

November 16, 2009

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, November 16, 2009. The meeting began at 7:30 p.m. Members present included Jo Ann Groves, C. Richard Whicker, Anthony Hession and Rodger Ward. Also present were Don Reitz, Secretary, Eric Fazzini, Planning Technician, Tyler Starkey, for the County Attorney and Gloria Watts, Recording Secretary.

Everyone stood and recited the Pledge of Allegiance and there was a moment of silence to recognize those in the military who had lost their lives in the states and overseas.

Ms. Groves stated there was a quorum with four (4) members present. Ms. Groves asked for an approval of the October 19, 2009 meeting minutes.

Mr. Whicker made a motion to approve the October 19, 2009 meeting minutes as submitted.

Mr. Ward seconded the motion.

Mr. Hession abstained because he did not attend the October 19, 2009 meeting.

VOTE: For- 3 Against- 0 Abstained- 1 APPROVED
OCTOBER 19, 2009 MEETING MINUTES

VAR 10/09: STERLING ESTATE (Andrew Kult) for a variance from the development standards as required in HCZO Section 4.7 D to permit up to two buildable twenty (20) acre parcels with no road frontage in a AGR/Agricultural Residential district, Center Township, S19-T16N-R1W, located on the northeast side of State Road 236, approximately 1,500 feet south of County Road 350 North, 3016 South State Road 236, Danville Indiana, 46122, 40 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Fazzini stated the property had just sold at auction on October 31, 2009 and the new owners were present, Mr. and Mrs. James Stewart.

Mr. Andy Kult, Comer Law Office, 71 W. Marion, Danville Indiana, appeared before the Board and stated the Stewarts had purchased the entire 40 acres. Mr. Kult stated the Stewarts may split the property later but at this time the approval was for two twenty acre parcels. Mr. Kult stated there was a family member that would like to build on the property some day and the Stewarts were aware of the platting that would be necessary. Mr. Kult stated the two homes on the property were in bad condition and one may be demolished soon using the local fire department. Mr. Kult stated the petitioner was okay with a condition to have an easement recorded for access over the lower twenty acres if the forty acres were divided. Mr. Kult stated at this time there was an easement only at the road entrance over the Township Trustee property on the east entrance to the acreage. Mr. Kult stated one of the homes may be rented and the property had been cleaned up by Mr. Dan Hollars.

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Ms. Groves asked about the junk littered on the site.

Mr. Kult stated the clean up was in the process.

Mr. Fazzini stated some of the items the Staff had seen on the property were inoperable vehicles.

Mr. James Stewart, 6583 S. County Road 400 E., Clayton Indiana, appeared before the Board and stated at this time the property was in much better condition. Mr. Stewart stated Dan Hollars was the executor of the estate and he had done an excellent job cleaning it up. Mr. Stewart stated the grain truck still on the property was being sold. Mr. Stewart stated some of the small buildings on the aerial had been removed.

Ms. Groves opened the public hearing and no one appeared. Ms. Groves closed the public hearing.

Mr. Reitz stated the demolition would be taken care of by the property owners and Staff was not concerned. Mr. Reitz stated the easement was not an issue at this time and if a permit was asked for at a later time it would then be addressed.

Mr. Whicker made a motion to adopt the positive findings of fact and approve **VAR 10/09: STERLING ESTATE (Andrew Kult)**.

Mr. Hession seconded the motion.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law

VAR 10/09

An application for the above noted development standards variance was filed in the office of the Hendricks County Department of Planning and Building (DPB). That application sought to vary development standards to permit up to two parcels with no road frontage in an AGR/Agriculture Residential district. Acting in its role as staff to the Hendricks County Area Board of Zoning Appeals, the DPB staff subsequently created a file containing all documentation of the request and made that file available for public inspection in Room 212 of the Hendricks County Government Center.

In accordance with Indiana Code (IC) 5-3-1 and the Hendricks County Zoning Ordinance (HCZO) Section 5.14, the DPB staff published a legal notice in the *Hendricks County Flyer* and the *Danville Republican*. This notice advertised the public hearing scheduled in conformity with IC 36-7-4-920. The public hearing included the above variance on its agenda.

In accordance with Section 2.6-1 of the Rules of Procedure of the Hendricks County Area Board of Zoning Appeals, the applicant also sent courtesy notices by Certified United States Mail to certain surrounding property owners of record and other interested persons. A copy of this courtesy notice and a list of those receiving them were made a part of the file for this variance.

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The Board conducted the hearing as advertised and heard evidence and testimony on the above noted variance. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and HCZO. A tape recording of this proceeding has been on file and available to the public in the DPB office since the date of the hearing.

In its deliberations, the Board weighed the evidence associated with the following requirements and made the following findings.

IC 36-7-4-918.5 Variance from the development standards of the zoning ordinance. A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. A variance may be approved under this section only upon a determination in writing that:

- (1) **The approval will not be injurious to the public health, safety, morals, and general welfare of the community;**

The Board finds that an approval will not be injurious to the public health, safety, morals and general welfare of the community. Permitting access to this property by an existing easement and driveway rather than a public right-of-way will have no detrimental effect on the agricultural or rural residential character of the community, nor will it impair public safety, and will not influence the established land use pattern in the area.

- (2) **The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;**

The Board finds 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. The existing easement is a long-established access route and this property is surrounded by agricultural and rural residential land uses. Therefore, the area adjacent to this property will not be affected adversely. This approval will not alter current traffic volume on the easement nor in any other manner create a disturbance to surrounding land uses. Furthermore, the dimensions of the easement are such that a public road could be constructed in the future if the proposed area should be further subdivided.

- (3) **The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.**

The Board finds that the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. The parcel is currently land locked by a half-acre parcel and is unable to obtain the road frontage required by the zoning ordinance which would make development of this site impossible.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 16th day of November 2009.

VOTE: For- 4 Against- 0 Abstained- 0 APPROVED
VAR 10/09: STERLING ESTATE (Andrew Kult)

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Being no further business the meeting was adjourned at 7:45 p.m.

Jo Ann Groves, Chairman

Don F. Reitz, Secretary