

Hamilton County Board of Zoning Appeals - North District
May 26, 2021

Mrs. Johnson called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 8:37 p.m.

Members Present: Jim Galloway - alternate, Kristin Johnson, Ron Hall, and Tim Clark. Also present: Byron Settles, Interim Director; Aaron Culp, Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum: Mrs. Johnson declared a quorum with three out of five regular members and one alternate member present.

Guests: See sign-in sheet.

Communications/Reports: Mrs. Burdett stated that everything had been passed out.

Approval of Minutes: ***Mrs. Johnson identified the minutes from the April 28, 2021 meeting.***

Mr. Hall moved they be approved as mailed.

Mr. Clark seconded.

With no comments or corrections... Mrs. Johnson called for the vote. ***3 yes votes... 0 no votes... 1 abstention.*** Mr. Galloway was not at the meeting.

Old Business: Mrs. Johnson continued with ***NBZA-R.V.-0004-03-2021*** a Requirement Variance. We have a request from the petitioner that they will need additional time.

Mr. Culp advised Mrs. Johnson that since it was already tabled, they could just leave it tabled. We would need to identify that it would be Wednesday, June 23, 2021 and this would be at 8:00 p.m.

New Business: Mrs. Johnson began with ***NBZA-R.V.-0006-05-2021*** a requirement variance concerning reducing the minimum lot size from the required 10 acres down to 5 acres. Also, to reduce the minimum lot width from the required 150 ft. down to 100 ft. ***Location: 10475 East 296th Street, Atlanta, Indiana.*** Please come forward and tell us about your petition. Please state your name and address for the record.

David Booth, of 7486 East 400 North, Windfall, Indiana, stated his name and address for the record. With me I have my wife, Tricia, and Andy Wert has been working with us as well. My wife and I bought 19 acres on 296th Street in 2018 to start having our own farm on that land. We also wanted to build a home and move our family to that land. We are at the intersection of where we are ready to start building.

We bought the land with a “beginning farmer program” through the FSA Office of the USDA. As

part of that program they have asked that where we are going to put that house, we need to parcel that section off from the farmland. That's the reason for the variance to parcel off the 5 acres and then leave the remaining 14 acres as production cropland.

Mr. Hall asked if the FSA lender was going to release their interest in your 5 acres.

Mr. Booth answered, correct.

Mrs. Johnson asked if they would release 10 acres. (2) Is it possible to have the 10 acres deeded for your house but still farm that?

Mr. Booth answered, I don't know that we could get 10 acres released because the total acreage is 19. There is a 2 ½ acre woods there so we're really down to about 16 ½ tillable acres. By the time they would release 10 acres there really wouldn't be much to be farming anymore which takes away our whole reason to move down there and start farming that as a family. (2) I would say no. From a record keeping standpoint when you have to certify your acreage with the FSA of what is certified in crops vs what is going to be a homesite, it just kind of muddies those records back and forth. It would make it very cumbersome.

Mr. Hall asked if the 5 acres he was asking for the variance on would include the woods.

Mr. Booth answered, correct. The homesite would be in front of the woods. The ground back there is less productive so the thought is to keep the house on the less productive land. We really want to minimize the impact of the homesite on the productive cropland.

Mr. Galloway asked *Mr. Booth* if he were to build the house on the 19 acre tract the FSA won't go along with that. (2) So the whole thing is a lending issue? (3) How would you feel about a condition on the remaining parcel that you couldn't divide it? (4) Then if you sold your house and sold the other acreage, the people who bought it couldn't divide it either.

Mr. Booth answered, correct. Because of the beginning farmer program that we're in, it's a joint financing program. They have part of it and then there's a commercial lender that has the other part so you would be looking at a third lender for the home. (2) It's a lending issue as well as wanting to keep as much in crop production as we can. (3) We wouldn't have any intention of building anymore homes other than our own. But I don't know if that will change anything. (4) My only concern, and hopefully that is way down the road, is when that gets passed down to the heirs. I would not want to restrict those downstream.

Mr. Clark stated that the problem now is hardship on the land. This is a financial hardship, but it's not a hardship on the land. I think that's the hurdle that we have to get passed.

Mr. Galloway stated that the way the zoning ordinance is right now they couldn't sell the one lot off anyway.

Mr. Hall stated that if the petitioner or some subsequent owner wanted to divide it up they would have to come back here because they would only have 14 acres left.

Mr. Booth stated that their sole intent was to build a home, live on the farm and continue to farm the land. We're currently living in Tipton County. We've been taking our kids to Hamilton Heights for three years so we're making that drive two to three hours a day. We knew the day would come, but we didn't want to switch school systems.

Mr. Hall asked Mr. Culp if we split this off and he has 14 acres left, he could have 10 acres but what about the 4 acres left. Can he divide it into 10 acres without having to come back here?

Mr. Culp answered, no. In order to comply with our ordinances both resulting lots would have to be 10 acres. He could build on the 14 acres.

Mr. Galloway asked if they grant him the variance for the 5 acre tract and he wants to sell the 14 off later, he can do that, correct? (2) And then anyone could build a house on the 14 acres? (3) They can't establish a 10 acre lot, and then if they did, they would have 4 acres left they couldn't do anything with.

