

Hamilton County Board of Zoning Appeals - North District
July 22, 2020

Mr. Kirby called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 7:00 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 member present.

Guests: See sign-in sheet.

Communications/Reports: Nothing to present.

Approval of Minutes: Mr. Kirby identified the minutes of June 24, 2020.

Mr. Habig made a motion to approve as submitted.
Mr. Hall seconded.

With no comments or corrections... 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.-0003-05-2020***. This project was assigned a new number. The new number is ***NBZA-R.V.-0007-07-2020***. This is a requirement variance concerning subdividing an existing 6.5 acre parcel of land into two parcels. Parcel one to be 2.77 acres in size. Parcel two to be 3.73 acres in size. Each with a single family residence; minimum lot size is 10 acres. When permit was issued for the new house in October 2019 the existing house was to be removed when the new house was completed. ***Location: 23635 (aka 23711) Joyce Avenue, Cicero, Indiana.*** Would you please step forward and present your case?

Greg Landwerlen stated his name and introduced **his wife, Amanda**, for the record. **We live at 23635 Joyce Avenue, Cicero, Indiana.** I want to thank you, the council member, and all the folks who came today whether they are for or against the project. I appreciate them taking the time to speak their minds. It is important that we do so and I understand and respect that.

I would like to thank Mr. Kiphart and Mrs. Burdett for their guidance and help through this project. They were extremely helpful regardless of whichever way this goes. I can't thank them enough.

When we started out, we were looking to get some big property and enjoy more land. We have a big family.

Our intent was to replace the home that sat up on the bluff overlooking the river. That home was built in 1901. It was an old hunting lodge. The foundation was still there. As we started working on the new home, we understood that we would have to tear the existing home down.

We have older children, and they come and visit. They would like to spend the night and enjoy the rafting or kayaking; we have horses, so they like to ride the horses. It is a dream come true for us.

So, yes, we did change our minds. We thought we could keep this home and turn it into a carriage home. So, we decided to see if we could keep this and fit it into the community.

I reached out to all of my neighbors, some who are here this evening. I asked them if they wanted to sit down and have a conversation so I could share with them what our plans are.

My goal is not to have two pieces of property. My goal is to have our main home with a carriage home so our family can come and stay. I'm not going to rent it. I don't want to sell it. We can do away with the old driveway and just use the new driveway.

The house across the street from me has these nice shrubs lining the street and buffering his house against the street. I said I would go ahead and do something like that too. A few neighbors said if I was going to fix the house to match the new home as far as the brick on the bottom, the hardie-plank, the colors, make sure it's aesthetically pleasing and fits in, then we wouldn't want you to put that up. I'm willing to do almost whatever works so we can have the two homes.

It is a beautiful piece of property. We just want to enjoy it with our family.

There are two complaints in here saying that we shouldn't do it and they're mentioning things that happened 10 – 15 years ago and maybe even longer ago than that. Time does change things.

I think what we're offering to do will increase the value of the properties around me. I did bring Steve Decatur who is a real estate agent in Cicero and knows the property very well. He brought some information if you would like to see what it would do to the property values.

The little home has been there since 1930 something and is a beautiful little home. Fixed up it will be a beautiful part of the neighborhood.

I would love your support and approval for this plan. If you want to give me guidelines or recommendations or mandates on how to do that... I would be happy to try to oblige. I want to be a good neighbor. A good part of the community. And I think my project will benefit everyone in our community. Thank you.

Mr. Hall asked for clarification. Your intent when you applied for the permit was that you were going to tear the house down?

Mr. Landwerlen answered, yes.

Mr. Habig asked Mr. Landwerlen with his idea for the older home... what is your reasoning to divide the property?

Mr. Landwerlen answered, when I started out on this project to try to keep that home, I spoke to people and was advised at that point that dividing the property was the right way to go. I'm a car salesman. I don't know much about all of this, so I took the direction. It was after I spoke with my neighbors and shared with them, they said why do you want to divide it. I said I don't want to divide it. I personally would prefer that it's not divided but once we got this far, they said go ahead and go to the meeting and tell them how you feel. So that's what I'm doing.

Mr. Hall stated that one of the key things that they have to decide here to be able to approve this or not is the hardship in using the property. What is the hardship you would have in using this property if you did not have this approved?

