

Hamilton County Board of Zoning Appeals - North District
June 24, 2020

Mr. Kirby called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 8:34 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 present.

Guests: See sign-in sheet.

Communications/Reports: Nothing to present.

Approval of Minutes: Mr. Kirby identified the minutes of May 27, 2020. Any additions or corrections?

Mr. Habig made a motion to approve.

Mr. Hall seconded.

With no further comments... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.**

Old Business: Nothing to present.

New Business: Mr. Kirby began with **NBZA-R.V.-0002-03-2020**. This is a requirement variance. It was tabled in March and April due to the Covid-19 virus. It is concerning the reduction of a side yard setback for an addition to an existing residence from the zoning ordinance required 25 ft. down to 10 ft. and 15 ft. **Location: 25084 State Road 37 North, Noblesville.** Would you please step forward and present your case?

Philip Holt and Brenda Holt, of 25084 State Road 37 North, Noblesville, Indiana, stated their names and address for the record. We purchased that property and built a home there about 40 years ago. There were no zoning ordinances in place at the time that we built. Now I am wanting to add onto the back of my garage. The southwest corner of the garage where I would need to attach is approximately 10 ft. from the side property line. The proposed addition would go to the southeast and the southwest corner of the proposed addition would end up approximately 15 ft. from the side property line. It goes at a slight angle away from the property line.

I need additional garage space for vehicles, for storage. I currently have vehicles being stored in friends' garages and tools stored in relatives' garages that I have no room for at my house. I have no way of meeting the requirements we have in place today. I can't physically pick my house up and move it to comply with ordinances that were put in place after it was built.

The construction of the proposed addition cannot be seen from any of my neighbors' residences or property. It goes in behind my house. It would match the existing exterior of my house. Once complete it would not be noticeable that it was an addition.

Everyone has been properly notified. My neighbors have wished me well. House Farms which owns the farm land adjacent to my property said they have no reason to have any concerns with the expansion in my back yard.

If you approve this it would not be injurious to the public health, safety, moral, or general welfare of the community. It would adversely have no impact on the farm community that we live in. The use and value of the area and the property would not be affected in a substantially adverse manner. In fact, I believe the addition would increase the property value. And the strict application of the zoning ordinance would really result in a hardship to me that I could not use my property to expand my garage and store my things at my location.

All the county offices were notified. The Hamilton County Soil and Water Conservation District said they have no objections to the variance requested. We had quite a conversation about drainage and the farm ground adjacent to my property is either at the same elevation as my property, some of it is at a higher elevation than my property so in no way would it have any impact on the drainage, farming, or production that would come off of that farm ground.

I submitted pictures that show what the proposed expansion and west elevation would look like. The south elevation can only be seen from my back yard. Do you have any questions?

Mr. Habig asked if there was no proposed driveway around to the back. So the access to the new addition would be through the existing garage, correct?

Mr. Holt responded, through the existing garage. The south wall of the existing garage would be removed, and the extension would go straight back from there.

Mr. Hall stated that based on your comments, you don't plan to do anything with respect to drainage? The letter we have from soil and water that you were reading from says that "it is our recommendation that the drainage water from the expansion be properly directed as not to impact the neighboring properties or create excess erosion." Did you come to any kind of conclusion with the soil and water folks? (2) And soil and water is ok with that then?

Mr. Holt answered, yes. Drainage on the northwest corner drains north towards State Road 37. It does not drain towards the adjacent properties. The farm ground actually drains across my driveway and front yard into a ravine on the east side of my house. The drainage off the west side of my house drains to the south onto my property and both properties at that point drain to the south towards Pike Creek. (2) Yes.

Mr. Clark asked for clarification. So you're not going to have a driveway in the back? (2) Just an open door for the breeze?

Mr. Holt answered, no. (2) Just open the door on the back so I can get my mower in and out.

With no further questions from the board... Mr. Kirby opened the hearing to the public at 8:46 p.m. and invited anyone who wished to speak for or against the petition to step forward. And with no one stepping forward to address the board... Mr. Kirby closed the public portion of the hearing at 8:46 p.m. and asked for a motion.

Mr. Habig made a motion to approve as submitted.

Mr. Hall seconded.

Mr. Habig stated he thought it fits in there nice with the house and doesn't encroach any more than what the garage already is. Looks good to me.

Mr. Kirby stated that he did a great presentation. Very prepared.

Mr. Hall stated that with the property, what he wants to do - the use is permitted. It will not impact the neighboring property any more, in fact, a little less since it widens there so there isn't any more burden on any other property that what's already there.

With no further comments... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.** Your variance is approved.

Mr. Kirby stated that **NBZA-R.V.-0003-05-2020** is still being processed and would not be heard tonight.

Mr. Kirby continued with **NBZA-R.V.-0006-06-2020** a requirement variance. This is concerning a reduction in the ordinance required front yard setback from 140 ft. down to 71 ft. to allow the construction of a new single family residence. **Location: 22024 Overdorf Road, Noblesville, Indiana.** Would you please step forward and present your case?

Robert Anglea, of 548 Sunset Drive, Noblesville, Indiana, stated his name and address for the record. I have asked the realtor that we purchase the lot from to also say something about that.

I wanted to thank Mrs. Burdett for everything that she has done to help this. She's awesome. She's unbelievable. I'm sure you guys know that.

Before we decided to buy the property in question, we pulled public records. The public records have the setback noted at 60 ft. That was through the records that we found on-line. So when we went to have our custom home designed, we had that designed based on that setback that was pulled off the website.

