

March 15, 2010

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, March 15, 2010. The meeting began at 7:30 p.m. Members present included Jo Ann Groves, C. Richard Whicker, Anthony Hession, and Sam Himsel. 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 February 16, 2010 meeting minutes as submitted.

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

Mr. Himsel seconded the motion.

**VOTE: For- 4 Against- 0 Abstained- 0 APPROVED**  
**FEBRUARY 16, 2010 MEETING MINUTES**

**SE 04/10: DEANNA KNIGHTEN** for a special exception in accordance with HCZO Section 4.7 C to permit a home business in an AGR/Agricultural Residential district, Union Township, S9-T16N-R1W, located approximately 900 feet south of the intersection of 50 West and 600 North, 5812 N. County Road 50 West, Pittsboro, In 46167, 1.4 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Fazzini stated the trailer would be parked behind a garage when not in use and the County Engineer, Mr. John Ayers, had looked at the road and advised caution would need to be used.

Ms. Deanna Knighten, 5812 N. County Road 50 W., Pittsboro Indiana, appeared before the Board and explained the reason she wanted to use the trailer parked on her property one or two days per week for grooming dogs. Ms. Knighten stated her customers had shown interest in saving money by bringing their dog(s) to her home for grooming instead of the mobile unit coming to their home. Ms. Knighten stated the hours she wanted to operate would be 7 a.m. - 6 p.m. or 8 a.m. - 5p.m., Monday to Friday, one to two days per week. Ms. Knighten stated the trailer was fully self contained, holding both grey and fresh water, and she dumped the grey water at Love's Truck stop. Ms. Knighten explained her history in the dog grooming business. Ms. Knighten stated her driveway was large, there would be no cars backing out onto the county road and she would have no boarding or retail sales. Ms. Knighten stated the dogs would be crated and always on a leash for restroom breaks. Ms. Knighten stated if the business grew she would look for a commercial location, she would not have unscheduled customers as well as a sign on her property.

Ms. Groves asked about the number of dogs that may be groomed per day and the hours of operation.

March 15, 2010

Ms. Knighten stated the maximum would be 8 dogs per day and she preferred the hours of 7 a.m. – 6 p.m., which would be better for her customers.

Mr. Whicker asked how much water was used for bathing the dogs.

Ms. Knighten stated 3 – 6 gallons would be used per appointment.

Mr. Hession asked what type or breed of dogs would be groomed.

Ms. Knighten stated she would not groom aggressive dogs, they would be better at a vet's office for services. Ms. Knighten stated she had been booked lately and recommended her clients be on a regular grooming schedule.

Ms. Groves opened the public hearing and the following individuals came forward.

Mr. Dale Bunch, 32 E. County Road 50 N., Pittsboro Indiana, appeared before the Board and stated he used 50 West throughout the day, it had been repaved and the high school traffic traveled the road at high speeds. Mr. Bunch stated the County Engineer had looked at the site and advised caution to be used. Mr. Bunch stated he had seen four accidents in the area and he had been involved in one. Mr. Bunch stated the added traffic would cause problems.

Ms. Judith Pingel, 5707 N. County Road 50 W., Pittsboro Indiana, appeared before the Board and stated she had lived on the road for 34 years. Ms. Pingel stated she did agree it was hard to see well but did not feel the dog grooming would cause a problem. Ms. Pingel stated she had seen two accidents during the time she had lived there. Ms. Pingel stated she had no objections.

Ms. Groves closed the public hearing.

Ms. Knighten stated she had a letter from a 911 deputy, Mr. Steven Cook who had done research on accidents in the area. The letter stated there had been no accidents for all of 2009 up to the date of March 9, 2010. The letter was submitted as Exhibit A for the case file. Ms. Knighten stated she would not place a sign for her dog grooming business.

Mr. Whicker stated a condition could be added stating no sign would be placed at the property.

Mr. Himsel made a motion to adopt the positive findings of fact with conditions and approve **SE 04/10: DEANNA KNIGHTEN** adding item 11 stating no sign shall be permitted.

Mr. Hession seconded the motion.

