

August 17, 2009

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, August 17, 2009. The meeting began at 7:30 p.m. Members present included Jo Ann Groves, C. Richard Whicker, Rodger Ward, Anthony Hession and Sam Himself. Also present were Don Reitz, Secretary, 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 five (5) members present. Ms. Groves asked for an approval of the July 20, 2009 meeting minutes.

Mr. Whicker made a motion to approve the July 20, 2009 meeting minutes as submitted.

Mr. Ward seconded the motion.

Mr. Hession abstained because he did not attend the July meeting.

VOTE: For- 4 Against- 0 Abstained- 1 APPROVED
JULY 20, 2009 MEETING MINUTES

SE 07/09: LAURA TESDAHL for a special exception in accordance with Section 4.7 (C); 7.9 (B) (3) and 12.7 to permit a home business (art lessons) in a AGR/Agricultural Residential district, Brown Township, S16-T17N-R1E, located on the north side of 1000 North, approximately 0.25 mile west of 650 East, 6300 East County Road 1000 North, Pittsboro Indiana, 46167, 5.01 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Reitz stated the case had been continued from the July 20, 2009 meeting. Mr. Reitz stated the residents of the Wings Estates subdivision had submitted a petition, Exhibit A, with seventeen signatures against the special exception for a home business.

Ms. Tesdahl appeared before the Board and stated she had a revised proposal for the Board to consider. Ms. Tesdahl submitted the proposal, Exhibit B, with a smaller class size and reduced hours. Ms. Tesdahl stated she would reduce the number of students to a maximum of eight (8), offer four (4) classes per week, which would be a total of ten (10) hours of class time. Ms. Tesdahl stated classes would be offered from August to May, with class times as follows: Wednesday from 3:30-5 p.m. and 7-8:30 p.m., Thursday from 4:30-6 p.m. and 7-9 p.m. Ms. Tesdahl stated the time between classes would allow for traffic flow and she would not allow early or late drop offs. Ms. Tesdahl stated she had six (6) students at this time and taught at the Brownsburg library. Ms. Tesdahl stated she would like to offer summer sessions consisting of one week, from 1-3:30, Monday through Friday, with eight (8) students per class and planned on two per month. Ms. Tesdahl stated she also wanted to offer an adult class in the evenings. Ms. Tesdahl stated she did not plan to grow any larger than what would be approved tonight, she had a studio set up and had given tours. Ms. Tesdahl stated the concern of traffic had been addressed at the last meeting and there were neighbors attending tonight in support of her home business. Ms. Tesdahl stated the septic issue should not be a problem as they had a 1,500 gallon tank with

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only three people living in the home and a detailed septic report was submitted along with Exhibit B. Ms. Tesdahl stated the Brownsburg Recreation Center was closing and the children needed activities available in the area. Ms. Tesdahl stated she was willing to drop to six (6) students if needed.

Ms. Groves asked if the Board had any questions. Ms. Groves opened the public hearing and the following individuals came forward.

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| 1. Richard Gilbert | 6170 East County Road 1000 N. | Pittsboro, In | 46167 |
| 2. Glen Barr | 6204 East County Road 1000 N. | Pittsboro, In | 46167 |
| 3. Loraine Novatny | 6234 East County Road 1000 N. | Pittsboro, In | 46167 |
| 4. Fred Novatny | 6234 East County Road 1000 N. | Pittsboro, In | 46167 |

Mr. Gilbert appeared before the Board and stated he had lived in the area 36 years. Mr. Gilbert stated the residential zoning should keep these types of home businesses out of neighborhoods. Mr. Gilbert stated traffic on 1000 North was at its worst between 3 and 6 p.m. which would be the time of day her students would come and go. Mr. Gilbert stated the soils were not good for drainage; the septic systems in the area could be jeopardized and asked if the paint was poured into the septic lines. Mr. Gilbert asked the Board for denial and stated a precedence would be set if the home business were approved.

Mr. Barr appeared before the Board and stated he moved to the area for the quiet and did not want to see a business move in. Mr. Barr stated safety was an issue and checking his mail was dangerous at times because of the traffic. Mr. Barr stated a friend had parked in his driveway with a radar gun and the speeds varied from 40 to 72 mph, at 5:30 p.m. Mr. Barr stated in the past he was denied a urinal in a garage he was constructing because the impact on his septic drain field. Mr. Barr stated if there were an approval an accident would happen within a month.

Ms. Novatny appeared before the Board and stated she was in support of Ms. Tesdahl but because of the zoning she would not ask for a home business herself. Ms. Novatny stated she would like to have a salon at some point in the future but then the area would become more commercial in nature. Ms. Novatny stated the art classes could get too large and for that reason should not be approved.

