

MINUTES
ZONING BOARD OF ADJUSTMENT

January 14, 2013

Members Present:

Rebecca Schlein, Acting Chairperson
Patricia Williams
Beth Walker
David Rader
Bryant Lindsay ,alternate

Members Absent:

Trey Hatcher, Chairman
Linda Chester, Vice Chairman

City staff present:

Crystal Reed, Recording Secretary
Russ Cochran, Senior Planner, and.

OLD BUSINESS:

Item #1 **Approval of the minutes**

Mrs. Williams made a motion to approve the February 13th 2012 minutes with noted corrections.

Mr. Rader seconded the motion.

Passed unanimously.

NEW BUSINESS:

Item 1: Variance request submitted by Mr. Keith Coffey to permit use of a twenty (20) foot access to property located at 432 Pete Brittan

All parties were sworn in prior to speaking

Mr. Cochran explains a variance request submitted by Keith Coffey of 432 Pete Brittain Road. Applicant requests to place a modular home on property he owns which is located directly behind a property at 430 Pete Brittain Road (which is owned by his brother).

Mr. Cochran continued that the property where the modular is proposed to be located is completely land-locked. The applicant owns a ten(10) foot wide strip of land which extends from Pete Brittain Road to the subject property, *but is not connected to the subject property*. Parallel to the ten(10) foot wide property owned by the applicant, the owner of the front property (currently his brother) has granted the applicant another ten(10) foot wide easement for use. Taken together, this is an access of 20 feet total, ten(10) feet owned by the applicant and ten(10) feet of easement granted by the front property owner.

Mr. Cochran also explains the history of the property, stating it was passed to the applicant from his mother and father at the same time his brother received the same property (his brother, **Mark Coffey**, owns the front property) in 1996.

Applicant **Keith Coffey** was living on Enola Road and was displaced by the Enola Road widening. He now needs a location to place a newly ordered modular home.

In 1996, **Mark Coffey** (applicant's brother) deeded a 10 foot easement to the rear property for access to his brother's property.

Several years later, a request for water service was made to the City of Morganton by the applicant. He was informed that he is required to have a ten(10) foot strip of land connecting the water service at the road to his dwelling unit. In 2001, he acquired a ten(10) foot strip of land from the front property which is owned by his brother (in addition to the 10 foot easement his brother had already granted to him for access).

He then recently came in to get permits to place the modular home on his lot and was informed that the access width to the property did not meet current requirements (20 feet is available to him, where as the requirement is 40 feet). A forty foot requirement would go through part of his brothers home on the front lot.

Mr. Lindsey asked **Mr. Cochran** when the ordinance took place. He asks is there any reason to believe that the intent was to violate the ordinance.

Mr. Cochran answered that the current ordinance was adopted in 1996 and that ,no, he did not believe a violation was intended.

Mrs. Walker asked if at the time the 20 foot easement was granted, would it have conformed to the ordinance?

Mr. Cochran answered that the current requirement was forty (40) feet , but twenty(20) could be used. He then explains the situation with the water service to the property.

Mr. Lindsey asked how the board has handled similar situations, when others have done things properly at the present time and then ordinances change.

Mr. Cochran explains that ordinances do change from time to time due to state and federal regulations.

Mr. Lindsey said if ordinances change, it's not necessarily grounds for relief by the board.

Mr. Cochran said he believes it would be if the violation did not exist under the previous ordinance and they were just a victim of ordinance changes.

Mrs. Schlein asked why it was changed from 20 feet to 40 feet.

Mr. Cochran said probably as a general rule and he believes the 40 feet is better. However, the entire 40 feet does not have to be paved and he believes by fire code only 20 feet has to be accessible and can be gravel. He said the 40 feet is just standard for any subdivision because it allows enough room to install water, sewer and other utility services.

Mrs. Schlein asked if it would provide access for fire trucks or emergency vehicles.

Mr. Cochran said in this case, yes it would.

Mrs. Walker asked if since this property will not be developed other than the one modular home, then the larger water, sewer lines would not apply.

Mr. Cochran said yes.

Mr. Lindsey asked if the board knows of any specific cases where the same conditions have been presented.

Mr. Cochran said not that he is aware of.

