

Franklin Township, Portage County
Board of Zoning Appeals
November 14, 2022

Present: Chair David Hansford, Justin Money Penny, Marilyn Sessions, Sam Abell, and alternate Ron Goodspeed, Board Members; Joe Ciccozzi, Zoning Inspector; Jenny August, Secretary.

Mr. Hansford called the Board of Zoning Appeals meeting to order at 7:00 p.m. He introduced the Board members and explained the procedures for the meeting.

7:00 Hearing:

At 7:00 p.m. an application from John Clark at 282 Kent Dr. Tallmadge, OH 44278 representing the property located at 7598 Diagonal Rd, Kent, OH 44240 (parcel number 12-075-00-00-002-013) was heard for a variance to section 315.03 which requires a minimum of 50 feet of frontage for a single-family dwelling. The applicant wishes to construct a single-family dwelling with frontage on his private drive and not a street maintained to Portage County Subdivision Standards.

Mr. Hansford asked who is here to speak to this tonight. Dr. John Clark of 282 Kent Dr. Tallmadge, Ohio was sworn in. He and his wife, sister, and brother-in-law have been looking for property for several years to build both houses on. He has been in this area his whole life. He has been a Pediatric Physician at Akron Children's Hospital since 1998. He is leaning towards retirement and started looking for a nice quiet place to retire to. He was unaware of the driveway issues. He owns 60 feet of Diagonal Road frontage which includes a driveway that continues through Pines 1 and 2 condominiums and back to his property. He owns two lots and has a permit to build his home there. He has applied for a permit to build a second home on the second lot. Because of the narrowness of the Diagonal Road frontage, he can't have either a county approved road making Hemlock Drive a county approved road because it is too narrow, and he doesn't have enough frontage on Diagonal Rd for a second 50-foot section to have enough frontage for two houses. The lots are split and the county has approved a shared driveway, and now he is asking for approval from the township.

Mr. Abell asked if he has an existing dwelling yet. Dr. Clark said they are in the process of building his home.

Mrs. Sessions asked how many acres he owns in the back. Dr. Clark said he owns 32 in the back. Dr. Clark said he worked with Todd Peetz from Portage County Regional Planning Commission, and Mr. Peetz was very clear that he could build two houses, but any more than that would be a concern because there are only two lots. The Board reviewed the property maps provided by Zoning Inspector Ciccozzi.

Mr. Hansford opened the meeting to public comment.

Ms. Rachel Kuhn of 50 Public Square Suite 2000 Cleveland Ohio 44113 was sworn in to represent the Pines 1 Condominium Association. She is with Kaman and Cusimano Law firm as the Pines legal counsel. She does not think this variance can be considered without looking at the whole big picture of the roads and concerns of the homeowners in the Pines who share this road that goes back to Dr. Clark's property. The Pines 1 and 2 is 37 homes sharing a private driveway. To call it a road is a bit misleading. It is meant to be a quiet, tranquil, intimate wooded setting. The road is very narrow and could not be a dedicated road. There are railroad ties that serve as retaining walls on both sides of the parcel that contains the road. The owners of Pines 1 are all on this private drive and some of their homes sit only a few feet from the private drive. She pointed out on the survey provided that some areas of the private drive at times goes on, or butts up to the association's property. This housing development was built in the 1970's by Evergreen Valley Development Corporation. They put in these private drives and developed Pine 1 into 25 units and Pines 2 into 12 other units. The 33-acre parcel was left wooded in the back. The original intent was that it was meant to be enjoyed by the 37 homeowners within the Pines. It is a bit unusual that the developer retained this road under today's development statutes for condominium and homeowners' associations and there would have been some other mechanism to transferring ownership of that parcel. Regardless, for 45 years an easement has controlled the road. The parcels were eventually conveyed to Ron Burbick who was an owner in the Pines, and was set up for the association to share the costs of the road such as snow plowing and maintenance. Currently, that easement that controls this road is essentially giving the applicant that steps into shoes of the declarant of the easement, the right to make all of the decisions pertaining to the maintenance and care of this road. Now one owner has control of the road/driveway that is shared by 39 homes. The association has concerns about the logistics of the construction and the vehicles that are going back there, and damage this may cause to the road, as well as speeding. They also have concerns about the ongoing needs for maintenance and snow plowing of this road. For the last two years we have been trying to negotiate a cost sharing agreement to address a lot of these issues that hasn't been a problem for the last 45 years as the easement that controls these roads grew silent. We would like to table this or that the easement be denied until this agreement can be worked out so we can maintain this harmonious, tranquil living environment that the owners have enjoyed for the last 45 years.

