

XENIA TOWNSHIP BOARD OF ZONING APPEALS
PUBLIC HEARING

September 20, 2023

THESE MINUTES ARE A SUMMARY OF THE EVENTS OF THE PUBLIC HEARING AND ARE NOT A WORD FOR WORD ACCOUNT OF THE DISCUSSIONS WHICH TOOK PLACE.

Nathan Anthony, Chairman, called the meeting to order at 6:00 p.m. and welcomed the people in attendance. He asked for roll call for attendance of the members.

Board of Zoning Appeals members present: Nathan Anthony, Chair, Janis James, Darren Jones, Brian Secor, and Aidan Kolbe. Also present was Alan Stock, Xenia Township Zoning Inspector, and Ashley Caldwell Greene County Prosecutor's Office, legal counsel for the Township.

Mr. Anthony went over the rules of the meeting; all cell phones must be turned off, everyone must sign in and fill out an intent to speak form, if you choose to speak. The application will be read by Alan Stock, Zoning Inspector/Clerk, because the Board of Zoning Appeals decisions are quasi-judicial, all testimony has to be sworn. Everyone must come to the podium; state their name and state they are under oath. Only facts are to be given, not opinions or emotions. Minutes are being taken electronically. Questions are to be directed to the Board only. The Board of Zoning Appeals will follow Roberts Rules of Order for procedures. The Chair reserves the right to limit public input. The Board of Zoning Appeals may approve in whole or in part, reject in whole or in part, or reschedule to another date. An applicant may also withdraw their request. The decision will become effective five days after date of decision. A decision by this Board is a final order under R.C. 2506.04. Aggrieved individuals may appeal the decision to Common Pleas Court. The audience joined the Board in the Pledge of Allegiance. Mr. Anthony administered the oath to the audience.

Mr. Anthony asked Mr. Stock if the application was lawful to be heard by the Board. Mr. Stock indicated yes, they had, and advised that the notice had been published in the newspaper and notices had been mailed to all property owners within 500' of the property. Mr. Stock stated that a sign was placed on the applicants' property. Mr. Stock explained all the exhibits for this Public Hearing. Mr. Anthony asked the Board members if they had read and considered the application—all answered yes; and he asked if they felt they should not be part of the proceeding due to some conflict of interest all answered no; and if they intend to participate in the entire procedure including voting on the questions asked—all answered yes.

Mr. Anthony asked Mr. Stock to present the proposal. Mr. Stock reviewed all the documents and Exhibits A-E.

Exhibit A: Application for Board of Zoning Appeals

Exhibit B: Proof of Public notices (Letter to Neighbors, Newspaper Notice, Sign in Yard, Website, Procedure Check List)
Exhibit C: Staff Report
Exhibit D: Agenda
Exhibit E: Public Comment

Steven Root, Owner, 1344 Boyd Road, Parcel # M36000200361001900 - Variance of Section 404 for Minimum Road Frontage in the Agricultural District

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, state that he felt his intent was made clear by the application read by Mr. Stock.

Mr. Anthony, BZA, Chair, asked for Board questions.

Mr. Jones, BZA, asked Mr. Stock to place the property picture on the screen, and asked Mr. Root to show where he would like to carve out the ten (10) acres.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, obliged. He then stated that the two (2) parcels that also share the driveway were originally part of the Boyd Farm that was split off.

Ms. Kolbe, BZA, asked if there were other parcels that was originally part of Boyd Farm.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that he thought all of the parcels on Boyd Road were part of Boyd Farms.

Ms. James, BZA, asked if there was a reason why they couldn't build with 300 feet of road frontage.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated it was only a driveway, with no road frontage. He went on to say that the road was established to give access to horses to the farm, the road became a Township Road and there is only a driveway to his property.

Ms. Kolbe, BZA, asked when Boyd Road became a Township Road.

Mr. Stock, Zoning Inspector, stated that he did not know, but that he has been here for 12 years and it has always been maintained by the Township that entire time.

Mr. Anthony, BZA, Chair, stated that the Duncan Standard question asked if the variance would be substantial, and asked Mr. Root why this variance would not be substantial.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that with the way his land is, no one would be able to see the new home so it would not impact anyone.

Mr. Anthony, BZA, Chair, stated that by the Zoning Resolution, road frontage has been 300 feet since 1996. He went on to say that Mr. Root has no road frontage except a driveway and that would be a special privilege. Mr. Anthony then stated that every property is unique and that no decision is made by the board just because someone else has a variance for road frontage, that precedence doesn't exist with the board. He then asked if the BZA in 1995, that was denied, was the same lot.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated no, that he was living in the original farm house that was in bad shape and wanted to build a new house, but was told he could not have two (2) homes on one parcel. He then stated that at the hearing, he was told by a Trustee that if he would tract off 10 acres of land, he would not need a variance. He went on to state that there was opposition of the neighbors because they did not want land developed. He then stated that it was not his intent then or now to develop the land, he just wants a place for his daughter to live.

