

Minutes

Clark County Board of Zoning Appeals

Regular Meeting ~ 2:00 pm
Thursday, February 27, 2020

Springview Government Center
3130 East Main Street
Springfield, Ohio 45505

Mrs. Jerri Taylor, Chairperson of the Clark County Board of Zoning Appeals of Clark County Ohio, called the meeting to order at 2:00 pm. and asked for the Roll Call.

Present For Roll Call: Mr. Tom Duffee, Mrs. Jerri Taylor, Mr. Rick Smith and Ms. Greta Wilt.

Absent For Roll Call: Mr. Paul Hazlett and Ms. Janie Riggs.

Also in Attendance: Mr. Allan Neimayer, Mrs. Jennifer Tuttle, and Ms. Rachel Clime of Clark County Community and Economic Development.

Approval of the January 30, 2020 Minutes

Motion by Mr. Smith, seconded by Mr. Duffee, to **Approve** as presented

VOTE: **Yes:** Mrs. Taylor, Mr. Smith, and Mr. Duffee.

No: None.

Abstain: Ms. Wilt.

Motion Carried.

Chairperson Taylor explained how the meeting would be held.

Chairperson Taylor asked Staff to present the first case.

Case #BZA-2020- 03 ~ Property Owner/ Applicants: Secured Storage LLC, Christopher Wilkey ~ Location: 11725-11825 New Carlisle Pike; Bethel Twp. ~ Request: A variance to Chapter 5, Section 501.02 to allow for gravel parking instead of asphalt parking for expansion of an existing outdoor self-storage business

Mr. Allan Neimayer, Senior Planner, stated the subject property is located at 11825 New Carlisle Pike in Bethel Township and consists of 6.0 acres. The property is zoned I-1 (Industrial District). The Applicant would like to expand the existing area for outside self-storage as shown on the plot plan. Zoning regulations require all parking areas, except for agriculture, single- and two-family residential uses, to be of a paved surface. Therefore, the Applicant has submitted this variance request to allow this planned expansion to have a gravel parking area. Mr. Neimayer reviewed slides of the area and of the site and noted the comments from the County Engineer's Department.

Chairperson Taylor asked part of the property is black top and over on the other side its gravel? Mr. Neimayer identified the areas of the site that are paved and are gravel.

Chairperson Taylor opens the public Hearing at 2:06 pm. and asked if the Applicant would like to speak at this time.

Christopher Wilkey, Applicant, 1800 St Rt. 718 Troy, OH, was sworn. Mr. Wilkey stated that this area (the area of the property in question) is used by the City of New Carlisle swimming pool across the street for parking, and they have used it for many years. There has never been any run off with water. He stated you would have a problem with run off if you had asphalt, but not with gravel.

Chairperson Taylor asked, so it i a grassy area now? Mr. Wilkey responded its grass and gravel.

Mr. Duffee asked is there already an access to that area? Mr. Wilkey responded yes its graveled. The pool has used this area for parking for years.

With no further questions for the Applicant, and with no one else in the audience to speak on this application, Chairperson Taylor closed the public hearing at 2:09 pm. and asked for Board discussion.

Mr. Smith stated looking at the rest of the property and what he plans to do I do not see a problem with it. There is already gravel there, and I would assume he has the soil in-between the new and existing so even with a heavy run off it would not cause a problem as long as he adheres to the request of the county engineer.

Mr. Duffee asked, so the proper sequence is if we approve this and it then goes to the county engineer? Chairperson Taylor responded correct.

Ms. Wilt added, I agree with Mr. Smith as long as the Applicant abides by the recommendations of the County Engineer.

Chairperson Taylor added the way I see it is, it's already a grassy area for a similar purpose, parking. I agree with the County Engineer's Department you do not need another access. I see it as a good use.

Mr. Neimayer added, it sounds like you are all in favor, subject to the County Engineers' comments. It would help Staff, and benefit the Applicant, that you include a condition that the required zoning certificate not be issued until those issues of the County Engineer's Department have been resolved.

Hearing no further discussion from the Board, Chairperson Taylor asked for a motion.