Mr. Culp answered, yes, he can. (2) That is correct. (3) They would have to come back here.

Mr. Galloway stated that you're still not increasing the density over the 10 acres.

Mr. Hall answered, yes, we are. On the 19 acres he could only build one house because you can't divide it. If you divide off 10 acres then you have an unbuildable 9 acres. What we're doing by splitting this is creating the ability to have, without any more say so, two houses on 19 acres. I think the question then becomes 19 acres vs 20 acres. Does that make a big difference?

Mr. Galloway stated that it doesn't to him. I think we would go along with a split of 2 lots out of that 19 acres.

With no further questions for the petitioner... *Mr. Clark* stated that it still sounded like a financial problem and not a hardship on the land. And he didn't sound real sure that they would turn him down. I don't know that he has really investigated the possibility.

Mr. Hall stated that he thinks of a financial issue, particularly for an ordinance variance, I think is perfectly acceptable.

Mr. Galloway stated that the financial situation here is not a financial gain on his part which would not be a hardship, but where somebody wants to split into two or three parcels because they can get more money, that's different from what this is. We've had experience with that a few times.

Mrs. Johnson opened the floor for public comment at 8:51 p.m. and invited anyone who wished to speak for or against the petition to please step forward. And with no one stepping forward to address the board... *Mrs. Johnson* closed the public portion of the hearing at 8:51 p.m.

Mr. Galloway moved to approve the variance.

Mr. Hall seconded.

Mr. Hall stated that as far as a hardship, I see where this qualifies for that because this is externally imposed and for a requirement variance, I think that this meets the test of the ordinance.

Mr. Clark stated that he is still on the fence for that. In 2018 everything was already in effect. I still don't see it as a hardship on the land. It can still be farmed.

Mrs. Johnson stated that this is a requirement variance, but I still think that by approving this we will open the door for a lot more things like that. Mr. Galloway comes from an area that is very heavily populated; White River Township isn't. Once we get that ball rolling people think "I can buy 50 acres and then build my house on part of it"... and there's just a lot of things that can happen.

Mr. Galloway stated that he thought this was totally different. We just had one in our jurisdiction and it passed. I was against it, but it was a 47 acre parcel originally and it ended up being a 26 or 27 acre parcel, narrow but a half a mile deep. It had a woods halfway back and a woods all the way back. It made two great homesites, but it also put two houses on 330 ft. of road frontage and that's where I have a problem. If we do a lot of that then you do end up with more houses on the roads but if someone's got a property and they adhere to the 330 ft. you can't and we're doing a variance for that as well, but the other lot would then have all the rest of that.

Mr. Hall stated that there still could be the maximum of two houses on 19 acres and you'd be just shy of 20 and those two houses would still have the entire frontage for the 19 acres. We are adding the possibility of a second home that wouldn't be there but if it was 20 acres, they wouldn't even be here. It seems so deminimus to me.

Mrs. Johnson stated that they would still be here. They want to put a home on 5 acres.

Mr. Clark stated that a lot of families stay until the kids are grown and by that time maybe the county ordinance would allow a house on 5 acres.

Mr. Galloway stated that most of the residents wanted the 10 acres.

Mrs. Johnson agreed.

Mr. Hall added, or more. I feel that this meets all of our tests specifically for hardship and the fact that if he came in and asked for two 10 acre tracts we would probably give it to him. If this creates a situation where they can have two houses, I think we're still in the same spot we were before.

Mrs. Johnson stated that she totally understands. You want young people to be able to go out and live in the country and I totally get that.

With no further discussion... *Mrs. Johnson* called for the vote. **3 yes votes... 1 no vote.** *Mrs. Johnson* voting no. Your variance is passed.

Director's Report: No report.

Legal Counsel Report: Mr. Culp stated that the search for the new director continues. We have

some good candidates. We feel like we may be in a position to do the interviews at the June plan commission. Per Mr. Habig, he wants the BZA members to know you are welcome to attend. It will be an executive session. If more than two members from a BZA will be there I will need to know because technically that's a quorum of the BZA and we will advertise it as a joint executive session of the Hamilton County Plan Commission, and the BZAs.

Mr. Clark asked for the date of the meeting.

Mr. Culp stated that it would be June 16th. There is one item that may or may not go before the plan commission. If that doesn't go, we would just schedule the executive session to start at 7:00 p.m. which is when the plan commission would have started. Everyone should hopefully be free to be there.

Mr. Hall stated that he would plan on being there.

Mrs. Johnson stated she would not be there.

Mr. Clark stated he would try to be there.

Mr. Galloway stated you would have at least two members there anyway because Mr. Habig and I are both on the BZAs.

The next BZA meeting will be Wednesday, June 23, 2021 at 8:00 p.m.

With nothing further to come before the board... Mrs. Johnson asked for a motion to adjourn.

Mr. Galloway so moved.

Mr. Clark seconded.

With no further comments... Mrs. Johnson called for the vote. ***4 yes votes... 0 no votes.*** Meeting adjourned at 9:04 p.m.

Kristin Johnson, Chairman

Date: _____

Linda Burdett, Secretary

Date: _____