

Ch. Calabro called the April 26, 2023 Board of Zoning Appeals Public Hearing for Ivanovic to order at 7:12 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 Alternates Schrader and Romanofsky, and Zoning Inspector Wilson. There was no virtual audience at this time as there were some technical difficulties.

The Recording Secretary read the legal ad and confirmed that the legal notice was mailed to the applicant and adjacent property owners. Ch. Calabro clarified that the public hearing notice states minimum lot width of 175 feet for both the building line and the street right of way, not 170 feet as read by the Recording Secretary.

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 upon the application submitted by applicant Nikola Ivanovic, for the property located at 2353 Ridge 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, site map, proposed lot split map, letter from the Zoning Inspector and a letter from the neighbor across the street which was submitted earlier on April 26, 2023 all related to the variance request.

Ch. Calabro stated the applicant is requesting two variances and the discussion at this hearing will relate to both variances, however, the Board will vote on each variance separately.

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 regarding this matter, 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 2353 Ridge Road, Hinckley, Ohio 44233.

Response: Calabro – yes and yes inspected on 4/22/2023, Hoop – yes and yes inspected on 4/22/2023, Zeleznak – yes and yes inspected on 4/22/2023, Schaefer – yes and yes inspected on 4/22/2023, Wrubel – yes and yes inspected on 4/22/2023.

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 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 and all who speak must state their name and address.

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

Nikola Ivanovic – 2353 Ridge Road, Hinckley

Mr. Ivanovic was sworn in accordingly.

Mr. Ivanovic stated he is planning to build a new home and is requesting a variance because the location of the proposed new house doesn't meet the setbacks. Mr. Ivanovic stated the existing house which was built in 1912 and has been fully renovated would remain if the variance was approved. Mr. Ivanovic stated he knows he cannot build two dwellings on one piece of property so that is the reason for the variance request – he would like to use the existing home as a residence for his brother who was injured 5 years ago in a motorcycle accident and is no longer able to provide for himself. Mr. Ivanovic stated his brother can live on his own, but needs someone to live close by to help. Mr. Ivanovic stated he is doing the best he can to care for his brother and the idea is he would split the existing lot allowing him to build a home for him and his family on one of the lots and then keep the existing home on the other lot for his brother to reside in.

Mr. Ivanovic stated the proposed lot split would put the property line through the three existing barns/sheds on the property. One of the barns sits near the road and needs work so he would remove which would make the area look better. Mr. Ivanovic stated the other two sheds are further back on the property, one built in 1950 and the other built in 1980 and both in need of repair would be torn down.

Mr. Ivanovic stated he has been a Hinckley resident since 1995. He would like to build a home that is approximately 3,500 square feet.

Mr. Schaefer asked Mr. Ivanovic when he purchased the property. Mr. Ivanovic stated he purchased the property in 2019, his aunt and uncle owned the property prior to that and he lived there prior to purchasing the property.

Mr. Schaefer asked Mr. Ivanovic if he was aware at the time of purchase that there was a Zoning Code and Mr. Ivanovic stated he was aware there was a zoning code but not aware of all the regulations in the zoning code.

Mr. Schaefer asked if there was a hardship that Mr. Ivanovic wanted to state and Mr. Ivanovic stated the biggest hardship is to be able to financially provide for his family in the best way possible and take care of everyone. Mr. Ivanovic stated the current house is too small for his family and with the age of the home it's too much to expand on that home. Mr. Ivanovic stated without the lot split he will most likely have to move elsewhere to provide for his family.

Mr. Zeleznak stated he appreciates the situation but by granting a variance in this situation they would be establishing a non-conforming lot and he doesn't believe they have the authority to do that – his understanding is they cannot create a non-conforming lot. Mr. Zeleznak stated they have to follow the zoning regulations.

Mr. Ivanovic asked if that is an issue even if one of the lots is conforming and Mr. Zeleznak stated if they start with a non-conforming lot they could possibly work with that, but according to the zoning regulations they cannot create a non-conforming lot.

