

Hamilton County Board of Zoning Appeals – South District
June 24, 2020

Mr. McMillan called the official meeting of the Hamilton County Board of Zoning Appeals – South District to order at 7:00 p.m.

Roll call: Adam Zeller, Charlie McMillan, Jr., Frank Habig, III – alternate, Jim Galloway, and Mike Pugel - alternate. Absent: David Musselman. Also present: Charles Kiphart, Director; Aaron Culp Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum: Mr. McMillan declared a quorum with three regular members and two alternate members present.

Communication or Reports: Nothing to present.

Approval of Minutes: Mr. McMillan stated that on the November 13, 2019 minutes there is a correction needed.

Mr. Zeller moved to withdraw the approval of the November 13, 2019 minutes due to the correction needed.

Mr. Culp advised the board that in order to do this... if one or more of the people who weren't here feel comfortable based on their representation that that change should be made you can go ahead and second and/or vote for it.

Mr. Galloway seconded.

After minimal comments... Mr. McMillan called for the vote. ***5 yes votes... 0 no votes.***

Mr. Zeller made a motion to amend the November 13, 2019 minutes by changing the word "gusted" to "guessed."

Mr. Galloway seconded.

With no further comments... Mr. McMillan called for the vote. ***5 yes votes... 0 no votes.*** The correction to the November 13, 2019 minutes has been taken care of.

Mr. McMillan then identified the minutes of February 26, 2020. There is a correction needed in those as well. On page 8, the last paragraph, first sentence – the word "he" should have been the word "the."

Mr. Zeller made a motion to amend the February 26, 2020 minutes on page 8 changing the word "he" to "the."

Mr. Pugel seconded.

With no further comments... Mr. McMillan called for the vote. **5 yes votes... 0 no votes.** The February 26, 2020 minutes have been amended and approved.

Old Business: Mr. McMillan began with **SBZA-R.V.-0003-02-2020**. This is a requirement Variance. This was tabled at the February meeting due to a septic issue, tabled in March and April due to the Covid-19 Coronavirus, and then petitioner requested to be postponed until June. This is concerning not having to pave or curb the parking lot. The parking lot is proposed to be gravel. **Location: 13350 State Road 38 East, Noblesville, Indiana.** Mr. Bilbrey, please step up to the podium and present your petition.

Alan Bilbrey stated he was here in February asking to have the parking lot be gravel instead of being paved. There were some issues with the septic and lines, so I just moved the building up front. I am still looking for gravel parking instead of paved.

Mr. McMillan asked about the issue with the septic.

Mr. Bilbrey stated that there was some dispute about how I would drive my truck there. There is already a road back there, but they said I shouldn't use it because it goes over not a finger but a line or two. It came down to being easier to just move it up front.

Mr. Galloway asked if the new drawing that they have was the new location. (2) The house? (3) In reading the minutes... how big of a company do you have? (4) There was a statement made at the last meeting that you have one employee.

Mr. Bilbrey stated the building is right next to the shop. (2) Yeah. ~~Yea.~~ Which is the office. (3) I have three lawn care technicians and myself. We're not big. (4) I have one person that will be parking and is in the office. I have three full time technicians, plus the lady, plus me.

She is the only full-time employee. The rest of them are seasonal – nine months.

Mr. Habig asked for clarification that the business has already been okayed. All we're doing is voting on whether or not he can put the gravel lot in. So we're not concerning ourselves with any outside storage or anything like that?

Mr. Kiphart stated that that was all per the ordinance.

Mr. Bilbrey stated that there will be no outside storage if I get the building built. There's none now anyway.

Mr. McMillan stated that he thought the issue they were having was with the septic location.

Mr. Habig stated that he had the notice from INDOT about the screening.

Mr. Pugel stated that the old drawing shows a septic tank and what amounts to two lines - one to the north and the other to the southeast. The new map shows three fingers. Did somebody find one?