Cynthia Snider of 1939 Hemlock Drive was sworn in. She and her husband are 20 plus year residents and they are here with a lot of their neighbors. She read from a document that the Board received earlier. "Regarding the layout of the Pines, this is a unique, wooded community of homes with limited frontage off Diagonal Road in a single entryway which is Pines Drive. Our homes are in very close proximity to the narrow winding

roadways which are flanked by retaining walls constructed of railroad ties which are an important landscaping feature of The Pines. In what I consider a highly unusual situation, the original developer retained ownership of the heavily wooded property in the back of the initial units as well as the two narrow winding roadways known as Pine and Hemlock Drives that provided access. Under several long-established easement agreements, the developer, Manny Barenholtz back in the 1970's, granted to the Pines Association a right of access for all residents who own properties in Pines 1 with the primary provisions that 1) the association retained the maintenance of the roadway, and 2) that if any new units were added, those units would share proportionately in maintenance costs. These easement agreements have been in effect since the 1970's and faithfully followed by the Pines Association. After nearly 5 decades, John Clark purchased the undeveloped property of approximately 33 acres including the attached roadways of Pine and Hemlock. It is unfortunate that he did not do his homework before purchasing the property. Now he is coming to this Board for a variance to build a second home. Mr. Clark's construction of the first home began without any notice or warning to our community. There have been no neighborly efforts at coordination and no assurances that resulting damage will be repaired. Here is what's happening in our neighborhood, and it is all well documented. Heavy trucks, semi's loaded with blocks and cranes, and other construction vehicles are traveling back and forth on a regular basis on Pine and Hemlock. As you can imagine, Pine and Hemlock were never intended to accommodate substantial traffic flow or heavy equipment. Because there is no loop in either Pine or Hemlock, and the roads are narrow, vehicles entering the construction site often enter or exit by either precariously backing in/out through our neighborhood or turning around in our driveways. As you can imagine, cracks are appearing in our newly paved areas and driveways. These construction vehicles and others accessing Mr. Clark's property do not observe the posted speed limit. Because we have narrow and winding roads, the posted speed limit is only 15 mph. There are no sidewalks, and our residents (including elderly and young children/grandchildren) have enjoyed walking in the scenic roadways. Multiple private driveways have been spray painted and flags have been placed in our yards. This is apparently to mark areas to dig for utilities and/or perhaps to widen roads. When asked, the people placing these objects say that they are doing so on behalf of Mr. Clark. Strangers who are connected with the construction project are parking on the roads, walking and parking in our private driveways, and trespassing on Pines Association property without contacting us. Further, as described in the document we have provided, Mr. Clark has demonstrated his continuing refusal to work with the Pines in a neighborly manner. Here is one of multiple examples; when Mr. Clark first bought the property, our association Board was obviously concerned about the impact, and reached out to him to request that a new easement agreement be developed so that he would pay his fair share of the road and property maintenance, especially during the construction process. This approach was clearly appropriate under our existing easement agreement. At the request of Mr. Clark, the Pines condo association and board prepared a revised agreement after consultation with our

attorney. Mr. Clark declined to sign the agreement. Instead, he sent his own version that stated that he would control everything and implied that he would, without consultation, send us the bill for any repairs or maintenance. We implore this Board to not approve Mr. Clark's request for a variance to build a second home. Granting this variance will substantially alter, and be a substantial detriment to our long-established neighborhood. A variance for one additional unit is cause for great concern. Even more concerning is that Mr. Clark has indicated that he wishes to build additional homes beyond the second one. This really boils down to two questions; 1) Will Mr. Clark be a homeowner or a developer? 2) Will Mr. Clark be a good neighbor or the neighborhood bully? As members of the Franklin Township Board of Zoning Appeals, you can answer these questions by denying this variance.