Mr. Landwerlen answered, there is no hardship. I would like to leave it as one parcel with a little carriage house.

Mr. Kirby asked about the verbiage. The proposal is to split. If we were to consider leaving the house without splitting, they would have to get another variance. Is that correct? (2) So what we are going to vote on is if we are going to split it.

Mr. Culp answered, right. And it would have to be advertised differently. (2) Right.

Mr. Landwerlen stated that it was never his intent to waste the board's time. If you turn this down because you have to make a ruling based on that, I understand, and I respect what you're doing. You're doing your job. If I need to get a new variance that says one piece of property with two homes and approach it that way, I know there are no guarantees in life, I understand that.

After minimal comments... Mr. Kirby opened the hearing to the public at 7:17 p.m. and invited anyone who wished to speak for or against the petition to please step forward and state their name and address.

Steve Decatur stated his name for the record. I've been in real estate for about 40 years. Right around there, there are one acre, three acres, they're all over the place so this is not going to hurt the neighbors. What he has done there has actually increased everybody's value. I brought some examples of some homes. Here is one I just sold for two million dollars that has a carriage house. There is a nice home that will be set up on the hill. The existing home has a little front porch on it with a cute little two car garage. I just don't understand why you would tear down a good house. And from the neighbors' standpoint... this is an estate which only increases everyone's values. These are all million dollars homes that I have printed off that have either a guest house or a carriage house on them. Some of them are on two or three acres. They are not on almost seven acres. Either way this is not going to hurt values. He has definitely improved the property.

Richard Parker, of 23530 Joyce Avenue, stated his name and address for the record. I'm just across the street and catty-corner. I've lived there for 30 years and I'm one of the newcomers. It

is a beautiful area. It is the nicest drive that there is along there. Mr. Landwerlen and I talked about this in his home. I got to look at the new home up close and it's beautiful. He's done a great job. It looks great in the neighborhood. I asked him, why divide them? He also mentioned his plan about making that a carriage house and upgrade the look of it to make it look like the other house. I think the biggest concern of the other neighbors was if the property was divided and the little house stayed the same then it would bring the values down on everybody's houses.

I don't think that is what Mr. Landwerlen or his wife want. Keeping one big piece of land there and having a carriage home with the other home would probably increase the value of the home.

As a guy who lives directly across the street and sees exactly what's going on, I think it's a really great idea and see no reason to divide those properties. In the original paper he said he was going to tear the house down but if he had said instead that he was going to build it into a carriage house or redesign it and make it look like it fits as a carriage house, what's wrong with that? Nothing. It makes it a more beautiful neighborhood for everybody. I would be happy to answer any questions that anybody has. I appreciate that he asked me over to discuss it. Thank you.

With no one else stepping forward to address the board... Mr. Kirby closed the public portion of the hearing at 7:23 p.m. Do we have a motion?

Mr. Habig made a motion to approve as submitted.

Mr. Hall seconded.

Mr. Habig stated that for what was in front of him he knows how he is going to vote because there is no hardship. I wish we were talking about keeping the same property as a whole and possibly talking about turning this house into a carriage house. I'm not seeing it but... following the right guidelines of putting a carriage house with conditions on it, might be something I would take a look at but as far as dividing the property... there is no hardship here so I would have to vote against it.

Mr. Hall stated that this property has been used as a 6 ½ acre single family residence for many, many years and to say that not continuing to do so would be a hardship is not conceivable. It's a nice project but on our criteria that is not one of the things that we have to approve. We have to determine whether or not there is a hardship in using the property as a 6 ½ acre residential property; and there is no hardship to do that.

Mr. Kirby stated that he agreed.

Mr. Kiphart stated that when people come in and talk about variances with him, they always want to know what the alternatives are, and there are always several. First thing is, what would you recommend? I can't outright recommend anything; and I don't; and I won't. The only thing I can tell people is what the board has done in the past. I might be wrong, but I don't think our boards have ever approved... "carriage house" means nothing. It is a second single family residential. I don't think the board has ever approved two permanently established single family residential structures on a property. But you have on occasion – you've turned down some lot splits and you have approved a few that were outside the ordinance requirements. And that's what I told them.

I would say that if you're going to say "no" he should withdraw it and we should allow him to come back. Maybe he doesn't have to pay the same fee over again but he would be responsible for a new public hearing. We don't want to mis-lead him and have him go through all of that and turn it down and I know you can't vote on it.

