

**XENIA TOWNSHIP BOARD OF ZONING APPEALS**  
**PUBLIC HEARING**

February 15, 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, Acting Chairman, called the meeting to order at 6:08 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, Interim Chair, Janis James, Brian Secor, and Aidan Kolbe, Alt. 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. 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

**Joseph Bates, 2113 US 68 North, Xenia, Ohio 45385– Variance of Section 400.3 Accessory Unit for the current structure/ Bed & Breakfast in the Agricultural District for Parcel # M36000100130000300.**

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that when he first applied for the Conditional Use for his B&B, he had included both parcels, but decided to withdraw the one parcel. He went on to state that the garage has been gutted and would like to turn the garage into a home for his brother to live in to manage the B&B.

**Mr. Anthony, BZA,** asked for questions from the Board.

**Ms. Kolbe, BZA,** asked for more information on the current B&B.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that he uses the Airbnb app to manage reservations, that he has a five (5) star review, and has not had any complaint from neighbors. He went on to state that tenants have use of the entire house and that the house is fully furnished.

**Mr. Anthony, BZA,** asked if Mr. Bates had considered any other options other than requesting a variance. He went on to suggest rezoning and/or combining parcels.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that he has considered combining the lots when he purchased them, but decided against it. He went on to state that the well is on the house parcel and the septic is on the garage parcel.

**Mr. Anthony, BZA,** asked if the variance was approved, how the well and septic issue would be resolved.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that the Greene County Health Department would be the deciding factor for that. He went on to state that he did not want to spend any more money if the Health Department wouldn't sign off. Mr. Bates went on to state that when the houses were purchased, that the house was a hoarder house and that nothing was operational. Mr. Bates also stated that the garage had been developed to a degree with insulation, heat and air.

**Ms. James, BZA,** asked why on-site management would be needed if the B&B was operating so good.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that he feels the B&B is operating good because he has on-site management there now. Mr. Bates gave examples of situations that required the assistance of the on-site manager. He went on to state that he feels tenants follow the rules because they know someone will be there, and that its helpful when the tenant needs assistance.

**Ms. James, BZA,** asked if there was already on-site management at the B&B.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that his brother has been living in a RV on the property since the project started.

**Mr. Secor, BZA,** asked if Mr. Bates had a permit for the RV and if so, where he obtained it.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that he received the permit from Alan Stock, Zoning Inspector.

**Mr. Secor, BZA,** asked if the permit was temporary or permanent.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath,** stated that the permit is temporary.

**Mr. Stock, Zoning Inspector,** stated that according to the Zoning Resolution, a homeowner may ask for a six (6) month permit and one (1) renewal of that permit to equal one (1) year that a homeowner may live in a RV while doing renovations. Mr. Stock went on to say that Mr. Bates has always been compliant with the Zoning Resolutions.

**Mr. Secor, BZA,** asked if the permit has been renewed.

**Mr. Stock, Zoning Inspector,** stated that the permit has been renewed once and cannot be renewed again.

**Ms. Kolbe, BZA,** asked Mr. Stock if the parcel was combined and the septic could handle two (2) homes, you still would not be able to have two (2) homes on one parcel.

**Mr. Stock, Zoning Inspector,** stated that the parcel would need to be rezoned to multi-family.

**Ms. Kolbe, BZA,** asked Mr. Stock if the parcel was rezoned to multi-family, there would still be an issue with set-backs.

**Mr. Stock, Zoning Inspector,** stated that there would be issues with setback and size of homes. He went on to say that Mr. Bates would not be able to rezone unless the Health Department says that the septic tank would be able to handle two (2) homes and adequate space for a replacement septic.

**Mr. Secor, BZA**, asked if the lots were combined, if there would be space for a second septic.

**Mr. Stock, Zoning Inspector**, stated that for an 1,800 square foot home, the minimum lot size is 1.5 acres for septic and that the majority of the property is in the flood plain, and you are not able to place a septic in the flood plain.

