

**Chair**  
Gail Watkins  
**Vice-Chair**  
Jim McClelland  
**Secretary**  
Jim Wieber  
**Members**  
Jim Ostrowski  
Richard Vitek

**CLINTON COUNTY  
ZONING BOARD OF APPEALS**

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Daniel Leonard  
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Wendy Ward

**ZONING BOARD OF APPEALS MEETING  
Tuesday, November 17, 2009  
7:00 p.m.**

**1. Call to Order and Roll Call -**

The October 20<sup>th</sup> Zoning Board of Appeals meeting was called to order at 7:00 p.m. with Chair Gail Watkins presiding.

Members present: Chair Gail Watkins, Secretary Jim Wieber, Jim Ostrowski, and Richard Vitek. Member absent: Vice Chair Jim McClelland. A quorum was reported. Chair Watkins reminded those present that it takes a majority (3 votes) of the 5-member board to grant a variance and there are four members present. Vice Chair McClelland arrived at a later time.

Staff present: Wendy Ward, Assistant to the Zoning Board of Appeals and Dan Leonard, Assistant Planner / Zoning Enforcement, Community Development Department.

**2. Pledge of Allegiance -**

The pledge of allegiance was given to the flag.

**3. Approval of Agenda -**

**ZONING BOARD OF APPEALS ACTION**

Moved by Wieber, supported by Ostrowski to approve the November 17<sup>th</sup> ZBA agenda. There being no further discussion, motion carried 5-0.

**4. Approval of Per Diem Vouchers -**

**ZONING BOARD OF APPEALS**

Moved by Ostrowski, supported by Vitek to approve the November 17<sup>th</sup> per diem vouchers. There being no further discussion, motion carried 5-0.

**5. Approval of ZBA Meeting Minutes -**

A. October 20, 2009

Ostrowski presented two corrections to the October 20<sup>th</sup> ZBA minutes: 1) 2<sup>nd</sup> page, 8. Old Business under Zoning Board of Appeals Action – fence *row* and 2) last page – also under Zoning Board of Appeals Action - moved by McClelland, supported by Ostrowski to *waive* the 5-day waiting period.

## **ZONING BOARD OF APPEALS ACTION**

Moved by Ostrowski, supported by Wieber to approve the October 20<sup>th</sup> meeting minutes, as amended. There being no further discussion, motion carried 5-0.

Vice Chair McClelland arrived at this time.

**6. Communications -**

There were no communications presented.

**7. Public Comments -**

There were no public comments presented.

**8. Old Business -**

There was no old business to be presented.

**9. New Business.**

**A. ZC-07-09 VR – Application for a Variance Request**

An application for a variance has been submitted by Colleen Carol Buffington, requesting a variance to Section 432 – Schedule of Area, Height and Placement Regulations; specifically for the creation of a new parcel that is too small, frontage would be less than the required frontage and the remaining parcel would be too small for the property located at 6011 Alward Road (Parcel ID#19-140-021-200-030-60) Section 21, Victor Township.

Dan Leonard provided a summation of staff's report. Applicant is requesting a variance to create a new parcel (23 acres) by separating the existing single family homestead and detached pole barn away from the adjacent vacant field located to the north (remaining 24 acres); a variance to Section 423 to create two (2) parcels. The new proposed parcel for the house is less than 10 acres, does not meet the minimum 330' of required road frontage. One parcel would keep the homestead and detached accessory structure with one (1) acre of land and 150' of road frontage. The remaining vacant parcel would meet the acreage and 4 to 1 depth to width ratio requirements but would not meet the minimum required frontage of 330' (only 297'). There are actually three (3) variances being requested by applicant – two (2) for the new residential parcel and one (1) for the remaining 23 acre parcel. Leonard also added a brief discussion on the location of the driveway; it ties into the area to the east driveway so access to a future lot may bring a discrepancy and no easement is shown on the survey that allows access to and from on that eastern boundary of the smaller portion of ground. The ZBA requested Leonard to approach them and show the driveway, the proposed parcels, etc. Leonard also mentioned that on the survey, the western portion of the 'exception' is noted on the survey and this would be the proposed new lot and parcels B and C on survey would remain combined and serve as one parcel of 23 acres.

