Mr. Kirby called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 7:04 p.m.

Members Present: Frank Habig, III, Gerald Kirby, Ron Hall, Tim Clark, and Tracy Dean - alternate. Absent: Kristin Johnson. Also present: Charles Kiphart, Director; Aaron Culp, Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum: Mr. Kirby declared a quorum with four regular members and one alternate member present.

Guests: See sign-in sheet.

Communications/Reports: Nothing to present.

Approval of Minutes: The minutes are not available.

Old Business: Nothing to present.

New Business: Mr. Kirby began with NBZA-R.V.-0012-07-2019. This is a requirement variance concerning the reduction of the required road frontage from the zoning ordinance required 330 ft. for a 10 acre or larger lot down to 200 ft. Location: 14264 East 216th Street, Noblesville, IN. Would you please step forward, state your name and address, and present your case?

Daniel Lawhorn, of 503 East Howard Avenue, Arcadia, Indiana 46030, stated his name for the record. I own the property that we’re talking about. Not sure of the address. I acquired the property in April. I got 10 acres. I know I need that to build. I got it from my parents. I took all the frontage that they had off the 40 acres that they have there, but it didn’t give me enough. I only have 200 ft. and of course I needed 330 ft. We plan on building a home there, if this passes, pretty much right away.

Mr. Kirby asked Mr. Lawhorn why his lot was so narrow and deep. (2) Is it going to be farmed then with his ground?

Mr. Lawhorn stated that the owner before his parents only sold so much to his parents and I took all the frontage they had. They’re actually landlocked behind me now. I’m not sure why they divided it that way, but the owner wanted to hold on to some property. (2) I only acquired the property for the purpose of building. I didn’t really want to get it just to turn around and cash rent it to my parents for the rest of my life.

Mr. Habig asked Mr. Lawhorn if his parents lived on the property. (2) What was the 40 acres that this parcel was cut out of? (3) When did they buy the 40 acres?
Mr. Lawhorn answered, no. They live on Durbin Road maybe a mile south. (2) They bought it from Jim Noggle. Then I got the 10 acres from my parents. (3) I’m not exactly sure. It officially became theirs within the last year or so. They’ve been farming it for a long time, I guess.

Mr. Hall stated that it looks like their parcel, before you purchased yours, would have looked something like Oklahoma with the 200 feet that goes back 1,000 ft. or so and then opens up into a big field. (2) Is the 200 ft. strip plus the part in the back roughly 40 acres? (3) What is the ownership on the parcel just to the east of it that does have road frontage? (4) Did your parents get a road frontage variance when they purchased the property?

Mr. Lawhorn responded, like a big capital “P.” (2) Yes. (3) That is Jim Noggle’s. (4) I don’t believe so, no.

Mr. Habig asked for clarification that Mr. Lawhorn didn’t know when his parents purchased it. (2) So the remaining property in the back is going to be landlocked.

Mr. Lawhorn answered, no. I know they were in Arizona when the deal finally went through. (2) Yes.

Mr. Hall asked Mr. Lawhorn… if this were approved you would grant them an easement?

Mr. Lawhorn answered, yes.

Mr. Kiphart stated that the property went from Jon R. Noggle to Terry Lawson on February 8, 2019.

Mr. Hall asked Mr. Kiphart for clarification on which parcel. On the 40 acres? (2) Would you repeat that transfer?

Mr. Kiphart answered, yes. (2) February 8, 2019 it went from Jon R. Noggle to Terry Lawson, 39 acres, and then it looks like Terry Lawson to Terry Lawson he split out the 10 acres so that there was a 10 acre and a 29 acre on May 17, 2019.

Mr. Habig asked about the 40 acres. Who split it off and when did the 40 acres get split off that had the 200 ft. of road frontage?

Mr. Hall and Mr. Kiphart both responded, February.

Mr. Kiphart stated that that was when it was transferred.

Mr. Habig asked how long the 39 acre boundary had been that way.

Mr. Hall asked Mr. Lawhorn if his father was buying the property on contract.

