

BOARD OF ZONING & APPEALS MINUTES

Tuesday, April 12, 2016

7:00 P.M.

A. ROLL CALL-

Members present:

Phil Darling
Russell Beiersdorfer
Jim Thatcher
Rick Pope
Jane Ohlmansiek
Nicole Daily, Zoning Administrator
Andrew Baudendistel, Attorney

B. Action on Minutes-

Mr. Beiersdorfer made a motion to approve February 9, 2016 minutes. Seconded by Mr. Darling. All in favor. None opposed. Motion carried. Mr. Pope and Mrs. Ohlmansiek abstained.

Mrs. Ohlmansiek made a motion to approve March 8, 2016 minutes with correction. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

C. Old Business Scheduled to be Re-opened-

1. Request: Conditional Use request for a Contracting Business with outdoor storage in an Agricultural Zone & Variance on slope of commercial driveway and Variance on sight distance
- Applicant/Owner: Matthew Paul Honeycutt
- Site Location: Lower Dillsboro Road
- Legal: Sec. 31, T5 R1 Parcel #15-07-31-300-007.000-002
- Township: Center
- Zoning: Agricultural (A) Size: 2 Acres

Ms. Daily presented the Board with the request. The property owner is requesting to construct a barn on the property to house a construction business. The barn would be for storage for materials and there would be work related vehicles stored outside the barn. During the daylight hours the vehicles parked on the property would be employee personal

vehicles. This would not be a location for customers to visit. Ms. Daily presented the Board with pictures of the revised driveway since the last meeting. The new driveway that currently there now meets commercial sight distance. Trees and shrubs have been removed for the required sight distance. The sight distance have been met per Dearborn County Highway Engineer. A 12 inch slotted drain or something similar will need to be installed. The slope of the driveway has been reduced from 26% to 15%. Maximum commercial driveway allowed is 8% therefore a Variance of 7% is needed.

No further questions for Ms. Daily

Mr. Pope called the applicant to speak before the Board.

Matthew Honeycutt addressed the Board and stated that there will be a 16 inch box drain, 22-24 feet in length installed.

No further questions for the applicant.

Mr. Beiersdorfer made a motion to open public discussion. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

No public discussion.

Mr. Thatcher made a motion to close public discussion. Motion was seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Mr. Beiersdorfer made a motion to grant the Conditional Use for a construction business with outdoor storage in an agricultural district on property located on Lower Dillsboro Road, Parcel #15-07-31-300-007.000-002 of Center Township. This Conditional Use arises from Article 9, Section 930. Citing the request meets the criteria of Article 3, Section 315 within the Dearborn County Zoning Ordinance. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Mr. Thatcher made a motion to grant the Variance approval for the slope of 7% for a commercial driveway on property located on Lower Dillsboro Road, Parcel #15-07-31-300-007.000-002 of Center Township. This Variance arises from Article 24, Section 2431. Citing the request meets the criteria of Article 3, Section 320 within the Dearborn County Zoning Ordinance. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

D. Old Business to remain tabled- None

E. New Business-

- 1. Request:** Requesting a Variance to build a house in an M-1 District
Applicant/Owner: Andrew & Kassie Clark
Site Location: Taylor Lane
Legal: Sec. 36 T5 R2 Parcel #15-08-36-400-041.000-008
Township: Hogan
Zoning: Manufacturing (M-1) **Size:** 19.0 Acres

Mr. Baudendistel, Attorney addressed the Board and is excusing himself from this request due to the fact he prepared the deed for Andrew & Kassie Clark.

Ms. Daily stated to the Board that if they feel they cannot make a decision without legal advice from an attorney, her recommendation is to table the request. Then she would bring in a separate attorney for the Board if they deem it necessary.

Ms. Daily presented the Board with the request. The applicant is requesting the approval of a variance to construct a residential structure in a manufacturing district. Residential units are not a permitted use within an M-1 district. The variance would be based on the use of the property. Ms. Daily stated that each Board member should have a copy of an easement in their packets and to look at the list of conditions and restriction that are listed concerning this property. Ms. Daily went over in more detail some of the staff comments.

Ms. Daily stated Mr. Steven Taylor, adjoining property owner hand delivered a letter to our office today and the letter is included in their packets.