Action on Case #BZA-2020- 03 ~ Property Owner/ Applicants: Secured Storage LLC, Christopher Wilkey ~ Location: 11725-11825 New Carlisle Pike; Bethel Twp. ~ Request: Variance to Chapter 5, Section 501.02 to allow for gravel parking instead of asphalt parking for expansion of an existing outdoor self-storage business

Motion by Mr. Smith, seconded by Ms. Wilt, to **Approve** subject to no zoning certificate to be issued until the County Engineer's issues have been resolved.

VOTE: Yes: Mr. Smith, Ms. Wilt and Mr. Duffee.

No: None.

Motion Carried.

Chairperson Taylor asked Staff to present the next case.

Case #BZA-2020-04 ~ Property Owner/ Applicant: Arthur Malloris Jr. ~ Location: 10816 Musselman Rd.; Bethel Twp. ~ Request: Variance from Chapter 2, Section 201 to reduce the minimum lot size from 1.0 acre to 0.849 acres and minimum frontage from 150 ft. to 122 ft., to create a new single-family parcel.

Mr. Neimayer stated that the subject property is located at 10816 Musselman Road and consists of 2.12 acres. The property is zoned A-1 (Agricultural District). The Applicant would like to split off the east side of the parcel to create a new single-family parcel. Because this "new" parcel would not comply with the minimum lot size or minimum frontage, the Applicant has filed this variance request. Mr. Neimayer referenced comments from the County Engineer's Department regarding elevation changes along this section of Musselman Rd. They are concerned with safe site distance coming onto the road.

Mr. Neimayer also commended on a 3rd variance that is needed for the side yard setback from the "new" lot line. The proposed distance is approximately 16 ft. while the minimum requirement is 25 ft.

Mr. Smith asked, Mr. Neimayer you said the health department had no issues. Is that an existing leach field? Mr. Neimayer responded, no that is the leach field for the VFW.

With no further questions for Staff, Chairperson Taylor opened the public hearing at 2:19 pm. and asked if the Applicant wished to speak at this time.

Arthur Malloris Jr., Applicant, 10816 Musselman Rd was sworn in. Mr. Malloris stated that Mr. Neimayer answered my questions on the 3rd variance that we did not know about until we came in today.

Chairperson Taylor stated we have several issues here we need to address, and it sounds like the county engineers have issues as well. My suggestion would be to Table this and give you some time to work these things out and come back with additional information. Is that something you would want to do? Mr. Malloris responded, I do not think that is something we are able to do. Mr. Health, potential buyer, sitting in the audience states, "I think we are fine for right now." Mr. Neimayer asks Mr. Health to step to the podium.

Ben Health, 5433 Honeyleaf Way, was sworn in. Mr. Health stated he am a resident of Montgomery County. Looking at the lot split and the house I am wanting to build, I know there has to be 60 ft. between the lot lines. (25 ft. and 35 ft.). It would leave me 8 ft. short on one side. Turning the house would not look good in the neighborhood. Bringing the County Engineer aspect in because of where I would want to put the driveway, I would have to pay the surveyor extra money. My point is I have other options out there. Building houses in any county in Ohio is not cheap. I am retired from the military. I still work and going over the budget lines is tight. It was worth a try. And I may look into the engineer's office to get some shots, but the budget can quickly grow from 10 grand into 20 grand.

Chairperson Taylor added, for the record, Mr. Malloris is the seller, Mr. Health is the buyer, and you both were trying to work this out. I commend you for trying to work this out ahead of time.

Mr. Health replied, absolutely. I am not going to purchase land that I will not be able to build on.

Chairperson Taylor stated my suggestion would be to Table this for another month and see what the county engineer says. That way you see what your options are before you just say no. Let us Table it and then you can always withdraw.

Chairperson Taylor asked for a motion.

Action on Case #BZA-2020-04 ~ Property Owner/ Applicant: Arthur Malloris Jr. ~ Location: 10816 Musselman Rd.; Bethel Twp. ~ Request: Variance from Chapter 2, Section 201 to reduce the minimum lot size from 1.0 acre to 0.849 acres and minimum frontage from 150 ft. to 122 ft, to create a new single-family parcel.

