

**Hiram Township Board of Zoning Appeals
Bixler Variance Request Hearing
March 13, 2017**

Board Members: Chairman, Janet Pancost, Bette Gualtieri, Gary Bott, Wendell Schulda and Tom Franek.

Public Present: Eric Hankinson, Sam Bixler, Ann Bixler, Raymond Knispel, Lorie Cook, Greg Cook, William Barton and Zoning Inspector, Rich Gano.

The meeting was called to order at 6:30 p.m.

Janet Pancost explained the process of the evening's meeting.

The Board members introduced themselves.

Interested parties were sworn in.

Mrs. Pancost stated that we are here tonight for a request for a Variance filed by Sam Bixler. She asked Mr. Bixler what type of variance he was asking for and why. Mr. Bixler answered that they do not have enough frontage and they would like to build a house on their property. They have 20 acres. It has a long driveway. Mrs. Pancost stated that from the paperwork submitted, there is 95 feet of frontage. Mr. Bixler answered yes. Wendell Schulda asked Rich Gano what the Zoning Code required. Mr. Gano answered 200 feet.

Tom Franek asked how long Mr. Bixler has owned the property. Mr. Bixler answered "since 2002". He added that he "tried back then but everyone thought I was going to put a development in". Mrs. Pancost asked what has changed since then. Mr. Bixler answered that there is a barn and horses there. Mrs. Pancost asked if there was a barn there previously. Mr. Bixler answered no and that he got a permit for it.

Mrs. Pancost asked if the audience members were familiar with the property and that there are maps available for review. The maps were reviewed. Mr. Franek asked who Mr. Bixler bought the property from. He answered Dianne Konecny. Mr. Franek asked if it was an adjoining piece of property when he bought it. Mr. Bixler confirmed the same. Greg Cook stated that it was one big lot and this part was cut off when he purchased his property. Mr. Franek stated that we must have allowed lots like this. Mr. Gano answered that he doesn't believe that we did. He stated that it was not signed off on by the Zoning Inspector at the time. He further stated that he questioned the Portage County Regional Planning Commission because the Zoning Inspector has to sign off that it is a buildable lot. Mr. Gano stated that he found out that when a property is over 5 acres, it isn't required. He stated that back at that time, there was an unknown exemption. Lorie Cook stated that they tried to purchase the lot because it already had an oil well driveway and they wanted it for their driveway. Mr. Bixler added that it is the right of way. Mrs. Cook further stated that the previous property owner did not want them that close so she bought it.

Mrs. Pancost stated that her understanding of the history of the property is that the two lots were owned by the same person and she sought a Variance from the Board of Zoning Appeals because she wanted to sell the other lot off without enough frontage for a single home or another purpose. Mr. Franek stated that neither of the properties had enough frontage. Mr. Cook stated that when she sold the house the original frontage requirement was 150 feet. Mr. Gano stated that Zoning was amended in 1993 regarding frontage requirements.

Bette Gualtieri asked Mr. Bixler if he purchased the property knowing the frontage requirements. Mr. Bixler answered yes and that there are a "ton of places in the township that do the same thing". Mr. Franek asked if the barn on the map is existing. Mr. Bixler answered yes, since 2006.

Mrs. Gualtieri asked if the neighbors had any comments on the matter. Ray Knispel stated that there is already access to the property, there is already a driveway there. He understands the frontage flaw. Mr. Knispel stated that he is not a fan of land locked property. Mr. Bixler has 20 acres that he cannot do anything with and he is all for it. He doesn't believe that Mr. Bixler should be denied because of the frontage.

Mr. Franek asked what the soil was like. Mr. Bixler answered that it is good soil and "the soil scientists have already been out there".

Mr. Schulda asked Mr. Bixler if when he purchased the property he was aware that the frontage did not meet the Zoning Code. Mr. Bixler answered yes. William Barton asked what the concern was about the lot. Mr. Cook stated that the Johnson family wants to put houses in. Mrs. Gualtieri explained the process for putting in a subdivision. Mrs. Pancost stated that a subdivision would still have to meet the Zoning requirements. Mr. Barton reviewed the map.

