

**St. Clair County Zoning Board of Appeals
Minutes for Meeting
At the Courthouse – 7:00 P.M.
May 6, 2019**

Members Present: Chairman Scott Penny, George Meister, Alexa Edwards,
Kent Heberer, Steven Howell & Marcy Deitz

Members Absent: Patty Gregory

Staff Present: Anne Markezich, Zoning Department
Dave Schneidewind, Zoning Attorney

**County Board
Members Present:** Ed Cockrell, County Board District #7
Kevin Dawson, County Board District #20
Michael O'Donnell, County Board District #22

Pledge of Allegiance

Call to Order

The meeting was called to order by Chairman, Scott Penny.

Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

Approval of Minutes

MOTION by Deitz to approve Minutes of April 8, 2019. Second by Howell.
Motion carried.

Public Comment

There were no comments from the public.

New Business – Case #1

Subject Case 2019-04-ABV – Frederick Werner TR, 3500 Old Sand Road, New Athens, Illinois, Owner and Jacob F. Werner, 3500 Old Sand Road, New Athens, Illinois, Applicant. This is a request for an Area/Bulk Variance to allow the division of 6-acres instead of the 40-acres required in an “A” Agricultural Industry Zone District, on property known as XXXX Old Sand Road, New Athens, Illinois in New Athens Township. (Parcel #18-20.0-100-010)

Frederick Werner, Owner

- Mr. Werner stated he would like to divide off 6-acres of his property for his son who would like to build a house on the property.
- Mr. Werner pointed out where his son would like to build a home on the property.

Discussion

- Ms. Edwards asked the applicant if the property is currently being farmed. (The applicant stated the trees on the map are where a Christmas tree farm was located and the field was a corn field last year.)
- Ms. Markezich stated the LESA score is a 188 which is moderate.
- Ms. Edwards asked if there is public water available to the property. (The applicant stated public water is not available to the property.)
- Chairman Penny asked how far they would have to drill for water. (The applicant stated approximately 30 ft.)
- Ms. Edwards asked who lives in the home in front of this property. (Mr. Timothy Thomas, 3473 Old Sand Road, New Athens stated he lives in that home.)
- Ms. Edwards asked who originally owned the property. (The applicant stated his father owned the property.)
- Ms. Edwards asked when the property was sold off of this piece. (The applicant stated the property was sold in 1995.)
- Ms. Markezich stated she researched this area and all of the divisions were done prior to the adoption of the 40-acre rule.
- Mr. Meister asked if there is any problem on this property with flooding. (The applicant stated this property sits higher and there are no flooding problems.)
- Ms. Edwards stated the Comprehensive Plan calls for Agricultural Preservation and the LESA rating is moderate but is still tillable land and is obviously being farmed.

- Ms. Edwards asked what the applicants will do with the property if the home is built. (The applicant stated they will plant trees and grass on his property, there will no further farming in that area.)
- Ms. Edwards stated granting this request would be a division of a division and there are no public utilities available.
- Ms. Edwards stated she feels granting this request would start a precedence of divisions of divisions in agriculture preservation area.
- Ms. Deitz asked how many acres the parcel is currently. (Ms. Markezich answered this parcel is 25-acres.)
- Ms. Edwards asked if the applicant could build one house without dividing the acreage. (Ms. Markezich stated the applicant could build one home on the property.)
- Ms. Edwards informed the applicant that his son could build his home on the property without making a division of the property. (The applicant stated he also has two daughters and if he dies tomorrow, his sons home would become part of the estate.)
- Ms. Edwards asked the applicant if he plans on dividing the property for his daughters. (The applicant stated he does not, however there is an area for one more division of a home.)
- Chairman Penny stated the concern is, the area has large blocks of farm property and is not an area for residential development.)
- Mr. Heberer stated the one thing that makes this property unique is it sits on the edge of the flood zone.
- Mr. Meister asked if the applicant if his son helps out on the farm. (The applicant stated he only farms 120-acres at this time, so if he needs his son, he will help.)
- Mr. Meister asked if the Christmas tree farm will be re-opened. (The applicant stated the Christmas tree farm will not be re-opened.)

Public Testimony

- Timothy Thomas, 3473 Old Sand Road, New Athens, Illinois stated he is not present to “torpedo” the division. He stated his concern is this property drains to East and Southeast of his home and runs down through there. Mr. Thomas stated he has no problem with the construction of a home on the property he just wanted it stated for the record that there is drainage coming off of that property that will come across his property. Mr. Thomas is concerned that with construction and less permeable drainage could be an issue in the future and feels this fact should be acknowledged.