Mr. Dennis Krupa of 1920 Hemlock Dr. Kent was sworn in and passed out a letter to the board dated 10/4/2021 from Dr. Clark's attorney. His hope is to fill in the gaps of why we are here, and try to get things nice and civilized. Recently, they received another letter on 11/7/2022 to the board. In that letter Dr. Clark's attorney says that the residents of the Pines are warned against making public statements at this variance hearing. This is a public hearing so naturally he thinks he can come here and make a public statement that is true. The Clark's attorney warns the residents about making statements at the hearing that are "tortious". When he looked up the meaning of "tortious" it is something that causes emotional distress. To Mr. Krupa, the letter was tortious. He thinks they are getting hostile feedback. He just wants to live peacefully together and get on with life. In Dr. Clark's letter he says if he doesn't get the agreement that he wants, he will create a new neighborhood. We don't know the definition of that and we want an answer on that. That was 10/4/2021. Now we are getting the letter from 11/7/2022 warning us against making tortious statements against the variance. Then there is conflicting information that there were 9 units originally proposed. It sounds like tonight it is being restricted to two units. We did not hear that in the interim. It has not been communicated well. It isn't that we don't want Dr. Clark in our neighborhood. We welcome him in our neighborhood. If he wants to be in our neighborhood, we are very interested in him being whole-heartedly in support of sustaining the livability factors of our neighborhood such as the cluster housing which is designed to save land, provide green space, and provide the individual avenues to our homes in a practical, functional way so that we don't eat it all up and we can use the rest of the land for walking dogs or birds to come in, things like that. That is one of the advantages of cluster homes and he would like to see it done more often. It's not very common yet. The other point he wants to make is that the lanes that connect the units are nicely scaled with the units proximity to each other so that the traffic is allowed to meander through, not at a high speed. It goes and it flows nicely, even the post office trucks, UPS, and Fedex trucks can negotiate it very nicely. They are new there, moving there in 2019, buying Jeff Hunt's property. He (Jeff Hunt) also sold Dr. Clark his property. Also, the signage and lighting can be a big factor in a cluster housing development.

If you put big vibrant street lights shining in through the windows of the homes, that can be kind of annoying, so that's a consideration. Then the signage is fine and very functional. It works well and we present well. For guests to visit Dr. Clark will have a nice meandering route to his house. It's a nice road. Those are some of the questions they have and are reasonable, not tortious ones to ask and to receive answers to before having a variance meeting. It is putting the cart before the horse. He asked them to keep in mind that many various owners and realtors have done title searches over the last 45 years, and we have been left with this vulnerability that could have been rectified but never happened. It needs to be recognized and get done now. We need to come up with a viable, common-sense alternative preserving our area that will use the land wisely. Decades of maintenance for the roads and landscape that has kept the originals founders' vision intact, a vision that is highly desired, and he hopes the future generations can share that vision with the same opportunities to inherit and care for it like we have. He feels that we should all be able to get along in a reasonable fashion without widening roads. He thinks we will have to have another meeting and come up with a nice solution to create a neighborhood that is slightly larger.

Dr. Clark shook Mr. Krupa's hand and agreed to get together for discussions. He then asked to clarify a few things with the board. For instance, the statement that the back 33 acres was meant to be a nature preserve is not true. It was originally intended to be another third or fourth development of condominiums. That never happened. In 2003 it was approved to be a single-family housing development and nine lots were defined. It was approved through the county and the township, and there were certain stipulations. The Army Corp was involved to fill in some of the wetlands back there and the county dictated that Hemlock Drive had to be raised to a county approved road for this to happen.

Mrs. Sessions asked Dr. Clark why the original nine lots are only two lots now. Dr. Clark said that back in 2003, the wetlands were parceled off and were non-buildable, and the other nine lots were the northern half that were buildable. Those nine lots were never divided. The development was never finished. So, the property as Mr. Clark acquired it was the northern half and the southern half. The northern half being what was originally approved to be nine lots. They put the roads in, they put sewer in, they buried the utilities to each property all the way back to where his sister's house will be. Mr. Clark added that they couldn't widen Hemlock, and therefore after all that, it all fell apart. It was going to be a development. Mr. Burbick bought it after that and turned it into a nature preserve because there was nothing else they could do with it. Mr. Clark added that the easement has been in existence since 1977 and it is still there for anyone to look at and read. When he bought the property he reached out to Mary Lange and the Pines 1 board, and they had a meeting to determine what they needed to do. He was as cordial as he could be. They came up with a new easement. Mr. Clark said they didn't need an easement. The easement already exists. Their new easement included that he could build Monday-

