

AGENDA  
BUTLER COUNTY BOARD OF ZONING APPEALS  
BUTLER COUNTY ADMINISTRATION CENTER  
130 HIGH STREET  
HAMILTON, OHIO 45011  
September 21, 2010

I. Opening

- A. Roll Call      Mr. Gary Salmon  
                         Mr. Thomas Bevington  
                         Mr. Alan Daniel  
                         Mr. Henry W. Philpot  
                         Ms. Lee Steenken

II. Approval of Minutes

- A.                      August 17, 2010

III. New Business

- A.      BZA10-1V      Karla J. Watkins.  
                         7471 Hetzler Road  
                         Middletown, OH 45042
- B.      BZA10-20V      Jordin Horan/Kroger Limited Partnership I  
                         428 Oxford State Road  
                         Middletown, OH 45042

IV. Adjournment

REGULAR MEETING: Tuesday, September 21, 2010  
Butler County Government Services Building  
Conference Room 1  
315 High Street, 1<sup>st</sup> Floor  
Hamilton, OH 45011

CALL TO ORDER: Mr. Bevington called the meeting to order at 7:00P.M.

ROLL CALL: Mr. Thomas Bevington  
Mr. Alan Daniel  
Mr. Henry W. Philpot  
Mr. Gary Salmon  
Ms. Lee Steenken

MEMBERS ABSENT: None

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

### **APPROVAL OF MINUTES**

Mr. Salmon made a motion to approve the minutes from the August 17, 2010 meeting.  
Mr. Daniel seconded the motion. Motion carried.

AYES: Salmon, Daniel, Steenken, Philpot, Bevington

NAYES: None

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**Case No. BZA10-11V**  
Karla J. Watkins  
7471 Hetzler Road  
Middletown Ohio 45042

Ms. Watkins said they moved to Madison Township in 1992 and raised their children on a large farm and at that time they had checked into splitting off the land and making separate parcels for the children and were told they could use the road frontage that is across the street that runs across the creek to actually make those splits and recently when she checked into it she was told that that would not be a possibility and she would have to apply for a variance in order to do the lot splits and that is what they would like to do.

Ms. Watkins said the acreage is a little over 88 acres and the reason for the request is because each of the children want to remain in Madison Township and they each want to build a home in Madison Township and when we purchased the farm that was our dream – to build up on the land and it became her children’s dream as well.

Ms. Watkins said her goal is to allow her children a parcel of land on the farm that they were raised on.

Mr. Bevington asked Ms. Watkins how old her children are.

Ms. Watkins said she has a 20-year old, a 22-year old, and a 28-year old and the 28-year old has two children of her own.

Mr. Bevington asked Ms. Watkins if she has talked with the adjoining property owners.

Ms. Watkins said not recently but throughout the years she always has. Ms. Watkins said she always has good neighbors; they are there when you need them and they don’t get in your face. Ms. Watkins said she spoke with Mr. Mark Whiteman because his land is in the front and told him of her desires and Mr. Edwards and Mr. Orth, he has land that butts up to the back and they actually sold the land to Ms. Shirley Orth and they had actually sold the land to Shirley in the process.

Mr. Daniel asked Ms. Watkins if any of her neighbors object.

Ms. Watkins said no, she would not know if they had objected.

Mr. Daniel asked Ms. Watkins when her children plan on building their homes.

Ms. Watkins said probably about seven (7) years down the road when they’ve saved enough money and she just wanted to get this done before she dies. She comes from a family of six (6) children and her parents never really specified what their wishes are after death, so her key object is to have everything in place so that her children can actually benefit from what she has worked for before she dies and she would like to see them have homes up there and help one another.

Mr. Daniel asked Ms. Watkins if there would be three (3) lots that would go to her three (3) children and those are 11-acre lots that he is seeing.

Ms. Watkins said it’s kind of odd because the whole property is surrounded by large crevices so the top part of the land is actually farmable and flat but the surrounding parts have large crevices and deep valleys so what they’re trying to do is take the land straight up to where each of them would have a portion of the flat land.

Ms. Watkins said originally there was more acreage in the front so she asked them to make it as even as possible and be fair.