Mr. Kirby stated that they have approved somebody taking an existing garage and turned it into living quarters for a mother-in-law or something.

Mr. Kiphart stated that they can do that as long as it doesn't have a kitchen in it. They don't have to get a variance for that. Then it becomes an apartment then. But without having a kitchen and with having an entry way from the inside of the house people can do that.

Mr. Hall stated that he would caution the petitioner here too that just because we think it's a great project does not necessarily mean that we're voting on anything or commenting on anything other than what is before us right now. If we do turn this down in our vote, and we've been real positive about how nice it would be, you shouldn't walk out of here thinking that you can come back and we'd approve it. We may turn it down. We may not turn it down. But that is not what's before us this evening and I wouldn't want to suggest to you either way.

Mr. Habig asked if they wanted to vote on it or give him a chance to withdraw. He'd have to wait a year, correct?

Mr. Culp stated that he didn't know that he would have to wait a year. That would be a completely different variance. He wouldn't be coming back to us for the same thing. If it's withdrawn it's not a denial. If I understand, if Mr. Landwerlen withdraws his petition Mr. Kiphart wouldn't make him re-pay the application fee but he would still have to pay for the notice.

Mr. Clark asked Mr. Kiphart about going for a two lot subdivision.

Mr. Kiphart stated that he would have to change the zoning to an A-2(s) but that would require each lot to be three acres in size.

Mr. Kirby asked if it was to be divided into two separate properties would we have any say where he couldn't sell that.

Mr. Kiphart and Mr. Culp both answered, no.

Mr. Landwerlen asked if he would have the right to offer that up in writing that I wouldn't sell it.

(2) That is my feeling and I would be willing to do that.

Mr. Kiphart answered, yes.

(2) Mr. Culp stated that he didn't know that that would be legally binding.

Mr. Kiphart stated that if Mr. Landwerlen withdrew the petition and came back for the two houses on the same lot he could offer and the BZA could agree and have conditions recorded that it would

have to be used as a secondary structure by the owner. You couldn't rent it for money. It could only be used for family members and friends. And then record the statement.

Mr. Kirby asked Mr. Landwerlen if he was interested in withdrawing.

Mr. Landwerlen stated that he would be very interested in doing that if that gives him a better opportunity. And I appreciate what you're saying in "do not walk out of here thinking that if I withdraw it and resubmit it, that I'm going to get it approved." I do understand and I respect the clarity in your statement. So yes, I would like to withdraw.

Mr. Culp stated that based upon what you said you wanted to achieve which is you would really like to have one parcel, then to me the other way gives you a chance to have one parcel with a main house and the carriage house. You would come in requesting a variance to allow you to have a second residential structure on one parcel. Like Mr. Hall said, there is no guarantee that you would get it.

And Mr. Kiphart said he would not charge you the filing fee for a new petition, but you would pay for the notices.

Mr. Landwerlen stated that he overheard something about a kitchen not being in the house that might make a difference...

Mr. Kiphart stated that that was only if the two structures were connected.

Mr. Landwerlen stated that he would like to officially withdraw. Thank you for your time. I hope your families are all safe through this Covid-19 that we're dealing with.

Mr. Habig commended Mr. Landwerlen on his process and how he got all his neighbors together and talked to everybody associated with that piece of property. You came in pretty well equipped to stand in front of us. It was just the wrong one to put in front of us.

Mr. Kirby stated that NBZA-R.V.-0007-07-2020 has been withdrawn.

Mr. Kirby continued with ***NBZA-R.V.-0008-07-2020*** a requirement variance. This is concerning the reduction of the ordinance required side yard setback from 135 ft. down to 104 ft. in order to construct a new single family residence. ***Location: 23774 State Road 213 North, Noblesville, Indiana.*** Would you please step forward and present your case?

Melissa and Jason Uhrick, of 10800 East 206th Street, Noblesville, stated their names and current address for the record. My husband and I decided we were going to build what we thought we wanted for our retirement. Before we purchased the property, I came to the plan commission to make sure we could build what we wanted to build and to get the setback lines that we needed because the property was all wooded. We had to clear lots of beautiful trees before we could lay our pad and set our driveway. We filed our electric permit and my husband set the "H" block and when he went to pick up the permit, he was told that we had the wrong setbacks. We were told 60 ft. from the edge of our property line on State Road 37 and that's what we did.