When we did that we decided to go ahead and purchase the property. Then when we submitted for the approval of our permit to build the home, we found out the setback was 140 ft. We applied for the variance. When we looked at our options on the property, we looked at different areas where we could build. We are already on the largest portion of the property that allowed us to build as far back as possible on the lake. The other side of the lake is a little lower and there are

some issues with the outlet getting clogged and getting backed up a little bit, or if it rained heavily it would really reduce that area where we felt comfortable building the home. We also had a company come out and look at back-filling the current location a little bit to see what we could do to bring that back, but it was going to be in the hundreds of thousands of dollars range to bring in enough back-fill to sit that back farther.

Amy Englert stated that they had done a little bit of homework on the average setbacks of 34 properties between 206th and 234th Street on Overdorf Road. What we found was of 34 properties the mean setback is 78 ft. From a real estate standpoint this setback requirement that Mr. Anglea has would not create a detriment to the surrounding property owners because it would be more than the means and the norm and, in fact, it would be more in keeping with the surrounding properties. Also, it could create a detriment to his property to have it be so close to the lake where there could be erosion and where he could also have flooding.

Since they are building a very high-end, custom home that is very much in keeping with the neighborhood and a similar setback to his neighbors to the south it seems like it would be more the average than it would be the abnormal.

Mr. Anglea stated that his setback is substantially different than the abutting properties that have been granted variances already. Without the variance I would be denied the same rights and privileges enjoyed by my zoning neighbors. My request does not involve any prohibited use or zoning of the district. It wouldn't cause any safety issues. And it is actually improving the property that is currently there. That's what we're requesting.

Mr. Kirby stated that the Hamilton County Highway said that they were confused because the plans showed a house at approximately 100 ft. from the centerline of the road and that a reduction of 71 ft. has the potential to cost the county more for purchase of right-of-way. I don't know what that's supposed to mean.

Mr. Culp stated that they're saying if the county decides at some point it has to enlarge the road, improving it will increase the value and we would have to pay. But that is not something we can consider at this point. That would be us restricting his property so that we can get a better deal, hypothetically, in the future.

Mr. Hall asked Mr. Kiphart for clarification that they would not be in the right-of-way itself though, correct.

Mr. Kiphart answered, he was not sure what that was, and that he didn't bring his thoroughfare plan map with him.

Mr. Culp stated that he can't believe that it would be or they would have noted that.

Mr. Kirby stated that the surveyor's office stated that it was in a regulated drain watershed, so any improvements have to go through them. (2) Is the septic going across the road? (3) You have pumping stations?

Mr. Anglea stated that they were aware of that. (2) It is. We actually own a ¼ acre across the road because of the size of the property and in relationship to the lake we had to be across the road. There are currently two homes there and they go across the road as well. (3) Yea.

Mrs. Englert stated that this was approved by the Hamilton County Health Department in conjunction with Brian Baker.

Mr. Clark asked how far the neighbor's house to the south sets back.

Mr. Anglea stated that they were exactly equal, and I think their setback is 60 ft. from the road.

With no further questions from the board... Mr. Kirby opened the hearing to the public at 9:00 p.m. and invited anyone who wished to speak for or against the petition to step forward and with no one stepping forward to address the board... Mr. Kirby closed the public portion of the hearing at 9:00 p.m. Do we have a motion?

Mr. Hall moved to approve as presented.

Mr. Habig seconded.

Mr. Habig stated that they definitely have a hardship there.

Mr. Hall stated it was a classic case of the nature of the land causing a hardship in the use of the land as it's been zoned.

After minimal comments... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.** Your variance is approved.

Mr. Hall asked Mr. Kiphart what website he was referring to and why is it incorrect. (2) Was he looking at GIS? (3) Is there one for the M District? The zoning is A-2 and M-3.

Mr. Kiphart stated that it was not incorrect. There are two different parts of the zoning ordinance that deal with setbacks. The actual front yard setback is within the zoning district like an A-2 or an R-1. Then to that you would add the right-of-way shown on the thoroughfare plan. As Mrs. Burdett's says... there probably should have been a cross-reference.

But that's the case with a lot of things. You don't just look at one section of the ordinance and it tells you everything you have to do as it relates to the property. We have a very interesting situation next month that I have to talk to Mr. Culp about that relates to exactly the same thing. When the people don't call us or make an appointment to meet with me to explain all the different things that are required to build on a property, they just make the assumption that what they saw is it and make their plans based on that.

(2) No. He was looking at Muni-code and the ordinance itself. The two sections for this variance are listed as Article 3-B, Section 3-1-a and Article 18-C, Section 1-r and both of those apply to most of the setbacks.

(3) No. The M-3 is where the lake is. The owner chose not to get rid of the M-3 once it was done.

Mr. Hall asked about the easement for everyone to be able to use the lake.

Mr. Culp stated that he didn't recall if there was a license to use the lake or if the lake was deeded to the property owners as a common area.

Mr. Kiphart stated that the property line does go through the lake. There are no easements. Each lot goes out into the lake. I would assume there is some kind of an agreement on the deed that was given by the original owner to these people.

Director's Report: No report.

Legal Counsel Report: Nothing at this time.

The next BZA meeting will be Wednesday, July 22, 2020.

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

Mr. Habig made a motion to adjourn.

Mr. Clark seconded.

With no further comments... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.** Meeting adjourned at 9:08 p.m.

Gerald Kirby, Vice Chairman

Date: _____

Linda Burdett, Secretary

Date: _____