

Salem Township
Board of Adjustment

July 2, 2014

Members Present:

Mike Coats
John Potter
Kate Herness
Teresa Carstensen
Brian Connelly (Township Board Supervisor)

The meeting was called to order by Mike Coats at 6:15 PM.

John Potter moved to approve minutes from Nov. 2011 meeting, Kate Herness seconded. Minutes passed.

Business- Variance Request- Thomas and Kathleen Gilbertson, section 18: variance to the non-farm dwelling density ordinance. The applicant wishes to construct a single family home on a non-farm size parcel in a quarter-quarter section wherein there is already a non-farm parcel/dwelling. The A-2; Agricultural Protection District zone allows only one non-farm parcel/dwelling per quarter/quarter section.

David Meir of the TCPA gave the staff report. An attachment of this report is included with the minutes.

Frank McAnulty, attorney for the Gilbertson's, presented the Gilbertson's need for this variance. The Gilbertson's had several hardships, medical and job loss. He also has a letter from the neighbor, Hussein Khalili, stating that he has no objections to the Gilbertson's constructing a dwelling.

Brian Connelly asked the TCPA if by allowing this variance, Would Salem be less restrictive than the county? If so what are the ramifications?

Roger Irhke of the TCPA commented that if there was enough merit, the board should get Township attorney involved. The TCPA did contact the County attorney and if variance is granted the Township would be less restrictive than the County. County is concerned that by allowing this variance it would start to happen all over the township.

Frank McAnulty said that an area variance concerns density not use. He refers to staff report were Tom Canan argues that it is use. He also said that the applicants did not realize what sellers did to get land split. Is it an illegal parcel? He said that since it is a taxable parcel it is legal. The need for this variance is due to a series of events, 2011 real estate market was bad, Gilbertson's moved shed to property after

an application was granted, well and septic were applied for through the proper channels. The Gilbertson's had medical hardships and job loss in 2012.

Teresa Carstensen moved to open meeting to public comment, Brian Connelly seconded, passed. Rick Lutzi commented that tax statements do not make a site buildable.

Frank McAnulty mentioned that this may have been when woodlots were around but this is not a woodlot. If this variance is granted it won't be much different than others in the township.

Mike Coats called three times for comment, hearing none Teresa Carstensen moved to close meeting to public comment, Kate Herness seconded, passed. Public comment closed.

Mike Coats said that four of the board of Adjustment members have been involved with the rewriting of the township ordinances and are familiar with the ordinances.

Brian Connelly asked about the septic, well and shed move being applied for before the foreclosure.

Why did you want to build on the North Section? Gilbertson's said it was to build the shed and ease the care of livestock.

Mike Coats commented that there are so many red flags in this report. We are to be as strict as the County. If this variance is passed will it set precedence?

Frank McAnulty responded that, no, it wouldn't but it could be brought up in the future, it would be by word of mouth and not searchable.

David Meir pointed out that if the variance is passed it gets put in County Law Library and could be searched.

Mike Coats said if we pass this we may be in contention with the County. He suggested that the Board discuss this and look for additional support from Township Attorney. Postpone decision for 30 days until next meeting.

Frank McAnulty said it was understandable to check with attorney and he added that an area variance is more allowable than a use; this is not a use variance.

Brian Connelly moved that the board get our attorney's, Troy Gilchrist, opinion on what the ramifications of the board allowing this would be and to continue on August 6 with the question at hand.

Kate Herness seconded, passed.

Permission was given for the TCPA to extend 60 day period to the Gilbertson's.

Meeting continued to August 6, 2014, 6:15 PM.

Continuation of July 2, 2014 meeting

Mike Coats resumed meeting at 6:15 p.m. on Aug. 6, 2014. Teresa Carstensen moved to take discussion off the table. Brian Connelly seconded, motion passed.

David Meir of the TCPA read the response from Troy Gilchrist, the Township Attorney. An attachment of this letter is with the minutes.

Frank McAnulty responded for the Gilbertson's. The letter was cogent and based on statutes. The ordinance is to preserve prime farmland and this property is not prime farmland. If granted the density will only be 2 dwellings on 40 acres, which is within county guidelines. He submits that this variance is in harmony with county guidelines. The property will be used in a reasonable manner. The landowners have had difficulties. The property has been split for 24 years and the Gilbertson's use of the property at that time was consistent with their needs at that time. They are not blameless but doing the best they can with the situation. Frank McAnulty urges board to approve.

Questions from board-

John Potter asked if when the septic was approved, was the property buildable for a dwelling?

David Meir responded that it was not.

Kate Herness asked if the property was combined with a 30 acre lot would it then be buildable for a dwelling?

Roger Ihrke clarified that to have a septic permit and individual can have a system on a non-buildable (dwelling) lot, for a shed if they have the land. The Gilbertson's had to have proof that they were not living on property, another dwelling, at time of septic permit.

Mike Coats added that the county is not following their own rules and wants the Board to follow them. He asked the Gilbertson's if they are living on the property, they replied that they were camping there. He also asked if we would have to evict them by sending back to the county?

Roger Ihrke said we can only look at the merits of the variance. The town board would have to send it on. The parcel would not be sellable as a dwelling, building lot.

Frank McAnulty said enforcement of the variance or not, the Gilbertson's still own the land and could subsist on property. What is just in these circumstances? Common sense, 24 years of residence and owning property and the neighbors are not against variance.

Brian Connelly made a motion to approve variance, Teresa Carstensen seconded.

Variance passed with Mike Coats, Brian Connelly, John Potter and Teresa Carstensen voting in favor and Kate Herness opposed.

David Meir read the resolution, STV-14-01.

Kate Herness asked if the Gilbertson's can list this property as buildable for sale?

Roger Ihrke said yes. If they get a building permit they will have to get property up to code.

Brian Connelly said that the neighbors did not oppose the variance and the closest neighbor wrote a letter in favor.

Brian Connelly made a motion to approve with amendments.

Teresa Carstensen seconded.

John Potter moved to adjourn.

Kate Herness seconded.

Approved, meeting adjourned at 6:55 p.m.

Respectfully submitted,

Mike Coats,
Chair

Teresa Carstensen,
Secretary