Mr. Darling asks if this is the only property accessing Taylor Lane. Ms. Daily stated there are 3 residences that access Taylor Lane to get to their property.

Mr. Beiersdorfer asks if the applicant would be required to have flood insurance even though the house isn't in the flood plain. The proposed location of the house would not be in the floodplain so the county would not require any additional information. Ms. Daily stated it will be based on the mortgage company. Elevation certificate may be required and the structure or property may need to be eliminated from the flood plain through a LOMA. It's not the entire property; it's based on the entire structure.

Mr. Thatcher asks if there is a bridge that would be used for crossing before getting back to the applicants property. Ms. Daily stated there is one right off of Wilmington Pike.

Mr. Pope asks when the Manufacturing Zoning was established on this property. Ms. Daily stated she believes it was in the 1960's. She also stated we are not aware of any Manufacturing companies on the property or the properties adjoining.

No further questions for Ms. Daily

Mr. Pope called the applicant to speak before the Board.

Mrs. Terry Hall is speaking on behalf of the applicant. She stated that the applicant has received the preliminary septic location approval from the Dearborn County Health Department. The applicant would be willing to send out letters to the adjoining owners due to the easement to let everyone know when they would start construction. They would like to wait until approximately August for the drier part of the season to eliminate any possible damage to the road since it is part of the easement restrictions. They have plans to inspect the progress weekly and to maintain it throughout the process. The applicants are setting aside funds for any repairs needed to the road after the building is complete. They are asking for approval from the Board, and if approved the county will be informed the status of the building process. They will also be monitoring the wear and tear of the drive.

Mrs. Ohlmansiek asks where the applicant's parents live. Mrs. Hall stated they are an adjoining property owner.

Mr. Thatcher asked about the insurance that the applicants are going to have for the damages to the driveway. Mr. Andrew Clark spoke to the Board explaining he will be going to the bank in order to finalize this but until they get the approval from the Board they cannot get these issues finalized. They understand that there will be some damages but they are more than willing to be responsible and make sure these damages are repaired when the construction is finished. They have been setting extra funds aside for this purpose.

Mr. Darling made a motion to open public discussion. Motion was seconded by Mrs. Ohlmansiek. All in favor. None opposed. Motion carried.

Steven Taylor, 12617 Taylor Lane, adjoining property owner. He submitted his concerns in the letter to the Board. He asks the Board to please read the letter carefully. He would like his letter to be added to the approved minutes. (See attached "Exhibit A") He stated he doesn't necessarily object to the applicants building a home. But he states because the way it has been done it presents both liability and legal issues for him. He expects those to be addressed. He stated he was not consulted but rather had been told about this request.

Mr. Thatcher asks Mr. Taylor if there is more than one bridge coming back to the property and does he have concerns of weight on the bridges. Mr. Taylor stated yes he has concerns with the weight issue and there is only one bridge in question. The bridge is concrete arch. The bridge was widened in 1939. Some discussion took place on the condition of the bridge. The span of the concrete arch support system is 4 feet wide and 5 feet tall. The condition of the road is asphalt to the first residence and from there is crushed rock.

Mrs. Ohlmansiek asked who maintains the lane. Mr. Taylor stated it is privately maintained.

Mr. Thatcher asks what his primary objection is to this request. Mr. Taylor states it is the traffic being above a certain weight.

Mr. Thatcher also asks him if he feels that sitting down with the applicants and resolving some issues that he is having would help. Mr. Taylor stated that yes that is the way he sees it.

Mr. Pope stated he sees this as an opportunity to upgrade and fix the bridge.

Mr. Taylor stated that a few years ago he had a proposal to waive the weight limits in the easement. The proposal was between himself and Mike and Debbie Clark; the Clarks would have to be willing to upgrade the road to standard and suitable condition for additional traffic. But he did not hear a response from the Clarks. Mr. Taylor is willing to consider some different options for this request.

Mrs. Hall addresses the Board to answer the concern for the bridge. The Clark's are offering to place a temporary support on the bridge during the construction process. They would be willing to sign a waiver of liability for any damage done to the bridge.