Mr. Bilbrey stated that there has always been three. At first the drawing wasn't perfect and the last drawing is... this is what it is.

Mr. Zeller stated that at the first meeting it looked like the lines were moved over. (2) So this drawing is correct?

Mr. Bilbrey stated that he has like 17,000 of these drawings. At first it was just there because I didn't think it was a problem at all. Then before the last meeting I had a company come out and then had Miller... it is what it is now. (2) Correct.

Mr. McMillan stated that they had had communication with the Hamilton County Surveyor's Office basically saying *"the plan dated June 10, 2020 is acceptable to the Hamilton County Surveyor's Office."* Also, we had correspondence from the Hamilton County Health Department says, *"the building looks different from what was proposed before. He was using some building out of the back and the septic system was in question. Now the whole plan has changed from there to here."* (2) We also have communication from INDOT stating, *"upon review INDOT has no issue with the proposed variance."* Was there talk of a tree screening before because it is mentioned in here as well?

Mr. Bilbrey stated that he came out and did ~~{put}~~ a dye-test ~~{die-test}~~. Then he went out to check it for seven to ten days and it never failed. So it was good to go anyway. (2) You're supposed to screen the parking lot. There are a whole bunch of trees on a prior picture. There are only going to be trees to screen the parking light.

Mr. Pugel asked if that was on the south end. So you're showing one tree to the west of the gravel entry now. (2) Anything on the other side?

Mr. Bilbrey stated that it would be two or three pine trees. (2) That's not going to be parking but I can.

Mr. McMillan continued with comments from INDOT. Also regarding the entrance with gravel. Now the entrance is paved at this point in time, and the pavement will stay? (2) And then it says... "back of pole." Is there a pole or something there that indicates where that's at? (3) And again, the building will have no restrooms or drains in there?

Mr. Bilbrey answered, yup. (2) I don't know what they're referring to. There is a telephone pole right next to the driveway. (3) No.

Mr. Bilbrey asked Mr. Kiphart about how far the building could come down.

Mr. Kiphart stated that there is a minimum setback which would probably be 135 ft. from the centerline of State Road 38 to the front of the building.

Mr. Pugel stated that it looked like the drawing showed 123 ft. but that it was from the edge of the road not the center.

Mr. Culp stated that per the new plan a setback variance would be required.

Mr. Kiphart stated that on the original plan it shows 135 ft. and the parking was in the back.

Mr. Culp and Mr. Habig stated that it looks like the line is shown to the center of the road.

Discussion indicated that moving the building back farther was not an option because of being over the septic tank or line.

Mr. Habig stated that he would have to take 12 ft. off of his new shed for it to be legal.

Mr. Pugel stated that it looks like the new building would be 10 ft. off the septic line.

Mr. Bilbrey stated that it was. I thought we had a variance set-up for this.

Mr. Culp stated that in order for this board to consider that there has to be legal notice just like you did the first time, and the same sort of steps have to be followed.

Mr. Kiphart asked when things were mailed out the second time.

Mr. Bilbrey stated that it would have been last month. I didn't do that. I just thought it was in there.

The mailing Mr. Bilbrey was talking about was the mailing that was sent out by the office a month ago because of the disruption caused by Covid-19.

Mr. Kiphart stated that the new site plan was received June 11, 2020 which is after everything was mailed out.

Mr. Bilbrey stated that when he talked to Mr. Kiphart, Mr. Kiphart said it was no big deal we just had to do another variance. (2) After that you guys called me and said we would need to re-submit all the letters and put a sign back in the yard, and it was before that that we had this conversation, but I had nothing to do with any of that.

Mr. Kiphart stated that that statement was correct. A variance would be needed. (2) Right.

(2) Mr. Pugel stated that that was for this variance though.

Mr. Bilbrey stated that was fine. We can do whatever.

Mr. Pugel stated that there is a variance for the gravel. We can take care of that because that is in front of us. In order to complete the building, there needs to be another variance.