Mr. Novatny appeared before the Board and stated he was retired and felt safety was a major concern. Mr. Novatny stated he was home all day and had observed traffic patterns on 1000 North, had shopped for a home for a year in 1990 and wanted the area to remain residential.

Ms. Groves closed the public hearing.

Ms. Tesdahl appeared and stated she understood the concerns of her neighbors. Ms. Tesdahl stated the parents of her students should decide if there was a risk coming in and out of her driveway. Ms. Tesdahl stated she used only non toxic paints and there were no oils. Ms. Tesdahl stated as far as a hair salon in a home, that was in fact a special exception in that zoning district. Ms. Tesdahl stated with the economy she needed extra income and was not able to find a

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job teaching. Ms. Tesdahl stated her extra earnings would help to cover the increase in her husband's health coverage costs. Ms. Tesdahl stated she was aware of several artists teaching in their home without special exception approvals.

Mr. Ward asked if the gate on the drive would be kept open and if a turnaround would be in front or back of the gate. Mr. Ward asked if the number of students could be reduced to four per session.

Ms. Tesdahl stated the gate would stay open and a large bush at the front of the drive would be removed. Ms. Tesdahl stated the turnaround would be in front of the gate and there was enough room. Ms. Tesdahl stated their own vehicles would be parked out of the way on the days class was held and no one would be back out of the driveway. Ms. Tesdahl stated she could not afford commercial space; she would like to keep the option to have the classes in her home and would reduce the number of students if necessary.

Ms. Groves asked about classes being offered at the library and if that was still an option.

Ms. Tesdahl stated the library had a maximum capacity and would become more crowded with the Recreation Center closing. Ms. Tesdahl stated the room was carpeted, had upholstered chairs and needed to be booked three months in advance.

Ms. Groves stated the character of the neighborhood would change if small businesses were permitted in the area and for that reason she was not in support.

Mr. Hession stated he did agree with Ms. Groves.

Mr. Ward stated the reduction of students may make this a possible home business and he was in support as long as it did not grow.

Mr. Whicker made a motion to adopt the negative findings of fact and deny **SE 07/09: LAURA TESDAHL.**

Mr. Hession seconded the motion.

Hendricks County Area Board of Zoning Appeals
Findings of Fact/Law and Conditions of Approval

SE07/09

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 (art lessons) in a 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.

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In accordance with Indiana Code (IC) 5-3-1 and the Hendricks County Zoning Ordinance (HCZO) Section 12.8, 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 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 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 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:

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.

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 not be harmonious and in accordance with the general objectives and specific objectives of the County's Comprehensive Plan and Zoning Ordinance. The proposal represents a significant non-residential intensification of use in this well established rural residential neighborhood. The Comprehensive Plan recommends that this area be reserved for residential use. The proposal conflicts with this recommendation.

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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 not 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 proposal represents a substantial intensification of use. Given the layout of the parcel under consideration, the amount of traffic generated, the proximity of neighboring residential uses, and the well established rural residential character of the neighborhood, there is no practical way for the proposed use to be made compatible with its surroundings.

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

The Board finds that the proposal will be hazardous or disturbing to existing or future neighboring uses. The proposed use is of an intensity that is not residential in character. It represents an insertion of a relatively intense use in an established rural residential neighborhood. There is no practical means of making the proposed use compatible with neighboring uses given the layout of the parcel, the amount of traffic generated, the proximity of neighboring residential uses, and the well established residential character of the neighborhood.

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

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 service is required as a result of this approval.

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 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 large number of students per class as proposed will generate sufficient noise, activity, and traffic

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as to establish a clearly non-residential use on this rural residential parcel to the detriment of the neighborhood.

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 not have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Due to the large class size proposed, the use will have a substantially negative effect on local traffic volume or patterns.

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 special 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 12.7 (D) (2) A through K are found to apply to this special exception:

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

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 bases.

For all the foregoing reasons, the Board denied this request for a special exception, subject to the conditions set forth, the 17th day of August 2009.

VOTE: For- 3 Against- 2 Abstained- 0 DENIAL
SE 07/09: LAURA TESDAHL

The vote was as follows:

<u>Member</u>	<u>For</u>	<u>Against</u>	<u>Abstained</u>
Jo Ann Groves	X	0	0
C. Richard Whicker	X	0	0
Sam Himsel	0	X	0
Rodger Ward	0	X	0
<u>Anthony Hession</u>	<u>X</u>	<u>0</u>	<u>0</u>
Total	3	2	0

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VAR 07/09: EUGENE HODSON for a variance from the development standards as required in HCZO Section 7.12 (A) (2) to permit an accessory structure prior to a principal structure in a RB/Single Family Residential district, Clay Township, S35-T15N-R2E, located behind 4845 Pearl Street, Scotts addition, Lot 3, on the northeast corner of Pearl Street and Sycamore Street, 4845 Pearl Street, Amo Indiana, 46103, 0.4 acres.

