

May 17, 2010

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, May 17, 2010. The meeting began at 7:30 p.m. Members present included Jo Ann Groves, C. Richard Whicker, Rodger Ward, and Anthony Hession. Also present were Don Reitz, Secretary, Eric Fazzini, Planning Technician, Greg Steuerwald, County Attorney and Gloria Watts, Recording Secretary.

Everyone stood and recited the Pledge of Allegiance.

Ms. Groves stated there was a quorum with four (4) members present. Ms. Groves asked for an approval of the April 19, 2010 meeting minutes as submitted.

Mr. Whicker made a motion to approve the minutes as submitted.

Ms. Groves seconded the motion.

Mr. Hession abstained from the vote because he was not able to attend the April meeting.

VOTE: For- 3 Against- 0 Abstained- 1 APPROVED
APRIL 19, 2010 MEETING MINUTES

SE 05/10: ANGELA WEBB for a special exception in accordance with HCZO Section 4.9 C to permit a home business - portrait studio in an RB/Single Family Residential district, Washington Township, S35-T16N-R1E, located on the southeast corner of State Road 267 and Rudgate Drive, 1593 N. State Road 267, Avon Indiana, 46123, approximately 2.32 acres.

The Staff made a Power Pointe presentation of the facts of the case. Mr. Fazzini stated the case had been continued from the April meeting and a condition was added stating no props would be permitted on the property.

Ms. Webb stated her reasons for having the photo sessions on her property. Ms. Webb stated the small sign would help her clients to locate her home, her work was all digital and she did not use chemicals as the developing was sent out. Ms. Webb stated her drive was long and there would be only one more car parked than usual. Ms. Webb stated there was a passing lane on the west side of 267 which would help with those using her drive.

Mr. Whicker asked how many clients or sessions there would be per day.

Ms. Webb stated she would have a maximum of two sessions per day, on Wednesday, Friday and Saturday from 10 a.m. to 4 p.m.

Mr. Ward asked why Ms. Webb decided to get the Board of Zoning Appeals approval.

Ms. Webb stated she did want to stay within the County rules on a home business.

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

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The Staff made available to the Board members two letters submitted at the previous meeting, Exhibit A and B, for review.

Ms. Groves stated her opinion of the photography studio being located in a residential neighborhood. Ms. Groves stated she did not feel it would make a large impact and if the conditions were followed and the home business did not grow she would support the approval. Ms. Groves stated no other employees, other than Mr. Webb would be employed.

Mr. Reitz stated if a condition specified a spouse was permitted as an employee and later there were a divorce, another person employed other than a spouse would then be a violation of the conditions of approval.

Ms. Groves stated the condition could be restricted to Ms. Webb. Ms. Groves stated the mailbox could have a name and address, which was allowed. Ms. Groves stated the name could be larger so it was readable from the street.

Mr. Whicker stated he did agree with Ms. Groves regarding the sign on the mailbox.

Ms. Webb stated she would rather have the "W" as shown in the presentation but would change the mailbox if needed.

Mr. Ward stated the mailbox as shown in the presentation would be out of place in the neighborhood.

Mr. Hession stated he also agreed with Ms. Groves.

Ms. Groves stated the name on the box was fine although nothing that appeared commercial.

Mr. Whicker made a motion to adopt the positive findings of fact with conditions and approve **SE 05/10: ANGELA WEBB**. Mr. Whicker stated the site would have no signage and no props would be allowed.

Mr. Hession seconded the motion.

Mr. Reitz stated condition number seven (7) should state no signage and that was made part of the approval.

Findings of Fact/Law and Conditions of Approval SE 05/10

An application for the above noted special exception was filed in the office of the Hendricks County Department of Planning and Building (DPB). That application sought to permit a home business in an RB/Single Family Residential district. Acting in its role as staff to the Hendricks County Area Board of

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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 12.7(C), 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 special exception on its agenda.

In accordance with Section 3.07(D)(2) 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 special exception.

The Board conducted the hearing as advertised and heard evidence and testimony on the above noted special exception. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and the 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 36-7-4-918.2 Exceptions and uses. A board of zoning appeals shall approve or deny all: (1) Special exceptions; ... from the terms of the zoning ordinance, but only in the classes of cases or in the particular situations specified in the zoning ordinance.

HCZO Section 12.7 (A) authorizes the Hendricks County Area Board of Zoning Appeals to approve special exceptions.

HCZO Section 4.9(C) authorizes the approval of a home business special exception in the RB/Single Family Residential zoning district.