Mrs. Gualtieri asked if the neighbor that lives directly in the front was present. Mr. Barton answered that he was. Mrs. Gualtieri asked what he thought. Mr. Barton answered that he is interested in learning what is going on. Mrs. Pancost explained the Variance process.

Ray Knispel asked if it would be a single family dwelling. Mr. Bixler answered yes. Mr. Knispel stated that he does not have a problem with it. He further stated that Mr. Bixler has a lot of property and that Mr. Bixler knew he didn't have enough frontage when he purchased the property but there are a lot of other properties around with an easement.

Mr. Bixler provided a letter from his neighbor Todd Parton who could not be present. Mrs. Pancost read the letter out loud. The letter was in favor of the Variance.

Mrs. Gualtieri stated that looking at the zoning, there is a spot for a Conditional Variance for irregularly shaped lots but you have to have 20 acres. One of the qualifications is that you have to have the Fire Chief prepare a letter stating that the access of a fire apparatus is possible. Mrs. Gualtieri asked if Mr. Bixler had obtained this letter. Mr. Bixler answered no but that he knows that it is possible. Mrs. Gualtieri asked Gary Bott if it is possible. Mr. Bott answered yes and that it is not a problem.

Mrs. Gualtieri stated that another concern of hers is that the proposed house would be close behind Mr. Barton's house. Mr. Bixler stated that there is 900 feet difference. Mrs. Gualtieri asked if there was a line of trees. Mr. Bixler answered yes and that they are full size trees. Mrs. Pancost asked Mr. Bixler to mark on the aerial map where he plans to build the house. Mr. Bixler did the same. The map was reviewed.

Mrs. Pancost asked how many stories they are planning on building the house. Mr. Bixler answered a story and a half. Mr. Bott asked if the proposed house was 1833 square feet. Mr. Bixler answered that it would be a little bigger than that and that was the length of the lot. Mrs. Gualtieri asked if Mr. Bixler was planning on adding any other accessory buildings other than the barn. Mr. Bixler answered no. Mrs. Pancost asked if there would be an attached garage. Mr. Bixler answered yes. Mr. Barton asked how soon Mr. Bixler planned to build. Mr. Bixler answered this year.

Mrs. Pancost asked Mr. Bixler what he does with the back lot. Does he make hay, brush hog? Mr. Bixler answered a little of both. Mr. Cook stated that there is an orchard on that lot. Mr. Bixler stated that he makes hay up to the property line. The map was reviewed.

Mrs. Pancost stated that she is looking at the lot and thinking of the neighbor right in front. If there were a line of pine trees along the lot line so that even during the winter time the view would be obscured, how would Mr. Barton feel. Mr. Barton stated that he is undecided as to how he feels about it. He is not for it. He is not against it. Mr. Bixler stated that Mr. Barton would see more of the other neighbors. Mrs. Cook stated that they would see all the driveway traffic. Mrs. Pancost asked how Mr. and Mrs. Cook feel. Mrs. Cook stated that they aren't a fan of the traffic. Mr. Bixler stated that there will be less traffic when he lives there. Mr. Cook asked if Mr. Bixler would consider building behind his barn. Mr. Bixler stated that he would have to clear it. Mrs. Cook stated that their concern is the traffic. Mrs. Pancost asked Mr. and Mrs. Cook to show on the map where their house is. Mr. Cook did the same. Mr. Bixler stated that he has already planted young pine trees on Mr. and Mrs. Cook's side. There was a brief discussion regarding trees in the neighborhood.

Mr. Bott asked if the driveway would be able to support 40 tons for emergency vehicles. Mr. Bixler answered yes. Mr. and Mrs. Cook answered that it is an oil well driveway.