Mr. Beiersdorfer made a motion to close public discussion. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

The Board members discussed the issue with the Manufacturing Zoning for this property. Ms. Daily stated she will have to research the records to find the year that this was zoned from the old county maps. The discussion took place on how and why this property was zoned the way it is. There would be a lengthy process for this property to be rezoned. The Board discussed the option to table this request in order to get legal advice before hearing this case again in May and to allow a meeting and an agreement to be reached between all property owners involved.

Mr. Thatcher made a motion to table this Variance request until the May 10th meeting. This will also allow the Board to seek legal advice on some issues that have come before them tonight. Mr. Thatcher also asks that the parties involved come together and discuss any and all issues and to come to a resolution on them by the May 10th meeting. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Ms. Daily stated she will be contacting an additional attorney to attend the May 10th meeting due to the fact the Mr. Baudendistel will be excusing himself from this request and will not be giving legal advice.

2. Request:	Variance request for driveway spacing
Applicant/Owner:	Krystal Barrett/Hueseman Road, LLC
Site Location:	Hueseman Road
Legal:	Sec. 10, T4, R2, Parcel #15-11-10-400-135.000-023

Township: Washington
Zoning: Residential (R) Size 68 Acres

Ms. Daily presented the Board with the staff report. The applicant is requesting the approval of a variance for driveway spacing. The applicant is in the process of purchasing approximately 48 acres from the total 68 acres. The proposed split would split the property into two different frontage points along Hueseman Road. The proposed driveway would be located approximately 20 feet south of an existing driveway for the house located at 10250 Hueseman Road. The driveway spacing required is 150 feet for a speed limit posted of 35 MPH; therefore a variance is needed of 130 feet.

The Board had no further questions for Ms. Daily.

Mr. Pope called the applicant to speak before the Board.

The applicant had nothing to add to the discussion.

Mr. Beiersdorfer made a motion to open public discussion. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

No public discussion.

Mr. Beiersdorfer made a motion to close public discussion. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Mrs. Ohlmansiek made a motion to grant the Variance approval of 130 feet for driveway spacing on property located at Hueseman Road, Parcel #15-11-10-400-135.000- 023 of Washington Township. Citing the request meets the criteria of Article 3, Section 320 within the Dearborn County Zoning Ordinance. Motion was seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

ADMINISTRATIVE:

Ms. Daily presented a case to the Board based on several complaints that were called into the Planning and Zoning office concerning the construction on Jerome Wilker property in Seldom Seen Estates Subdivision. Ms. Daily state that Planning & Zoning does not feel that these complaints are valid or enforceable by the department at this time. Mr. Wilker had received his permit in June 2015 and it has only been 1 year since the issuance of his permit. The issuance of the permit was being held up by the Planning & Zoning due to some issues of the grade of the driveway and Hrezo Engineering had to revise his house plan 3 times. The Dearborn County Building Department will be monitoring the construction process. The Planning & Zoning Department has asked Mr. Wilker to do some cleaning up around the project site and to cover

up some of his equipment when not in use. Ms. Daily would like to get just an opinion from the Board on what they feel is necessary for further enforcement issues and/or support of staff's decision at this time.

Mr. Thatcher asks if they owner is in violation of anything at this point. Ms. Daily stated no.

A few of the property owners are in attendance to voice their concerns.

Mr. Beiersdorfer made a motion to open public discussion. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Tricia Karaus, 1252 Seldom Seen, adjoining property owner. Her concern is a disabled van for an entire year used for storage. Her other concern is safety of a wall that is coming down on the construction site. She feels that these issues are a nuisance.

Mr. Thatcher asks Ms. Daily if the Building Department requires home owners to carry liability insurance. Ms. Daily stated not for personal property, also she believes the department does not require proof of insurance during construction.

Mr. Jerome Wilker, 1258 Seldom Seen Dr., stated that the framed wall is 11 feet from the adjoining owner's property and is anchored to where it will not fall on their property. He will be having a framer coming to the site and will support the walls. He is hoping to move into his home in November 2016. He also stated he has a \$50,000 insurance bond on the roadway.

The Board feels, in their opinion, there is nothing at this point they can do concerning the complaints on this property. The home owner has 2 years to complete this project from the issue date of the permit.

