Mrs. Johnson called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 7:03 p.m.

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

Declaration of Quorum: Mrs. Johnson declared a quorum with four out of five members present.

Guests: See sign-in sheet.

Communications/Reports: Nothing to present.

Approval of Minutes: Mrs. Johnson stated that they had two months to approve. The first is from June 26, 2019. Could I have a motion please?

Mr. Habig made a motion to approve.

Mr. Hall seconded.

With no comments or corrections… Mrs. Johnson called for the vote. 4 yes votes… 0 no votes.

Mrs. Johnson identified the second set of minutes from July 24, 2019. Could I have a motion to approve?

Mr. Habig moved to approve.

Mr. Clark seconded.

With no comments or corrections… Mrs. Johnson called for the vote. 4 yes votes… 0 no votes.

Old Business: Mrs. Johnson began with NBZA-R.V.-0012-07-2019 a requirement variance. It was tabled at the July meeting for additional information. It is concerning reducing 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, Indiana. Mr. Lawhorn, if you would come forward and from the beginning just tell us about your petition in its entirety. I was not here at the last meeting and if I don’t hear it all I can’t vote and then you’re down to three board members to vote.

Mr. Lawhorn stated that they bought the property on contract about two years ago but we finally made it official in March or April of this year. My parents bought 29 acres and I got 10 acres.
Originally it was a 39 acre property. I took all the road frontage that was on that property. It was shaped like a big capital “P.” I knew I needed 10 acres to build. I took the 10 acres in front and that landlocked my parents behind me. They don’t mind and I will give them an easement. My intentions were to build on my 10 acres then I found out we had to have 330 ft.

The last time we were here I was encouraged to go talk to the property owner next door to see if he would be willing to sell some more land so I could get my 330 ft. that way. I did and he wrote letters to everybody stating that he did not want to sell any more land. No one showed up at the last meeting to protest me building on this 10 acre parcel and there were no objections from any of the neighbors. His family has owned the property since 1901 and they don’t want to sell so that’s about it.

I know there are other properties out there that don’t quite meet the 330 ft. or they don’t meet the 10 acres.

Mr. Hall asked Mr. Lawhorn if he saw any other solution to making this work.

Mr. Lawhorn answered, no. If Mr. Noggle had been willing to sell another acre, I would have been happy to buy it but he’s not. The property that butts up to my west is a little two acre piece of property that has a pole barn and a little brick ranch on it now. They can’t sell me anything so it would have to come off the Noggle farm to my east. It is pretty much up to the board to make a decision for me.

Mrs. Johnson asked for clarification that he has owned this for two years. (2) When did you buy it on contract?

Mr. Lawhorn answered, no. Well yes. We bought in on contract two years ago but didn’t officially put it in my name until March or April. (2) I don’t remember the exact date. It was at least two years ago.

Mr. Habig asked Mr. Lawhorn if his parents ever planned on building in the acreage back behind his 10.

Mr. Lawhorn answered, no. They’re not moving. They just completely remodeled four years ago. If they did, it would be to Arizona not here.

Mr. Hall asked for clarification. When the property was purchased from Mr. Noggle that was you and your parents together or just your parents? (2) So that was the plan from the beginning?

Mr. Lawhorn stated that it was just his parents with the intentions of him taking 10 acres to build. (2) Yes. It wasn’t until April when we were going forward with our builder that I realized that I needed 330 ft. I took all the road frontage that we owned to get as much as I could.

Mr. Clark asked Mr. Lawhorn if he had talked to his father about acquiring a little more acreage and him still being able to farm it.
Mr. Lawhorn stated that whatever isn’t his house or yard his father will farm. As far as purchasing more land behind me… I don’t want any more acres. The only acres I was interested in was to get my 330 ft.

Mrs. Johnson asked Mr. Lawhorn where his parents’ house was.

Mr. Lawhorn answered, 21189 Durbin Road. Directly south of me on a different road.

Mr. Hall asked for clarification that he didn’t have a problem with having such a narrow but very, very deep property.