Mr. Daniel asked Ms. Watkins if one of the children is married and the other two (2) are not.

Ms. Watkins said that is correct.

Mr. Daniel asked Ms. Watkins if she has checked with the Fire Department regarding the private drive, if he is not mistaken he has received calls from neighbors inquiring (not negative or positive – just asking) about it and other people want to do the same thing and what is the proposed width of the drive way she has in mind.

Ms. Watkins said the actual driveway is going to be 30-foot wide with a ten-foot berm but the actual road up there is moved out so it goes up and we've shelved off so cars can actually pull off to the right side so there is no problem.

Mr. Daniel asked Ms. Watkins if a fire truck could turn around in this driveway.

Ms. Watkins said yes on the wide berm, but she would probably have to put more (inaudible) and does not have it all completed.

Mr. Daniel said Safe Haven Farms had a road but they had to do some fine tuning so that the fire trucks could turn around.

Ms. Watkins said there is no problem with the trucks turning around on the bottom and top of the hill, and even in the middle of the hill they have moved dirt to where there is approximately 25 feet to the right-hand side.

Mr. Daniel asked what if the applicant's children were to change their mind and they want to sell the lots.

Ms. Watkins said her son, Colby, loves the land and they all want to have a part of the land and she does not foresee that ever happening

Mr. Daniel asked Ms. Watkins what she will do with the back portion.

Ms. Watkins said they hope to have family reunions and stuff like that.

Mr. Daniel asked Ms. Watkins if she lives in the farm house now.

Ms. Watkins said she stays at her mom's house, right around the corner because her father just had a stroke but her daughter lives at the farm house with her two children.

Mr. Daniel asked Mr. Fox, if down the road, can the 11 acres be split off again.

Mr. Fox said they would have to come back before the Board of Zoning Appeals and request a variance to re-subdivide it, unless this Board wishes to approve it with a

condition on it stating that these parcels can not be subdivided again. But they could potentially get another split but would have to come before this Board.

Mr. Daniel said they could go through the Zoning Department itself if they wanted to put in a subdivision – say they put in a Township or County road in there and would have to bring it up to scale and make it certified.

Mr. Fox said they would have to do a zone change to change the zoning and then do it that way. He walked the property and it would cost them multi-millions of dollars to get up that grade and try to put a subdivision in there and it would be a tall task but if anyone of them wanted to split off their 11-acre tract they would have to come before the Board of Zoning Appeals because if the current Board decides to approve it, it will be approved as-is in this plat here, barring any changes this Board wishes, if you decide to approve it.

Ms. Watkins said that was what she was told in the beginning but wants to make sure that when all is said and done, that her children benefit from it. She added that there are a lot of places in Madison Township that actually have one lane and several homes back there. When they sold the property to (name inaudible) we had 200 foot road frontage and they added to their land and then when we came down to the old court house, we had asked them about splitting land at that time they were actually cutting the 200 foot road frontage from across the street over by the creek, and then taking one lane up and they were splitting it off and I just have the paper that they actually drew the pencil mark down the side at the court house and they said at that time we could do it and we did not really give it any thought until her kids started getting older and it's been a while.

Mr. Bevington said he was curious if the children wanted the land so badly, and asked where they are now.

Ms. Watkins said her daughter is working, and the grandchildren had sports and the other daughter is in class at Cincinnati Culinary Arts.

Mr. Philpot asked how much actual road frontage is on this piece of property.

Mr. Fox said somewhere in the neighborhood of 746 feet and in theory it is a little bit on the other side.

Ms. Watkins did not really think it would be a problem and didn't realize things had changed and that it would kind of knock them out of this.

Mr. Fox said there have been ten (10) text amendments since 1992 so there have been a number of changes to the code to reflect why Ms. Watkins is here today.

Mr. Fox said he has talked with Ms. Watkins to try and figure a way this can get done, but if you look on the road there is a little gap between here and here (pointed to on map) and there are other ways to get road frontage called "panhandle lots" and one thing we require with panhandle lots is to have 200 feet of road frontage on the right-of-way and

then the panhandle has to go back 50 feet; and the panhandle itself can only be 25 feet wide. If you add all of these splits up the applicant would never get that to happen on here.