Mr. Beiersdorfer made a motion to close public discussion. Motion was seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Ms. Daily presents a complaint case to the Board concerning a fence on North Dearborn Road. The complaint is based on an existing fence being 2 inches to 6 inches taller than the 6 foot maximum requirement according to the Dearborn County Fence Code. The Planning & Zoning Department does not feel this is a violation that needs to be pursued.

In the Boards opinion they do not feel that there is a violation against the fence owner.

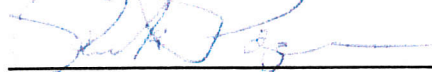
Mr. Baudendistel stated he would not feel comfortable with filing a complaint in front of Judge Humphrey over 2 to 6 inches. He doesn't want to take up the courts time.

Mr. Baudendistel stated he had a contempt hearing on Marvin Hamon last week. Judge Humphrey found Mr. Hamon in contempt and found it willful. A willful failure to abide by the agreement and the prior court order. We didn't ask for any money or fines. We have a \$25,000 judgement on a prior case. Judge Humphrey did not order Mr. Hamon to jail but did put specific time lines on him on applying for the minor site plan. Once he applies for the site plan he will have one week to file for building permit with the Building Department. He was also given time lines on the finishing of the fence and the starting of the barn and completion of the barn. Mr. Baudendistel will be giving the court updates on Mr. Hamon's timelines and if these are not met Mr. Baudendistel will ask the court for a hearing to address any punishment for Mr. Hamon's continued failure to abide by the court order.

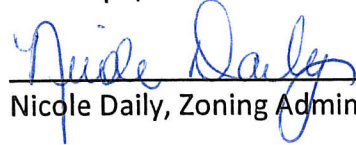
Ms. Daily stated there will be a May 10th meeting. There is 1 tabled request and 2 new submitted requests. Derek Walker will be attending to help presenting for practice for a June meeting that he will be presenting for Ms. Daily in which she will be on vacation.

Mr. Beiersdorfer made a motion to adjourn. Motion was seconded by Mr. Darling. All in favor. None opposed.

Meeting adjourned at 9:15 p.m.



Rick Pope, Chairman



Nicole Daily, Zoning Administrator

"Exhibit A"

Steven Dean Taylor

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April 12, 2016

Dearborn County Plan Commission
215 B West High Street
Lawrenceburg, IN 47025

RE: April 12, 2016 Variance Request Proceeding; Andrew and Kassie Clark

Board Members:

Thank you for the opportunity to address the Board.

INTRODUCTION

By way of introduction, my name is Steven D. Taylor. I was notified of this proceeding via certified mailing dated March 29, 2016 and received April 01, 2016 because I own property adjacent to the Andrew and Kassie Clark, hereinafter, petitioners, property, hereinafter, parcel, at issue in this proceeding.