Friday from April to October, using nothing more than pickup trucks on Hemlock Drive. There is no other access to get back there. It is land locked. It also said that he would repair or replace the road at this own cost when it was done. That was the welcome to the neighborhood that he got. They wanted him to change an easement that has existed for 45 years. He didn't need changes. It was all there and clearly spelled out the responsibilities on all parties including him. Why would he want to go with an entire new easement? Regarding the cracks in the pavement, he had already photographed those before starting construction because he expected this to happen. The photograph the Pines Board is showing are preexisting. The spray painting they talked about was not Mr. Clark's doing. Spagnola did the survey for the Clarks and was very specific and did not mark anything that was in contact with The Pines. He has not hired anyone that would do anything like that. The last thing Mr. Clark wanted to say was that this hearing is about a variance to allow his sister to use his driveway to get to her house. The objections that he is hearing tonight are saying that there are 37 other individual homes who can use his driveway to get to their homes, and the only one they think is inappropriate is his sister. Todd Peetz from Portage County Regional Planning Commission has painted it very simply and very clearly that no more than two houses can be put back there, and that is all he is asking.

Mr. Hansford asked Mr. Clark if he knows if Todd Peetz was citing subdivision regulations. Mr. Clark said he doesn't know the law well enough, but they went through this a whole lot with him. Mr. Hansford said there is a threshold. Mr. Clark said yes, five acres. If they have more than five acres it is not a subdivision. Mr. Clark did what Todd Peetz told him to do.

Mrs. Sessions said they have a request from Mr. Flynn to table this until next month as he will have some additional information. Mr. Hansford said without knowing what the information is, he would think it's appropriate only if we have a good reason. Dr. Clark's Attorney, said he thinks the request is for time to get a copy of the recorded easement which he does not believe exists. Ms. Kuhn said she had a copy of the easement with her. Mr. Clark's Attorney asked if it is recorded. Ms. Kuhn said it is recorded as an exhibit to the Pines 1 declaration. She said if you look at that easement, the easement is their concern because not only has it not been followed for 45 years, because the easement grants the grantor the right to maintain the road, maintain the entranceway, and basically maintain everything. The grantor, or whoever steps into the shoes of the grantor, being the owner of that road, and the owner of the back parcel really was not doing that and the association was the one maintaining that road, hiring the snow plowers, paving the asphalt, and maintaining the front entrance. The easement is really silent about how if repairs are needed to that road, how is it going to be determined among these, (if two homes are built) 39 owners. How is it going to be determined who is hired as the

contractor? How is the snow plowing going to be handled? Right now, this easement essentially grants one owner the right to make all of those decisions on behalf of 39.

Michael David, 737 Boulevard Avenue, Cleveland Ohio was sworn in. He is representing the Clarks. He said he would like to reiterate that Dr. Clark is here for a frontage variance. He understands that the Board and the residents have some concerns about the easement and how those drives are maintained, but that doesn't impact Dr. Clark's request for the frontage variance. Dr. Clark has retained his firm to work with the Board to figure out. We have started to negotiate with them. He would ask the Board to consider allowing this variance to be approved and let Dr. Clark work with the association to take care of issues related to the maintenance of these things.

Mrs. Sessions said in Mr. Flynn's letter it states that he was recently retained and he has requested from the title company all recorded documents concerning this property, including easements, etc. and he would like some time to review and to come next month and talk about them. Mr. Hansford said we have a copy of the easement. Zoning Inspector Ciccozzi said Kaman and Cusimano actually provided a copy of the easement, and it was his understanding that it was never recorded, but he is not a lawyer.

Mrs. Sessions said it is obviously a very emotional issue and she is sorry that it has happened for both sides. She said the board can't be referees. It is a zoning issue and some questions that came up are "Are we denying Mr. Clark the right to use his own property", and she wanted to ask Mrs. Snider when was the last time anything was built in the Pines, or any activity requiring any heavy equipment. Mrs. Snyder said it was probably in the 1970's. Mrs. Sessions asked when was Pines 2 built. Mrs. Snyder deferred the question to others, but the answer from the neighbors was "in the 80's". Mrs. Sessions asked if anyone has had any work done that would require a backhoe or any heavy equipment to come in. Mrs. Snyder said no, it's a long-established neighborhood.