Mr. Fox said he told Ms. Watkins that there was no guarantee but this would be the easiest and best way by putting a private lane up there to propose it to the Board of Zoning Appeals.

Mr. Daniel said he spoke with the Trustees and said you never know what will happen, nothing against the applicant, but they did get some calls from people that have larger farms than the applicant does, and not too far from her, and there are lots of things that have to be considered and there are concerns. Mr. Daniel said he can recall doing only two panhandle cases in his experience and so there have not been too many and the stipulation for a panhandle is fairly strange too.

Ms. Watkins said her children don't have the money to go in and try to make a road.

Ms. Steenken said as she looks at what Ms. Watkins has proposed, she sees it kind of surrounded on three (3) sides, a property belonging to Charles and Karah Debord.

Ms. Watkins said Karah is her daughter and it is the old farm house and we actually lotted that off as soon as we bought it and knew that we were going to build at that time.

Ms. Steenken asked what will be the disposition of that property that is now the farm house if this is approved.

Ms. Watkins said her grandchildren will hang on to that particular property.

Ms. Steenken said so whoever ends up with that property would be a party to the private lane.

Ms. Watkins said yes, the private lane used to be an old county road but back in the 30s or 40s and went all the way back to Friend Road and there were old homesteads back there. She added that Joe Lacey (not sure of spelling) and Mark Whiteman's mother gave her some literature when she first moved in to the Brewer house.

Mr. Salmon asked Ms. Watkins if the little 2.61 acres is not going to be attached to karah's other 11 (acres).

Ms. Watkins said that is not in the plans, but as far as the lane goes, that will be in the variance where they would have to agree with the maintenance and upkeep of the gravel and we wrote out a maintenance agreement that will need to be done in the spring and the fall and any added gravel or running of the tractor.

Mr. Philpot commented that it was about 2,000 feet of road.

Ms. Watkins said a lot of it is actually graveled now.

Mr. Philpot said yes but it still needs to be maintained – 2,000 feet has to be maintained.

Ms. Watkins said she has maintained the gravel lane for as long as she has been there and does know the cost of gravel and has shoveled it when it rains.

No further questions from the Board of Zoning Appeals.

**TESTIMONY IN FAVOR:** Donnie Lawson, 7483 Hetzler Road, Middletown, OH, Mr. Lawson said he has been Karla Watkins' neighbor since 1995 and she is a good neighbor and all neighbors have some issues over time but they have had very few. He said he feels it is honorable of the applicant to build for her kids and he would love to be able to see her do that and he has heard rumors about this coming in and he has received no information on it whatsoever other than what being four (4) lots and what he has heard here today – 3 kids and 4 lots.

Mr. Lawson said he is concerned about where the houses will be built because his bedroom is very close to the property line with the adjoining property and is very concerned about traffic beside his bedroom window – it's out in the country and they love the horses that Karla has over there now.

Mr. Lawson said he is concerned about the proposed drive and wonders if there will be a buffer zone between that drive and his place and he is very concerned about rumors of a subdivision going out back on top of Watkins' property – she spoke of four (4) 11-acre lots and he has no issues with that and hopes she can build for her kids up there but his concern is about the proposed drive – and where it is.

Ms. Watkins said it is the same as the current drive and she would never subdivide and give in to a subdivision and it will never happen. It is the same driveway, and they would all share it and the homes would actually go up top because everyone would put the water and electric in the same ditch going up and then split off.

Mr. Philpot asked Mr. Lawson if he felt this would create that much traffic.

Mr. Lawson said no, the reason he is here is because he loves Madison Township and he had to get a variance to join his two lots and Ms. Watkins gave him a real nice letter giving him her blessings, and she has his for what he sees here, but he did not want a busy street beside his property with traffic coming in and out for a lot of houses up on the top – but he does not have a problem with four (4) homes, especially for Ms. Watkins' family.

Ms. Watkins asked the Board if it would help if she were to agree to write that she would agree to never subdivide the property – and would that make it ok. She did not know there was a rumor.