HCZO Section 12.7 (D) (1). In addition to the special requirements for permitted Special Exception uses as specified in Section 12.7 (D) (2) ... the Board of Zoning Appeals ... shall find adequate evidence showing that the use at the proposed location:

- A. Is in fact a permitted Special Exception use ... [in] the zoning district involved;
The Board finds that the proposal is in fact a permitted Special Exception use in the zoning district involved.

- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the County's Comprehensive Plan and the Zoning Ordinance;
The Board finds that the proposal will be harmonious and in accordance with the general objectives and specific objectives of the County's Comprehensive Plan and Zoning Ordinance. Approval of this proposal would not have an adverse influence on established or proposed development in the area. The character of the parcel will remain residential, which is consistent

with the current zoning and with the land use recommendation of the Comprehensive Plan for the area. Further, conditions of approval are established to minimize any potential conflict with neighboring uses.

- C. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;

The Board finds that the proposed use will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area. The suburban residential character of the area will be preserved. The size, scope, and nature of the home business can be accommodated on this residential parcel without altering the established character of the vicinity. Further, conditions of approval are established to minimize any potential conflict with neighboring uses.

- D. Will not be hazardous or disturbing to existing or future neighboring uses;

The Board finds that the proposal will not be hazardous or disturbing to existing or future neighboring uses. The proposed home business will be compatible with current and future land use patterns in the area. Moreover, conditions of approval are established to minimize any potential conflict with neighboring uses.

- E. Will be served adequately by essential public facilities and services ... or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

The Board finds that the proposed use will be served adequately by essential public facilities and services, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services. All essential services are provided to the location under consideration.

- F. Will not create excessive additional requirements at public cost of public facilities and services and will not be detrimental to the economic welfare of the community;

The Board finds that the proposal will not create excessive additional requirements at public cost of public facilities and services and will be detrimental to the economic welfare of the community. No additional public services are required as a result of this approval. As the proposed use will be compatible with current and future land use patterns in the area, the economic welfare of the community will not be affected.

- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;

The Board finds that the proposal will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors. Conditions have been attached to this approval that ensures that the proposed use will not be detrimental to persons or property.

- H. Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;

The Board finds that the proposal will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. The proposed use will have a negligible effect on the already established local traffic volume or patterns.

- I. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

The Board finds that the proposal will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance. This approval does not adversely affect any feature of the property under consideration.

HCZO Section 12.7(D)(2) Other Considerations For Special Exceptions. In addition to the above noted findings, the following specific requirements found in HCZO Section 12.9(D)(2)(A) through (K) are found to apply to this special exception:

None

HCZO Section 7.9 Home-Based Businesses. In addition to the above noted findings, the following regulations found in HCZO Chapter 7 are found to apply to this Special Exception:

None

HCZO Section 12.7(D)(3) Additional Development Standards. In granting any Special Exception Use, the Board of Zoning Appeals may prescribe additional development standards on a case by case basis.

None

IC 36-7-4-918.2 Exceptions and uses. [T]he Board may impose reasonable conditions as a part of its approval.

The Board imposed the following conditions in furtherance of the Indiana Code and the Hendricks County Zoning Ordinance:

1. Approval shall be terminated and of no further effect in the event the proposed use is discontinued for a period of twelve months. Upon such termination, no reestablishment of the use in any form shall occur without favorable action (including new findings of fact/law and conditions of approval) by the Board or any successor agency.
2. To restrict accountability and responsibility for the operation and to make future operations compatible with the surrounding property, this special exception shall run with the applicant and not the real estate.
3. Approval shall be valid only if the petitioner demonstrates clear and convincing progress on establishing the proposed use within 12 months of the date of this approval.
4. All applicable federal, state, and local approvals are required.

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5. Hours of operation shall be limited to 10 am to 4 pm; Wednesday, Friday, and Saturday.
6. Maximum number of clients per day shall be limited to two.
7. Signage shall be prohibited.
8. Employees shall be limited to the applicant and one other.
9. Any expansion of the home business beyond that which is approved here shall require BZA special exception approval.
10. No business-related props, backgrounds, or other material shall be stored outside.
11. No business-related chemical processing of film shall occur on the property.

For all the foregoing reasons, the Board approved this request for a special exception, subject to the conditions set forth, the 17th day of May 2010.

VOTE: For- 4 Against- 0 Abstained- 0 APPROVED
SE 05/10: ANGELA WEBB

SE 08/10: PAIGE HAYES for a special exception in accordance with HCZO Section 4.7 C to permit an expansion of an existing home business in a AGR/Agricultural Residential district, Guilford Township, S17-T14N-R2E, located on the south side of 700 South, just west of the Marion County line, 10965 E. County Road 700 S., Camby Indiana, 46113, approximately 15 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Fazzini stated Ms. Hayes had a previous approval in 2000 for the home business and wished to expand. Mr. Fazzini stated the existing building was 12 x 20 feet and the applicant wanted to add an addition of 23 x 25 feet.