Mr. Lawhorn stated that he probably wouldn’t use much more than three acres of it anyway. I intend to put the house 400 ft. off the road. I’m going to have a decent size front yard and a decent size back yard and then the rest will be in crops. The width is fine. It’s a lot wider than the property I live on right now.

Mrs. Johnson asked Mr. Lawhorn if his parents would access their property through his property.

Mr. Lawhorn stated that they can access through his property or Mr. Noggle’s because they farm his property too. They could come through my yard if they wanted to.

With no further questions from the board… Mrs. Johnson opened the hearing to the public at 7:14 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 7:14 p.m. Do we have a motion on this petition?

**Mr. Habig moved to approve with the condition that they do record a written easement through that property to the back.**

Mr. Clark seconded.

Mr. Habig stated that he didn’t particularly like the narrow lot but if neither person on either side is going to give and they truly want to build out there I don’t see any other way around it.

Mrs. Johnson stated she didn’t either.

Mr. Clark stated that if he was buying a piece of landlocked property, and if nobody would sell you could go through the court and the court will order an easement. If that was happening, we wouldn’t have the 330 ft. road frontage either.

Mrs. Johnson stated that he needed 130 ft. more of road frontage when they bought it from Noggle – that didn’t happen. Now that is not an alternative anymore. It definitely is a hardship.

Mr. Hall stated that the person who is most responsible for this which is Noggle, is the one least likely to help find a solution. So we’re backed into being the “bad guys” if we follow our ordinance
so that these people can’t have a home there. It really t’s me off that we’re supposed to break our rules so that we can have a solution for them. It is really hard for me to find a hardship here. A hardship that was created by the parties somewhere along the line that were involved here when the ordinance was in place and when everybody was on notice of what it should be. I feel real awkward if we approve it because we could have a hundred people come in here and say the same thing, and we have had people come in and we’ve turned them down, too. I just hate for these people to have gotten this far in the process and find out they can’t build a home there. I also can envision somewhere down the line somebody is going to come in and somebody is going to want to buy the parents property and somebody is going to be in here asking for another exemption because they want to build on a property that doesn’t have any road frontage. (2) Yes. It is just the worst of all situations. I suspect there is a [sentilla] scintilla of a hardship here because of the hardship of people using this cause it can be used as a residential property. The difficulty was self-created and I would sound horribly callus if I said “Well, it’s their problem, not our problem.” (3) If Mr. Noggle would exchange property.

Mrs. Johnson added… and use the easement to access it. (2) I think the only thing they could potentially do to keep it as a 20 acre farm is to put some of the back part of it in with Mr. Noggle and then expand the road frontage a little bit. (3) He wouldn’t be losing any. It sounds like he was very addiment on keeping a 20 acre homestead.

Mr. Clark stated that they did discuss that at the last meeting. Did you look into that?

Mr. Lawhorn stated that he did. When I talked to Mr. Noggle we talked about that too and he does not want to give up any more of his 20 acres. He doesn’t want to change the shape. He’s happy with the way things are now.

Mr. Clark stated that he was frustrated. How do we get the message out to the public not to do this?

Mr. Hall stated that he saw Mr. Lawhorn being the victim.

Mr. Clark stated that if they could get the information out then maybe we wouldn’t have as many victims because they would know not to do it.

Mr. Culp stated that what they needed to remember was that creating a lot by itself wasn’t the problem. It was creating the lot with the intention of building. If he just wanted to farm it we wouldn’t be here.

Mr. Hall stated that when push come to shove, he would say there is a [sentilla] scintilla of a hardship that these people can’t use the property as it’s zoned. I am deeply disturbed that it seems to be self-inflicted whether on purpose or not on purpose is irrelevant. I will vote in favor of the motion with regret.

Mr. Culp reminded the board that their decisions don’t set precedents. Each and every parcel is unique and that’s why you guys come in and look at every one of them.
After minimal comments… Mrs. Johnson called for the vote to approve NBZA-R.V.-0012-07-2019 with the condition of an ingress/egress easement, a permanent easement, to run with the land. **4 yes votes… 0 no votes.** Happy building.