Mr. Uhrick added that it was supposed to be 135 ft. from the centerline of State Road 37. (2) That's why we're asking for the variance. We would have to take out another 30 ft. of trees to the north, re-do the driveway...

Mrs. Uhrick stated that they were at 104 ft. from the centerline of State Road 37. (2) And move the pad. We're not made of money and we just don't have the extra money in our budget to pay for all that.

Mr. Hall asked for clarification on the pad. This is going to be on a slab? Is that what you mean by pad? (2) And it has been brought to your attention that you have to have architectural approvals on that?

Mr. Uhrick stated that it would be of pole barn construction. It will be a barndominium.

(2) Mrs. Uhrick stated that they met with Mr. Kiphart and he told them what they needed.

Mr. Habig asked if they had a permit to pour the slab.

Mr. Uhrick stated that they haven't poured it. They just cleared the ground.

Mr. Hall stated that if this was not approved... your driveway would be alright, or you would have to move it too? (2) This home will face State Road 37 or 213? (3) From both State Road 213 and 37 there isn't any doors or windows on either side.

Mr. Uhrick stated that they would have to move it too. We would have to extend everything 30 ft. to the north. (2) It will face the north. The side of the building will be on the 213 side. The back side of the building will be on the State Road 37 side. The doors will face the neighbors to the north of us. (3) No sir.

Mr. Kirby asked for clarification on the shop area. Is that going to be for parking cars and other stuff?

Mr. Uhrick answered, for parking cars, a camper.

Mrs. Uhrick stated that is was basically a big garage.

Mr. Hall asked if they agreed that there would be no commercial use of the property. (2) You agree? (3) The soil and water folks had some concern about run-off. Have you been able to address that or made plans to address that?

Mrs. Uhrick answered, no. (2) Yes.

(3) Mr. Uhrick stated that this was the first he knew of their concerns.

Mrs. Burdett stated that they just got that information within the last two days.

Mr. Clark stated that their letter said that the soil would absorb water well, but it also would wash away easily. (2) The letter said ground cover would take care of it so after you're in it would probably be ok.

Mrs. Uhrick stated that there was a drain that's not there yet, and they were putting in a culvert for their driveway. (2) I'm sure that will help but we don't want to put it in yet because with all the machinery that has to come in, we're afraid it would break.

With no further questions from the board... Mr. Kirby opened the public portion of the hearing at 7:44 p.m. and invited anyone who wished to speak for or against the petition to please step forward.

Joann Glover, of 23820 State Road 213 North, Noblesville, Indiana, stated her name and address for the record. I've lived out there for 45 years. The woods have a lot of mosquitoes, and he's making a nice place. The traffic when I pull out of my driveway from 37 and 213 – you could never see the cars and they never did cut the trees down or anything. He mows the ditches out there. He's got it real nice and I welcome them as new neighbors.

With no one else stepping forward to address the board... Mr. Kirby closed the public portion of the hearing at 7:46 p.m. Do we have a motion?

Mr. Habig made a motion to approve as submitted with the following conditions: (1) that the plans for the storage and new home building be architecturally drawn; (2) there be no commercial use of the storage building, the house, or the property; (3) and they need this all recorded.

Mr. Kirby seconded.

Mr. Habig stated that it was a pretty place to put a home.

Mr. Kirby stated that the area has always been wooded and hard to see around the corner.

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

Director's Report: No report.

Legal Counsel Report: No report.

Mr. Hall stated that the trailers on State Road 213 have begun to be moved. Is that because of anything that we instigated?

Mr. Kiphart stated that he was unsure. The sheriff's department was supposed to send them a citation. I had asked Mr. Culp to work with the attorney that was going to issue the citations but that hasn't been done yet.

Mr. Culp stated that a lot of the court action had been sidelined by Covid-19.

Mr. Clark stated that he noticed two on 191st Street just west of State Road 32. Can people use them for commercial building or storage buildings?

Mr. Kiphart answered, no. Not in our jurisdiction.

The next BZA meeting will be Wednesday, August 26, 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. Kirby seconded.

With no further comments... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.** Meeting adjourned at 7:58 p.m.

Gerald Kirby, Vice Chairman

Date: _____

Linda Burdett, Secretary

Date: _____