Motion by Mr. Duffee, seconded by Ms. Wilt to **Table** until the March 26, 2020 meeting.

VOTE: Yes: Mr. Duffee, Ms. Wilt and Mr. Smith.

No: None.

Motion Carried.

Motion Carried.

Chairperson Taylor realized the audience members that were here to speak on this case did not get a chance to speak. Chairperson Taylor re-opened the public hearing and asked anyone else wishing to speak on this variance request to approach the podium.

Francis Webb, 527 Glenn Avenue, New Carlisle, OH, was sworn in. Mr. Webb stated that if someone purchased that property and builds a home, it is not going to be very quiet. Referring to the adjacent VFW Lodge property,

we sponsor some troops that use our property in the back. Kids build bonfires and camp out. We have a speaker and a smoking section. It is very noisy. I do not mind someone building, but that is what they have to put up with.

Chairperson Taylor then asked if anyone else wished to speak on the case.

Terry Wilkerson, 322 Farmers Dr., was sworn in. Mr. Wilkerson stated that he understood the issue, and my sister and I both own the property now. My first concern is when the property was purchased there was not to be anything built on it according to the deed. My attorney researched it and that is what he told us. Our second concern is there is a hill and people do not drive 35 miles an hour on Musselman Rd. If you are coming from the west to east you will not see that driveway. But the big questions is we paid an attorney to research the deed. When AJ (Arthur Malloris) purchased that property, there was nothing going to be built on it. That leach field for the VFW, that was for the small building and it has never been upgraded since 1964.

Mr. Duffee asked do you own property there? Mr. Wilkerson responded we are the farm across the street.

Ms. Wilt asked where is your driveway? Mr. Wilkerson responded our driveway is across from AJ's driveway.

With no one else to speak, Chairperson Taylor asked if the Applicant wished time for rebuttal.

Mr. Malloris stated that when we split the property off, they have a place to put the septic on the VFW. As far as the deed goes, I never signed anything like that and I have the deed at home.

Hearing no further comments, Chairperson Taylor closed the public hearing at 2:36 pm.

Chairperson Taylor asked for, and the Board unanimously agreed, to resend the previous motion on this case.

New Action on Case #BZA-2020-04 ~ Property Owner/ Applicant: Arthur Malloris Jr. ~ Location: 10816 Musselman Rd.; Bethel Twp. ~ Request: Variance from Chapter 2, Section 201: A) to reduce the minimum lot size from 1.0 acre to 0.849 acres; B) to reduce the minimum frontage from 150 ft. to 122 ft, to create a new single-family parcel; and C) to reduce the minimum side setback from 25 ft. to 16 ft to create a new single-family parcel.

Motion by Mr. Smith seconded by Mr. Duffee to ***Table*** this case until the March 26, 2020 meeting to allow the applicant to resolve the issues from the County Engineer's Department.

VOTE: Yes: Mr. Smith, Mr. Duffee, and Ms. Wilt.

No: None.

Motion Carried.

Chairperson Taylor asked Staff to present the next case.

Case #BZA-2020-05 ~ Property Owner/ Applicant: Joseph & Wanda Monnin ~ Location: 41 N. Tecumseh Rd., Bethel Twp. ~ Request: Variances to Chapter 8, Section 802.06.03 to increase the maximum sq. ft. for accessory structures from 1,500 sq. ft. to 2,400 sq. ft. and to increase the maximum height from 18 ft. to 20 ft. to construct a 40 ft. by 56 ft. pole barn for storing a camper and equipment indoors.

Mr. Neimayer stated that the subject property is located at 41 N. Tecumseh Road and consists of 0.99 acres. The property is zoned R-1 (Rural Residence District). The Applicant would like to construct a new 40 ft. by 56 ft. (2,240 sq. ft.) pole barn in the rear yard for storing a camper and equipment indoors. Due to the size of the parcel, this pole barn would exceed the maximum sq. ft. and maximum height for an accessory structure on a parcel less than one acre. Therefore, the Applicant has filed this variance request. Mr. Neimayer reviewed slides of the property and surrounding area.