Mr. Schulda stated that he would like to go back to the March 13, 2002 Board of Zoning Appeals meeting and referenced testimony that Dianne Konecny purchased the property that Mr. Bixler currently owns in 1992 but it was only 4.3 acres. Mr. Bixler stated that is the house lot. He purchased the 19 acres in 2000. Mr. Schulda stated that according to testimony, at that time Dianne Konecny owned a piece of property that was 95 feet wide and 4.3 acres. She also owned a property next to it that was 215 feet wide and 19.7 acres. Dianne Konecny went before the Board of Zoning Appeals for a proposed split in reconfiguring the property line. The Variance to reconfigure the property was denied on March 13, 2002. According to the Portage County website regarding property, the parcel was re-plotted on April 4, 2002, just a few weeks after the March 13, 2002 Board of Zoning Appeals meeting. Mr. Bixler purchased the property on April 17, 2002 which consisted of 95 1/2 feet wide and 19 plus acres. Mr. Schulda stated that he is a little confused. The Board of Zoning Appeals denied the split but a few weeks later it was re-plotted for the configuration that was applied for with the Board of Zoning Appeals. Mr. Bixler stated that it has been so long that he doesn't remember. Mr. Schulda replied that it is the record. Mr. Gano stated that the Portage County Regional Planning Commission stated that properties over 5 acres could be exempt. Mrs. Gualtieri asked if the Board of Zoning Appeals denied it, Regional Planning could still reconfigure the lot? Mr. Gano stated that he didn't know about the Variance but regarding the signing of the Mylar, they could recommend that they come to the Zoning Inspector for the sign off but don't have to. Mrs. Pancost stated "the exchange of land between adjoining land owners when no building sites are being created would be an exemption". She further stated, "if you are exchanging land between land owners with the purpose of creating a building site there is no exemption". In this case, the previous owner was trying to create a lot to be built upon. Mr.

Gano reiterated Mrs. Pancost's statement for confirmation. Mr. Schulda expressed that is why he thought it was denied, because it didn't conform with the zoning.

Mr. Schulda asked Mr. Bixler what has changed in 15 years. Ray Knispel asked if there were any zoning changes and stated that he didn't believe that anyone on the current Board of Zoning Appeals was on the Board of Zoning Appeals in 2002 and asked why the variance was denied then. Mrs. Pancost answered that the previous property owner was denied a variance because there was not enough frontage between the two lots to split it in compliance with the Zoning Code. There was a brief discussion regarding property front footage requirements, building and zoning.

Mr. Bixler stated that there is already a water well on the property. Mrs. Pancost asked if there were any other questions or comments. There were none. Mrs. Pancost asked the Board members for their opinions. Mrs. Gualtieri stated that there is a large lot, the house is going to be in the center of it and he isn't going to be building it right on someone else's property line. She further stated that there is a line of trees in between. Mr. Franek stated that it already has a curb cut and a driveway. Mr. Bott stated that he doesn't have a problem with the way it is set up and what Mr. Bixler would like to do. Mr. Schulda stated that he is sticking with the zoning code and the required frontage. Mrs. Pancost stated that it is a large piece of land with bad frontage. She stated that her concern is to protect the neighbors. Mrs. Pancost stated that she is not "wildly in favor of it" unless we can do some things to protect the neighbors and shield their view. Her thoughts are to visually separate the lots, making the barn and house less visible year round. Mrs. Pancost proposed a line or double line of pine trees.

William Barton stated that his concern is the driveway. Mr. Barton stated that while Mr. Bixler is a "nice guy", he doesn't know who is going to be living there in 5 years. Mr. Bixler stated that Mr. Barton doesn't live there. Mr. Barton stated that he might.

Mrs. Cook stated that she is concerned with this setting precedent. Mrs. Pancost stated that the Hiram Township Board of Zoning Appeals does not set precedent. Anything that they decide cannot be used in subsequent decisions. If you are before the Board of Zoning Appeals, you have a unique situation with a unique property.

Mrs. Pancost asked Mr. Barton if seeing the barn and the house is not as big of a deal to him as seeing the traffic up and down the driveway. Mr. Barton confirmed the same. Mrs. Pancost asked Mr. and Mrs. Cook the same question. Mrs. Cook confirmed the same. Mr. Cook stated that Mr. Bixler's property is not a mess and that he keeps it clean.