**Mr. Secor, BZA**, asked if the Health Department allows for alternative septic systems.

**Mr. Stock, Zoning Inspector**, stated that the question was outside his expertise and that he did not want to give wrong information.

**Mr. Anthony, BZA**, stated that the Duncan Standard question #2 asked if the request was substantial. He read Mr. Bates answer stating that the request was not substantial because working farm land was not being taken away. Mr. Anthony went on to state that the Staff Report shows eight (8) points that are substantial. Mr. Anthony then stated that the role of the BZA is to determine how substantial a request is and if it is too substantial to grant. Mr. Anthony asked Mr. Bates if he would like to comment.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath**, stated that when he purchased the property, he had asked Greene County Building Regulations how common it was to turn garages into homes, and they stated that it was common. He went on to state that he purchased the property with the mindset of the garage becoming a home for the manager of the B&B.

**Mr. Anthony, BZA**, asked for any comments in opposition of the request.

There was none.

**Mr. Anthony, BZA**, asked for any comments in favor of the request.

**Samalene Brannen, 2129 US 68, Xenia, Ohio, Under Oath**, stated that she lives next door and wants an on-site manager at the property because she does not want to deal with renters coming onto her property. Ms. Brannen went on to state that she bought her home in 1978, and she gave some background of the surrounding properties. Ms. Brannen went on to state that the current on-site manager is a good neighbor and she feels safer with him there.

**John Ellis, 55 Clifton Road, Xenia, Ohio, Under Oath**, stated that he has lived there for 82 years and that Mr. Bates has made the property look better than it ever has. He went on to state that Mr. Bates is an asset to the community and that he should help in any way possible.

**Terry Ali, 255 Clifton Road, Xenia, Ohio, Under Oath**, stated that he is not familiar with the history of the property, but he has witnessed the transformation of the property over the past two (2) years. He went on to state that the daily usage of the septic would be limited to the

garage and the occasional tenant at the B&B so the septic should be able to handle both residences. He went on to say that he strongly supports Mr. Bates request.

Tom Knickerbocker, 2001 US 68, Xenia, Ohio, Under Oath, stated that he himself has rentals and B&B properties. He stated that he prefers B&B because it has less impact on the septic. He went on to say that Mr. Bates runs a nice operation and that he is fully in favor of the request.

**Mr. Anthony, BZA**, asked for any comments from the Board.

**Joseph Bates, 1920 Wilberforce-Clifton, Xenia, Ohio, Applicant, Under Oath**, stated that he typically only rents on the weekends, so there is less impact on the septic.

**Ms. James, BZA**, asked if going forward if both lots would be combined.

**Mr. Anthony, BZA**, stated that the discussion of the variance is for as it sits, but that conditions could be added.

**Ms. Kolbe, BZA**, asked for background of the Zoning Resolution disallowing habitation in accessory structures. She went on to state that this was the biggest hurdle.

**Mr. Stock, Zoning Inspector** stated that there were many hurdles. He went on to state that Xenia Township decided minimum square footage for residential living space partly based on appropriate septic. He went on to state that the Health Department now requires two (2) leach fields. Mr. Stock went on to state that allowing two (2) dwellings on one property would not be protecting the Zoning Resolution and that the R-M District is the only district that allows for multiple dwelling on one parcel.

**Mr. Anthony, BZA**, closed the hearing for public comments.

**Ms. James, BZA**, asked if septic regulations are different for Business Districts and Residential Districts.

**Mr. Stock, Zoning Inspector**, stated that you can not have a dwelling in the Business Districts.

**Mr. Secor, BZA**, stated that the property is greatly improved. He went on to say that he would not be able to make a vote on the issue because there was a number of issues that he did not want to feel pressured to approve or disapprove. He went on to state that the lots should be combined and that there should be an approved septic from the Health Department before voting.