Mr. Abell said he would like more time to talk with Todd Peetz. He saw the fears expressed that there would be a development back there, and the condominiums, we don't have anything to do with the facilities stand point. We are not part of the deal there with the condominiums, so if you build more condominiums, we would be totally out of the picture. If you are doing a subdivision it would be different. I don't know how you would build to county standards if you don't have access on Diagonal Road with all of the buildings and condos that are there now. Maybe there would be some other way to do it, but he is not clear about that, and he personally is not ready to say yes or no to the variance request at this time, and that means that he would be opting for a continuance until such time. He doesn't know if there is a possibility for these folks to work it out. He doesn't know if that is a realistic option, but that would be a miracle to come back a month from now saying that you have it all figured out and we would all feel better about the whole

thing. Right now, he is confused, and he has been confused about the whole thing about what is going on here. Mrs. Sessions said if they could just separate the whole emotional piece from the zoning piece. Mr. Abell said if we go through the Duncan Factors here; is the variance substantial? Obviously, it's a 100% variance and we have to think about those kinds of things too.

Mrs. Sessions moved to table this hearing until next month with a second from Mr. Abell.

Mr. Hanford asked if there is any more discussion. He added that for both parties involved, they couldn't have anything more confusing. It's a mess and probably starts from day one because he knows a little bit about this discussion from what happened at Walden and it's the same thing that is happening here. He thinks granting the variance may be the start of a good relationship and he would like to see some progress made before next month.

Ms. Kuhn said Council has re-resumed discussion about the easement, but it is not a new easement, it is a cost sharing agreement. Council has re-resumed the conversations that were not going anywhere for the last six months, so we would appreciate some more time to potentially work this out.

Mr. Hansford called the vote. All Board members voted yes except Mr. Money Penny who voted no. The variance request is tabled until next month. Mr. Abell noted to the public that they will not be re-notified.

7:15 Hearing:

At 7:15 p.m. a continuance for an application by Matt Proske, at 6486 Westshore Dr. Kent, OH representing the property located at the same address (parcel numbers 12-039-10-00-067-000 & 12-038-50-06-085-000) was heard for a variance to section 405.06 A.5. The code does not allow for an accessory structure in the R-1 zoning district to be larger than 768 square feet on lots less than 1.5 acres. The applicant wishes to build an accessory structure totaling 1920 square feet requiring a variance of 1152 square feet.

Mr. Hansford asked who is here to speak to this tonight. Mr. Matt Proske of 6486 Westshore Dr. Kent was sworn in. He informed the Board that he would like to knock down the three old buildings and make one nice accessory structure. He has made improvements to the site plan, and combined the 4 individual parcels which are now merged. All of the Boards requests from the last meeting have been met. Mr. Abell asked for the dimensions of the new structure. Mr. Proske said they are 36' by 66', roughly the same square footage as the three buildings that are being removed. It will be on a foundation. He kept the height under 16 feet. Mr. Proske spoke with his neighbors and they are okay with it.

Mr. Hansford opened the meeting to public comment. Nobody was there to comment.

Mr. Money Penny moved to allow the applicant to build an accessory structure totaling 1920 square feet on a lot that is less than 5 acres. Mr. Hansford seconded the motion.

The board reviewed the Duncan Factors: A-yes, B-yes, C-no, D- no, E-yes, F- yes, G-yes. Mr. Hansford called the question. On roll call all board members voted yes.

Mr. Hansford noted that there was a 30-day appeal period that would begin after the minutes of this meeting were journalized. The journalizing will occur at the next meeting of the Board of Zoning Appeals.

Nomination of 2023 Chair:

Mrs. Session nominated Justin Money Penny to be the Chairman of the Board of Zoning Appeals for 2023 and 2024. Mr. Abell seconded. All Board members voted yes.

Approval of Minutes: Mr. Hansford moved to accept the minutes from the October 10, 2022 meeting. Mr. Goodspeed seconded the motion. Mr. Hansford, Mr. Abell, and Mr. Goodspeed voted yes. Mrs. Sessions and Mr. Money Penny abstained. The meeting minutes were approved.

Next Meeting: The next meeting is scheduled for December 12, 2022 at 7:00 p.m. to continue the Clark variance request hearing and consider any other applications that may come in.

Adjournment:

The hearing was adjourned at 8:10 pm.

Respectfully submitted,

Jenny August
Secretary, Board of Zoning Appeals

Approved as submitted:

Chairperson, David Hansford

Approved as amended:

Chairperson, David Hansford