The Victor Township Board submitted correspondence stating their recommendation for approval of this variance along with the recommendation from the Victor Township Planning Commission. The Clinton County Road Commission has no objections, and the Clinton County Drain Commissioner shared that the applicant is aware that there is a

50' wide drain easement on the property along the South Maple Drain which forms the eastern boundary of the parcel.

Colleen Buffington, applicant and her son, John Buffington were both present and approached the Board for discussion. A brief discussion followed. Ms. Buffington responded to the ZBA on the driveway issue; primary purpose is use as a 'friendly pass.' Chair Watkins advised that this be changed before the property is sold. This is called a 'prescribed easement' in legal courts. Applicants were advised to legally clarify this 'turn around' in the deed and no right of passage from either parties; strictly for clarification. Leonard stated that typically looking at these types of variances, what could be done with the other parcel – applicant will be very limited; not much potential, even if it was to be split. Watkins added that the only compelling things he sees are the quality and shape of the land and the fact that the surrounding area is residential.

### **ZONING BOARD OF APPEALS ACTION**

Ostrowski moved to approve the three variance requests – the new parcel allowing 150' of road frontage, smaller than the 10 acres and it is consistent with the other lots that are there already in the area, the 297' of frontage on the larger parcel as there is no other way to get anymore frontage if first lot is allowed as this is all left on the roadway there, it does meet the seven (7) basic conditions and special condition #1, recommendation for approval has been submitted by the Victor Township Board and this is the only logical way to help the situation here that the petitioners are facing as to wanting to separate off the residential portion and leave the rest for recreational purposes later for the family. Wieber supported.

Chair Watkins questioned the need for very clear language in the motion that would refer to the topography of the parcel; the physical nature of the parcel – would it be beneficial? ZBA members concurred and Ostrowski amended his original motion with the statement 'to include under Basic Condition #7, the unique layout of this piece of property considering the drain and everything else that is there and the limited usage of this piece of property and special condition #2 would also covers this as well.' Wieber supported the amendment to the motion.

A brief discussion followed with concerns with the precedent setting. McClelland and Watkins shared their concerns with the precedent setting. Leonard stated that the topography and the overall usage of it is what could be the precedent setting portion. If this was a flat piece of ground that was a stand alone by itself, this could be precedent setting. This land is very hilly, the drain is an existing physical feature and the future usage of it is slim to none; he does not foresee the precedent setting to be negative. McClelland added that he is not in favor of this variance and doesn't support the motion the way it reads. Watkins added that the only mitigating factor is the surrounding uses of the surrounding properties.

Chair Watkins requested a roll call vote. Those voting aye (4) – Vitek, Ostrowski, Wieber and Watkins. Those voting nay (1) – McClelland. There being no further discussion, motion carried and the variances were granted.

Chair Watkins instructed petitioners that they will need to go to the township and request a land division.

**B. ZC-08-09 VR – Application for a Variance Request**

An application for a variance has been submitted by Joe & Cindy Miller, Miller's Family Trust, requesting a variance to Section 432 – Schedule of Area, Height and Placement Regulations; specifically for a possible split of parcel on Jason Road but then would not meet frontage requirement on Church Road for the vacant property located on Jason Road (Parcel ID#19-130-008-400-035-00), Section 8, Riley Township.

Dan Leonard provided a summation of staff's report. The petitioners are requesting to divide off the southern 10 acres of the parcel from the northern 21 acres of the parcel; normally utilized for farming practices. Another existing feature is the location of the drain; eastern side of the property (the northern 21 acres piece of ground). Petitioners are looking at several variances; a variance to the northern 21 acres, it has the minimum 10 acre size requirement but the frontage is lacking and the 4 to 1 depth to width ratio will also exceed the requirement. This is somewhat similar to the previous request and there are extenuating circumstances here. The property to the east of the drain was attached to the western property and over time, it was split away and is now a single residential property to the east of the drain. The actual variances being requested are the 4 to 1 depth to width ratio and the frontage requirement for the northern 21 acre parcel. Riley Township Board provided comments from their township meeting stating that after careful consideration, they voted in favor of the request as it presents to be the best use of the land. The township board also felt that it is important to carefully consider the impact this decision may have on future development in the township and asks the ZBA to impose a restriction on the parent parcel to only allow a single-family residence on that property in the future; this property, with the limited frontage, should not be eligible for a multiple residential development. The extenuating circumstances on the northern 21-acre portion is the location of the drain for the frontage and the width to depth ratio as it exists currently. The Clinton County Road Commission has no objection to this variance and the Clinton County Drain Commissioner shared his comments that he is not opposed to the granting of the variance but he noted that there is an easement for the Muskrat Creek Drain on the property. The preliminary FEMA flood maps show much of the northern part of the parcel along Church Road to be in the 100-year flood plain and that should structures be built in this area, they would be subject to additional requirements to insure that they are built above the flood elevation and the owner may be required to purchase flood insurance. .