Chairperson Taylor asked Mr. Neimayer can I see the aerial view. I would like to see what is on the back half of the property.

Mr. Smith asked do you know where the septic system is located? Mr. Neimayer responded no the Health District does not have any records on this parcel.

With no further questions for Staff, Chairperson Taylor opened the public hearing at 2:40 pm. and asked if the Applicant wished to speak at this time.

Joseph Monnin, Applicant, 41 N. Tecumseh Road, was sworn in. Mr. Monnin stated that Alpha Road does not run true east to west, so our lot is not square. When you apply the setbacks on our property the house is square with N. Tecumseh so $\frac{3}{4}$ of my lot has been frontage. We had the opportunity to buy the property next door so we did. We did not want to build on our corner lot because of the setbacks. There is drainage so our thought was to put it in the back. I talked to all the neighbors and it 'is in their backyard and everything is tree lines.

Chairperson Taylor asked so you live the in the corner lot and bought the adjacent property. Mr. Monnin responded yes. We are remodeling it (the adjacent property) now and not sure what we are going to do with it. We bought it for the land and the house came with it. Chairperson Taylor then asked in the future if you were to put that pole barn back there then you would have to do what? Mr. Monnin responded it has a driveway going back there already. That property could stand alone. It would have a house, a one car garage and a pole barn in the rear.

Mr. Smith asked where is your septic system? Mr. Monnin responded it is in the front yard. Mr. Smith asked is there an existing driveway now? Mr. Monnin responded yes. There is a drainage ditch that runs along the fence line and the driveway is partially gravel. That is the highest elevation on this property and that is why we chose to build the barn back there.

Mr. Smith asked you didn't combine the two properties into one? Mr. Monnin responded no. We thought they were sister properties. Our corner property is 100 ft. by 100 ft. and something. The adjacent property is 99 ft. wide, 99-hundredths of an acre. So I own two acres, but not two one acre lots.

Hearing no further questions for Mr. Monnin, and with no one else in the audience to speak on this case, Chairperson Taylor closed the public hearing at 2:46 pm. and asked for Board discussion.

Mr. Smith stated it looks like he owns two properties. If he looked to sell one in the future it could be a violation. Someone could have measured a foot off, but I do not see a problem with it.

Mr. Duffee added he is .01 of an acre less than the 1.0 acre. If he had that .01 of an acre, it doubles the size of an accessory building that is permitted. I do not see a problem with this variance requests.

Ms. Wilt adds with that location I do not see a problem with the variance requests.

Chairperson Taylor asked what is the height requirement over the limit?

Mr. Neimayer states, the maximum height permitted is 18 ft. and he's looking for 20 ft.

Mr. Duffee adds, but again if he had that .01 of an acre the size nearly doubles.

Chairperson Taylor stated looking at the back of the property even though it is so close to the other properties and a little larger, I do not have a problem with this variance requests.

Hearing no further discussion from the Board, Chairperson Taylor asked for a motion.

Action on Case #BZA-2020-05 ~ Property Owner/ Applicant: Joseph & Wanda Monnin ~ Location: 41 N. Tecumseh Rd., Bethel Twp. ~ Request: Variances to Chapter 8, Section 802.06.03 to increase the maximum sq. ft. for accessory structures from 1,500 sq. ft. to 2,400 sq. ft. and to increase the maximum height from 18 ft. to 20 ft. to construct a 40 ft. by 56 ft. pole barn for storing a camper and equipment indoors.

Motion by Mr. Smith, seconded by Ms. Wilt, to **Approve** as presented.

VOTE: Yes: Mr. Smith, Ms. Wilt and Mr. Duffee.

No: None.

Motion Carried.

Chairperson Taylor asked staff to present the next case

Case #BZA-2020-06 ~ Property Owner/ Applicant: Willoughby Place LLC, Mike Hufford ~ Location: 5640 Lower Valley Pike; Bethel Twp. ~ Request: Variance to Chapter 2, Section 201 to reduce the minimum frontage from 150 ft. to 10 ft. to create a new clustered single-family parcel.