Ann Bixler referred to the driveway and stated that it was there when the property was purchased and asked why it would be a problem now. Mrs. Pancost replied that there is a significant difference in traffic between a property where people are living and a property has people tending to horses and making hay. Mrs. Bixler stated that there is more traffic on the road than the driveway. Mrs. Cook stated that there are lights going up and down the driveway. Mrs. Bixler stated to Mrs. Cook that there was a driveway there when they bought their property. Mrs. Pancost stated that there may have been, but there wasn't a house. Mr. Bixler stated that it would be less traffic as they would already be there and wouldn't have to come and go to take care of the horses. Mrs. Pancost stated that there needs to be some compassion for the neighbors in the fact that if this variance is approved it changes things for them even though it may not be a big change to the Bixlers. Mr. Bixler stated that he is trying to make it better and not worse.

The Board reviewed Section 601-2 number 12 regarding irregularly shaped lots of 20 or more acres. Mrs. Gualtieri stated that the property has already been re-plotted. We cannot change the frontage. At this point they can never build a house on it. Mrs. Pancost confirmed the same and said that it could be used for agricultural purposes. The members reviewed the maps.

Mrs. Pancost suggested going through the guidelines for a variance request.

1. *Whether the land will yield a reasonable return or whether there can be any beneficial use of the land without the variance?*

Mrs. Gualtieri stated that it could still be used for agricultural purposes and if denied, there can never be a house. Mrs. Pancost agreed and stated that there is still a beneficial use without a variance. Mr. Franek asked if the property was CAUV. Mr. Bixler answered yes. There was a brief discussion regarding CAUV requirements. Mrs. Gualtieri stated that there would still be a use but not as profitable a use as a home. Mr. Bott stated that without a house that land will not yield anything because it isn't a big enough piece of land.

2. *Whether the variance proved substantial?*

Bette Gualtieri	YES
Janet Pancost	YES
Wendell Schulda	YES
Tom Franek	NO
Gary Bott	YES

3. *Whether the essential character of the neighborhood would be substantially altered or whether adjoining landowners would suffer a substantial detriment as a result of the variance?*

Mrs. Gualtieri stated that she didn't think that the essential character of the neighborhood would be altered but there would be some detriment to the neighboring land owners. However, if the property had enough frontage, they would be faced with the same issue. Mrs. Pancost agreed with Mrs. Gualtieri. She stated that it would be a detriment to the neighbors but not substantially. Mr. Barton stated that the members needed to look at it as if it was their own house. Mr. Franek stated that every decision is difficult and mentioned other variances that have come before the board. Mr. Bott stated discussed his own neighbor that has a home behind his. Mr. Schulda stated that the essential character of the neighborhood would not be altered and that the neighbors would suffer some detriment, but not substantial.

4. *Whether the variance would adversely affect the delivery of government services?*

Mrs. Gualtieri stated that she thinks that Mr. Bixler should get a letter of approval from the Fire Department but that it would not adversely affect the delivery of government services. Mr. Bott said that there is no problem. Mrs. Pancost stated that it would not be adversely affected. Mr. Franek and Mr. Schulda both answered "no".

5. Whether the applicant purchased the land with knowledge of the zoning regulation?

Bette Gualtieri	YES
Janet Pancost	YES
Wendell Schulda	YES
Tom Franek	YES
Gary Bott	YES

6. Whether the applicant's predicament feasibly can be obviated through some other method other than the variance?

Bette Gualtieri	NO
Janet Pancost	NO
Wendell Schulda	YES
Tom Franek	NO
Gary Bott	NO

7. Whether the spirit and intent behind the zoning regulation would be observed and substantial justice done by granting the variance?