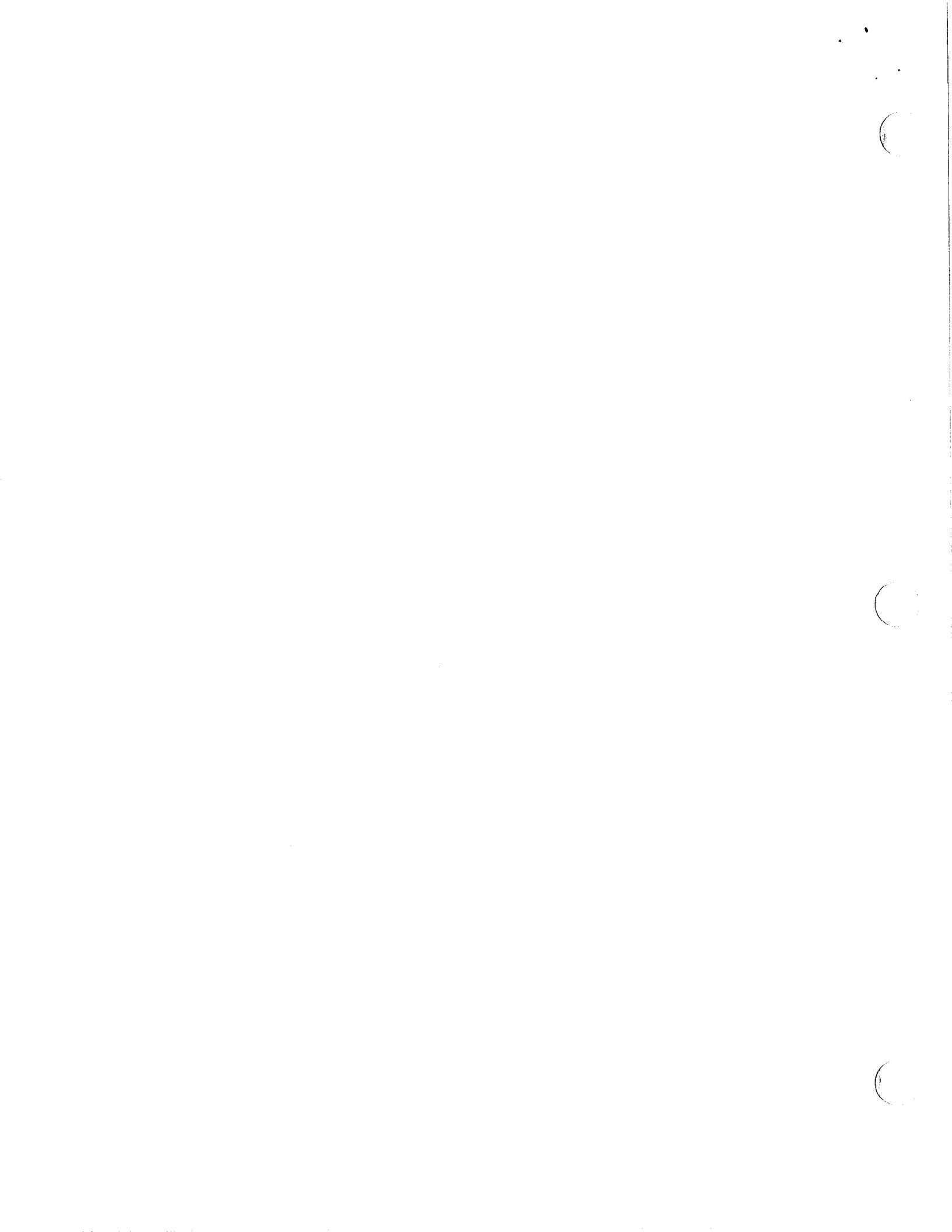
The Dearborn County property where I currently reside at 12617 Taylor Lane was purchased by my parents in November of 1951 after they returned from their service in WWII. I spent my childhood here and have resided here since November of 1951, excepting the period between June of 1973 and July of 1993 when I lived and worked in Ohio, and the period between August 1999 and June 2002 when I returned to Ohio to continue my professional education.

PREMISE

I would like to premise this letter by stating that I would have preferred to avoid appearing before the Board but am compelled to do so due to the manner in which the petitioners and the most recent conveyors of said property have chosen to proceed. Given protection of my existing legal rights and property, and protection from any liability resulting from actions by the petitioners, I may well not object to the construction of a single, single-family residence building on said parcel accessed via Taylor Lane. Indeed, I believe that common ground could well be found allowing the petitioners, to construct such a residence on the subject parcel. Unfortunately, I have not been consulted regarding the plans of the petitioners. Rather, I have been told.

ISSUES

Issues concerning the proposed variance include, among others, the suitability of Taylor Lane for additional ingress and egress traffic, especially police, fire and emergency traffic and heavy construction traffic, protection of my existing legal rights, protection from



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liability resulting from the acts of the petitioners, the suitability of the parcel for use as a residence where small children might reside or be anticipated to reside, as well as highest and best use of the property.

ORDINANCE

In accordance with Article 3, Section 320, Subsection 1, of the Dearborn County Zoning Ordinance, hereinafter, Ordinance:

An appeal to the Board requesting a variance shall demonstrate:

