

## XENIA TOWNSHIP BOARD OF ZONING APPEALS

April 30, 2013

### **THESE MINUTES ARE A SUMMARY OF THE EVENTS OF THE MEETING AND ARE NOT A WORD FOR WORD ACCOUNT OF THE DISCUSSIONS WHICH TOOK PLACE.**

Board of Appeals members present: Ed Jacobson, Charles Bingamon, Don Harner, Joe Mullikin, and Elaine Conley. Also present was Stephanie Hayden, Assistant Prosecutor and Alan Stock, Xenia Township Zoning Inspector/Clerk.

Ed Jacobson called the meeting to order at 7:00 p.m. He presided at the Hearing and welcomed the people in attendance. He went over the rules of the meeting. All cell phones to be turned off. Everyone must sign in. The application will be read by the Zoning Administrator. Because BZA decisions are quasi-judicial, all testimony has to be sworn. Everyone must come to the podium, state your name and address and that you are under oath. Only facts, not opinions or emotions. Minutes are being taken manually and electronically. Direct questions to the Board only. We will follow Roberts Rules of Order for procedure. Chair reserves the right to limit public input. The BZA may deliberate in private, and announce decision at a later date. BZA may approve in whole or in part, reject in whole or in part, or reschedule to another date. Applicant may also withdraw. The decision will become effective five days after date of decision. Under ORC 2506.04, aggrieved individuals may appeal the decision to Common Pleas Court. The audience joined the Board in the Pledge of Allegiance. Jacobson swore in the audience. He asked that everyone in the audience who wishes to participate, to raise their hand and swear to tell the whole truth and nothing but the truth so help you God. Jacobson asked Alan Stock, Zoning Inspector/Clerk, if the applications are lawful to be heard by the Board and if all advertisements and notices had been made, and he replied affirmative to both.

Jacobson asked the Board members if they had read and considered the application and if they intended to participate in the hearing. Joe Mullikin recused himself as he is related to applicant. The remainder of Board members indicated they intended to participate. Stephanie Hayden asked applicant if he had any problem since one board member is absent, the alternate would be filling in which makes an even number and should the board split 2-2 it would be a no vote. The applicant answered no.

### **James Brown, 460 W. Krepps Rd., Xenia, Ohio 45385 – Request for Variance:**

Alan Stock read the application from James Brown, 460 W. Krepps Rd., Parcel ID #M36000200240005100, Xenia Township, Greene County, OH. Applicant requests an Area Variance to the minimum size lot in an agricultural district of 5 acres. Applicant would like to split a 6.49 acre parcel into two parcels at the natural creek line. Currently there is no access to the land behind the creek line. The applicant would like to sell the property to an adjacent farm owner. Because it is an area variance an additional letter was sent to Mr. Brown stating a 1986 case heard by the Ohio Supreme Court which led to the Supreme Court prescribing seven guidelines to follow in making the decision of granting an area variance. All board members were given Mr. Brown's responses to the seven guidelines. On April 16, 2013 a letter was mailed to 13 residents within 500' and a legal notice was sent to the newspaper. There were no responses by mail or email or phone call.

Joe Mullikin, 1088 Lee Ann Dr., Xenia Township, spoke on behalf of Mr. Brown – currently the front half of property has a house, garage and pond on it and the back half has always been farmed. A new owner has purchased the adjacent property to the east and he maintains the access to the back half of the property. He has done a lot of work on the property, putting in tile to enhance drainage and clearing trees. He also put in culvert pipe and bridge. Some of the reasons the Browns want to split the property are they

are in their retirement years, it is a lot of property to maintain, and the best use for the land is for farmland.

Jacobson asked if there was a road across the creek to the back of property on the west side. Mullikin answered yes and it is a homeowner who built a house back there, Mr. Moore. Their property is used for farming also.

Jim Brown, 460 W. Krepps Rd., said for information sake, the bridge is not big enough to support farm equipment.