Mr. Lawson said Ms. Watkins has done a real good job with the drainage off of the hill and said his area in Madison Township has a lot of water and he would be very concerned about all of the water running off the hill and how that would be laid if he were to get more water. He said there is a small spring down there and he has a small sump pump and it pumps just enough out of there but the water that comes down the hill actually looks like a creek. He added that he put a little levy in when he built his barn and it stops about 90% of it but when there is a hard rain it comes down looking like a creek.

Ms. Watkins said she could put another (inaudible) up there.

Mr. Lawson said he would appreciate that and he hopes she can do this for her kids, but his concern was the busy driveway right beside his bedroom.

**TESTIMONY IN OPPOSITION OF:** William Orth, 7575 Hetzler Road, Middletown, OH, here as a proxy for his mother, Shirley Orth, 7551 Hetzler Road, Middletown, OH, Jonathan Mark Whiteman, 7301 Hetzler Road, Middletown, OH

Mr. William Orth said he lives at 7575 Hetzler Road and is also here as proxy for his mother, Shirley Orth, who lives at 7551 Hetzler Road, Middletown, Ohio. Mr. Orth said his mother contacted Mr. Fox earlier this week.

Mr. Orth said he has three (3) objections. Mr. Orth said the applicant did not talk with him to begin with; and his primary objection would be that this is the beginning of more and more (inaudible), it is honorable that she's allotting this to her children but he is concerned that if four lots can be split, then eight (8) lots could be split and it would set a precedence back there.

Mr. Orth said his other objection is that it is zoned Agricultural for a reason and trying to keep up with his mother's 80-acre farm when Karla's side will open his side to a compromise and the idea of having four (4) additional houses back there and trying to keep that in tact becomes an even larger problem for him.

Mr. Daniel asked if there are three (3) houses back there or are there supposed to be four (4).

Mr. Fox said the proposal is for five (5) splits where they could put five (5) houses on.

Ms. Watkins said it is not likely to be five (5) houses because she only has three (3) children.

Mr. Daniel said someone said four (4) and that is where he got confused.

Mr. Orth said four (4) is what he read in it.

Mr. Fox said they are proposing five (5) splits; one has proper road frontage and four (4) do not. So the four (4) that do not have proper road frontage is what we are here for – but



there will be a total of five (5) when all is said and done because one already has the proper frontage, which is the Hetzler Road property which is 11.934 acres; then there are four (4) others that do not have proper road frontage.

Ms. Watkins asked the Board if there is anything she can say or do to never allow further subdividing to happen and she does not understand.

Mr. Fox said there is nothing you can say because sooner or later, you are going to pass away, and if someone has multi-million dollars who wants to develop this property and comes to your family members and offers \$20,000,000.00 for the property, he guarantees that the family will be gone with the \$20,000,000.00 and the land will be developed, so we would not consider that as a condition because when we are all gone, this property will still exist and someone will own it, whether it be Ms. Watkins' family or somebody else and this is why we have to look toward the future.

Ms. Watkins said if she makes each of those lots over ten (10) acres then they can be agricultural and they can have gardens and whatever they desire but she has never wanted to subdivide it.

Mr. Orth said his argument would be that this will make it more difficult for him to run a farm.

Mr. Fox asked Mr. Orth to explain how this would make it difficult to run his farm.

Mr. Orth said he has an 80-acre farm and the entire property is fenced in with barbed wire and in the past 10 years he has had people compromising his fence – cutting it to come through and hunt or do whatever they are doing over there and they have come from the applicant's side.

Mr. Fox asked Mr. Orth if it was Ms. Watkins' family members.

Mr. Orth replied he did not know who it was but he already sees problems on the applicant's side.

Mr. Fox said he would think that having 4 – 5 houses might stop that from happening because people would be there.

Mr. Orth said it would either stop it or aggravate the situation; however, his primary concern is that this is a step towards subdividing.