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

Mr. Eugene Hodson appeared before the Board and explained why he needed the storage building. Mr. Hodson stated he had antique tractors and had been notified by the zoning inspector to remove them from the property or place inside a structure. Mr. Hodson stated he did not operate a business and the collection was only a hobby. Mr. Hodson stated three of the tractors were now being shown at the Indiana State Fair.

Mr. Whicker asked the Staff about the accessory structure being placed prior to the principal structure.

Mr. Reitz stated the accessory structure would be the only structure placed on the lot, because of the location on an alley there would not be a residence built.

Ms. Groves opened the public hearing and the following individuals appeared.

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| 1. Donna Watson | 5051 Main Street | Amo, In | 46103 |
| 2. Bobbie Bray | 4857 Pearl Street | Amo, In | 46103 |
| 3. Wayne Johnson | 4930 Vine Street | Amo, In | 46103 |
| 4. Ken Wheeler | 4952 West Main | Amo, In | 46103 |

Ms. Watson appeared before the Board and stated she was speaking on behalf of her mother, Ruth Bryant, who lived at 4964 Main Street. Ms. Watson read a letter from her mother stating the tractors had caused ruts in the alleyway and submitted Exhibit A, with three photographs of the alley. Ms. Watson stated she was the Town Clerk in Amo for twenty two years and had always been concerned about the alleys in the Town of Amo. Ms. Watson stated the alleys had always been left open.

Ms. Bray appeared before the Board and submitted Exhibit B, with photographs showing tractors, trailers and the alley between her property and Mr. Hodson. Ms. Bray stated she had mowed the alley for thirty years and the ruts created by the tractors were now a problem. Ms. Bray stated Mr. Hodson owned thirty acres just outside of town and asked why he did not move the tractors to that location.

Ms. Johnson appeared before the Board and stated the storage building should be allowed to be built on the landlocked property because it was not good for any other use. Mr. Johnson stated the tractors were antiques and they were not used in the fields. Mr. Johnson stated there were no plans to have chickens or farm animals and he was in support of the storage building.

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Mr. Reitz stated the alley was a vacated right of way and was split between the two property owners.

Mr. Wheeler appeared before the Board and stated the size of the building was large. Mr. Wheeler stated the majority of the tractors were owned by Mr. Hodsons son and the alley was used very often. Mr. Wheeler stated the alley was blocked often and Ms. Bray could not access her garage. Mr. Wheeler stated the storage building would be better if built on the family farm.

Ms. Groves closed the public hearing.

Mr. Hodson appeared before the Board and explained how he moved the tractors in and out using the alley. Mr. Hodson stated Ms. Bray had a separate driveway although the garage was accessed from the same drive he used. Mr. Hodson stated the tractors may not be safe at the acreage he owned outside of town.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law

VAR 07/09

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 an accessory structure prior to a principal structure in a RB/Single Family 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.

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.

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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:

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 parcels under consideration are established platted urban lots with no frontage on a public street. They have always been used for accessory purposes tied to the applicant's residential lot. Further, their location behind platted residential lots and their being accessible only via an alleyway indicates that these parcels were never intended for residential use. This approval will have no effect on the community.

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 use of the two parcels under consideration will not change by virtue of this approval. The parcels were plainly intended for uses accessory to the platted residential lots as their rearward location and their being accessible only via an alleyway make them undevelopable for residential purposes. This approval will not change the established and intended use of the parcels for uses accessory to the residential parcel.

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 zoning ordinance prohibits accessory structures to locate on a parcel without a permitted principal use. In this case, where the parcels are clearly intended for residential accessory uses, the zoning ordinance prohibition in effect bars the use of the parcels for any practical residential purpose. Thus, a practical difficulty exists for which this variance is the relief.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 17th day of August 2009.

Mr. Ward made a motion to adopt the positive findings of fact and approve **VAR 07/09: EUGENE HODSON**.

Mr. Whicker seconded the motion.

VOTE: For- 5 Against- 0 Abstained- 0 APPROVED
VAR 07/09: EUGENE HODSON

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Being no further business the meeting was adjourned at 8:55 p.m.

Jo Ann Groves, Chairman

Don F. Reitz, Secretary