Mr. Rader asked if the size of the water line would also determine the size of the access.

Mr. Cochran answered yes.

Mr. Jonathan Lane Harrell, General Manager of Sinergy Housing stated that typically in other jurisdictions the 40 feet is generally needed because of the tap for county water and sewer. He said **Mr. Coffey** is installing a septic system so he will not need the extra footage for sewer and water. Mr. Harrell also said he believes all the criteria would have to have been met in 1996 in order for all surveying and recording of deeds to have occurred at that time. He said he would

suggest that Mr. Coffey combine the two properties into one and he said they are prepared to do that. He said right now they are recorded as two separate deeds.

He also added that **Mr. Coffey** has a lot of financial equity into this property with his intent to eventually live there. His father wanted him to have it so that he can help take care of his elderly father along with his brother. Mr. Coffey has also been displaced due to the road widening on Enola Road so he hopes the board will consider that in making their decision.

Mr. Lindsey asked Mr. Harrell if the possibility of combining the property had anything to do with this case.

Mr. Harrell said right now **Mr. Keith Coffey** has a deed that shows his ownership of one ten (10) foot strip of land from Pete Brittan Road back to the landlocked parcel . This did not exist in 1996 . He continued that in 1996 , the property had no access at all other than a 10 foot easement (across his brother's property) which would have met guidelines in 1996 for the county. So when he (Keith Coffey) requested a water tap, the provider (now the City of Morganton) required him to have ownership of a ten foot strip of land from Pete Brittan Road back to his landlocked parcel. His brother (Mark Coffey) gave him a 10 foot strip of land in order to meet these requirements (This ten foot strip is NOT currently combined with the larger landlocked parcel in the rear, which is also owned by Mr. Keith Coffey.)

NOTE: The ten (10) foot strip of land owned by Mark Coffey and transferred to Keith Coffey was IN ADDITION to the ten (10) foot easement across Mark Coffey's land (for a total of 20 feet). In addition, the ten foot strip of land transferred from Mark to Keith Coffey was not immediately combined with the rear, landlocked, parcel.

Mr. Lindsey asked again if combining the two properties (the 10 foot strip and larger landlocked parcel both owned by Keith Coffey) is part of this case.

Mr. Harrell said no, he is making a suggestion to make it more clear and transparent. He added that **Mr. Cochran** had mentioned before that they should combine the two properties.

Mr. Lindsey said the board can't ask him to do that.

Mrs. Williams added that the board can make that a condition.

Mrs. Schlein agreed with **Mrs. Williams** that the board could make that a condition if granting the variance.

Mr. Harrell explains how it would make sense to combine the two properties.

Mr. Lindsey asked if they would have any problem if the board adds that condition if the variance is granted.

Mr. Harrell said absolutely not.

Mrs. Schlein asked if anyone else had questions or would like to speak.

Mr. Mark Coffey lives at 430 Pete Brittain Road, he is the brother of the applicant and explains that he is retired and he needs help with taking care of their father who is elderly and unable to care for himself. He needs his brother close by to help with him.

Mr. David Orders is a resident at 424 Pete Brittain Road and he says if there is a problem with the right of way he will let **Mr. Coffey** have enough land to meet the requirement and do whatever it takes to help him and his family.

Mr. Cochran explains by the map where the properties and right of ways are located.

Mr. Lindsey asked if **Mr. Cochran** will explain the combining of the two properties.

Mr. Cochran said yes and explains on the map provided.

Mr. Lindsey asked if the two were combined will it still need a variance.

Mr. Cochran explained yes that there would still be 20 feet needed to comply with current regulations (current code requires 40 feet).

Mrs. Walker said so the existing 20 feet meets fire code ?

Mr. Cochran answered yes.

Mr. Lindsey said what he is getting at is if the problem can be solved without the board.

Mr. Cochran answered no.

Mr. Lindsey asked if they can get 100% compliance without this board making a decision.

Mr. Cochran answered no.

Mr. Lindsey asked what would happen if **Mr. Orders** gives some additional land.

Mr. Cochran answered that this would be according to what **Mr. Orders** is willing to do. If he sold enough land to allow Keith Coffey a forty (40) foot connection to the rear, landlocked parcel, no variance would be required, but otherwise this is the only board that can grant any kind of exception to the current rule.