Mrs. Gualtieri answered under normal zoning, no. The spirit and intent of zoning is large, wide frontage between houses. However, the zoning section regarding Conditional Uses makes it not a clear yes or no. Mr. Franek answered yes, it will still maintain the spirit of zoning with rural character. The property already has a driveway with a curb cut. Mr. Schulda answered no. Gary Bott answered yes.

Mrs. Pancost stated that there are 2 issues. One, Mr. Bixler knew when he bought the property that it didn't comply with zoning. The other, doing something with landscaping so that the neighbors aren't looking at lights. Mrs. Gualtieri asked what amount of landscaping is reasonable. The members reviewed the maps. Mrs. Pancost stated that to say you have 19 acres and you cannot put a house on it doesn't sound reasonable. However, to purchase a property that you know cannot have a house built on it and to come before the Board of Zoning Appeals is another issue. Mrs. Pancost stated that if we can put reasonable conditions on the variance to help mitigate the effect on the neighbors she might be able to support it. Mrs. Pancost explained that the conditions would need to be met before building on the property.

The members discussed trees and spacing. Mr. Franek stated that he has a hard time with the planting because the neighbors also have a responsibility and gave an example of his property and neighbor. He stated that if we have property we do not own beyond our property. Mrs. Pancost stated that there are expectations of use. The expectation of use for this property would be agricultural and not residential. The map was reviewed and further discussion was had regarding trees. Mr. Bixler stated that he does not have a problem going down the tree line and planting more trees.

Wendell Schulda motioned to deny the Application for Variance based on the fact that Mr. Bixler knew that this was not a buildable lot and it does not conform with the current Zoning Code.

Tom Franek motioned to approve the Application for Variance with conditions. The conditions are as follows:

- 1. The fire chief shall provide a letter that states that safe access for fire apparatus and emergency vehicles can be reasonably constructed and maintained to the portion of the lot that is suitable for a residential dwelling. (Pursuant to Section 601-2, 12G of the Hiram Township Zoning Code)**
- 2. The property owner is to plant 20 evergreen trees between 5 feet and 6 feet in height at his discretion to block the neighbors' views of his house and to block lights on ingress and egress of the driveway.**

Bette Gualtieri seconded the motion.

Section 601-2, 12G was reviewed. Mr. Cook asked if Mr. Bixler should've asked for 2 variances. Mrs. Pancost explained that the variance is filed for the frontage issue. The conditions are attached to the variance. Mr. Franek stated that if the property was over 20 acres and he had sufficient frontage, he wouldn't have had to come before the Board. The proposed conditions were reviewed.

ROLL CALL: Bette Gualtieri YES, Gary Bott YES, Wendell Schulda NO, Tom Franek YES, Janet Pancost NO. The motion carries.

Mrs. Pancost explained the process of approving the meeting minutes and the appeal process.

Secretary, Kellie Durr stated that the next meeting is scheduled for March 29, 2017.

There was a brief discussion regarding the antenna on the Verizon cell phone tower and dispatch services.

The members reviewed the March 3, 2017 meeting regarding the Ober Variance Request. Corrections for clarification were made.

Bette Gualtieri motioned to approve the March 3, 2017 meeting minutes with corrections. Gary Bott seconded the motion. Roll Call: Janet Pancost YES, Wendell Schulda YES, Gary Bott YES, Bette Gualtieri YES, Tom Franek abstained.

The members reviewed the February 6, 2017 and March 6, 2017 meeting minutes regarding the Verizon Application for Conditional Use Request. Grammatical and clarification corrections were made.

The members briefly discussed upcoming matters.

Gary Bott motioned to approve the February 6, 2017 and March 6, 2017 meeting minutes with corrections. Bette Gualtieri seconded the motion. Roll Call: Janet Pancost YES, Bette Gualtieri YES, Gary Bott YES, Tom Franek YES, Wendell Schulda abstained.

Bette Gualtieri motioned to adjourn. Tom Franek seconded the motion. Roll Call: Janet Pancost YES, Bette Gualtieri YES, Gary Bott YES, Wendell Schulda YES, Tom Franek YES.

The meeting adjourned at 8:27 p.m.