Mr. Whiteman said one of his biggest concerns with this would be the upkeep of this land going over the hill and wished there was a topographical map so a person could see what this involves because there is a fairly steep hill going up there and he has not been down to Ms. Watkins' residence, or her daughter's residence, to see what she has done to it, but he is here tonight and is telling the Board right now about the excess amount of water and sediment coming from that direction and it is filling his two ditches up that run their line

and it is overflowing in his field; and has used the applicant's backhoe trying to clean it out and before she moved out there he never had any problems with drainage from either ditch so he does not know what has happened down there or what she has done down there to aggravate the problem, whether she is trying to divert some water from Mr. Lawson and shoved it over his way or what but it is quite a mess and overflows in to his field quite a bit – once this year and several times last year.

Mr. Bevington asked Mr. Whiteman how long has he been there.

Mr. Whiteman replied his whole life, 55 years. That is his main concern over that and feels the applicant did not do her homework for what she has proposed here and has the neighbors in an uproar over this and he is surprised there aren't more down here tonight but if she went and talked with them it might have settled their fears and he guesses that Alan has received several calls concerning this property and several have called him and stopped him on the road concerning this – the main concern is subdivision and the applicant said she would never do that but she comes from a family of builders, so people are thinking they are going to build houses out there so that may be some of the things that need to be addressed.

Mr. Bevington asked Mr. Whiteman if one of his primary concerns is water running off and down the hill.

Mr. Whiteman said water coming off the applicants' property on to his – he does not know how it will be if she builds a bigger lane – that will put that much water on him or Mr. Lawson's – he has not seen the design of what that would be to divert the water.

Mr. Bevington asked Mr. Whiteman to show him where his property is on the map. Mr. Whiteman identified his property on both sides of the road.

Mr. Bevington asked Mr. Whiteman what type of crops he has and is it typical agriculture.

Mr. Whiteman said yes, he has soy beans in this year and rotates it with corn, beans, alfalfa and wheat and it is good productive ground.

Ms. Steenken asked Mr. Whiteman to show her where his house is located. Mr. Whiteman identified the location of his house. Ms. Steenken commented that it was across the street.

Ms. Steenken asked Mr. Whiteman where the major runoff problem comes from.

Mr. Whiteman replied it is from down the lane and there is a drainage ditch that runs right beside the lane and goes in to Brown's Run and also across his border this way (pointed to on map, and then she has one coming down and intersecting here (pointed to on map) and does not know how that could be maintained to keep it clean as there is a large amount of sediment coming in to it now and that is what is filling it up and then it

overflows on to his field and he has had some problems with it over the past several years.

**NEUTRAL TESTIMONY:** None

**STAFF COMMENTS**

Mr. Fox said the applicant, Ms. Karla Watkins, 7471 Hetzler Road, Middletown, Ohio, Case BZA10-11V, is requesting to split property without road frontage to create four (4) building lots.

Staff Comments are as follows:

1. The property is zoned A-1 Agricultural District.
2. This area is rural in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, and since there is no evidence of a hardship with the properties, staff will recommend denial.

Mr. Daniel said this is one of the slowest growing townships and he has been here a lot of years, and there is a lot of concern for variances like this.

Ms. Watkins said she is surprised.

Mr. Daniel said Mr. Whiteman, Mr. Larson and Mr. (inaudible) did not call him.

Ms. Watkins said just because her family came from builders and all of her brothers' have land and she is blown away about this.

Mr. Daniel made a motion to deny Case BZA10-11V because of what he knows, what he has seen and the possibilities in the future, which Mr. Fox spoke of a little while ago. Mr. Salmon seconded the motion. Motion carried.

AYES: Daniel, Salmon, Philpot, Steenken, Bevington

NAYES: None

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**Case BZA10-12V**

Jordin Horan/Kroger Limited Partnership I  
428 Oxford State Road  
Middletown, Ohio 45042

Ms. Jordin Horan, 130 Tri-County Parkway, Cincinnati, Ohio said she is here to represent Kroger, said she has three (3) simple boards to present; first one being the proposed monument sign and the others being the existing sign there.

Ms. Horan said there currently is a grocery store at 430 Oxford State Road and we are proposing to add a fuel station on the existing property, and by adding a fuel station it would allow their customers the opportunity to redeem their fuel points.