Ms. Paige Hayes appeared before the Board and stated her reason for the addition to a storage building used for her business. Ms. Hayes stated she was a cake decorator and the name of her business was Sweet Seductions. Ms. Hayes stated she used her dining room at this time for meetings with clients and needed more space and a more professional area. Ms. Hayes stated she wanted to add to the taller side of the existing building and would use the same architectural details as her home.

Ms. Groves asked about the conditions from the previous approval in 2000 and the hours of operation.

Ms. Hayes stated the hours would remain the same, Monday to Saturday, 12 p.m. to 6 p.m.

Mr. Hession asked about a bathroom in the building and the current septic system. Mr. Hession also asked about the exterior of the structure.

Ms. Hayes stated she had checked with the Health Department requirements and there was a separate septic for the building. Ms. Hayes stated she would commit to the exterior being the same as the home.

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Mr. Hession asked about the volume of her business.

Ms. Hayes stated she made 85 cakes last year, which was a low volume.

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

Mr. Hession made a motion to adopt the positive findings of fact with conditions and approve **SE 08/10: PAIGE HAYES**.

Mr. Ward seconded the motion.

The illustration of the building was submitted and Ms. Hayes stated she would construct the building as shown.

Mr. Reitz stated this would be added as a condition of approval.

Findings of Fact/Law and Conditions of Approval SE 08/10

An application for the above noted special exception was filed in the office of the Hendricks County Department of Planning and Building (DPB). That application sought to permit the expansion of an existing approved home business in the 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 12.7(C), 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 special exception on its agenda.

In accordance with Section 3.07(D)(2) 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 special exception.

The Board conducted the hearing as advertised and heard evidence and testimony on the above noted special exception. Meeting in open session, the Board subsequently considered the above noted request and its relationship to the requirements of IC 36-7-4 and the 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.

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IC 36-7-4-918.2 Exceptions and uses. A board of zoning appeals shall approve or deny all: (1) Special exceptions; ... from the terms of the zoning ordinance, but only in the classes of cases or in the particular situations specified in the zoning ordinance.

HCZO Section 12.7 (A) authorizes the Hendricks County Area Board of Zoning Appeals to approve special exceptions.

HCZO Section 4.7(C) authorizes the approval of a special exception for home business in the AGR/Agriculture Residential zoning district.

HCZO Section 12.7 (D)(1). In addition to the special requirements for permitted Special Exception uses as specified in Section 12.7 (D)(2) ... the Board of Zoning Appeals ... shall find adequate evidence showing that the use at the proposed location:

- A. Is in fact a permitted Special Exception use ... [in] the zoning district involved;

The Board finds that the proposal is in fact a permitted Special Exception use in the zoning district involved.

- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the County's Comprehensive Plan and the Zoning Ordinance;

The Board finds that the proposal will be harmonious and in accordance with the general objectives and specific objectives of the County's Comprehensive Plan and Zoning Ordinance. The home business was originally approved in 2000 and those findings are incorporated here. Approval of this proposal will not have an adverse influence on established or proposed development in the area. Further, conditions of approval are established to minimize any potential conflict with neighboring uses.

- C. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;

The Board finds that the proposed expansion will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area. The residential character of the property will be maintained. Further, conditions of approval are established to minimize any potential conflict with neighboring uses.

- D. Will not be hazardous or disturbing to existing or future neighboring uses;

The Board finds that the proposal will not be hazardous or disturbing to existing or future neighboring uses. The proposed use will be compatible with current and future land use patterns in the area. Moreover, conditions of approval are established to minimize any potential conflict with neighboring uses.

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- E. Will be served adequately by essential public facilities and services ... or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

The Board finds that the expanded home business will be served adequately by essential public facilities and services, or that the persons or agencies responsible for the establishment of the commercial use shall be able to provide adequately any such services. All essential services are provided to the location under consideration.

- F. Will not create excessive additional requirements at public cost of public facilities and services and will not be detrimental to the economic welfare of the community;

The Board finds that the proposal will not create excessive additional requirements at public cost of public facilities and services and will be detrimental to the economic welfare of the community. No additional public services are required as a result of this approval. As the proposed use will continue to be compatible with current and future land use patterns in the area, the economic welfare of the community will not be affected.

- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;

The Board finds that the proposal will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors. Conditions have been attached to this approval that ensures that the property will remain residential in character and the proposed use will not be detrimental to persons or property.