**Mr. Anthony, BZA**, stated that conditions could be added to an approval.

**Mr. Secor, BZA**, stated that he would like to table the hearing until the issues are resolved.

**Mr. Anthony, BZA**, stated that the issues were not part of the applications and that the application is for a variance to use the garage as a dwelling. Mr. Anthony went on to ask if tabling the request was based on not knowing something but without requiring the petitioner to do something for the Board.

**Mr. Secor, BZA**, stated that he was basing it on what the petitioner had stated that he wanted to do.

**Mr. Anthony, BZA**, stated that it was not part of this request, but that the approved septic could be a condition placed on the variance.

**Mr. Secor, BZA**, stated that there was a lot of issues he was not comfortable with. He went on to state that “Tiny Houses” should be looked at in the future.

**Mr. Anthony, BZA**, stated that decisions are to be based on the current Zoning Resolution.

**Mr. Secor, BZA**, stated that he understood that they are there to approve or disapprove based on how it impacts the community and property owner. He went on to state that the neighbors are in favor. Mr. Secor then stated that he was not aware that the manager had been living on the property in a RV. He further stated that a lot of things were up in the air and he wanted to table it until they were resolved.

**Mr. Anthony, BZA**, stated that he was not sure they were allowed to require the petitioner to answer anything as part of a continuation.

**Mr. Secor, BZA**, stated that he understands, but that they are allowed to table.

**Mr. Anthony, BZA**, asked if Mr. Secor was suggesting tabling until he received answers that the Board can not require someone to give.

**Mr. Secor, BZA**, stated that he did and it would give the opportunity to get answers that are being asked.

**Mr. Anthony, BZA**, stated that it was a property owners’ prerogative and is not in the Board’s consideration. He went on to say that the Board is in the here and now, and conditions that could be set or not set that would require the petitioner to go through the appropriate process.

**Mr. Stock, Zoning Inspector**, stated that the issue before the Board was if an accessory structure could be used as a dwelling. He went on to say that the only way to ask for a continuation is if the information presented lawfully looked at or there is an insignificant piece of evidence that needed clarifying. Mr. Stock then stated that tabling is not an option for the BZA, they could only continue for clarification of evidence.

**Ms. James, BZA**, stated that the Board had added conditions to approved BZA’s.

**Mr. Stock, Zoning Inspector**, stated that lots could not be combined unless they meet minimum lot size and road frontage. He went on to say that rezoning would be needed to accommodate multiple homes and an approval from the Health Department for the septic. Mr. Stock then stated that another BZA would be required because the home does not meet minimum living space. He further stated that the first home does not meet the standards, but that the Township would not require someone to move or add to a home unless they were asking to improve a structure.

**Ms. James, BZA**, stated that the Board needed to either agree to this as is, or put conditions on it that could lead to multiple BZA's and/or rezoning.

**Mr. Stock, Zoning Inspector**, stated that it would be difficult to add conditions that would not require additional BZA's. Mr. Stoke further stated that if the request was denied, the petitioner could not come back for 365 days for the same request, but he could come back for other requests.

**Ms. James, BZA**, stated that if it was approved, he would still need approval from the Heath Department.

**Mr. Anthony, BZA**, stated that if approved, he would need conform to the standards required from Building and Health Departments.

**Mr. Anthony, BZA**, called for a motion.

Motion to Deny the Variance to Section 400.3 Accessory Unit for the current structure/ Bed & Breakfast in the Agricultural District for Parcel # M36000100130000300 was made by Mr. Secor and seconded by Ms. Kolbe.

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

Ms. James	AYE TO DENY REQUEST
Mr. Secor	AYE TO DENY REQUEST
Mr. Kolbe	AYE TO DENY REQUEST
Mr. Anthony	AYE TO DENY REQUEST

Variance to Section 400.3 Accessory Unit for the current structure/ Bed & Breakfast in the Agricultural District for Parcel # M36000100130000300 DENIED

There being no further business, the Board adjourned.  
Meeting Adjourned 7:20 P.M.

ATTEST:

---

Alan D. Stock, Zoning Inspector