

**Application for Variances – Alan Anthenat & Jill Harvilchuck  
BZA Case #1-VA-2021**

**JACKSON TOWNSHIP BOARD OF ZONING APPEALS**

**ENTRY OF BOARD’S DECISION**

This matter came before the Jackson Township Board of Zoning Appeals (the “Board”) for hearing on March 8, 2021 pursuant to the Application for Variance filed by Alan Anthenat and Jill Harvilchuck, property owners, (hereinafter collectively referred to as “Applicant”). The Application was assigned as Jackson Township Board of Zoning Appeals Case Number 1-VA-2021. The Application requested variances for lot width and access drive spacing related to the subdivision of the 55.64+/- acres of property identified as 0 Zuber Road, Grove City, Ohio, 43123 and as Parcel No. 160-000032 in the Records of the Auditor of Franklin County, Ohio (the “Property”) into approximately 9 lots. The Property is located in the Rural Residential (“R”) District. The Applicant has requested variances from Sections 206.01 and 305.05(B) of the Jackson Township Zoning Resolution (“JTZR”), which provide the required minimum lot width and access drive spacing, respectively. The eight variances the Applicant has sought from the provisions of the JTZR are as follows:

1. Minimum Lot Width Requirement from JTZR Section 206.01

Required: “Table 2 identifies the dimensional requirements for all districts.... A. Minimum Lot Width. The minimum lot width shall be measured as the minimum distance that a tax parcel abuts an improved and accepted public right-of-way or an approved private street.” Table 2 provides a minimum lot width of 300 feet for a lot located in the R District.

Proposed: The Applicant seeks variances from this requirement for lots 2, 3, 4, 7, 8, and 9, as identified on the site layout document they filed with their Application, entitled “Plum Run Crossing Layout” (the “Layout”).

2. Access Drive Spacing Requirement from JTZR Section 305.05(B)

Required: “The following standards shall apply to determining the permitted spacing of access drives:... 2. Access drive spacing shall be related to the classification of the road, the posted speed limit, and the residential density of the zoning district as listed in Table 12-A....” The Note to Table 12-A provides that “LOCAL streets, regardless of zoning district, constructed within platted subdivisions with posted speeds of 25mph may have access spacing no less than twenty-five (25) feet depending on lot layout. All such spacing is to be coordinated through The Franklin County Subdivision Regulations and recorded upon the plat.”

Proposed: The Applicant seeks variances from this requirement for lots 8 and 9, as those lots are identified on the Layout.

The Applicant has requested area variances for items 1 and 2 above. This Board may grant area variances as will not be contrary to the public interest where, owing to special conditions on the

land, a literal enforcement of the provisions of the Zoning Resolution would result in unnecessary hardship, and so that the spirit of the Resolution will be observed and substantial justice done. JTZR Section 105.02(C). In *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986), the Ohio Supreme Court reaffirmed its holding that the practical difficulty standard should apply to an area variance. In *Duncan*, the court went on to outline the factors to be considered in determining whether or not a property owner has encountered practical difficulty with respect to an area requirement. The factors to be considered and weighed by this Board in determining whether a property owner has encountered a practical difficulty as established in *Duncan*, include, but are not limited to the following:

- A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- B. Whether the variance is substantial;
- C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- D. Whether the variance would adversely affect the delivery of governmental services (*e.g.*, water, sewer, garbage);
- E. Whether the property owner purchased the property with knowledge of the zoning restriction;
- F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance, and;
- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

No single factor is controlling and not all factors must be met. It is the Applicant's burden to prove that sufficient factors have been met to prove that it has encountered practical difficulties in meeting the JTZR requirements.

As a preliminary matter, it is worth noting that most, if not all, of the opposition testimony provided at the March 8, 2021 hearing related to the Applicant's proposal as a whole and general stormwater drainage concerns, rather than specifically how minimum lot width and access drive variances would affect those opponents and/or their property. Upon due consideration of the testimony, exhibits, and all the evidence presented at the hearing, the arguments of residents, the applicable provisions of the JTZR, and being fully advised in the premises thereof, the Board hereby makes the following findings of fact and conclusions of law:

1. The requested variances from the lot width requirement of JTZR Section 206.01 seeking to reduce the minimum lot width from 300 feet is substantial in the case of lots 7 and 8, but not as substantial in the case of lots 2, 3, 4, and 9. That being said, many nearby properties appear to have lot widths significantly less than 300 feet, so it does not appear that the essential character of the neighborhood would be altered or that adjoining property owners would suffer a substantial detriment in allowing some of the lots to have lot widths of less than 300 feet. While the Applicant has testified that there may be other ways to configure the streets and lots so as not to require one or more of these variances, one such way, adding length to the proposed streets, would not necessarily be a better outcome. The Property has some unique characteristics, specifically, that previous owners have created one or more individual lots along Zuber Road, high voltage transmission lines bisect the Property, and Plum Run waterway and floodway run along the back portion of the Property. Taking these characteristics into

account, as well as the Applicant's proposed number and configuration of lots, variances from the lot width requirements are justified. Each lot is envisioned to be at least 2.5 acres in area, which exceeds the minimum lot area for lots in the R District. Even with reduced minimum lot widths, these larger lots will allow a sufficient amount of separation between homes and the resulting neighborhood will not look out of place in its surroundings, preserving the spirit and intent of the JTZR and allowing substantial justice to be done. Based on these considerations, we find that the Applicant has proven practical difficulties in meeting the lot width requirement of JTZR Section 206.01 with respect to lots 2, 3, 4, 7, 8, and 9.

2. The variances from the access drive spacing requirement of JTZR Section 305.05(B) are requested because of the configuration of lots 8 and 9 around the proposed south cul-de-sac, and are not substantial. The essential character of the neighborhood will not be substantially altered by allowing these access drives to be closer than required, and no detriment is anticipated to adjoining property owners. The issue likely could be resolved by some other means, but again, adding an additional length of street is not a preferable resolution. Allowing the access drives on two lots at the end of a cul-de-sac to be slightly closer than required will preserve the spirit and intent of the JTZR because it allows the lots to be laid out efficiently while taking into account the unique characteristics of the Property, and substantial justice would be done by granting these variances. Based on these considerations, we find that the Applicant has proven practical difficulties in meeting the access drive spacing requirement of JTZR Section 305.05(B) with respect to lots 8 and 9.
3. With regard to the variance factors that generally apply to all eight variances, a) the Applicant purchased the property with knowledge of the zoning restrictions; b) the Applicant has not shown that the property in question will not yield a reasonable return or that there cannot be any beneficial use of the property without the requested variances – there appear to be other available options to make use of the Property for one or more residential lots; and c) the Applicant has shown that the variances will not adversely affect the delivery of governmental services.

The Board hereby adopts this Entry as the decision of the Board. With respect to each of the variances from the JTZR requested by the Applicant, it is hereby ordered that:

1. Variances from JTZR Section 206.01 to allow the following minimum lot widths for lots created on the Property in the configuration shown on the Layout or substantially similar are approved and granted:
  - a. Lots 2, 3, 4, and 9: 200 feet
  - b. Lot 7: 100 feet
  - c. Lot 8: 50 feet