Ch. Calabro stated it is in the Code in Section 8.3b and read a portion of that section regarding a non-conforming use displacing a non-conforming use. Ch. Calabro stated currently the lot is conforming and if the Board were to grant the variance to split the lot then that would create a non-conforming lot. Ch. Calabro stated the lot that the new home would be built on would be a conforming lot, but the other lot would then be non-conforming.

Ch. Calabro asked if he could further clarify a hardship or if there was another way he could accomplish what he wants to do. Discussion followed.

Mr. Ivanovic stated his hope was that by eliminating a structure that was unsightly he would make the area more beautiful and his variance could be considered. Mr. Ivanovic stated he could leave it standing and turn it into a produce stand.

Ch. Calabro stated the dilemma is that there is truly no hardship in this situation and the Code states clearly that they cannot create a non-conforming lot. Further discussion followed.

Ms. Wrubel stated she reviewed the Code and legally there is no way to get around this. Ms. Wrubel stated there are two issues, one being Section 8.3b, the Board has no ability to get around that Section and, if so, it would be subject to be overturned. Second, the proposed lot split almost creates the hardship for the applicant – Ms. Wrubel clarified that by requesting a lot split Mr. Ivanovic is creating a self-imposed hardship.

Ch. Calabro stated she understands what they are trying to do, but there is no hardship for the variance request. Further discussion followed.

Ch. Calabro asked if there were any comments from the audience.

Frank Chesek, 2366 Ridge Road, Hinckley

Mr. Chesek was sworn in accordingly.

Mr. Chesek stated he has been a Hinckley resident since 2019 and lives across the street from the applicant and they had a similar situation. Mr. Chesek stated they bought an existing home and their plan was to build a new home on the property and they had to combine a lot instead of splitting the lot. Mr. Chesek stated they combined the lot and built a nice home and then there was an issue with building the accessory building which required a variance and they were granted the variance. Mr. Chesek stated with Mr. Ivanovic's lot being over 2 acres per lot with the proposed lot split he is meeting the requirement, although he is not meeting the width requirement. Mr. Chesek asked if there is a way to split the lot at the house line and make a lot line that is not straight.

Ch. Calabro stated she recalls Mr. Chesek's variance request and that was a different situation. Mr. Schaefer stated Mr. Chesek's variance request was for an accessory building and he had a conforming lot -- Mr. Ivanovic's requested lot split would create a non-conforming lot which is not approved per the Zoning Code. Mr. Schaefer stated he recognizes this is a personal hardship, but a personal hardship is not something the Board of Zoning Appeals can use to rule on a matter, they have to rule on practical hardships, for example, a ravine on the property limits where something can be built.

Ms. Wrubel stated regarding the question about a non-straight lot line, the Zoning Code does provide for this but that would require a minimum of 7 acres.

Mr. Chesek asked the Board if they could take a look at the request and see if there is a way for the applicant to make it happen. Mr. Chesek stated he believes cleaning up the property by removing the existing barns/sheds would make the property more appealing and because Mr. Ivanovic is not able to afford an extra large home to accommodate both his family and his brother he is proposing the lot split to build a second house – Mr. Chesek believes that is a hardship. Ch. Calabro stated unfortunately, finance is not a hardship this Board can consider. Ch. Calabro stated the three buildings could be removed without the lot split and the existing house will still be there. Ch. Calabro stated she wishes there was a way they could approve this, but their hands are tied. Further discussion followed.

Mr. Nikolic – 1980 Stony Hill, Hinckley

Mr. Nikolic was sworn in accordingly.

Mr. Nikolic asked if the existing building (barn/shed) on the property that is close to the road were a fruit stand and if traffic backed up down the road due to the fruit stand would that be a hardship on the Township. Mr. Schaefer stated no, that would be an ODOT issue, it wouldn't

have anything to do with the Township. Mr. Schaefer stated if the situation existed and the Trustees wanted to take it to ODOT they could, but that right of way belongs to ODOT.

Mr. Nikolic asked if Mr. Ivanovic could purchase 2 acres behind his property to possibly make this work. Discussion followed and it was determined if that was done the lot behind would then be made a non-conforming lot so that wouldn't work. Ms. Wrubel stated the Board of Zoning Appeals does not make the Zoning Code, that is done by the Zoning Commission, and if they want to have a zoning code change considered, they would need to take it to the Zoning Commission first.