New Business: Mrs. Johnson continued with **NBZA-S.U.-0014-08-2019** a Special Use. This is concerning allowing the boarding of horses and a horse training facility. **Location: 28146 Ditch Road, Sheridan, Indiana.** Would you please state your name and address for our record?

Dave Coots, of 255 East Carmel Drive, Carmel, stated his name and address for the record. I am with the law firm of Coots Henke and Wheeler. I am here this evening representing the applicant, Amanda Hale, who is seated in the middle of the front row. She is with her father, Dave Martin, and Cassidy Martin is also seated with Ms. Hale. We would also ask that the board consider **NBZA-R.V.-0016-08-2019** the developmental standards variance. The special use application is to permit the property to be used to board horses and train those boarded horses if the owner so chooses. It is not strictly for the purposes of boarding but rather boarding and training.

The first sheet is the aerial photo showing the site. The second sheet is a photo of the barn. The barn itself is 20,000 sq. ft., 160 ft. long and 125 ft. wide. This page shows the arena used for horse training and storing hay from time to time. Along the top and bottom of the diagram are the ten horse stalls that are used to house the horses that are being boarded and trained. The third page primarily relates to the variance. It shows the stone drive off of 281st Street and the parking lot that measures 175 ft. by 125 ft.

The property is zoned A-2. It sits on the northwest corner of 281st Street and Ditch Road. Ms. Hale’s house is marked with a yellow arrow. Her dad, Mr. Martin, lives immediately to the north. She and her father and a third individual operate the training facility. Only the owners of the horses being boarded or trained come to the facility. The maximum number of horses to be trained is 20. That is also shown by the number of stalls available.

There will be no additional building constructed as a result of this special use. The parking area is presently gravel and it will not be curbed. The driveway is somewhat dictated by Mr. Martin’s tractor-trailer business of loading and transporting hay from his farm, his father-in-law’s farm, and his uncle’s farm across the street and/or to the south. Mr. Martin harvests that hay, stores it in the barn, and when needed, it’s transported to those who purchase it.

Requiring the parking area to be paved would create an undue hardship and make it more difficult for the horses that have been shod to negotiate the hard surface in ice, snow, and wet weather. It also eliminates the permeability of the surface to absorb rainwater and, we believe, it would have a resulting effect on the existing drainage. And the same with the curbing requirement.

The horses brought in for training remain on-site until their training is concluded. They do not come and go. Owners cannot bring horses in for the day and use the arena and then take them away. There is a turn over. There isn’t always the maximum because of the change over in the training process, and it depends on each individual owner’s interest in the degree to which the horses become trained.
There is electricity and water servicing the building. However, there is no restroom facilities. All of the employees are residents of the property.

There are no deliveries to the property from outside sources. The feed is either grown on the property and stored there or it is obtained by the applicants at the elevator and then brought back to the barn by Ms. Hale or her father.

At the plan commission they asked about the manure management program. We have developed a manure management plan taken from Mrs. Davis’s comments from the soil and water conservation department as to what she wanted to have done in regards to manure collection / storage / and disposition. Briefly this plan provides that the manure will be removed from each of the stalls daily and placed in a manure spreader that is large enough to accommodate a 3 to 4 day accumulation of manure depending on the number of horses. If it is necessary to store manure because of weather, it will be deposited on a hard surface collection area 30 ft. from the northwest corner of the barn. That collection area will be bermed in order to prevent any of the collected manure from escaping the compound area. In the event manure is accumulated in this containment area it would then be disposed of by loading it onto the manure spreader and spreading it on the 50 acres that Mr. Martin and his daughter own, or on approximately 200 acres of farm ground owned by family members to the southeast and to the east. A portion of the ground is row cropped and is accessible to spread manure November through March.

Prairie Creek runs through their properties and there will be a 30 ft. buffer alongside the creek of grasses and bio-swale material in order to preclude any run-off from the spread manure or manure in the fields by the horses themselves as they are periodically put out to pasture.

There is not an outside arena. However, there are three outside areas that are fenced.

We believe that boarding and training horses is a typical agricultural activity. It is very common within the county to board and train horses in facilities such as this and there are several within a two mile radius.