Mr. Habig stated that he definitely has a hardship there. (2) Can't go anywhere else. He would definitely qualify for that but he would still have to come in and apply for another variance and give everybody public notice. We could go through and he could still have his parking lot; he just couldn't put the building in until he gets the variance if that's the size shed you want to put in. Unless you want to cut 12 ft. off of it and then you're ok.

Mr. Galloway agreed.

(2) Mr. Galloway stated he has the septic tank problem; the septic finger problem. He can't move the building. He might be able to move 2 ft. but that wouldn't be enough to get the 12 ft.

Mr. Pugel stated that he could make it a rectangular building and take the "L" out.

Mr. Bilbrey stated that he worked out of a 30 ft. by 30 ft. for years and I can live with a 30 ft. by 30 ft. more or less, but I just want it as big as I can get it. If you're telling me right now that I have to take 12 ft. off of it, I'll take 12 ft. off of it because I bought this place two Decembers ago and I've been trying to get this done for a little while.

Mr. Habig stated that the building would be 32 ft. by 44 ft.

Mr. Bilbrey stated that he could live with that.

With no further questions from the board... Mr. McMillan opened the hearing to the public at 7:26 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. McMillan closed the public portion of the hearing at 7:27 p.m. Do I have a motion?

Mr. Galloway moved to approve the variance with the condition that the variance is for this owner and if he sells the business the variance has to be worked out again if someone else wants to change it.

Mr. Habig seconded.

Mr. Galloway stated that he didn't have a problem with it. I feel sorry for him because he is trying to do this the right way and with the virus and all of this it's just been a mess. I hate that he has to cut the building down 12 ft. to tell you the truth.

Mr. Habig added... and with his business I don't think a paved lot is really necessary. I like a permeable drain anyway out there for what it's going to be used for.

Mr. Zeller stated that he didn't have a problem with it as well.

Mr. Pugel asked if there was going to be equipment stored on the parking lot.

Mr. Bilbrey stated that Mr. Kiphart told him he needed four parking spots. I'll put screening on the other side.

After minimal comments... Mr. McMillan called for the vote. **5 yes votes... 0 no votes.** Congratulations.

Mr. McMillan continued with **SBZA-R.V.-0005-02-2020**. A requirement variance. This was tabled at the February meeting at the attorney's request, tabled in March and April due to the Covid-19 Coronavirus. This is concerning allowing for 38.89 acres of real estate to be divided into three parcels for building purposes. Each parcel will have not less than 10 acres, and have direct access to Prairie Baptist Road. **Location: 18647 Prairie Baptist Road, Noblesville, Indiana.**

Mr. Galloway advised the chairman he was going to withdraw himself from this petition because he was one of the adjacent landowners. I am going to sit right here but I'm going to stay out of it.

Janet Vawter stated her name for the record. I am the power of attorney for Curtis Smith. He is the successor trustee of the Curtis and Margaret Smith Revocable Trust. Mr. Smith is unable to be present due to his medical condition and he is presently in an assisted living facility in Arkansas and has not been out since Covid-19 started. At this time, I am going to turn this over for presentation to Mr. Gerry Holman who is the realtor who has sold this property. Thank you.

Gerry Holman stated his name for the record. I am the realtor on this property. Since we were here for the initial presentation in February, we have made a couple of changes based on some questions by the board. Basically, the two issues the board seemed to have were – loss of farmland and they wanted some support from the adjoining landowners.

Handouts were given to Mr. Kiphart to be given to the board members.

Since the last meeting we have gotten a contract on the total 40 acres by one person. Because one of the original prospective buyers is still wanting to see if the new owner would sell off one of the lots or parcels, the new owner has asked us to continue with the variance and proceed with the process.

The reduction in the parcel would go from three lots to two and maybe only one because the

current purchaser has not fully decided that he wants to sell off any of the property. The first exhibit shows we originally had three parcels. The second page is the current proposal request for having two parcels. The 15 acre one would be the one that would potentially be sold off. When we addressed the issue in the reduction of farmland, that particular 15 acres actually has about 8 acres of woods on it so worst case is we would be losing seven acres of farmland.