Mr. Lawhorn answered, no. He’s farmed it for a while. It wasn’t like he was buying it on payments or anything like that.
Mr. Kirby asked Mr. Lawhorn if Mr. Noggle was the guy from next door.

Mr. Lawhorn stated that it was his mother’s house, but she has passed, and no one lives there.

Mr. Clark asked Mr. Lawhorn if he knew what his father had planned for the other 29 acres. (2) At some point somebody is going to come in and want to put a house on it.

Mr. Lawhorn stated that he was just going to farm it. (2) I wouldn’t think so. Not as long as my father owns it, they won’t.

Mr. Kiphart advised Mr. Hall that the 39 acres back in October 19, 2007 my record has down that there was a split from Marion F. Noggle Revocable Trust to James A. & Jon R. Noggle by quit claim deed for the 39 acres.

Mr. Hall asked for clarification that it was 2007 was the transaction that created the 200 ft. of road frontage on this. (2) There was no variance requested or approved at that point?

Mr. Kiphart clarified that it was 2017. (2) No. They just did it.

Mr. Kirby asked Mr. Lawhorn who owns the ground directly to the east.

Mr. Lawhorn stated that it was Jim Noggle.

Mr. Habig asked Mr. Lawhorn if one guy farmed that entire area back there.

Mr. Lawhorn answered, yes. That’s my parents.

Mr. Clark asked for clarification that Mr. Noggle was east of him. (2) Does he also own the next property?

Mr. Lawhorn stated that the big house is east of him. I think he stays there sometimes but I don’t think it’s his primary residence. (2) No. Galloway owns that.

Mr. Hall asked Mr. Lawhorn when he realized that this property was in violation of the requirements. (2) And you applied for a building permit? (3) Do you know of any other property in the greater neighborhood that is 10 times deeper than it is wide? (4) Wasn’t that a red flag to you?

Mr. Lawhorn answered, I think in April when I got it and signed the contract with the builder to build the house. (2) No. I think in talks with the builder – he deals with this sort of thing all the time and I don’t so we figured it out pretty quick after that, but it was already too late to get on that month’s meeting. (3) No. (4) No. I didn’t really look around at any neighboring properties to much as far as how wide and deep they were. Most of the properties around us are big, not like 10 acres, they’re like 20 or 100 but significantly larger than mine.
Mr. Kirby asked Mr. Lawhorn if Mr. Noggle would be interested in selling him any more footage so he could have the road frontage.

Mr. Lawhorn answered, no.

Mr. Clark asked if Mr. Noggle would swap for the back part of his. (2) That would square you up and not have landlocked property. (3) We’re having trouble because we’ve had these ordinances since 1991 and people keep splitting things and then bringing them to us and wanting us to straighten it out.

Mr. Lawhorn answered, no. (2) No. I don’t think so.

Mr. Hall stated that it seemed to him that you have had at least two people hand you a bag of problems and you end up here.

Mr. Lawhorn agreed.

Mr. Habig stated that it would be different if it had been parceled off back before zoning. Then he’d have a hardship. But the way it is now it’s…

Mr. Clark stated that it was about the same amount of land… the back half of yours and between you and the other house. I think that would leave both properties probably with close to the right frontage. It would make everything easier if he would swap with you.

Mr. Lawhorn answered, yea. I’ve never met him. We mailed him the information to come here tonight and he didn’t show. I’ve never spoken with him.

Mr. Kirby asked Mr. Lawhorn if he would consider asking him.

Mr. Hall stated that he was the guy who created the problem.

Mr. Kirby added… he sold it off that way and did what he wasn’t supposed to do.

Mr. Clark asked Mr. Lawhorn if the front part of Mr. Noggle’s ground was better farmland than the back part of his. Is yours lower in the back or anything like that?

Mr. Lawhorn answered, no. I think it’s pretty much all the same farm ground as far as I can tell.

Mr. Habig asked Mr. Lawhorn for clarification that his parents just owned the 39 acres and don’t own any property to either side.

Mr. Lawhorn answered, no. Just strictly behind me.

Mr. Kirby stated that only if Mr. Lawhorn could buy another 130 ft.
Mr. Clark stated that the trouble is we don’t want somebody setting us up to just keep coming back in for a variance each time.