We do not believe that traffic in the area will be impacted by this proposed use. A lot of the road traffic is farm implements. There is a winery to the east of this parcel that enters off of Ditch Road. It has outdoor parking for their winery business. We do not believe that we will impact the traffic use of the adjoining any more than neighboring uses.

The adjoining properties are generally large agricultural uses that have similar structures to the barn that was constructed on this property in 2017.

The plan commission voted unanimously to approve our proposed use. This does meet the comprehensive plan. This does retain the rural nature of the community. It does utilize agricultural land for a minimally invasive commercial use.

As to the findings… we do not believe leaving the parking area as a gravel surface as it exists today will not have a negative impact on the public health, safety, morals, or general welfare of the
community. The boarding and training of horses is a very common agricultural activity. And paving that amount of surface coverage would impact sheet drainage and would impact the safety of the animals.

We do not believe that the grant of the variance will have any negative impact on adjoining properties. The drainage is from our place, from the south side of the barn, to the northwest, to Prairie Creek and then it flows southwest. It would remain the same drainage system as it presently exists.

We would ask that you approve the special use application and the developmental standards variance. We are prepared to answer any questions that may come up.

Mr. Habig stated that that was a pretty thorough presentation.

Mrs. Johnson agreed.

Mr. Clark asked if that was a commitment of 20 horses maximum. (2) Several times you referred to the driveway in and it sounded like the driveway is remaining the way it is? (3) In the hand-drawn picture, the driveway is as wide as the building and in the aerial view the driveway is more like a driveway with a wide parking area up near the building. Will the driveway be as wide as the building?

Mr. Coots answered, yes sir. (2) Correct. (3) There will be no change to the existing driveway. It is that wide and then narrows down to where it accesses 281st Street.

Mr. Hall stated that part of the confusion comes from the highway department’s letter who talks about commercial driveway width and they recommend that it be reduced to 24 ft. Mr. Kiphart, I don’t know that we have an ordinance that addresses that. (2) So we will not address that then?

Mr. Kiphart stated that that would be determined by the highway department and the county commissioners. Once it goes from personal use to commercial use, they will have to get a road cut permit from the highway department. (2) No.

Mr. Hall stated that he appreciated the manure management plan. Does that plan have the blessing of either the surveyor or the soil and water department?

Mr. Coots stated that it was sent to them today.

Mrs. Burdett stated that she had just gotten it today and by the time she left the office we still had not gotten a response.

Mr. Coots stated that Ginger Davis, of soil and water, wrote a report that is in the packet. The plan that was prepared is lifted from the comments she made in her letter. We attempted to address all of her concerns in the collection, storage, and disposition plan.

Mr. Hall stated that they got comments from both the surveyor and from soil and water about the
management plan. Mr. Kiphart, who has jurisdiction over that?

Mr. Kiphart stated that in the end it would be the surveyor.

With no further questions from the board… Mrs. Johnson opened the hearing to the public at 7:57 p.m. and invited anyone who wished to speak for or against the petition to step forward. Please state your name and address.

**Charles Davis** stated his name for the record. I own property at 1830 West 281st Street adjacent to Ms. Hale. I am not opposed to what she wants to do with her property. It’s her property. This started as something for their personal use and now they want to turn it into a training and boarding center. How many horse trailers are going to be parked there? Since they want it as a training and boarding center, does this mean that the individuals are going to ride their horses where ever they want to? The reason I am saying that is that her father seems to think it is ok to ride his horses through everybody’s property. I have asked him repeatedly for the last four to five years not to ride through my property next to him but also the property that I own two to three miles east and west of him. I have put up no trespassing signs on all of my properties but to no avail. I have talked to the neighbors and they have also put up no trespassing signs and nothing seems to stop them from riding the horses anywhere they want. There is approximately 30 acres adjacent that her father owns. It would be a good place to ride horses or in the arena. The places that I mow are not the smoothest but horse hooves that are 2, 4, and 6 inches deep doesn’t make the ride any smoother. My parents always taught us that if you don’t own the property, please stay off of it. Thank you.