Mr. Neimayer stated that the subject property is located at 5640 Lower Valley Pike and consists of 7.55 acres. The property is zoned A-1 (Agricultural District). The property was part of a two-lot clustered lot split from February 2017: Tract A, 4.997 acres and Tract B, 4.996 acres. In June 2017, those two clustered lots were reconfigured: Variance #BZA-2017-08 was approved on May 25, 2017 allowing for Tract A to be decreased to 2.58 acres and Tract B to be increased to 7.55 acres. A family matter has resulted in the Applicant wanting to split Tract B into two separate clustered lots of 4.982 acres and 2.567 acres. Hence, the Applicant is asking for a variance to reduce the minimum frontage from 150 ft. to 10 ft. in order to create a third clustered lot.

Within that 30 ft. there will be a shared driveway. There will be documents and responsibilities. We already have that for A, and B, and now C. every property owner will share into that for maintenance. Mr. Neimayer reviewed slides of the property and surrounding area.

Chairperson Taylor asked are we putting single houses in all of these lots? Mr. Neimayer responded yes.

Mr. Smith asked the white portions on the slide is that the park and they're adding the green area? Mr. Neimayer responded that is correct. Mr. Smith then asked where are they giving up land? Mr. Neimayer responded it is the 10 ft. wide strip of land from Lower Valley Pike.

Chairperson Taylor asked so the variance request is to reduce the frontage from 150 ft. to 10 ft. Mr. Neimayer responded yes. Chairperson Taylor then asked, where the 10 ft. is. Mr. Neimayer responded, it is the part shown in yellow.

The County Planning Commission at their February 5, 2020 meeting heard the Applicant's Lot Split variance case #LV-2020-01 to create a third clustered lot. Mr. Neimayer explained that under Section 4.14 of the Clark County Subdivision Regulations, Paragraph 4.146 states, "All lots, when possible, shall be approximately rectangular in shape. Triangular shaped lots shall be discouraged." In August 2011, the County Planning Commission adopted a policy that all proposed lot splits that do not follow Paragraph 4.146 are to be reviewed and approved by the CPC, unless the proposed lot split is to preserve farm land. Following discussion, the County Planning Commission passed a motion approving the shape of the proposed lot split.

Mr. Duffee asked, so when you refer to the 10 ft. frontage, really that is the driveway? Mr. Neimayer responded, the 10 ft. is to give it physical access.

With no further questions for Staff, Chairperson Taylor opened the public hearing at 3:03 p.m. and asked if the Applicant or representative wished to speak at this time.



Mark Scholl, Surveyor and Representative for the Applicant, 1533 Moorefield Rd., was sworn in. Mr. Scholl stated that to answer some questions, originally there were three houses all served by the driveway that goes back by the interpreted center by Lower Valley Pike. This driveway goes over the old railroad tracks. It is also the driveway that the Park District uses. There is currently a driveway easement for the two houses (the purple & blue lots) for them to use because that driveway is not in the 10 ft. strips (the yellow area) that bud up to the eastern property line. Those are strictly to satisfy the cluster lot requirement of having 10 ft. of road frontage on a public road. Those got approved because they had an easement in place over the existing driveway. Mr. Scholl stated that some personal family issues required some of Mike Hufford's original plans of having his kids live on the properties to change. So now Mr. Hufford would like to sell the house on the purple lot but he does not want to sell the property with all seven acres (red lot). He would like to retain the seven acres for himself and his family to continue to use. The park district has agreed to sell them a 10 ft. strip that parallels the yellow line, so then the red lot will have its own legal access as a 3rd cluster lot. All three lots will share in maintenance and up keep of the driveway.

Chairperson Taylor asked so his intent is to sell off two properties? Mr. Scholl responded Mr. Hufford already sold the blue lot. Chairperson Taylor then asked so he has no intent to build on the red lot, but is looking to sell the purple lot? Mr. Scholl responded yes. Mr. Hufford feels that if someone buys a purple lot they could manage that a little better than seven acres. Chairperson Taylor added, by keeping the red lot he is budding up to the park district and helping to preserve that. Mr. Scholl responded yes adding he will trade the green lots for a 10 ft. strip (to Lower Valley Pike) with the park.