Mr. Kirby stated that the other guy had plenty of frontage.

Mr. Hall stated that apparently… before you bought the property you knew that you had to have 10 acres. That’s why you made it so deep. (2) But you didn’t at that time know you also had to have the larger frontage? (3) How did you learn about the 10 acre requirement?

Mr. Lawhorn answered, yea. (2) No. (3) Just because I’ve lived in Hamilton County my whole life?

Mr. Habig asked Mr. Kiphart if somebody sells a piece of property like that are they bound on road frontage.

Mr. Kiphart stated that his initial thought was that it was sold to be farmland and not to be a buildable lot which would be ok. That happens all the time. The only issue is when somebody decides they want to build a house on it and it doesn’t meet the requirements.

Mr. Culp stated that at that point it becomes an issue between the buyer and the seller and what’s in that contract which is obviously not something that we can get into here. Depending on what was represented in that contract, did it say that this was a buildable lot? That is something that they would have to look at.

Mr. Clark stated that he was told years ago that you could sell a lot that’s not buildable as a building lot legally depending on the contract and what was stated.

Mr. Kiphart stated that that would be resolved by them, not by us.

Mr. Culp stated if this was just being farmed by somebody it would never be an issue.

Mr. Hall asked Mr. Lawhorn for clarification that this was a lot split and not a subdivision, correct.

Mr. Culp answered, yea.

Mr. Clark asked if he could do a subdivision but then we would still have a landlocked property.

Mr. Culp stated that even for a subdivision it would require a variance because both the resulting lots would have to meet our ordinance and here we have two lots that didn’t meet our ordinance for several reasons.

Mr. Kiphart stated that you couldn’t automatically do a subdivision because it’s an A-2 and not an A-2S.
Mr. Habig asked Mr. Lawhorn if he would consider the board tabling this for 30 days, giving him time to approach this gentleman and tell him what you’ve run into here.

Mr. Lawhorn stated that if they do that then he is not building a house this year because that would push him back that much farther and he would be building a house in the dead of winter and I’m not going to do that. Other than getting completely declined tonight that would be the second worst thing I’ve heard from this. This has already been dragging, not with this deal but other things. I kind of wanted to get building already and we’re waiting. As soon as we walk out of here we’re pretty much be full steam ahead on this house. That was the intention when we walked in.

Mr. Clark advised Mr. Lawhorn that if the board denies him then he can’t come back for a year. If we table it you can go talk to your neighbor and see… I don’t want you to get denied here and then go talk to your neighbor and then find out you have to wait another year because it was turned down.

Mr. Culp suggested to Mr. Lawhorn that he has had two members mention to him about getting tabled, obviously I don’t know how they are going to vote but to me that would set off an alarm that if that moves forward tonight you may not get a favorable recommendation. That’s why they are suggesting that you go get more information.

Mr. Lawhorn answered, yea. Have you ever passed a variance before where it is only 200 ft. of road frontage? Is this the first time it has ever been heard? (2) I wasn’t involved in any of that. I just got a piece of property.

Mr. Habig stated that if the property was divided back before zoning… (2) But whoever did divide it...

Mr. Kirby stated that it was just two years ago.

Mr. Lawhorn stated that he didn’t know if he could reach Jim Noggle. We sent him this to show up tonight, but he didn’t respond or come. So it pretty much never happens? So 200 feet is like a major deal, right?

Mr. Kirby stated that if we give one person permission then you gotta give them all.

Mr. Hall stated that it depends on the circumstances.

Mr. Lawhorn asked if he would be the first.

Mr. Kiphart stated that he didn’t think he would be the first. I can’t say for this board, we have two boards of zoning appeals.

Mr. Lawhorn stated that if this doesn’t go through then he is being punished for something his parents and another farmer dealt with.
Mr. Culp stated that this didn’t have anything to do with punishment. The ordinance is very clear on what is and isn’t allowed. And when people purchase property there is due diligence. So when something like this happens somewhere along the line someone skipped that step. I’m not saying it was you or who. What we have to do is administer this properly for all of Hamilton County to follow those ordinances.