Ch. Calabro stated they have to follow the Zoning Code and if they granted this variance they would be going against the Zoning Code and the decision would be subject to being overturned.

Mr. Ivanovic asked if he would need to request approval to keep the existing structures if he builds a new home behind them and Ch. Calabro stated yes he would need to request a variance. Further discussion followed.

Tom Schrader, alternate - 218 Walden Ridge, Hinckley

Mr. Schrader asked Mr. Ivanovic if he could put a 3,500 square foot addition on his house and Mr. Ivanovic stated he could. Discussion followed regarding common roof lines and connecting doors.

Ch. Calabro stated no one wants the applicant to move out of Hinckley and they will hopefully figure out a way to solve this issue but the Board of Zoning Appeals does not have authority to approve the creation of a non-conforming lot.

Mr. Chesek asked if they could split the lot and make the property line a zig zag and possibly, they could eliminate the non-conformance.

Zoning Inspector Wilson stated the problem is the frontage and that would not allow for a 175 foot frontage on both parcels and that is the issue.

Ms. Wrubel stated the Board has to make the decision on the 175' frontage variance and they can't make any other decisions regarding alternate plans, but that is something the applicant can bring to Zoning Inspector Wilson. Ms. Wrubel suggested reading through Zoning Code Section R1. Further discussion followed.

Richard Pearl, King Road, Hinckley

Mr. Pearl stated that the existing house was built in 1912, when did the 5 acre lot become a lot of record? Ms. Wrubel stated she tried to look this up and it looks like this happened prior to the 1970s.

Mr. Pearl asked if it's correct that when the original building code came out in the 1950s a single family residence needed just a ½ acre which then went to ¾ acres and then 1 ½ acre until it reached the current 2 acre requirement for R-1 District and that was confirmed.

Mr. Zeleznak stated there's a good chance much of this area were farms that got split a long time ago. Further discussion followed.

There being no further testimony offered, Ch. Calabro asked the Board to review 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

Zeleznak–Yes

Schaefer – Yes

Wrubel – Yes

Factor #2: Is the variance substantial?

Vote:

Calabro –Yes

Hoop – Yes

Zeleznak–Yes

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 – Yes
Zelesnak – Yes
Schaefer – Yes
Wrubel – Yes

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
Hoop – No
Zelesnak – No
Schaefer – No
Wrubel – No as testified

Factor #6

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

Vote:

Calabro – Yes
Hoop – Yes
Zelesnak – Yes
Schaefer – Yes
Wrubel – 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:

Calabro – No

Hoop – No

Zelevnak – No

Schaefer – No

Wrubel – 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 that an application for Variance AP0273 was submitted by applicant Nikola Ivanovic, property owner of 2353 Ridge Road, Hinckley, Ohio 44233, permanent parcel number 01603D31001 requesting two variances to split a 5 acre parcel into 2 lots with one lot not meeting the minimum lot width at the building line of 175 feet. Zoning Reference: Hinckley Township Zoning regulations 6R1.4.B and 6R1.4.C

The motion was seconded by Mr. Zelevnak.

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 –no; Hoop – no, Zelevnak– no, Schaefer – no, Wrubel – no

Ch. Calabro stated that the Variance was denied 0-5. Ch. Calabro stated that since the first variance was denied and the second variance was contingent upon the first variance being granted, they will not be voting on the second variance.

Ch. Calabro stated 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.

Mr. Ivanovic asked if he found examples where a variance like this was granted elsewhere in the Township could he use this for the appeal process and Ch. Calabro stated yes.

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. Schaefer moved and Mr. Hoop seconded. All in favor.

The April 26, 2023 Board of Zoning Appeals Public Hearing for Ivanovic was adjourned at 8:05 p.m.

Minutes by: Judi Stupka, Recording Secretary

Minutes Approved: _____, 2023

Josephine Calabro, Chairperson

Jeff Hoop, Vice-Chairperson

Dave Zeleznak, Member

Bill Schaefer, Member

Lindsey Wrubel, Member