**John Miller, of 28153 Ditch Road,** stated his name and address for the record. My wife and I own the property right across the street from Amanda Hale and Dave Martin. We have been there for 10 years. We don’t have any concerns with the proposal. From a personal standpoint I’m glad to see the continued agricultural use of the property. I enjoy seeing the horses walking around rather than just hay, or corn, or soybeans, or other uses. They are beautiful to look at.

**James Purciful** stated his name for the record. I live next door to Mr. Davis. I do not object to the whole thing. I just have a statement I want to make. Why do you build something and then ask for permission? I guess it’s easier to say I’m sorry than it is to ask permission. Thank you.

Mrs. Johnson asked Mr. Coots and Ms. Hale if they would like to address the questions and the concerns that were brought up as far as the number of horse trailers and riding on other properties.

Mr. Coots stated that there will not be any horse trailers kept or stored on the property other than what Ms. Hale owns. If I take my horse there for boarding, I unload my horse and take my trailer back home or wherever I keep my trailer. I do not bring my trailer to and from the barn on weekends to take the horse away or anything like that. If I do come to the training facility to either observe the training or to participate in the training I simply drive a vehicle.

As to the riding of horses and where they are ridden… the training process will occur within the arena in the barn and/or on the property owned by Ms. Hale or her father immediately to the north
of them. There will be no off-site training of horses. As to Mr. Martin riding horses where – he is here and he has probably heard the admonishment and knowing the damage he may be causing if he’s doing it and/or he is not been given license to do that I would suggest that he will take that to heart and not do it.

As to the comment on the construction of the barn and then asking for permission to do so… the barn when built in 2017 was issued a building permit. It is only the use of the barn that has evolved to bring us here for the special use that we seek.

With the change in use we will have to re-visit with the highway engineer for the access point and either narrow it or expand it.

Mr. Hall asked Mr. Coots if the petitioner built the building or did the petitioner purchase it already built.

Mr. Coots stated that it was constructed by Mr. Martin. Mr. Martin’s work has been in woodworking. He has also worked for building contractors and he is capable of building barns and did.

**Nancy Davis** stated her name for the record. I am the property directly west and adjacent to Ms. Hale. As we said… we have no problem with their property. They can do with it what they want. There is a little bit of confusion. I know you stated, Mr. Coots, that there are no trailers there. We’ve seen 10 to 15 trailers there all at one time. We don’t have a problem with it but he is saying there are no trailers there. It may be for some special occasion but there are time periods when there are a lot of trailers there. I just want to clarify what exactly that is. We just want to make sure they’re not riding on our property. Thank you.

Mrs. Johnson asked if when the trailers were there, were they there for a long time or were

Ms. Davis stated that it would be for an evening event maybe three or four hours.

**David Martin, of 28244 Ditch Road,** stated his name and address for the record. I am Ms. Hale’s father. As far as the trailers… there are times when we might have a bunch of friends come over and we just all bring our horses and play, train, or whatever but then those trailers leave. I have a semi-trailer that I use for hay that stays in that driveway. That is the biggest reason for the length of the stone. I can’t come off of Ditch Road and get my semi tractor-trailer turned. That’s why I created the rather large parking area so I could get turned around and backed up. A lot of times I might even have two or three semi-trailers there or wagons with hay. Hay is how I make my living anymore. As far as the horse trailers… I have a living quarters, we have another living quarters, we have a couple of stock trailers. We do have other stock on the farm. We have been running livestock for years. At this stage now, we kind of want to play with horses.

With no one else stepping forward to address the board… Mrs. Johnson closed the public portion of the hearing at 8:10 p.m. Do we have a motion on the special use?
Mr. Habig made a motion to approve the special use with the conditions that the maximum number of horses would be 20, and that they come to an agreement about the manure management either between the county surveyor or soil and water conservation, and no long-term storage of any non-owned non-resident owned horse trailers.

Mr. Hall seconded. Mr. Kiphart, as this goes to a commercial use does the state not require that there be restroom facilities?