Mr. Habig stated that the board had to abide by certain ordinances that have been put down and that’s one of those things that if you had a hardship, I realize that you do have a hardship, but the fact is somebody divided that piece of ground not giving you enough road frontage.

Mr. Clark stated that the hardship is on the property. Maybe there’s an easement going through from a power line or something like that and you can’t put your house where you want to put it we can grant you road frontage and let you set it back and things like that but the hardship is on the land and what it’s used for not for financial things.

Mr. Lawhorn stated that he understood. Do I need to make a decision on tabling it? Ok. Can I take a second?

Mr. Clark advised Mr. Lawhorn that if it was tabled it would only put you back 30 days into the winter which shouldn’t be the harsh part. You usually get the outside done first anyway.

Mr. Lawhorn asked for clarification. So if it’s tabled, and I go talk to Jim Noggle, and he says “No, I don’t want to sell any more land than I’ve already sold.” then I’ll come back again and we have to go through the whole process again, mailing all the letters, and we come back up here again and you could still say no?

Mr. Kiphart advised Mr. Lawhorn that he had at least tried to find a solution which hadn’t been done before. That could weigh on the board’s decision.

Mr. Habig stated that he would love to see a letter from that gentleman stating the fact that “no, he would not sell you any more property.” (2) If he sold you that little parcel its not going to do any harm to his road frontage. (3) If there is any explanation of why he could not parcel that out I’d love to see it in writing.

Mr. Lawhorn stated that he would have liked it if he had shown up tonight and I could ask him to his face in front of you but he’s not here. Like I said I have never spoken to him before. My parents would have gladly bought his whole property and knocked the house down and farmed where the house sits too but he wasn’t willing to sell it. (2) He’s got a Hoosier Homesteader sign so I don’t know how much acreage he has to hold on to for that.

(3) Mr. Kirby added in writing or he here himself. We know you don’t want to but…

Mr. Lawhorn stated that when Mr. Noggle sold the property to his parents he knew the plan was for me to build out there eventually. My parents knew this when they dealt with him.
Mr. Kirby stated that surely your parents can get a hold of him.

Mr. Habig stated that maybe he didn’t know about the frontage. (2) I would sure like to give you another shot at it with a little bit more information on why it was done that way.

Mr. Lawhorn stated that he lives in Madison County as far as he knew. He just got this house and the property because his mother passed.

Mr. Culp advised Mr. Lawhorn that he would not have to re-do his notice or anything. I think what they are going to do is open the public hearing, close the public hearing, and then discuss tabling it. Because it is done in a meeting and we have said that it is going to happen next month, there are no further notice requirements by you. You would just need to be here next month to answer some questions.

Mr. Lawhorn stated that it didn’t sound like he had much of a choice… so table it, I guess. I feel like there are a lot of tiny little properties that aren’t 10 acres out there.

Mr. Culp stated that anything that was existing as of 1990 was grandfathered because it happened before the ordinance.

With no further comments from the board… Mr. Kirby opened the hearing to the public at 7:31 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… Mr. Kirby closed the public portion of the hearing at 7:31 p.m. Do I have a motion to table it until next month?

**Mr. Habig made a motion to table this for next month’s meeting Wednesday, August 28, 2019 at 7:00 p.m.**

Mr. Kirby seconded. I hope he can get his parents to find out something. We hate to turn somebody down on something like this.

Mr. Hall stated that since the petitioner didn’t until just lately find out that there was a requirement, I would like for him to have as much time as possible to try to make his property in compliance with the ordinance. And I don’t want him to think that we’re telling him to go out and buy property. That may be his solution, but the solution is for him to come up with and present to us to see if it can pass. I want him to have the time to do that.

Mr. Kirby added at least meet with him to see why we couldn’t get it to work.

Mr. Clark asked Mr. Lawhorn to please ask him about trading. I think it would probably be easier to trade with than to buy more from him.