- Mr. Thomas stated the applicant will build a driveway to the North of his home which will be a semi-permeable surface. (The applicant stated the driveway will be built up and the runoff from the driveway will go down to the Township Road.)
- Ms. Deitz stated her understanding is one home can be built on the property as it sits. (Mr. Cockrell stated then the applicant would have to give his son 25-acres.)
- Ms. Edwards stated the Zoning Ordinance does not allow for Estate Planning, she is just looking at the facts and there is all this surrounding acreage and the 40-acre rule is to protect the agricultural properties for a multitude of reasons.
- Ms. Deitz stated the applicant wants to allow his son to build a home on the property and he shared he doesn't want any further divisions of the property and his daughters do not want to build out there. If the son builds his home on the property, the applicant can contact a real estate attorney to assist him with his estate. (The applicant stated he only has 50-acres and if he gives the son 25-acres, then the daughters will say they only received flood zone ground.)
- Mr. Schneidewind stated the Zoning Board is not in the business of estate planning.
- Mr. Schneidewind stated in regards to the drainage issue, if the Area/Bulk Variance were granted by this board, it would not force the applicants to build the home where he stated, as long as it meets setbacks, this board would not have a say in where the home is placed.

Further Testimony

County Board Member, Ed Cockrell stated he knows the Werner family, he stated there was no objection from New Athens Township, the division would be a part of estate planning and none of the neighbors are opposed to the request. Mr. Cockrell stated he supports granting the variance.

MOTION by Edwards:

The utilities are well/septic; the applicant stated there is no public water available and will not be in the area anytime soon. The Comprehensive Plan calls for Agricultural preservation. The LESA rating is 180-moderate. There is no hardship on the property; the applicant can build one home on the property without dividing the property; the request is not in harmony with the general purpose and intent of the Zoning Ordinance; the request could be injurious to the neighborhood; the nearest neighbor has indicated there is a watershed issue that could possibly develop if the home is not in the right place or if there is unusual

rainfall; therefore this request is injurious to the surrounding property owner; therefore it could be detrimental to the public welfare; it is in conflict with the Comprehensive Plan; it would not create a hazard to the fire; it would not create a traffic congestion; there would be an increase to flood damage to the adjacent property and the additional flood could create an additional public expense for flood protection, rescue or relief. Therefore, I recommend that this Area/Bulk Variance not be approved due to the public, health, welfare, safety and comfort and general inhabitation of the property or adjacent properties.

Second by Deitz.

A roll call vote:

Meister -	Present
Heberer -	Present
Deitz -	Aye
Howell -	Aye
Edwards -	Aye
Chairman Penny-	Aye

Chairman Penny stated this case has been denied by this board.

Old Business - Case #2

Subject Case #2018-22-ABV –Ralph & Debra Renth, 7942 Woodland School Road, Mascoutah, Illinois, owners and Eric Renth, 7942 Woodland School Road, Mascoutah, Illinois, applicant. This is a request for an Area/Bulk Variance to allow the division of 2.5-acres instead of the 40-acres required in an “A” Agricultural Industry zone District on property known as 11404 Fuesser Road, Mascoutah, Illinois, in Mascoutah Township. (Parcel #10-26.0-200-006)

Ms. Markezich explained this case was postponed due to a failed vote by the Zoning Board of Appeals on February 4, 2019.

Mr. Schneidewind asked the Board Members if they have further questions to the applicant or the County Board Member who is present at the meeting.

Discussion

- Mr. Meister asked the Township Highway Commissioner how he felt about the proposed variance. (Bob Hund, Mascoutah Highway Commissioner stated he has no problem with the variance.)

- Ralph Renth reminded the Zoning Board he would like to sell his son 2.5-acres so he can build a home on the property and help out with the farming. Mr. Renth stated they currently farm 300-400-acres.
- Chairman Penny stated there is all family living on this property. (The applicant stated that is correct.)
- County Board Member, Kevin Dawson stated he viewed the property and feels the plan makes reasonable and practical sense. He stated this division was granted before. He stated he has not received any correspondence from anyone in the neighborhood and it seems to be consistent with the property in the area and supports the application.
- Ms. Markezich asked the owner what his intention is with the existing home on the property. (The applicant stated he would move back into the home with his wife when they decide to downsize.)
- Ms. Markezich stated the applicant gave testimony at the previous meeting that the home on the property is in bad shape and may cost too much money to repair. (The applicant stated that is true.)
- Chairman Penny asked the applicant if he has considered tearing the existing home down on the property. (The applicant stated they have not decided what they are going to do with the property.)
- Mr. Schneidewind asked the applicant if he currently lives at the property South of this property. (The applicant stated he lives South of the property at 7942 Woodland School Road.)
- Chairman Penny stated the boards concern is his son moves out of the home on the property and it becomes derelict. (The applicant stated the home will be repaired or demolished.)
- Mr. Schneidewind asked Eric Renth how often he helps in the farm operation. (The applicant stated depending on the season, he helps out with mowing and seasonally with planting.)
- Ms. Edwards asked the applicant what he thinks he will do with the existing home on the property. (The applicant stated he may demolish it, and may build a retirement home on the property. The decision has not been made at this time.)