Mr. Lindsey said he is still understanding that the problem could be solved without the board.

Mrs. Williams explains that if **Mr. Orders** gives him land then there is no need for any variance.

Mrs. Walker said that the reason for the 40 feet was for the development of the property with sewer and water lines, but if that's not going to occur then she feels it would be superfluous to have 40 feet there.

Mr. Lindsey asked what the minimum things they could do without any action from this board.

Mr. Cochran responded to say that ideally the entire 20 foot easement (described earlier) would be owned by Mr. Keith Coffey with *another* 20 feet added (for a total of 40 feet). At this point it would comply with the ordinance and no board action would be necessary.

Mrs. Schlein remarked that they have asked for a variance and she feels the board needs to take action on their request.

Mr. Lindsey said he understands that they have.

Mr. Harrell said if **Mr. Orders** is willing to give them 20 feet, then that would be wonderful, but there is still 10 feet of a right of way tied to his brother's property, and his brother's bank lien, from which the bank would have to OK the release of. So that means they would have to ask Mr. Orders to give up 30 feet that would require surveys, money, time and would require a lot more than just giving up 10 feet and it's a lot deeper than that. He added asking someone to give up something that they have paid taxes on and was legal in 1996 is not fair. He said they are here today based on changes made by city and county ordinances.

Mrs. Williams asked if the 10 feet that **Mr. Mark Coffey** gave him is just an easement, he doesn't own the property.

Mr. Harrell said he owns 10 feet of the 20 feet.

Mrs. Williams said he owns 10 feet and the other 10 feet is an easement from his brother.

Mr. Harrell and **Mr. Cochran** said that is correct.

Mr. Harrell said in theory when all this property is combined there will be a 20 foot accessible strip to get back to that (Keith Coffey's) property (10 feet being owned and 10 feet being right of way which was approved and granted by his brother's lending institution in 2001).

Mrs. Schlein asked if anyone would like to make a motion.

Mrs. Williams said she would like to make a motion that **Mr. Coffey** be permitted to have a 20 foot access to the property located at 432 Pete Brittain Road, but would like to make a condition that a new deed be made which would include combining both properties into one (the ten [10] foot strip of land owned by Keith Coffey and the rear, landlocked parcel of land also owned by Keith Coffey).

Mrs. Walker said she believes since the applicant is willing to do that proactively then the board should make that a condition.

Mrs. Williams responded saying then she would like to make a motion that a condition be included along with granting the variance.

Mr. Rader asked if she was meaning to require combining the two properties.

Mrs. Williams said yes.

Mrs. Walker seconded the motion.

Mr. Rader asked **Mr. Cochran** if he pointed out that the line on the GIS map is incorrect.

Mr. Cochran said that he had.

Mr. Rader said then that needs to be changed on the plat. He said if they get a new deed then they should be aware of this and it should be corrected.

Mrs. Williams asked if that needed to be included in the motion.

Mr. Cochran said no.

Mr. Rader said he just wanted to make sure it was taken care of.

Mr. Cochran explained that it's just a mapping error and he has a copy of the corrected map from Suttles Surveying.

Mrs. Schlein said we have a motion and a second, is there any further discussion.

Mr. Lindsey said he would like to ask if the City Attorney has any problems with the motion as stated, and he would like to have it read by Miss Reed to make certain that he has it clear in his head.

Mr. Louis Vinay, Attorney for City of Morganton said he wanted to clarify what someone said earlier. He said the comment made about the existing mortgage for the Mark Coffey property bothered him because he believes this easement was established back in 1996 when they obtained the property. He asked if the mortgage is subsequent to that, is it subject to the existing easement.

Mr. Harrell answered saying they did explore that option but that was not done by a mortgage institution, it was done by the dad. He said he was just saying they would not be able to get one at this time because at the time it was given to them; there was no lien.

Mr. Vinay said he just wanted to make that clear and that answers his question.

BOA Minutes
January 14th, 2013

The Board of Adjustment stated the six(6) facts exist in granting this variance which include,

- 1) practical difficulties
- 2) unnecessary hardships
- 3) harmony
- 4) intent
- 5) public safety
- 6) public welfare

All in favor.

Adjourn.