The proposed owner would be looking at an agricultural approach to this property with animals and maybe farm part of it. The third page is if he doesn't sell it off the whole thing would stay together as one parcel. Any questions on any of that?

The other issue that was up for discussion was the issue of support for the variance from the local landowners. I got a little chart showing that we have signatures from four of the major landowners in the area that all support it. I spoke with each of the owners independently. I spoke with a homeowner and they both agreed, but I guess they didn't want to get involved to the point of actually signing the document.

I feel like we have addressed the two major issues so I would open it up to any other questions or concerns.

Mr. McMillan stated that the original hardship was you being the realtor had had it on the market and could not sell it as a whole, correct.

Mr. Holman stated that they had contracts for selling it by parcels.

Mr. Habig asked how many of the smaller parcels would be residences. (2) Mr. Culp, Mr. Kiphart - I'm going to need some clarification on this. When they had it divided into the three lots - 1, 2, and 3 - and they have the proper road frontage and all of those three lots are 10 acres plus... (3) But when you say it was done illegally...

Mr. Holman responded, going down to two - they would have residences on them. Or the one depending on how the purchaser decides to go.

(2) Mr. Kiphart stated that the tiny little lot was illegally split out. When that was brought to our attention and they were trying to sell the rest of it... the only way that lot could be made legal is if they sold the rest of the property off as one parcel. There is a special thing in our ordinance that says and that was done for farmers who were buying large pieces of land that had one house on it; they weren't interested in keeping the house. So they could sell off a lot of at least one acre with 150 ft. of public road frontage but they had to agree not to split 37.5 acres. (3) They didn't go through any kind of a process. They just did it.

Mr. Holman stated that he thought at the time they were required to have three acres in order to establish a home. (2) They didn't buy it. They inherited it.

Mr. Kiphart stated that all depends on how long the person who owns the property has owned it. The current owners bought it or had it after May 14, 1990 so the size for any lot would have

been 10 acres with 330 ft. (2) Inheritance doesn't count unless the people who own it now were on the title before May 14, 1990. So they just went ahead and sold the one acre lot and didn't come in and talk to us. They didn't want to sell any more property to the one acre and that was one of the options. So the only other way to split this up was to go through the variance.

Mr. Habig asked if someone came in and bought the 39 acres... would those people be allowed to divide that up into the three parcels? They wouldn't either?? (2) When you say "the board would have to correct that" that would be us right now? (3) And there's no way to go back and make that legal?

Mr. Kiphart stated that only the board can correct it. That's what happens when people don't come in and talk to us. (2) Correct. So that's what you're here to do. (3) If the one acre person agreed to buy nine acres or they wanted to give them nine acres. That was one of the options that I did explain to them.

Mr. Holman stated that they did pursue that one. The guy wanted to buy nine acres but he couldn't put it together to purchase it.

Mr. McMillan stated that there was also question on that parcel about the location of the septic field. We weren't clear if it went out into the 38 acres. There was also a question about an open wellhead due to the existing farm that was on the property whenever it was abandoned. We had communication from the health department that there was a possible open wellhead there. There was also a question about where the septic field was deemed illegal but functional. Was there any new communication from the health department?

Mr. Habig asked Mr. Culp if this would qualify as a hardship for the next landowner? (2) But these people cannot claim a hardship because they are the ones who did it. (3) And monetary is not a hardship, either. (4) Am I correct that the people who own this property are the ones who did this illegally?

Mr. Culp stated that that is what they would argue if they came in front of the BZA. (2) A hardship cannot be of your own creation. (3) It cannot be purely economical, and it cannot be... It has to be something from the way our ordinance is applied to the land.

(4) Mr. Holman stated that that is correct. He claims he didn't understand.

Mr. McMillan asked if the house that was there currently was up for sale.

