

Wexford	Hanover	Greenwood	Liberty
Springville	Antioch	Collax no zoning	Cedar Creek zoned
Slagle	Boon	Selma	Haring zoned
South Branch	Henderson no zoning	Cherry Grove	Clam Lake zoned

■ Planning and zoning by the Wexford Joint Planning Commission

Wexford Joint Planning Commission

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Proposed Minutes

Wexford Joint Planning Commission Zoning Board of Appeals July 26, 2017 Wexford Road Commission Building

- A. The meeting was called to order at 6:03 pm by Monroe
 1. Roll Call:
 Members Present: Chair Beverly Monroe, Benedict “Ben” Fleis, John “Jack” Prebay, Bill Swank, Beverly Brighton
 Members Absent: None
 Others Present: Robert Hall, Wexford Joint Planning Commission Planner/Zoning Administrator; Ben Townsend, Assistant Zoning Administrator, Timothy Porter, Lily Porter, Richard Draper
 2. Pledge of Allegiance
 3. Change to Agenda – Prebay Moved to approved agenda, support by Fleis, unanimous voice vote in favor.

- B. Approval of Minutes
 1. Approval of June Minutes postponed until next meeting.

- C. Matters pertaining to Citizens at the Meeting:
 1. Advertised Public Hearing #1 (Porter Variance Request/Case# ZBA-2017-04)
 - A. Chair declared open meeting at 6:07
 - B. Staff Presentation – Robert Hall: Explained to Board that Mr. Porter is conservator for his father Eugene’s property and has a unique situation. Along the road in Boon Mr. Porter has a property along a public right of way (ROW) and a railroad ROW. Long, narrow lots, not in a subdivision, less than the minimum lot size and non-conforming by nature, which could not meet the setbacks. Administratively the Zoning Ordinance does have some leeway on width, but nothing in the Rural-Residential District as this property is zoned. So, Mr. Porter’s Permit was Denied. His options were given him to accept the ZA decision, come back and try to meet the setbacks, or seek a variance through the ZBA. So, it is up to the ZBA to apply the standards of the Ordinance to see if it can provide the relief requested by the Applicant. The ZA recommended Denial

up front because of the ROWs. A Survey of the property would establish exactly where these ROWs are so that proper setbacks could be applied. County Road ROWs are sixty-six (66') feet, whereas railroad ROWs can be as narrow as fifty (50') feet and as wide as two-hundred and seventy-five (275') feet. And without a Survey it may be difficult to determine the adequate setbacks in order to grant the relief requested. (Visuals of the property and adjoining properties were presented.)

Applicant, Mr. Porter: Gives background of him being Conservator for his father's properties in the Boon area. Explained the cleaning up of his other properties, and the structures along the same road as the property is located on.

Brighton: Confused as to the Rural-Residential (R-R) guidelines as to why this property is zoned R-R. States that it does not meet the large requirements for property to be able to be built on. The current property is much smaller than what the Ordinance allows for R-R.

Monroe: Explains that this is why it is a nonconforming lot.

Brighton: Suggested that if the trailer was moved back seventeen feet, four inches (17'4"), there would be enough room for the front setback.

Prebay: Asked if Applicant was paying taxes on the lot and Applicant replied in the affirmative.

Porter: Explained that his family needs a place to live temporarily.

Monroe: Asked if this was going to be a temporary dwelling.

Porter: Explained that it may be temporary for his family but it will remain in the family and family will use the trailer in the future.

D. Chair allowed Public Comments: There are none.

Chair Monroe closed the Public Hearing

E. Deliberations

Monroe: Questions ZA concerning clarification of Ordinance on nonconforming setbacks. Asked if those apply to this property.

Hall: Responds that in R-1 and R-2 there are averages based upon width of the lot, but makes no provisions on the setbacks that are established in the district.

Prebay: Asked about the building down the road that seems closer to railroad tracks than this variance.

Porter: Responded that the owner of that building is where he got the railroad ROW of sixty-six (66') feet.

Brighton: Cites the Ordinance where the nonconforming property conditions are to be met. 1) Documented by Applicant parcel existed before January 1, 2016. 2) The parcel was not made smaller after January 1, 2016. 3) It is documented by the Applicant that contiguous land cannot be purchased, and 4) the parcel is large enough to require onsite sewage and well. 5) Other standards for issuing a variance by Appeals Board are met.

Fleis: Noted Brighton was correct and stated that he visited the site and stated it would be a bonus to Boon to have a residential dwelling on this property. It would

also create a larger tax base than just a vacant lot.

