 30 feet on each side. Mr. Zeleznak stated that on the drawing that was supplied it shows more than 30 feet on Mr. Cadnum's side. Mr. Zeleznak stated he did research on the Medina County Auditor's site measuring from the center line and on the applicant's side of the road the measurement was 33 feet from the center line and the other side was 26.9 feet. Mr. Zeleznak stated it basically shows Mr. Cadnum has a bit more right of way on his side of the street. Mr. Zeleznak then discussed the measurements taken by the applicant and the architect and the measurements taken by the Board at the site visit. Mr. Zeleznak stated there is a difference of 3 feet between the applicant's measurements and the Board's measurements, and the right of way is 33 feet on the applicant's side based on the Medina County maps. Mr. Zeleznak stated the difference of 3 feet is in the favor of the applicant and they want to make sure they have the correct setback. Discussion followed.

Mr. Zeleznak then stated the information in the packet showed the applicant's home had square footage of 1,085 square feet and according to the Zoning Regulations anything under 1100 sq. feet is non-conforming. Mr. Zelznak stated he then looked at the County website tax information regarding the square footage of the home and determined that the house would not be considered non-conforming. Discussion followed.

Ms. Wrubel asked if, prior to the enactment of the zoning restrictions, there is a house that does not meet the minimum setback requirements does that render it a non-conforming structure. Zoning Inspector Wilson stated it would make that a legal, non-conforming house and if anyone wanted to add to the house they can only add up to 10% of the footprint. Ms. Wrubel stated that with regard to the 10% -- floor area is defined in only one place in the Code and it states that porches are not counted for the purpose of calculating floor area. Ms. Wrubel stated she feels this means if there is a non-conforming structure and the request is for a porch that is not the same as an addition. Zoning Inspector Wilson stated they may need to clarify that.

Ch. Calabro explained to the applicant that if their home had been considered non-conforming they wouldn't be able to do a porch the size they are requesting – their variance request is for the front yard setback, however, if their house was considered non-conforming they would have to ask for a second variance. Ms. Calabro stated these discussions are part of the Board's due diligence. Further discussion followed.

Ch. Calabro stated as far as the variance request, the only difference between what is being requested in the applicant's packet and what the Board measured is 3 feet, which is less of a variance than what the applicant is requesting.

Ch. Calabro asked Mr. Cadnum if he was aware of the zoning restrictions when he purchased the property in 1976 and Mr. Cadnum stated no.

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:

Calabro – Yes

Hoop – Yes

Zelesnak–Yes

Schaefer – Yes

Wrubel – Yes

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

Vote:

Calabro –Yes  
Hoop – No  
Zelesnak–No  
Schaefer – No  
Wrubel– 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:

Calabro – No  
Hoop – No  
Zelesnak – No  
Schaefer – No  
Wrubel – No

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

Vote:

Calabro – No  
Hoop – No  
Zelesnak – No  
Schaefer – No  
Wrubel– No

**Factor #5**

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

Vote:

Calabro – No as testified.  
Hoop – No  
Zelesnak – No  
Schaefer- No  
Wrubel– No

**Factor #6**

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

Vote:

Calabro – No

Hoop – No

Zelesnak – No

Schaefer – No

Wrubel– 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:

Calabro – Yes

Hoop – Yes

Zelesnak – Yes

Schaefer – Yes

Wrubel – 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 grounds the decision was unreasonable or unlawful.

Mr. Zelesnak asked for clarification on the setback and Ch. Calabro stated they would use the Board’s measurement.

Ch. Calabro asked for a motion. Mr. Hoop made a motion for variance AP0271 submitted by Brian Cadnum property owner of 1085 State Road, Hinckley Ohio 44233 Permanent Parcel No. 01603B35016 requesting to construct a porch at the said address in a location that does not meet the front yard setback of 75 feet from the road right-of-way. The zoning requires a 75 foot setback, the proposed setback is 23.3 feet and applicant is requesting a variance of 51.7 feet. Zoning Reference Chapter 6, 6R1.4.K.1.c of Hinckley Township Zoning Regulations.

The motion was seconded by Mr. Schaefer.

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.

Vote: Ch. Calabro –yes; Hoop – yes, Zeleznak– yes, Schaefer – yes, Wrubel – yes

Ch. Calabro stated that the variance was granted 5-0.

Ch. Calabro stated they have one year from the date of this hearing to begin construction or to act on this request and anyone adversely affected by this decision has 30 days from the date of the approval of the meeting minutes to file suit or 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.

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

Ch. Calabro asked for a motion to adjourn the Public Hearing. Mr. Zeleznak moved and Mr. Schaefer seconded. All in favor.

The January 25, 2023 Board of Zoning Appeals Public Hearing for Cadnum was adjourned at 7:35 p.m.

Minutes by: Judi Stupka, Recording Secretary

Minutes Approved: \_\_\_\_\_, 2023

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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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Bill Schaefer, Member

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Lindsey Wrubel, Member