Mr. Anthony, BZA, Chair, asked if he received the variance.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that he dropped the request.

Mr. Anthony, BZA, Chair, asked if the farm house was still on the property.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that he tore it down and built a new home.

Ms. James, BZA, asked Mr. Stock to clarify the Road Department would not maintain the driveway.

Mr. Stock, Zoning Inspector, stated that there is several hundred feet of driveway that they do not maintain.

Ms. James, BZA, asked Mr. Stock if they maintained the driveway now.

Mr. Stock, Zoning Inspector, stated that they only maintain to the end of the road.

Ms. James, BZA, stated that there would not be any difference in township responsibilities then.

Mr. Stock, Zoning Inspector, stated that there would not be any difference in township responsibilities. He went on to state that over time, there could become an expectation that it should be maintained because we are already there. He then stated that roads are for public access and that Right of Ways give the opportunity for utilities to be brought up and down the road.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that there are utilities on the property and that they have access to the property to maintain the utilities. He went on to state that the other two (2) properties that use the driveway, have utilities.

Mr. Stock, Zoning Inspector, stated that there is no utility easement recorded on the deed.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that there is access.

Ms. Kolbe, BZA, asked Mr. Stock if he knew when the other two (2) parcels that share the driveway was separated.

Mr. Stock, Zoning Inspector, stated that he only has a survey only from 1972.

Ms. Kolbe, BZA, asked Mr. Stock to show where Boyd Road ends.

Mr. Stock, Zoning Inspector, obliged.

Ms. Kolbe, BZA, asked Mr. Stock if it was possible to have a private road that is consistent with Township Roads.

Mr. Stock, Zoning Inspector, stated that roads have to be built to specific standards that are determined by the Greene County Engineer, and then the Trustees would have to approve to accept the road. He went on to state that Boyd Road is a very old road that does not meet the criteria, so the entire road would need to be widened or just this section.

Mr. Secor, BZA, stated that the road is very old and narrow.

Ms. Kolbe, BZA, asked Mr. Stock if the road was "Grandfathered"

Mr. Stock, Zoning Inspector, stated that it is Non-Conforming, as is a lot of roads within the township.

Ms. Kolbe, BZA, asked that if have a Non- Conforming Road, and you add to it, the new part would have to be conforming.

Mr. Stock, Zoning Inspector, stated that by definition, yes. He went on to say that private or public roads can only be made by the Trustees and they have to meet Greene County Engineer standards.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that people on the road are willing to sacrifice the narrow road because it's beautiful and no one wants to change it.

Mr. Secor, BZA, asked how many houses are on the road.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that there is nine (9). He further stated that his daughter already lives in one of the homes on the road.

Ms. James, BZA, asked Mr. Stock if the survey showed an easement, if it would make a difference. She further asked if Mr. Root was to build an extension onto the home, if he would need a variance.

Mr. Stock, Zoning Inspector, stated that he does not have access to all records, but Mr. Root says he has one. He went on to say with an easement, utilities can be maintained without permission. He then stated that the current home can be expanded without a variance, if they have the same address, and the extension can be accessed from the interior of the home.

Mr. Anthony, BZA, Chair, asked if there was an easement for 1301 Boyd.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that there is.

Mr. Anthony, BZA, Chair, asked if this was approved if an easement would be required for the new parcel.

Mr. Stock, Zoning Inspector, stated that could be made a condition. He then stated that if you are accessing your property from another property, an easement and a maintenance agreement should be added to the deed.

Mr. Jones, BZA, asked if the lot had been surveyed.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated no.

Ms. Kolbe, BZA, stated that they should have ingress and egress, utility easement, and a maintenance agreement because if the property sold, it could become an issue.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that he is surprised that the easement issue had not been address with the selling of 1301 Boyd. He went on to say that it is important and necessary.

Mr. Secor, BZA, asked Mr. Root how he received electricity.

Steven Root, Owner 1344 Boyd Road, Xenia, Ohio, Under Oath, stated that it is underground.

Mr. Anthony, BZA, Chair, opened Public Comments at 6:44 PM.

Mr. Anthony, BZA, Chair, asked for clarifying comments.

John Lamont, 1275 Boyd Road, Xenia, Ohio, Under Oath, stated that he has lived on Boyd Road since 1974, and the road was a gravel lane. Mr. Lamont gave a brief history of the road. he

then stated that the Township has done a good job black topping the road. He stated that right after his driveway, the road drops off 5-6 feet, so a snow plow would not be able to go past his house. He then stated that the road is 12 feet wide and that his septic is 10 feet from the road, so the road cannot be widened. He also stated that electric and AT&T are underground on the road. Mr. Lamont stated that he hopes this is the only lot that they want to make, because the road could not handle more traffic. He finally stated that he has no issue with making the parcel for Mr. Roots Daughter to build a house.