Mr. Holman answered, yes. My understanding is that they actually have a contract on it.

Mr. Zeller asked if that could legally be sold.

Mr. Kiphart stated that there are a lot of things done... If the mortgage company or somebody

called me and asked me today if it was a legal lot, I would have to say yes. As far as I'm concerned you can't divide the 37.5 acres. It has to be sold as one property and you can only put one house on it.

Mr. McMillan stated that they were going off the last map that was provided. They weren't sure where the septic was. That is the last correspondence that we had.

Mrs. Vawter asked what the date was on the communication.

Mr. McMillan answered, Thursday, January 9, 2020. (2) I think the health department when they were looking at this parcel this came up. When they were looking at the adjoining property, this opened a can of worms, he felt that he needed to include his findings on that parcel.

Mr. Holman asked... and there was no problem?

Mr. Zeller asked for clarification that Mr. LeMaster was referring to the small parcel with the house. (2) If it's sold... any dug or driven wells have to be properly abandoned? Is that what it means? (3) Are these? (4) Was that part of the 37.5 acres?

Mr. McMillan answered, correct. (3) I don't know. There is a wooded area, I guess there is still some silos in there, where there was an original home in there. (4) Exactly.

(2) Mr. Kiphart stated that abandoned wells are always supposed to be capped.

Mr. Pugel stated that he thought Mr. LeMaster's comment about the wells is related to Tract 1 not to the standing one acre.

Mr. McMillan answered, correct.

Mr. Pugel stated that they would also need to have a drain easement to drain their septic field or whatever drainage they're going to need on Tract 1 down all the way through the property too. That would have to be part of the condition, I think.

Mr. McMillan stated that this brings back the question of hardship.

Mr. Habig and Mr. Pugel both stated that they didn't see any.

Discussion followed on the potential of or a lack of hardship.

Mr. Culp stated that the new owner will be aware of the situation when he's acquiring it.

With no further questions from the board... Mr. McMillan opened the hearing to the public at 7:58 p.m. and invited anyone who wished to speak for or against the petition to step up to the

podium.

Brad Boyer, of 10480 Creektree Lane, Fishers, IN 46038, stated his name and address for the record. I am the buyer. What I ask in the purchase of this is this is to be divided into two parcels. One 15 acre parcel and one 24 acre parcel. I made it a condition of purchase that it is divided into two parcels. I would like the flexibility to build a house and a barn and use the land for an agricultural purpose for the 24 acres and then at some time down the road if I wanted to sell the 15 acres I could. Or I could potentially sell the 24 and then live on the 15. I don't know that I have any interest in three parcels.

Mr. Habig stated that he felt Mr. Boyer would have to almost purchase the property and then come in front of us again and ask for that variance. It would be a roll of the dice on how you present your case and whether or not you can prove a hardship. (2) To approve any variance you have to prove a hardship, and I'm not seeing a hardship as to why this parcel has to be divided especially since they divided that small parcel out illegally. As we discussed... they produced their own hardship. I'm not saying which way it will go tonight. I'm just saying when you present your case as a new land owner and you have a hardship and you can prove it... then it will get passed. (3) Monetary hardships don't count.

Mr. Boyer stated that if you (the board) approve it to be divided into two parcels there wouldn't be any variance that I would be seeking. If you decided to divide it into three parcels I would come back before you to put it back into two parcels. (2) What hardship would you prove?

(2) Mr. Kiphart stated that the only valid hardship that anybody could say was that for the original owner... it was ignorance of the law. Then it's up to the board to decide if that's a justifiable hardship.

Mr. Culp stated that it is the petitioner's job to identify a hardship and convince the board that there is a hardship. A hardship cannot be something that the petitioner created themselves and it cannot be purely economical in nature. A hardship is... the way our ordinance is applied to this piece of land is causing or restricting the ability to use it. One of the most common ones you'll find is... where we have setbacks from a property line and the lot size or shape is such that you couldn't build anything on it if we forced them to comply with the setbacks. It's things like that that the petitioner has to prove in order to get a variance.