Mr. Lawhorn stated that in order to make it wider then he would have to give up some of his back which is fine because I don’t care about the back but that’s going to probably landlock two little pieces of property. My parents will be landlocked and the top of my 10 acres.
Mr. Hall stated that the solution was up to the petitioner at this point.

With no further discussion… Mr. Kirby called for the vote to table until the next meeting. **5 yes votes… 0 no votes.**

Mr. Kirby continued the meeting with **NBZA-R.V.-0013-07-2019.** This is a requirement variance concerning subdividing an existing 20 acre parcel into two parcels – one with 3.0 acres for building a new single family residence and the other with 17 acres; zoning ordinance requires 10.0 acres for residential building. Location: **22489 Prairie Baptist Road, Noblesville, IN.** Would you please step forward and present your case?

**Clint Flanders,** of 13699 Strawtown Avenue, Noblesville 46060, stated his name and address for the record. I’m Steve’s son. We’re seeking a variance that would allow us to divide a 3.0 acre parcel off an existing 20.0 acre parcel for the construction of a new residence. We don’t need 10 acres for our house construction, and it would unnecessarily take away farm ground from my father that he doesn’t really need to give up. And I’d rather not pay the taxes on the 10 acres. It’s family ground. It has been in the family for a number of years. The approval of the variance wouldn’t alter the well-being of the surrounding community in any way. The property adjacent to the variance will not be affected as it is farm ground as well. It wouldn’t affect the property across the street in an adverse way as most of the lots in the community are of similar size. The strict application of the zoning requirement would require us to obtain more land than needed for our project and take away farm ground from my father and it just doesn’t seem necessary.

Mr. Culp stated that it was his understanding that the person who he was purchasing the property from was here. (2) Could we have him step forward and say on the record that they have authorized this petitioner?

Mr. Flanders answered, yes. (2) Yea.

Mr. Culp asked the owner to state his name. (2) Your address. (3) And you consent to this?

**Steve Flanders. (2) 22225 Prairie Baptist Road, Noblesville. (3) Yes.**

Mr. Habig asked Mr. Clint Flanders… when you say cutting out 10 acres would take acreage away from the farm… why can’t you divide it into your 10 acre lot, build your house, and still farm the back end of the property?

Mr. Flanders stated that they could do that. I’m a youth pastor and have been for a long time. There are circumstances, though we’re not foreseeing it and hope it wouldn’t happen, hopefully this would be our home for a long time but if something happened to where we would have to move somewhere else and we had to sell the property then my dad has lost 7 acres unnecessarily.

Mr. Hall asked Mr. Flanders to repeat why requiring 10 acres for this project is an unnecessary hardship in the use of the property. (2) So, your hardship is a supposition that could possibly happen in the future?
Mr. Flanders stated that in his opinion… we don’t need the 10 acres. If something were to happen where we would have to move someday and sell that piece of property, then my dad would end up losing that farm ground. (2) Possibly, yes. Most of the other lots around there are of a similar size. There are a couple of 5 acre lots but most of them are 3 acres and some of them are less than that.

Mr. Habig asked if there was a subdivision across the street.

Mr. Kiphart stated that it was not a subdivision. They were probably all done prior to zoning.

Mr. Kirby stated that they had gotten a notice about the drainage in that corner. The surveyor’s office, some of them are kind of partially opposed to it. Did you know that? (2) Is there a regulated drain that goes through there?

Mr. Flanders stated that he didn’t read into it that they were opposed to it. They were just more concerned. Some of those aerial photos were taken when there was nothing planted at all. If there is stuff planted in there like grass and yard and things like that it is not going to drain that big. Also, we’d be moving around the dirt a little bit. We’re aware of it. My father’s aware of it. My brother who is just to the south of that lot is aware of it too and he deals with that stuff all the time in his business. (2) They’re all private tiles.

With no further questions from the board… Mr. Kirby opened the hearing to the public at 7:43 p.m. and invited anyone who wished to speak for or against the petition to please step forward.