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 AGR/Agriculture Residential district. Acting in its role as staff to the Hendricks County Area Board of

March 15, 2010

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 4.7(C) authorizes the approval of a home business special exception 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. 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

March 15, 2010

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 rural residential and agricultural 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;

March 15, 2010

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.
5. Hours of operation shall be limited to 7 a.m. to 6 p.m., Monday through Friday.
6. Maximum number of clients per day shall be limited to eight.
7. The applicant shall submit an animal waste management plan to staff for review and approval by 30 March 2010.

March 15, 2010

8. Grey water from the dog grooming operation shall be contained in the mobile unit holding tank and dumped off site in an approved RV dump station or other appropriate location.
9. Any further expansion of the use shall require BZA special exception approval.
10. In the event of future expansions, Plan Commission approval of a development plan for those expansions may be required.
11. No signage shall be permitted.

For all the foregoing reasons, the Board approved this request for a special exception, subject to the conditions set forth, the 15<sup>th</sup> day of March 2010.

**VOTE: For- 4 Against- 0 Abstained- 0 APPROVED**  
**SE 04/10: DEANNA KNIGHTEN**

**VAR 01/10: WILLIAM SODREL (Comer Law Office)** for a variance from the development standards as required in HCZO Section 4.7 D to reduce the rear setback to three (3) feet in a AGR/Agricultural Residential District, Liberty Township, S29-T15N-R1E, located in West Wood Estates, lot 5, southwest of the intersection of County Road 350 South and Martin Road, 3670 Applewood Court, Danville Indiana, 46122, 4.3 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Fazzini stated there was an existing pole barn on the property.

Mr. Ben Comer, 71 West Marion Street, Danville Indiana, appeared before the Board and stated Mr. Sodrel had a smaller building area than first planned as the septic drain field had taken up a larger area. Mr. Comer stated the lot also had ravines that limited the available building area. Mr. Comer stated the house would now be pushed back to the south property line which was the reason for the request of the reduced setback. Mr. Comer stated a neighbor, Mr. David Knoll had signed a written consent and had no problem with Mr. Sodrel building closer to the property line. Mr. Comer stated a pond was close to the lot line, no structures could be placed there and the pond would serve as a buffer. Mr. Comer stated Mr. Sodrel had agreed to plant 20 trees, although on the neighbor's property. Mr. Comer stated the trees planted would be spruce and crabapple, with a height of 3 to 4 feet.

Ms. Groves asked about trees being planted along the neighbor's property line and if it would need to be in writing that the neighbor approved.

Mr. Sodrel stated he had no intention of placing trees between the house he builds and the property line.

Mr. Comer discussed the commitment regarding where the trees would be placed.

Mr. Steuerwald stated a commitment would not need to be made to the Board.

Ms. Groves stated the commitment could be removed from the findings of fact and Mr. Sodrel could work with the neighbor on the tree placement.

March 15, 2010

Mr. Whicker asked about the fifteen foot setback on the south and east property lines and if it was a drainage/utility easement.

Mr. Reitz stated it was a combination of easements and there was a sign off from utility providers.

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

Mr. Hession made a motion to adopt the findings of fact and approve **VAR 01/10: WILLIAM SODREL (Comer Law Office)**, and to remove the commitment of landscape.

Mr. Himsel seconded the motion.

#### Findings of Fact/Law

##### VAR 01/10

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 reduce the rear setback to three feet in the AGR(E)/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, bulk, or area) of the zoning ordinance. A variance may be approved under this section only upon a determination in writing that:**

March 15, 2010

- (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 rural nature of the area, the dense vegetation in the immediate neighborhood, and the location of a large pond on the adjacent parcel combine to make a 12 foot reduction in the rear setback innocuous. This approval will have no effect on current or future land use patterns in the area or in any other way have a negative influence on the community.

- (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 crowding of adjacent property as the rural character of the neighborhood and the location of a large pond immediately adjacent to the lot under consideration make crowding unlikely.

- (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. An existing septic system, existing pole barn, dense vegetation, and rolling topography restrict the residential use of this residentially-zoned property to a location near the rear property line. Strict application of the zoning ordinance would limit use of the lot to a residence completely out of character with the neighborhood.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 15th day of March 2010.

**VOTE: For- 4 Against- 0 Abstained- 0 APPROVED**  
**VAR 01/10: WILLIAM SODREL (Comer Law Office)**

Being no further business, the meeting was adjourned at 8:10 p.m.

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Jo Ann Groves, Chairman

March 15, 2010

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Don F. Reitz, Secretary