Mr. Kiphart stated that there is another way. This entire piece is zoned A-2(s). They could go for a one lot subdivision and I think we talked about this option months and months ago. The person who owns the one acre can either purchase or the existing owner of the 37 or 39 acres could give to the one acre parcel – two acres because that would be the minimum lot size in an A-2(s). Indiana state law says if you meet all the requirements of the subdivision requirements and zoning, it can't be turned down. I believe there was a land use attorney involved at one time.

Mr. Culp answered, Steve Hardin.

Mrs. Vawter answered, yes.

Mr. Kiphart stated that he talked to him about that. And I talked to the realtor about that. We talked about all of the options for how this could work. And they chose this route. So there is another way to do it. It would go to the plan commission and the county commissioners. As long as they can make that lot three acres and they do a plat... it would have to be approved. They give up two acres but that's the cost of doing business.

Mr. Zeller asked if this doesn't matter that it was split off illegally in the first place.

Mr. Culp stated that at that point they would be going through a proper subdivision process. So they would be going back and cleaning it up.

Mr. Kiphart stated that if he was willing to buy a couple acres that would be ok.

Mr. Culp stated that as long as whoever buys this lot isn't looking to subdivide it or needing a variance for something, they probably aren't going to run into a problem. But when they come, and they have something that requires our approval they are going to run into needing to clean this up at some point in the future.

Mr. Boyer asked if the desire was to buy the whole piece of land and not break it into parcels then everything is ok. (2) You could then proceed as an A-2S and you could build a house and build your barn and move forward?

Mr. Culp answered, right. (2) Right. As long as you didn't need a variance or something else, or try to subdivide then we wouldn't have to confront this issue.

Mr. Kiphart stated that you could build one house and have your horses and a barn for those horses on that complete acreage. You would just need the building permit. That's all.

Mr. Boyer stated that somebody has to go through the process of getting two additional acres.

Mr. Zeller answered, no. You're good if you buy the whole plot.

Mr. Pugel stated that it was only if he wanted to do anything else with it like divide the 39 acres. You need to either ask for a variance from the board or you can go after making the one acre a three acre lot so that it is proper under Indiana law Mr. Kiphart said.

Mr. Zeller stated that it would still have to be approved by the plan commission.

Mr. Culp stated that that is a different standard. That does not require you to prove a hardship. You just have to show that you meet all the requirements and if you do then you're entitled to that. But that would require putting two acres with the one acre lot.

Mr. Boyer stated that if he did that it would put two acres into the one acre to make three acres and he'd be left with 37 acres. (2) Then there is no hardship that has to be proved? (3) Then we could subdivide it exactly like we're talking about here.

Mr. Culp stated that he could then subdivide those 37 acres in up to three lots. (2) No. (3) Yes.

Mr. Boyer stated that this has been a challenge to understand and weave through what you can and can't do. I appreciate you for laying it out. (2) If that gets broken into two parcels, you said something about drainage for a septic system. Can you explain that a little?

Mr. Habig commended Mr. Boyer for diving into this before purchasing it.

(2) Mr. Pugel stated that in comments from the health department – at the south end of the property there is a regulated drain. All three of the tracts are going to have to drain into that regulated drain and most likely each of the septic systems around the houses are going to have to have what is called a perimeter drain. That drain has to discharge into something. The discharge has to be that regulated drain which means that each one of the tracts are going to have to have a drain line running down to that drain. The other two tracts are going to require an easement in order to run the drain through the property.

Mr. Boyer stated that the surveyor's office can't tell me where the legal drain is. Is there any way of knowing where the legal drain is? (2) I understand but how do you know how many feet out into the field that is? (3) If you look at the map it then goes north out into the field. So how do you know where that drain goes or doesn't go?

Mr. McMillan stated that the legal drain was shown in red on the map.