Further Testimony

MOTION by Meister to grant the request for the following reasons:

The applicants stated they are a working farm; the division would be for the applicant's son who assists in the farm operation; the existing house has been discussed and will possibly be removed or repaired; and this division was previously approved in 2009 but expired due to time constraints.

Second by Heberer.

A roll call vote:

Meister	-Aye
Heberer	-Aye
Deitz	-Aye
Howell	-Aye
Edwards	-Aye
Chairman Penny	-Aye

This case has been approved by this board.

Old Business Case #3

Subject Case #2018-34-SP – Corey & Leah Meyer, 9510 Pister Road, Lebanon, Illinois, owners and applicants. This is a request for a Special Use Permit for a Planned Building Development pursuant to Section 40-9-3(H)(3) to allow a small event center in an “A” Agricultural Industry Zone District on property known as 9510 Pister Road, Lebanon, Illinois in O’Fallon Township. (Parcel #04-36.0-200-029)

Chairman Penny noted the applicants are not present at the meeting.

Mr. Schneidewind stated for the record the meeting this evening was announced at the February 4, 2019 meeting.

Discussion

- Daniel Bleisch stated he was at the last meeting and is present this evening to see what the decision of the board is. He stated he purchased the property down the street to put a house on and is opposed to the request.
- Mr. Meister asked if this property is on a dead-end road. (Mr. Bleisch stated that is correct.)

Further Discussion

MOTION by Meister to deny the request:

Mr. Meister stated the property has well and septic tank; the Comprehensive Plan calls for Agricultural; the pole barn to be used as an event center; and the property is on a dead end road.

Second by Deitz.

A roll call vote:

Meister - Aye
Heberer - Aye
Deitz - Aye
Howell - Aye
Edwards- Aye
Penny - Aye

This case has been denied by this board and will now go before the County Board for final decision.

Old Business – Case #4

Subject Case #2018-19-ABV – MK Environmental Limited LLC, 4911 Cobblefield Pass, Smithton, Illinois, owners and applicants. This is a request for an Area/Bulk Variance to allow the division of 29-acres instead of the 40-acres required with 50 ft. of frontage instead of the 200 ft. required in an “A” Agricultural Industry Zone District on property known as XXXX Upper Saxtown Road, Millstadt, Illinois in Millstadt Township. (Parcel #12-34.0-400-028)

Anthony Gilbert, Attorney representing MK Environmental

- Mr. Gilbert stated he is representing MK Environmental.
- Mr. Gilbert confirmed the board is looking for verification on the frontage issue of the 50 ft. on the Township right-a-way.
- Mr. Gilbert stated they obtained from the surveyor a sketch that demonstrates there is 60 ft. on the Township right-a-way.
- Mr. Gilbert asked the board what they are requiring from his client.
- Mr. Gilbert explained there is a pre-existing right-a-way at a right angle there. He also stated they have commitment from a prior split that demonstrates the existence of the right-a-way and there has been no release of that right-of-way.
- Mr. Gilbert stated this right-of-way is not an easement it is a deed of right-of-way and is a deed of the underlying feet and has never been

conveyed back to the adjacent landowners nor has it been abandoned. (Mr. Schneidewind asked for proof of his findings.)

- Mr. Gilbert explained they have copies of the deeds of right-of-way.

Discussion

- Chairman Penny stated at the previous meeting the whole roadway access was muddled.
- Mr. Schneidewind asked the applicants if they are representing that the 90-degree turn that was shown on the map is part of the roadway. (The applicant stated that is correct.)
- Ms. Edwards questioned if the board should allow ingress/egress on a curve that is only 50 ft. wide.
- Chairman Penny asked what the private landowners right is to that right-of-way connection. (Mr. Schneidewind stated that will be between the private landowner and the Township.)
- Mr. Schneidewind stated there have been many cases before the board where there is no road there, but the parcel touches the right-of-way.
- Chairman Penny asked Mr. Schneidewind with what has been presented this evening, does it prove there is connection to the public roadway. (Mr. Schneidewind stated with what has been presented it looks like there is a connection, however there is no title commitment because the applicant is still working to obtain such.) (The applicant stated they wanted to make sure they are headed in the right direction prior to obtaining commitments.)