Discussion followed. Chair Watkins questioned Section 1512 for unique characteristics of the property. Leonard stated that it is the applicant's intent to retain the northern 21-acres and continue farming it. He would like to get rid of the southern 10-acres. Both parcels are created and both parcels are sold to new owners but with different intentions, there are x-number of land divisions available to each new property whether or not the owner wants to utilize them is up to them and they would have to follow the requirements of the zoning ordinance to figure out how to do it. The ZBA can't put a condition on the variance; either it's granted or not.

Joe Miller, petitioner, was present and approached the Board. Discussion followed. Petitioner's intention is to use this for agricultural production in the foreseeable future; he doesn't plan on selling it.

Lee Chant, Riley Township Supervisor, was present and provided a brief discussion on the township board's comments from the meeting. The township board feels that this is the best use of the land. He could see a shared driveway with two houses on that knoll (on the south end – on Jason Road), with good drainage.

The petitioner must be clear to the land division administrator as to what his intentions are. Leonard added that if this is granted, the ZBA would have to review this again for any new residential development.

### **ZONING BOARD OF APPEALS ACTION**

Wieber moved to approve the variance request to grant the exception of the 4 to 1 depth to width ratio and the minimum frontage on Church Road, it meets the 7 basic conditions and special condition #1, it is the best use of the land splitting it up because of Muskrat Creek going through there, it limits what can be done on the land.

McClelland supported based on the same rationale. Vitek requested that the record (for disclosure purposes) indicates that Mr. Miller, petitioner, purchased this from a relative and that he has no personal interest in the property or the outcome of the vote. There being no further discussion, motion carried on a vote of 5-0.

#### **10. Other Business -**

There was no other business presented.

#### **11. Community Development Report -**

Vice Chair McClelland had requested, at last month's ZBA meeting, for staff to check with the Planning Commission on the requirements of accessory structure size coverage on lots over 5 acres – do we need to change the ordinance, do we need to look at a 10-acre maximum, etc. This was presented to the PC at the November 12<sup>th</sup> meeting and the response from the board was that we haven't had a number of these cases come through and the majority of the board recommended leaving this the way it is and let the ZBA look at each case on an individual basis and assess it. They felt that the 7500 sq. ft. maximum would be sufficient for those residential-type uses because typically, not a whole lot of barns that large are on parcels that aren't being used for Ag business. They felt that this is a unique situation and they felt comfortable. Wieber added that if this does come up again, he doesn't see how this could be passed. Ostrowski, ZBA member and member of the Planning Commission, spoke on behalf of the Planning Commission - the occurrence is the main issue; there has been one maybe two situations. The Board didn't feel it was necessary to amend the ordinance at this time. The ZBA exists for the purpose of looking at these exceptions and when they do come up, they will be looked at on their own merit and decided.

The wind discussion was discussed at the November 12<sup>th</sup> PC meeting. We had a lot of public comment and we completed the public hearing. Staff will now go through legal counsel and do a summation of all comments and discussion and put up a list to go through with the planning commission at either a special meeting or the next PC meeting of December 10<sup>th</sup>.

Watkins asked if a special meeting or discussion would be held for emergency service personnel – ladder trucks needed, electrocution problems, will the tower owner have to buy the ladder truck, etc.

The Planning Commission did offer a good suggestion; to separate out the residential sized turbines from the utility scale turbines as a future way of approaching discussion at the meetings.

**12. Adjournment -**

**ZONING BOARD OF APPEALS ACTION**

Moved by Ostrowski, supported by Vitek to adjourn the November 17<sup>th</sup> ZBA meeting. There being no further discussion, motion carried on a vote of 5-0. The meeting adjourned at 7:55 p.m.

Respectfully submitted,



Wendy E. Ward, Assistant to the Zoning Board of Appeals / Community Development Department