Ms. Horan said they are proposing two (2) monument signs and they would eliminate the pole sign and replace it with the new ground monument sign with brick face and replace the existing (inaudible) sign on Hamilton Middletown Road so it would match with the brick face and it would also be surrounded by approximately 27 (inaudible) which is on their landscape plan and their building permit has been submitted for review.

Ms. Horan said in addition to the proposed canopy they are asking for a variance on the signage allowance, the current code allows for four (4) percent on it. Currently it allows 4% and their current canopy is a very small one (inaudible) and as far as the (inaudible) is quite minimal as far as the logo to identify that it is a Kroger fuel station; and then on the south elevation, which faces the store, they would have the triple price sign so customers exiting the store would be able to see the price sign.

Ms. Horan said why they believe this is an undue hardship is that this is a Kroger gas station and a Kroger store, and they are two different businesses and she represents strictly the fuel stations, but seeing they are on one property they are only allowed one (1) monument sign for both businesses so that is why they are asking for the variance to have some additional signage to allow the fuel pricing and also the Kroger store.

Ms. Horan said as far as the surrounding area, this would be an improvement and there are so many other signs that are there, before the 2006 code change so there are a lot of signs outdated in the area, although this would be a variance it would be tasteful and in line with the code's intention.

Mr. Salmon asked if there would be one (1) sign on each road and both would be fuel station-type.

Ms. Horan replied yes, both will have the fuel price sign to allow vehicles coming in both directions to view the price and there will be a remote control so they will be electronic.

Mr. Salmon asked Ms. Horan if the pole sign would be removed before or after.

Ms. Horan said it will be removed before and the (inaudible) sign will be exactly in the same place.

Ms. Steenken asked if the location has been approved.

Mr. Fox said everything is good - the location, the height of the canopy and everything that they are doing on site from the standpoint of the gas station is a-ok. Back in 2009 there were a number of changes to the sign codes and this is really our first sign variance to this, since we have not had many signs go in our jurisdiction. Mr. Fox added that the County is looking at increasing sign height and how big it can be due to a lot of inquiries to us about our sign requirements being too small.

Mr. Daniel commented about a case about six (6) years ago and the need for some changes to be done in that.

Mr. Fox said as a staff, we would like to see the pole signs go away and feel they are gaudy and ugly and would like to see the ground signs remain and we are looking toward next year for a revision to the code that will increase the size of monument signs.

Mr. Salmon asked Ms. Horan if most of the Kroger signs are standard.

Ms. Horan said they are mostly the same, the canopy is very typical but it depends on the visibility, traffic and the jurisdiction but we try to keep them standard so people will recognize them and do still use some of the pole signs when they are allowed.

**TESTIMONY IN FAVOR:** None

**TESTIMONY IN OPPOSITION:** None

**STAFF COMMENTS:**

Mr. Fox said the applicant, Ms. Jordin Horan, representing Kroger Limited Partnership I, Middletown, Ohio, Case BZA10-12V, is requesting a variance to build two (2) monument signs that exceed allowable size and square footage requirements and allow the building sign to exceed four (4) percent of the total front building wall elevation.

Staff Comments:

1. The property is zoned B-3 General Business.
2. This area is business in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.

4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following condition:
  - a building permit is required.

Mr. Philpot made a motion to approve BZA10-12V, Jordin Horan, representing Kroger Limited Partnership I, Middletown, Ohio. Ms. Steenken seconded the motion. Motion approved.

AYES: Philpot, Steenken, Salmon, Daniel, Bevington

NAYES: None

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**ADJOURNMENT:**

A motion was made by Mr. Salmon, seconded by Ms. Steenken to adjourn. All in favor, motion carried.

These minutes represent a summary of the proceedings and do not purport to be the entire record. A complete transcription of these proceedings was taken from an audio tape by James M. Fox under supervision of the Secretary and may be obtained upon written request. Any charges associated with preparing such transcript shall be borne by the person requesting such same and must be prepaid.

Hamilton, Ohio

September 21, 2010

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Tom Bevington, Chair

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James M. Fox, Secretary

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Lee Margraf