Monroe: Concerned that still it is looked at as a temporary dwelling.

Brighton: Concurred that anyone who owns property can turn around and sell it or rent it. Cites Article 96 in the Zoning Ordinance (ZO) under F.2.a.(3) and quotes the Ordinance, beginning with “That strict compliance,” and ending with “unnecessarily burdensome.” States that in her opinion because the ZO was done in such a hurry that there should be expected to be mistakes that should be corrected and it continues to be a work in progress. States that we “inherited a mess.”

Monroe: Disputes Brighton’s claim because Monroe was on the previous Wexford County Commission and states that it was not just “thrown together” but was simply adopted from the former commission and painstakingly redone in its entirety.

Brighton: Stated that this section east of Boon does not look like Rural-Residential.

Hall: Called a Point of Order to explain why R-R is different from the other districts.

Fleis: Agrees with ZA Hall that this area is R-R because it is in a district which is zoned R-R. Notes that even the farm across the railroad tracks, even though agricultural, is in the R-R District.

Monroe: Stated that the Zoning Board was not there to rezone the area but to determine what to do with the case before them.

Hall: Brought up the fact that Brighton used the ZO appropriately and stated that there were “many purposes which are permitted” in R-R, but not just the usage the Applicant may wish to be permitted. Again stated that because of the perplexities of the property size with the ROWs, there is not enough information to make a proper decision as to what the setbacks may be.

Monroe: Drew everyone’s attention to WJZO 9604.B, which states: “No nonconforming use of neighboring lands, structures, or buildings, in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.” Noted that no matter what may be down the road or across the road, this particular case is concerning this property.

Hall: Cleared up the common misconception that zoning is the same as assessing when it comes to property distinctions. A store may be assessed as Commercial but in a zoning district that is given differing distinctions – R-R, Agricultural, etc. Zoning is totally separate from assessing.

Monroe: Asked the Administrator if the ZBA could rule in favor of the Applicant “contingent upon” the railroad ROW and setback being known in the future.

Hall: Stated that the ZBA could word that into their resolution.

Porter: Asked the board to clarify the distance of the railroad ROW.

Hall: Stated that if the Applicant could verify through the railroad or on a survey

exactly what the ROW was, then the ZBA could ensure this final decision could be administratively decided upon receipt of the survey/railroad confirmation. A discussion ensued about ROWs for both railroad and highway or county road. That no one is guaranteed exactly where the ROW starts or where the center of the road (or railroad) exactly is. It was determined that a survey can provide exactly where the ROWs exist.

Monroe: Brought the board's attention back to the questions for review from the Zoning Ordinance that will help the board decide whether to grant the variance or not. Monroe read the following parts of the ordinance and asked after each one who agreed or who disagreed and why.

1) "The requested variance is due to unique circumstances."

(All members agreed.)

2) "Need for the variance is not the result of actions of the property owner or previous property owners."

(All members agreed.)

3) "The strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonable prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome."

(All members agreed.)

4) "That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district."

(Monroe, Fleis, and Prebay agreed. Swank, Brighton disagreed. Swank and Brighton stated that they really do not know where the lines are, so they voted in the negative.)

5) "The requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district."

(All members agreed.)

Monroe: Asked to entertain a motion.

Brighton: Moved for the board to grant the variance requested, upon verification of the railroad ROW measurements, using the railroad ROW as a property line which abuts the property line, positioning the dwelling on the property meeting the maximum setbacks possible, agreeing that the railroad ROW comes in at sixty-six (66') feet or less.

Fleis: Seconded the motion.

Roll Call Vote:

Ms. Brighton - Yes

Mr. Prebay - Yes

Chair Monroe - Yes

Mr. Fleis - Yes

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Mr. Swank - Yes

Unanimous in support of the motion given above.

The Zoning Board of Appeals Certified its decision of the Case ZBA-2017-04 as of the date of July 26, 2017, and was signed by the Chairperson.

D. Unfinished Business and Reports:

Hall stated that there is a new internal policy for the administrative office to get the site plan Staff Report and ZBA Staff Report 15 days in advance. Therefore, a completed application for ZBA must be in the office 45 days in advance of when the ZBA meets to decide the issue.

E. New Business: There was none

F. Public participation: There was none.

G. Adjournment:

Prebay moved to adjourn. Swank second. All in favor – five. All opposed – none.
Meeting concluded at 7:14 pm.