(2) Mr. Galloway stated that there is a riser, I believe, on Prairie Baptist Road. That riser is right on that drain. (3) If the county map doesn't show it... you just probe it and find it. That's all you can do. The nice thing is you've done your due diligence and most people don't.

With no one else stepping forward to address the board... Mr. McMillan closed the public portion of the hearing at 8:14 p.m.

Mr. Zeller moved to approve SBZA-R.V.-0005-02-2020.

Mr. Pugel seconded.

Mr. Zeller stated that he didn't see a hardship and wouldn't support dividing the property up. It would need to stay as one parcel in my opinion.

Mr. Habig stated that he felt the same way. I can't see a hardship here. It does need to be cleared up, but this isn't the time to do it.

Mr. Pugel stated that the original variance was for three tracts. Now we're talking about two; so I don't know how that plays into whether or not the position of the variance is correct any more. (2) I concur with the other members of the board. I don't see a hardship. It looks like they bought into the hardship and there is nothing other than an economic issue. From the minutes of the last meeting there was an issue in selling the land but there appears to be a buyer. So it's not even a hardship any more.

Mr. Culp stated that you can change it if it is more in conformance, but you cannot be greater.

Mr. Zeller added... and that's not necessarily a hardship.

Mr. Culp addressing the board... if you voted tonight and denied this... and the buyer goes ahead and purchases it... he will not be allowed to submit a variance to try to do this for 12 months. The petitioner would have the option to withdraw this and leave it up to the buyer, but that would be up to them. Based on the way this discussion is going you might want to ask them if they want us to go forward with the vote. They could withdraw it, and the buyer goes ahead and acquires it, then he could come in...

Mr. Pugel states that the buyer had his ducks in a row. He knows what he wants to be able to do. He is in a better position to figure out how he gets there.

Brad Boyer returned to the podium. If the petition is withdrawn... then it could be brought back but if I understand the discussion... there isn't any bringing it back because there is no way this land is ever going to get divided into two parcels.

Mr. Culp responded, and that may well be the case. Ultimately, while you have that contract the direction would have to come from the current title owners.

Mr. Boyer stated that whether there is or isn't a hardship, it's a judgement call. The new way would be to go through the plan commission not through the board of zoning appeals.

Mr. Culp stated that that is a completely separate process. Any denied variance can come back in 12 months. You could come back, and you could make a case for a hardship. Except you would be the petitioner and you would be making the argument as someone who wasn't responsible for subdividing it and creating the current situation. Now... whether or not the board would accept that – I don't know. They would have to consider it when that got put before them.

Mr. Zeller stated that if you withdraw and you purchase the property as one parcel, there is no guarantees that you are going to be able to come back and get it divided.

Mr. Boyer stated that he understood that. If I understand correctly, the current owner is the one who subdivided off the one acre and created it so they can't now claim a hardship.

Mr. Habig answered, correct.

Mr. McMillan asked Mrs. Vawter and Mr. Holman to come up to the podium.

Janet Vawter, Power of Attorney for Curtis Smith, and Jerry Holman stated their names for the record.

Mr. Culp advised Mrs. Vawter and Mr. Holman that they had the option to withdraw or to go ahead and have the vote. I don't know what your agreement is. That is between you guys. I just wanted to put it out there in case that is something that you wanted to consider.

Mrs. Vawter advised the board that they wanted to withdraw their petition. Thank you very much for your time.

Mr. McMillan accepted their request. **SBZA-R.V.-0005-02-2020 has been withdrawn.**

New Business: Nothing to present.

Director's Report: No report.

Legal Counsel Report: No report.

Our next meeting will be Wednesday, July 22, 2020.

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

Mr. Galloway so moved.

Mr. Habig seconded.

With no further comments... Mr. McMillan called for the vote. **5 yes votes... 0 no votes.**
Meeting adjourned at 8:25 p.m.

Charlie McMillan, Jr. Chairman

Date

Linda Burdett, Secretary

Date