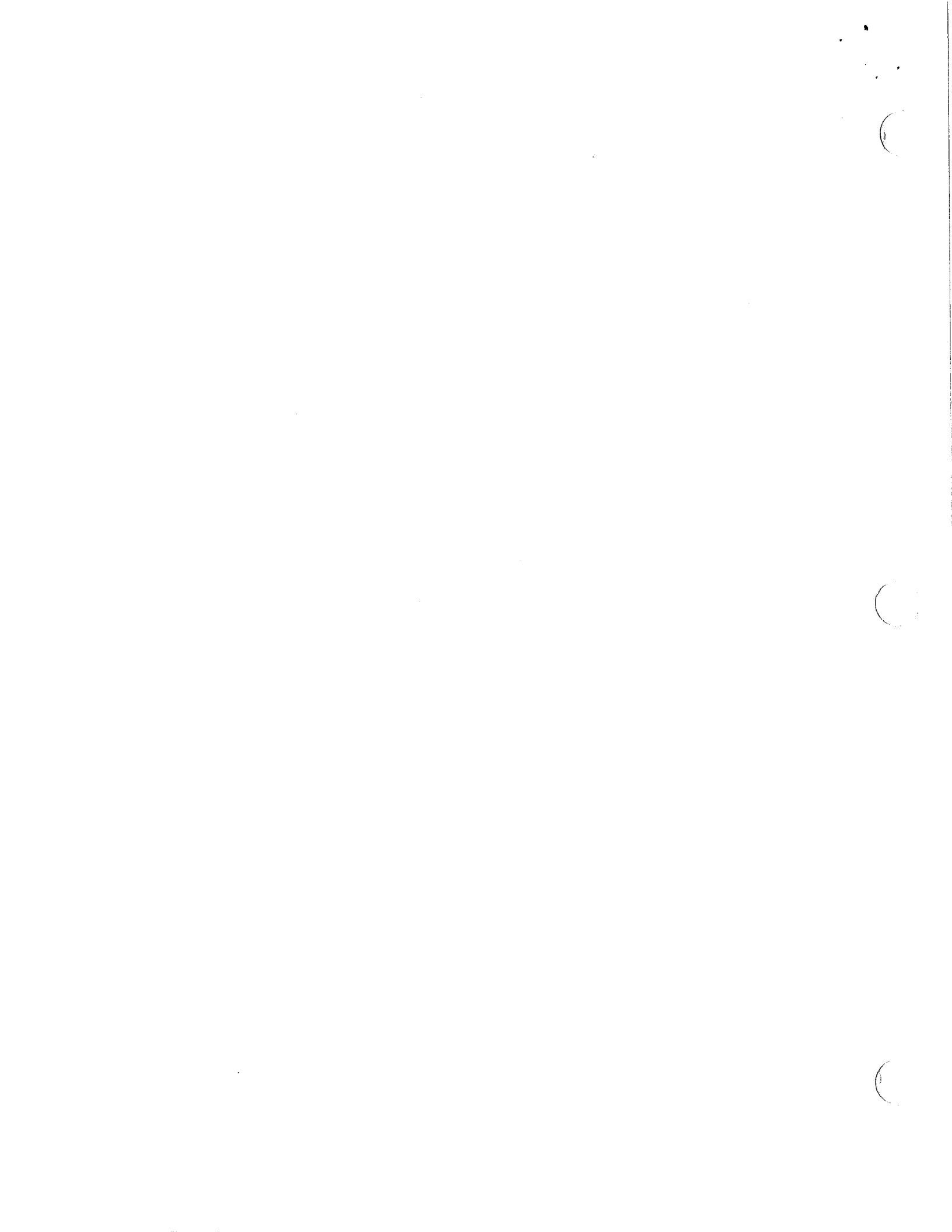
A variance may be appropriate by reason of exceptional narrowness, shallowness or unusual shape of a site on the effective date of these regulations or amendment thereof or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site. In addition, a variance may be appropriate if the literal enforcement of the terms of the zoning regulations would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zone.

1. An appeal to the Board requesting a variance shall demonstrate:
 - a. That the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - c. That the need for the variance arises from some condition peculiar to the property involved which are not applicable to other lands, structures or buildings in the same district;
 - d. That the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
 - e. That the special conditions and circumstances do not result from the actions of the applicant.

FACTS

The subject parcel is located in a district that is currently zoned M1. The subject parcel and surrounding area has been so zoned for over fifty years.