Mr. Kiphart answered, they will have to go to the state for at least a Rule 19 change of use and that is when the state would look at it to see if that’s needed. If they did, it would have to go back to the health department. They will need a commercial driveway permit from county highway. They will need to submit a change of use application to our office and the state. That is basically their permit. The other thing is, are they going to use any water at all? If they do, the water has to go into the septic system and then that would have to go to the health department to make sure they have a large enough septic system.

Mr. Culp asked that the verbiage to condition number 3 be phrased “no long-term storage of non-resident owned horse trailers”.

Mr. Hall re-seconded the motion.

Mr. Clark stated that the horse riding in somebody’s yard is more of a civil case. We don’t do enforcement or anything. No one will be riding on the right-of-way or road, correct? Only the property? (2) As long as they meet the requirements on a special use, is it required to be passed?

Male voice answered, correct.

(2) Mr. Culp answered, yes. A special use is a use that is permitted but we want to review it before it actually takes place.

Mrs. Johnson stated that she thought it would be a great addition to the community.

After minimal comments… Mrs. Johnson called for the vote. 4 yes votes… 0 no votes. Your special use is approved.

Mrs. Johnson moved on to NBZA-R.V.-0015-08-2019. That particular petition has been withdrawn.

Mrs. Johnson then asked for a motion on NBZA-R.V.-0016-08-2019.

Mr. Clark moved to approve.

Mr. Habig seconded.

Mr. Hall stated that he was highly in favor of gravel in these rural areas.
Mrs. Johnson added… he’s right. Horses don’t get along well on solid surface.

With no further comments from the board… Mrs. Johnson called for the vote. 4 yes votes… 0 no votes. Your variance is approved. Good luck with your project.

Director’s Report: No report.

Legal Counsel Report: No report.

Mr. Hall stated that at the last meeting we had someone who was very disturbed because I made a positive motion. They thought I was going to be in favor of it. And then I voted against it. They were very upset about that. I went back and checked… Mr. Culp if you would go back and check… I went through some of my material and at our meeting on October 20, 2009 Randy Leerkamp had indicated that if we had a positive motion that didn’t pass that we should remake the motion afterwards in the negative and then turn it down. Would you please check and see if there is anything to that?

This is the quote from the minutes that says… (this is Mr. Leerkamp talking) “from this point on if there is a positive motion that does not pass, I would request that someone make a negative motion so that we could have an affirmative decision by the board.”

Mrs. Johnson stated that that is confusing for people.

Mr. Hall asked Mr. Kiphart if he was correct that they have approved virtually every request to have a gravel driveway. (2) Should we change our ordinance? (3) I think we have all consistently said that is a very rural characteristic and so maybe that is a requirement we don’t need to have.

Mr. Kiphart answered, right. (2) Yes. (3) Several of them need to be changed.

Mr. Hall asked Mr. Culp for clarification. You said in your exchange with Mr. Clark – that if they meet all the qualifications for a special use, we are required to approve it. (2) My understanding has always been that yes, the courts have said that, but… our ordinance says “may.” It’s discretionary and our ordinance has never been overturned on that. (3) So don’t we have the liberty to exercise our discretion? (4) Would you please review our ordinance because I think our ordinance is discretionary?

Mr. Culp answered, right. (2) To my knowledge that has never been in front of the court. (3) Generally, the courts are going to use different level of strictness when they are looking at a special exception. A special exception is a permissible use. We just want to have it reviewed so we can add certain limits. So they are going to view that in that light. If the person meets each of the requirements, we are supposed to approve that use. (4) Our ordinance also uses a higher standard for a special exception. Under the statute it is a practical difficulty but expressly states we can use a stricter standard.

The next BZA meeting will be Wednesday, September 25, 2019.
With nothing further to come before the board... Mrs. Johnson asked for a motion to adjourn.

**Mr. Hall moved to adjourn.**

Mr. Clark seconded.

With no further comments... Mrs. Johnson called for the vote. 4 yes votes... 0 no votes. Meeting adjourned at 8:28 p.m.

______________________________
Kristin Johnson, Chairman

Date: ______________

______________________________
Linda Burdett, Secretary

Date: ______________