- H. Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;

The Board finds that the commercial use will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. The proposed use will have a negligible effect on the already established local traffic volume or patterns.

- I. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

The Board finds that the proposal will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance. This approval does not adversely affect any feature of the property under consideration.

HCZO Section 12.7(D)(2) Other Considerations For Special Exceptions. In addition to the above noted findings, the following specific requirements found in HCZO Section 12.9(D)(2)(A) through (K) are found to apply to this special exception:

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None

HCZO Section 7.9 Home-Based Businesses. In addition to the above noted findings, the following regulations found in HCZO Chapter 7 are found to apply to this Special Exception:

The Board finds that the application meets the minimum requirements for a home-based business specified in HCZO Section 7.9.

HCZO Section 12.7(D)(3) Additional Development Standards. In granting any Special Exception Use, the Board of Zoning Appeals may prescribe additional development standards on a case by case basis.

None

IC 36-7-4-918.2 Exceptions and uses. [T]he Board may impose reasonable conditions as a part of its approval.

The Board imposed the following conditions in furtherance of the Indiana Code and the Hendricks County Zoning Ordinance:

1. Approval shall be terminated and of no further effect in the event the proposed use is discontinued for a period of twelve months. Upon such termination, no reestablishment of the use in any form shall occur without favorable action (including new findings of fact/law and conditions of approval) by the Board or any successor agency.
2. To restrict accountability and responsibility for the operation and to make future operations compatible with the surrounding property, this special exception shall run with the applicants and not the real estate.
3. The Finding of Fact and Conditions of Approval for SE-15/GU00-02 shall remain in effect except in those cases where these Findings/Conditions supersede them.
4. All applicable federal, state, and local approvals are required.
5. The expanded business structure shall be done in the Victorian style illustrated in the submitted elevation dated 12 April 2010 and labeled Sheet 1 of 3.

For all the foregoing reasons, the Board approved this request for a special exception, subject to the conditions set forth, the 17th day of May 2010.

VOTE: For- 4 Against- 0 Abstained- 0 APPROVED
SE 08/10: PAIGE HAYES

VAR 03/10: RAYMOND WHITAKER (Larry Anderson-North American Manufactured Homes) for a variance from the development standards as required in HCZO Section 4.7 D to permit a dwelling with less than 1,500 square feet in a AGR/Agricultural Residential district, Center Township, S28-T16N-R1W, located on 200 North, ¼ mile east of State Road 39, 816 W. County Road 200 N., Danville Indiana, 46122, approximately 4.76 acres.

The Staff made a Power Point presentation of the facts of the case.

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Ms. Carol Anderson, North American Manufactured Homes, appeared before the Board and stated she would represent Mr. Larry Anderson. Ms. Anderson stated the home would be a true modular and built to state code. Ms. Anderson stated the home would be set with a crane.

Ms. Groves asked if there were any questions from the Board. Ms. Groves opened the public hearing and no one appeared. Ms. Groves closed the public hearing.

Ms. Groves stated the area had many homes the same size and that a hardship did exist in this situation. Ms. Groves stated the septic and the driveway limited the location and the size of the home.

Mr. Ward made a motion to adopt the positive findings of fact and approve **VAR 03/10: RAYMOND WHITAKER (Larry Anderson-North American Manufactured Homes)**.

Mr. Whicker seconded the motion.

Findings of Fact/Law VAR 03/10

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 a dwelling with less than 1,500 square feet livable area in the 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 12.6(C), 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 3.07(D)(2) of the Rules of Procedure of the Hendricks County Area Board of Zoning Appeals, the applicant also sent courtesy notices 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.

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,

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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. The area is rural residential and agricultural in character, with generally wide spacing of residences and other structures. A residence of the proposed size will not appear discernibly different than other residential units in the area. The proposed residence will have no negative influence on the area's character or established growth pattern. Further, the proposed dwelling is, in fact, larger than the one it replaces.

- (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. This approval will not result in a dwelling being located on the property that is discernibly different than one meeting zoning standards. In fact, it will be consistent with the size and scale of other existing dwellings in the neighborhood.

- (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 applicant—a single individual—has no need for a house of 1,500 square feet or greater. To require a dwelling of that size would be a waste of money and create a situation whereby the applicant would have dwelling space he simply cannot use. Moreover, the proposed dwelling replaces an older one that itself did not meet contemporary zoning standards.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 17th day of May 2010.

VOTE: For- 4 Against- 0 Abstained- 0 APPROVED
VAR 03/10: RAYMOND WHITAKER (Larry Anderson-North American Manufactured Homes)

Being no further business the meeting was adjourned at 8:15 p.m.

Jo Anne Groves, Chairman

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Don Reitz, Secretary