Article 3, Section 320, Subsection 1, e, states: "That the special conditions and circumstances do not result from the actions of the applicant." Here, the petitioners acquired the subject parcel from Michael and Deborah Clark, parents of Andrew Clark, well knowing that the parcel was zoned M1, and that residential construction was prohibited in such parcels, see Dearborn County Zoning Ordinance, Section 1302 and 1304. Additionally, the petitioners well knew of the easement provisions prohibiting subdivision and development of the subject parcel as evidenced by Items 1 and 2 of the easement document, hereinafter, Easement, submitted by the petitioners. Accordingly, the



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petitioners have not demonstrated that the special conditions and circumstances of Article 3, Section 320, Subsection 1, e do not result from the actions of the applicant. These facts, alone, are dispositive in this proceeding.

Taylor Lane is a privately maintained road providing access to my property as well as three additional properties aside from that of the petitioners. My property is situated between the public access via Wilmington Pike and the other properties accessed via Taylor Lane. All traffic to and from the three other properties travels over my property subject to recorded easements solicited and accepted by the owners of these properties. All such easements include prohibitions against subdivision and development as well as restrictions upon the type and weight of traffic allowed upon Taylor Lane.

Taylor Lane is a single lane, privately maintained road limited by easement provisions to twenty feet overall and a ten foot maintained roadway. Please refer to Easement, Item 3. Traffic on Taylor Lane is restricted via easement provisions to residential and agricultural vehicles, not to exceed 26,000 lbs. gross vehicle weight. Please refer to Easement, Items 1 and 2.

Such provisions are for good purpose. Taylor Lane is a single lane road traversing a steep hill, with sharp corners. Berms, drainage and ditching are inadequate and maintenance is marginal. Taylor Lane is, at best, marginally adequate for ingress/ingress traffic of the existing three residential and agricultural easement holders.

Furthermore, Taylor Lane traverses a bridge, hereinafter, Taylor Lane Bridge, over a substantial tributary to South Hogan Creek. This bridge was built nearly 100 years ago and has been inadequately maintained in recent decades. This bridge was neither designed nor intended for modern heavy construction traffic. Nor was it designed for heavy fire and emergency vehicles such as fire pumper and tank trucks that might be necessary should a fire occur at the proposed residence, which is without provision for municipal water connection or fire hydrant. Allowing heavy construction traffic across this bridge presents a safety and liability issue which, as owner of the property upon which the bridge is situated, I am not willing to accept without a liability waiver executed by the petitioners.

Additionally, Taylor Lane traverses through the Ohio River floodplain near its intersection with Wilmington Pike. An Ohio River level of approximately 54.5 feet causes Ohio River backwater to cross Taylor Lane near the Taylor Lane Bridge. A similar Ohio River level of approximately 55 feet closes Taylor Lane to automobile traffic. Such closure to traffic on Taylor Lane is a safety and liability issue for residents accessed only via Taylor Lane. Moreover, should police, fire, or emergency vehicles need to access the proposed subject residence, such access might not be available in flood or adverse weather conditions. Granting a variance allowing construction of another residence that can be accessed only via Taylor Lane would be "injurious to the public health, safety, morals, and general welfare of the community," and is proscribed by Article 3, Section 320, Subsection 1, a of the Ordinance.

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Prior to considering the proposed variance, I would invite all Board members to visit and inspect Taylor Lane and, especially, the Taylor Lane Bridge.

Finally, the subject property borders the CSX railway. Growing up on my property in the 1950s, I found the railroad to be an intoxicating attraction to a small child. Indeed, I spent many, many hours exploring the railroad property even though my residence was further removed from the railroad than is the subject parcel. Given the current litigious environment in the United States, I would not consider the subject property appropriate for a residence wherein small children would reside or might be anticipated to reside. Again, I would refer the Board to Ordinance, Article 3, Section 320, Subsection 1, a.

CONCLUSION

In conclusion, I would like to again state that I am not necessarily opposed to the petitioner's request for a variance to build a single, single-family residential building upon the subject property. Indeed, I remain convinced that common ground can be found to allow such construction while, at the same time, protecting my existing legal rights and property, and protecting me from any liability resulting from the acts of the petitioners.

ALTERNATIVE

Should the Board decide to take the subject variance under advisement, pending further review and/or consultation between the petitioners and myself, I remain convinced that a mutually acceptable solution can be found, and remain willing to discuss alternatives with the petitioners.

Please add this document to the minutes of this proceeding and record the minutes into the county records.

Thank you again for your time and consideration.

Respectfully,



Steven D. Taylor