Jacobson verified the neighbors could access Mr. Brown's property from the west and east but not from the front part of his property.

Stephanie Hayden asked how much expense would there be to have an access which could accommodate farm equipment passing to the back of the property.

Mullikin said there was an attempt to put a culvert in years ago, but when it rains a lot, the water travels across the property in such a way it washes out around the culvert so he believes there would be a large expense involved. The neighbor to the east put in a couple hundred tons of gravel plus a culvert and had the manpower to do it on his property.

Hayden said they could reasonably estimate it would be even more expensive to put in something heavier duty.

Mullikin agreed. The property owner on the east who already has the access would like to farm this piece of land. It would then become part of his property.

Brown said Neil Ferguson was a sharecropper who farmed the land for the last 20 years. The land which he used for access to Mr. Brown's property was sold so he no longer can access the property.

Jacobson asked where the access properties were.

Brown answered and showed on the map the access properties.

Jacobson asked what acreage is left.

Brown answered the property is a little less than 6 ½ acres since the road widening and the creek cuts the parcel practically in half. There are at least 3 acres he cannot access. Also because of the pond and garage on his property he has no way to access the back half.

Jacobson asked if Mr. Brown had put in the pond and Brown answered yes.

Jacobson began to ask questions using the seven guidelines set up by the Ohio Supreme Court.

1) Whether the property in question will yield a reasonable return or whether there can be beneficial use of the property without the variance. Brown answered no. Jacobson asked about someone else leasing the land to farm. Brown answered only the neighbor on east side has access. Hayden asked if Mr. Sweet wants to do that. Brown said he only wants to farm his own property. His property is two parcels to the west of Mr. Moore. He asked if Daryl (neighbor on east) would allow Mr. Ferguson access to farm the property and Daryl never responded. Daryl would like to buy the property.

2) Whether the variance is substantial. Brown answered no. Jacobson said if this is approved the property would be reduced from 5 acres in an agricultural district to 3 acres.

3) Whether the essential character of the neighborhood would be substantially altered or whether the adjoining properties would suffer a substantial detriment as a result of the variance. Brown answered no.

4) Whether the variance would adversely affect the delivery of government goods. Brown answered no.

5) Whether the property owner purchased the property with knowledge of the zoning requirements. Jacobson asked if Mr. Brown knew it was zoned Agriculture before buying the property. Brown answered yes. Hayden asked if he knew the minimum was 5 acres in Agriculture. Brown answered no. Jacobson said for clarification, minimum in Agriculture is 5 acres and in Residential it is ½ acre.

6) Whether the property owner's predicament feasibly can be obviated through some other method than a variance. Brown answered he does not think so.

7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Brown said yes and that neighbors all agree. Jacobson said the issue before the Board is he is in an Agriculture zoned area and the zoning documents require that any parcels in that area be 5 acres or more, and Mr. Brown is asking to cut it to 3 acres. Brown said land is totally landlocked. He even tried putting in a "low dam" but the first time it rained it washed out. There have been no improvements to property except by neighbor taking down the fence line. Creek is drainage for all fields around.

A motion was made to move to executive session by Charles Bingamon and seconded by Don Harner. The session lasted from 7:28 p.m. to 7:48 p.m.

A motion was made to return to Public Hearing by Charles Bingamon and seconded by Elaine Conley.

Elaine Conley asked if the property will be re-surveyed into one parcel by the buyer. Brown answered yes that will be part of the buyer's property.

A motion was made by Charles Bingamon to approve under the condition it is surveyed and made a part of new owner's property. Hayden suggested to Mr. Brown that he make that a condition of sale of his property. Don Harner seconded. Bingamon – Aye, Harner – Aye, Conley – Aye, Jacobson – Nay. Variance granted with 3-1 vote.

A motion was made by Charles Bingamon to close the session and seconded by Don Harner. There being no further business, the Board adjourned. Meeting adjourned at 7:58 p.m.

ATTEST:

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Alan D. Stock, Zoning Clerk