Public Testimony

- Donald Traiteur, 4000 Upper Saxtown Road, Millstadt asked how wide right of way is. (The applicant stated the right of way is 40 ft. with 60 ft. of frontage on the right-of-way.)
- Donald Traiteur stated he agrees that there is right-of-way but if this is approved who will be responsible to maintain that area. (Chairman Penny answered that question cannot be answered by the Zoning Board.)
- Jason Eccher, 4020 Upper Saxtown Road, Millstadt stated he understands right-of-way is there but this is a 90-degree turn here and if the Township wants to allow him to use this property they need to sell him some land. Mr. Eccher stated this will be an injustice to the neighbors if this variance is granted and if they try to bring in a large

trailer or something they will be clipping everyone's property lines getting in and out of there.

- Delores Bocker, 4030 Upper Saxtown Road, Millstadt stated she feels her property line will be compromised if this division is allowed, she stated her property lines are right up to this property. She also stated she is opposed to this request because of the 40-acre rule. She stated this property is only 29-acres and she is opposed to that and the traffic going in and out of there.
- Jim Probst – 3923 Vogel School Road, Waterloo stated his concern is the 40-acre rule that was established in 93. He stated this farm was originally an 83-acre tract. He stated a house a 5-acres was sold off in 97. The property went up for auction in 2017 or 2018 at 78 +/- acres, after that 10-acres was sold off to Greg Beyer and now we want to split this ground again. He stated the first case heard this evening was for a son to built a house, and now this case is for total strangers. Mr. Probst stated this request is not in accordance with the 40-acre rule or the Comprehensive Plan.
- Greg Beyer – 3919 Lower Saxtown Road, Waterloo stated he has some issues with the amount of timber that will have to be removed to put the driveway in and there will also be a very large creek that will have to be crossed and he feels this could be an issue down the road if he puts in a dam or anything like that.
- Brad Chandler, Real Estate Agent stated dividing off the 29-acres will leave the best 38-acres acres of tillable land remaining and can be effectively and efficiently farmed. He explained the 29-acres is not productive farm ground and the best use for this particular piece of land and the best use for the County is to have a homesite there that will generate taxes and be a nice place for someone to enjoy and raise their children.
- Don Traiteur stated that portion of the property has been productively farmed for years.
- Jim Probst stated the ground that is in the CRP program now is because the ditch was allowed to erode so badly that he could not get across the ditch to get back and farm it. Mr. Probsts stated the gentlemen actually came to his property and asked to cross his land so he could maintain that CRP as required as far as brush hogging and cutting it down because previous owners did not maintain that property and up until that time that ground was farmed.

Further Discussion

- County Board Member, Michael O'Donnell stated he is not sure this division is the best use of this property, there are several property owners in objection and he is not in favor of the variance being granted.
- Ms. Edwards asked Mr. Schneidewind if the Zoning Board has enough information to make a decision on this case based on the right-of way. (Mr. Schneidewind stated the board does not have firm evidence because there is not title report complete but we have been advised that the right-of-way does exist up to this property and we also do not have anything from the Township stating they will allow the road, but this board has granted cases before without that permission.)
- Chairman Penny stated he feels this case has further issues other than the right-of-way issue. (Mr. Gilbert stated the one thing that has not been discussed regarding this matter is there is Rural Residential zoning surrounding this parcel and these parcels will be over 30-acres each.)
- Chairman Penny stated there are over 29 different small divisions on that quarter page and that is another argument. (Mr. Schneidewind pointed out that area is zoned "RR-3" and is zoned for smaller lots.)

MOTION by Edwards:

The utilities for this property are well and septic; the Comprehensive Plan calls for Agricultural Preservation; this case was taken under advisement to determine if this parcel had access to the right-of-way; and there are other issues greater than the right-of-way, and a right-of-way on a curve is dangerous and it creates a traffic danger to the surrounding property owners and the ingress/egress of this property; therefore for the following reasons it is my recommendation that this Area/Bulk Variance be denied: The request is not in harmony with the general purpose and intent of the Zoning Ordinance; it would be injurious to the surrounding property owners and neighbors; it would be detrimental to the public welfare due to traffic; the request is in conflict with the Comprehensive Plan which calls for Agricultural preservation; the request would increase the hazards to other surrounding property owners; it would diminish the land and buildings in the immediate area; the request would create a traffic congestion to the public streets and highways with the dangerous ingress/egress of the property.

Second by Heberer.

A roll call vote:

Meister -	Nay
Heberer -	Aye
Deitz -	Aye
Howell -	Aye
Edwards-	Aye
Penny -	Nay

The vote is to deny this request and there will be no further action on this case.

MOTION to adjourn by Edwards, second by Meister. Motion carried.