Mr. Duffee asked what is the structure on the red lot? Mr. Scholl replied, that is a barn but it is not in great shape. The park district does not want it, so Mr. Hufford wants to tear it down.

Chairperson Taylor asked, in your professional opinion, is this a good use of this property? Mr. Scholl responded I know it is a jigsaw puzzle but yes. Originally, Mr. Hufford was going to do the three cluster lots, but before he sold it he wanted to keep a buffer between them.

Ms. Wilt asked the house on the purple lot is a usable house with septic? Mr. Scholl responded yes.

With no further questions for Mr. Scholl, Chairperson Taylor asked if there was anyone else in the audience to speak on this case.

Eric Erter, 5640A Lower Valley Pike was sworn in. Mr. Erter stated that I am in full support of the proposal. My concern is the language for the shared driveway. I just want to make sure the ball does not get dropped there. And I just want to make sure it is legally binding. Mr. Hufford has been nothing but good to me, so I hope you approve it.

With no one else to speak on this case, Chairperson Taylor closed the public hearing at 3:13 pm. and asked for Board discussion.

Mr. Smith stated, it looks like they put a lot of time in doing this right. I like the buffer between the properties and the park district. A lot of time went in to making this right.

Mr. Duffee stated I have no concerns.

Ms. Wilt asked Mr. Neimayer, did you say the language is in place for the driveway? Mr. Neimayer responded, there is specific documents, deeds, and legal descriptions with each one of the clustered lots. As a legal question, that is something I have to work with Mr. Scholl, Mr. Hufford and his attorney, is how do we get the current documents to reflect the three lots, but that can be worked out.

Chairperson Taylor asked for a motion

Action on Case #BZA-2020-06 ~ Property Owner/ Applicant: Willoughby Place LLC, Mike Hufford ~ Location: 5640 Lower Valley Pike, Bethel Twp. ~ Request: Variance to Chapter 2, Section 201 to reduce the minimum frontage from 150 ft. to 10 ft. to create a new clustered single-family parcel.

Motion by Ms. Wilt, seconded by Mr. Smith, to **Approve** as presented.

VOTE: Yes: Ms. Wilt, Mr. Smith and Mr. Duffee.

No: None.

Motion Carried.

Staff Comments

Mr. Neimayer reviewed the settlement agreement and mutual release regarding the Enlow vs. BZA et. al. case.

Following discussion, motion made by Mr. Smith, seconded by Ms. Wilt, to accept the settlement agreement and mutual release as presented & authorize Chairperson Taylor to sign the document.

VOTE: Yes: Mr. Smith, Ms. Wilt and Mr. Duffee.

No: None.

Motion Carried.

Variance Case #BZA-2004-09 ~ 3250 Newlove Rd. ~ Hazel Family Limited Partnership

Mr. Neimayer reviewed this 2004 variance case and showed some slides of the subject property. The original request was to allow the property to be divided into three parcels all greater than 5.0 acres using existing access points on Newlove Rd. Now, the owner wants to reduce this from three parcels to two parcels, both over 5.0 acres. Mr. Neimayer noted that current zoning regulations do not put a time limit (expiration) on a variance approval. Therefore, the 2004 approval is still valid. The only real change is reducing the number of parcels to be created. Mr. Neimayer said he felt it was important to inform the current Board of the owners change. No action was required by the Board.

Mr. Neimayer stated the next scheduled meetings will be on March 26 & April 23, 2020.

Mr. Neimayer gave an update on the proposed zoning text amendments project.

The Board and Staff discussed having a BZA Educational Work Session in April or May.

Adjournment

Motion by Mr. Smith, seconded by Mr. Duffee, to **Adjourn.**

VOTE: Motion carried unanimously.

The meeting was adjourned 3:54 pm.

Mrs. Jerri Taylor, Chairperson