Chad Flanders stated his name for the record. I’m Steve’s son and Chad’s brother. The main reason why we are here is… this property had been in our family for over 100 years. What happened was when my grandfather passed away, I was awarded 3 acres from my grandfather which was grandfathered in from a family clause I believe you guys have. Is that correct? So this 20 acres was actually given to my aunt. Yes, it technically changed hands, but it did not change in our family. So that is the whole just of why we were trying to get the 3 acres appropriated for this. It was never out of the Flanders family.

Mr. Hall asked Mr. Flanders when his dad acquired the property.

Mr. Flanders answered, 2017.

Mr. Steve Flanders stated that when his parents passed his sister got the property through the inheritance. I was able to purchase it to square up my piece of property and then also to make a spot for Clint to build his house.

Mr. Kirby asked Mr. Chad Flanders for his address.

Mr. Flanders responded… 22477 Prairie Baptist Road.

With no further questions from the board… Mr. Kirby closed the public portion of the hearing at 7:45 p.m. Do I have a motion?
Mr. Hall moved to approve as presented.

Mr. Kirby seconded.

Mr. Hall stated that he moved to approve it but has very serious problems with it. I really understand this family’s desire to keep this property all within the family and I admire that but for the life of me I cannot come up with a hardship, an unnecessary hardship in using this property that would require it to be less than 10 acres. Mr. Clint Flanders said that the hardship might be that someday it could possibly have a hardship if they went to sell it. I believe that there are alternatives. This is exactly in the crux of why the 10 acres was required in the ordinance so we didn’t come up with small properties like this. Basically the reason that they want it is because he doesn’t need more. Half of the people buying property around here could say the same thing. It really hurts me to have to do something that would prevent them from doing it the way they want but I cannot find any hardship that justifies less than 10 acres. (2) Had his dad of owned the property since zoning went into effect he would have been granted a grandfathered clause to parcel out 3 acres. That’s why I asked about when he purchased the property, but the present owner acquired the property since zoning went into effect, so the 10 acre requirement is valid for him.

Mr. Clark stated that it doesn’t sound like the 3 acre lots were arranged before the mother died.

Mr. Kirby stated that if he cash rents the property back to his dad it should more than pay for the taxes.

Mr. Hall stated that he felt that seemed to be a very reasonable alternative in maintaining our 10 acre requirement and keeping the property within the family.

Mr. Kiphart stated that they could also record something with that 10 acre parcel that says the dad has the right to farm it and work that out with somebody if he would have to sell it.

Mr. Hall stated that he could also give his dad first option to purchase. There are other alternatives that they could work out with their attorneys that would maybe not be as desirable for them but would still meet our ordinance.

Mr. Kiphart added… and get them what they wanted in the end for him to be able to build there. There can be a commitment made on that 10 acres that his dad be able to farm it even if the property is sold, and that has been done before.

Mr. Habig stated that they could just build a house on the 20 acres and be done with it.

After minimal comment… Mr. Kirby called for the vote. 1 yes votes… 4 no votes. Mrs. Dean voted yes. Your variance is denied.

Mr. Steven Flanders asked for clarification that the board has the right to keep them from doing what they want to do.

Mr. Kiphart answered, if it doesn’t meet the requirements of the ordinance.
Mr. Clint Flanders asked Mr. Hall for clarification. You moved to approve it as presented, right? (2) That you were in favor of it? (3) The way it came across is like… I’m gonna approve this—I got some reservations about it but then it seems like you just picked it apart.

Mr. Hall answered, yes. (2) No. I just moved to approve it so we could have a discussion. Our rules indicate that we’re supposed to make all of our motions in the positive. (3) I regret that that comes across that way but…

Mr. Kirby stated that that’s the way we have to do it.

Director’s Report: No report.

Legal Counsel Report: No report.

The next BZA meeting will be Wednesday, August 28, 2019.

With nothing further to come before the board… Mr. Kirby asked for a motion to adjourn.

**Mr. Clark moved to adjourn.**

Mr. Habig seconded.

With no further comments… Mr. Kirby called for the vote. **5 yes votes... 0 no votes.** Meeting adjourned at 7:56 p.m.

______________________________
Gerald Kirby, Vice Chairman

Date: ________________________

______________________________
Linda Burdett, Secretary

Date: ________________________