Greg Hoertt, 1251 Boyd Road, Xenia, Ohio, Under Oath, asked if this was to go through, if it would set a precedence for the rest of the farm land to be developed.

Mr. Anthony, BZA, Chair, answered no, that every property and situation is different.

Mr. Secor, BZA, stated that if they wanted to do a subdivision, it would require a whole other process for approval.

Greg Hoertt, 1251 Boyd Road, Xenia, Ohio, Under Oath, stated that he is only concerned for the people on the road, but he does not oppose.

Ms. Kolbe, BZA, stated that this hearing is only for the requested 10 acres, and that they would have to come back for another hearing if they wanted to do more.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, asked how wide the right of way is on Boyd Road.

Mr. Anthony, BZA, Chair, stated that it is roughly 12 feet.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, asked if an additional right of way will be added to the 10 acres and if it would be 12 feet.

Mr. Secor, BZA, stated that they are not putting in an additional right of way at this time.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, stated that there needs to be one.

Mr. Anthony, BZA, Chair, stated that the only issue at hand is the splitting of the 10 acres without any road frontage, and that the only right of way needed would be from the point the road ends and the until the driveway.

Mr. Secor, BZA, stated that right of way means that the government has a right to go onto a property within in the right of way without permission. He went on to state that the issue at hand is about splitting a lot without road frontage.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, stated that there would need to be an easement.

Mr. Anthony, BZA, Chair, stated that they would consider making that a condition to the variance.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, asked if this would be a single-family home with ingress and egress, and not used as commercial. He then asked if there would be children in the home.

Mr. Anthony, BZA, Chair, stated that was not an appropriate question to ask. He went on to say that all the pertinent information is in the packet that can be read. He went on to state that Mr. Siva's initial question was about easements, and that could be a condition to the variance. He further stated that anything on the lot its self does not need an easement because it's owned by the property owner, and that an easement is only for getting to the property.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, stated that was the issue with his property, he did not have any road frontage. He went on to say that there are four (4) properties that share a 25-foot driveway. He went on to ask if the board has any say over a road access easement.

Mr. Anthony, BZA, Chair, stated that was an entirely other issue that what is before them, that they will either approve, or deny, with or without conditions the request. He further stated that Mr. Siva's issues with his property needed to be addressed at a later date.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, asked if the board could do anything to widen the 12-foot easement.

Mr. Jones, BZA, stated that they are talking about a driveway that has nothing to do with Boyd Road. He went on to say that the request is asking to carve out another property from his property without road frontage and sharing a driveway. He further stated that this issue has nothing to do with the road except the property is on Boyd Road and has no road frontage.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, stated that it is a narrow road and asked if there was any way to fix it.

Mr. Jones, BZA, stated that they did not and that was not the issue before the board.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, asked if the board could make a recommendation to widen the road.

Mr. Anthony, BZA, Chair, stated that was not the role of the Board of Zoning Appeals.

Rick Siva, 1555 Stone Road, Xenia, Ohio, under Oath, stated that the board just approves or denies. He then asked if they would make the driveway a minimum width.

Mr. Anthony, BZA, Chair, stated that there are already rules for driveways and roads. He further stated that the role of the board is only for when something doesn't quite fit the zoning regulations.

Mr. Anthony, BZA, Chair, asked for comments against.

There were none.

Mr. Anthony, BZA, Chair, asked for comments in favor.

Kyly Brickles, 1196 Boyd Road, Xenia, Ohio, Under Oath, stated that he and his family just want to build a house for the family to live in and they have no desire to develop anymore land. He further stated that they know everyone on the street, but they stay to themselves.

Mr. Anthony, BZA, Chair, closed public comment at 7:03 PM.

Mr. Anthony, BZA, Chair, asked for Board discussion.

Ms. Kolbe, BZA, stated that this property was a byproduct of the way farms used to be established in the beginning. She went on to say that they are not asking to make money from the split, just asking to have family live beside them. She further stated that the neighbors will have a little extra traffic on the narrow road. She stated that she was in favor of the request.

Motion to grant the variance request of Section 404 for Minimum Road Frontage in the Agricultural District located at 1344 Boyd Road was made by Ms. James and seconded by Mr. Secor with the following conditions.

1. Establish a maintenance agreement for the driveway
2. Establish an easement for ingress and egress that runs the entire property
3. Establish an easement for utilities that run the entire property
4. Xenia Township will have no responsibilities for maintenance of driveway past the end of the established road
5. Obtain a survey within six (6) months

Mr. Anthony, BZA, Chair, called for a vote

Ms. James	AYE
Mr. Jones	AYE
Ms. Kolbe	AYE
Mr. Secor	AYE

Mr. Anthony

NAY

Variance of Section 404 for Minimum Road Frontage in the Agricultural District for 1344 Boyd Road GRANTED

There being no further business, Ms. Kolbe motioned to adjourn, seconded by Ms. James.

Meeting Adjourned 7:17 P.M.

ATTEST:

Alan D. Stock, Zoning Inspector