

July 20, 2009

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, July 20, 2009. The meeting began at 7:30 p.m. Members present included Jo Ann Groves, C. Richard Whicker, Rodger Ward and Sam Himsel. 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 four members present. Ms. Groves asked for an approval of the June 15, 2009 meeting minutes.

Mr. Whicker made a motion to approve the June 15, 2009 meeting minutes as submitted.

Mr. Ward seconded the motion.

VOTE: For- 4 Against- 0 Abstained- 0 APPROVED
JUNE 15, 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 Pointe presentation of the facts of the case.

Ms. Tesdahl appeared before the Board and explained her intent to teach art lessons at her home. Ms. Tesdahl stated the classes would be held two days a week with some Saturday classes. Ms. Tesdsal stated the majority of the students would be dropped off and there was a turn around with a double width driveway. Ms. Tesdahl stated there was room to park fifteen cars in her driveway. Ms. Tesdahl stated there would be some Saturday make up classes offered once a month.

Ms. Groves asked if there were any questions from the Board.

Mr. Ward asked Ms. Tesdahl to explain art camp.

Ms. Tesdahl stated this would be classes that were offered every day, for two and a half hours, for one week in the summer. Ms. Tesdahl stated she would offer four weeks of these camps and had held classes at the library this summer.

Mr. Himsel asked how many students would attend these classes.

Ms. Tesdahl stated she had set a limit of twelve in one class although she had only five in the first sessions offered.

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

1. G.R. Barr 6204 East County Road 1000 N. Pittsboro, IN 46167
2. F.C. Novotny 6234 East County Road 1000 N. Pittsboro, IN 46167
3. Richard Gilbert 6170 East County Road 1000 N. Pittsboro, IN 46167

Mr. G.R. Barr appeared and stated he was against the classes being offered at the residence because of traffic in the area. Mr. Barr stated he had lived there for 22 years and had seen how dangerous the road was, cars had sped at 50 – 70 mph and he was concerned for the children. Mr. Barr stated the hill made it a dangerous place for ingress and egress from the property and asked if there had been a traffic count taken at that location.

Ms. Groves stated she was not sure if there had been a traffic count.

Mr. F.C. Novotny appeared and stated he had lived in his home for 19 years and would like to keep the quiet atmosphere. Mr. Novotny stated if the camp grew to a large number of students the traffic coming to and from the property would be a traffic problem. Mr. Novotny stated the hill that was just 150 feet to the east of the Tesdahl driveway was a concern because the cars travel very fast. Mr. Novotny stated noise could be a problem and asked about signage.

Mr. Richard Gilbert appeared and stated he agreed with the neighbors and had lived there since 1974. Mr. Gilbert stated traffic had increased over the years and speeding was still a problem. Mr. Gilbert stated a stop sign was added to slow traffic although the traffic had still been a problem. Mr. Gilbert stated septic systems in the area have had drainage problems in the past as the soils were not the best quality and he felt increased use could add to the problem.

Ms. Groves closed the public hearing.

Ms. Tesdahl appeared before the Board and stated she would have only 12 students at a time. Ms. Tesdahl stated she had been in the area awhile and felt the concerns were somewhat exaggerated. Ms. Tesdahl stated the noise level would be low and the nature on her property would provide a subject for the students to sketch. Ms. Tesdahl stated the students would stagger in and this was why parking and traffic should not be a problem.

Mr. Ward asked about the hours the classes were offered.

Ms. Tesdahl stated the hours would be after school, 3:30 - 5, 4 - 5:30 or 7 - 9 p.m.

Mr. Whicker stated he was not in favor of the petition and this was a land use issue. Mr. Whicker stated the neighbors were not exaggerating about the traffic and the size of the classes could become large.

Ms. Groves stated she did agree with Mr. Whicker. Ms. Groves stated she had been to the property and did not feel there was enough room for parking or a vehicle turn around. Ms. Groves stated as the art classes became more popular the area would not be able to handle the increased traffic.

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Ms. Tesdahl stated she would have only 12 students at a time and submitted Exhibit A to show how parking could be alleviated. Ms. Tesdahl stated the turn around would be kept clear at all times and parking would be along one side of the drive only. Ms. Tesdahl stated she was interested in staying home with her son and wanted to keep the art classes small.

Ms. Groves asked if there were any questions.

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

Ms. Groves seconded the motion.

Ms. Groves stated the vote was a tie and asked for another motion and there was none.

Mr. Steuerwald stated a majority vote would be needed and the case would need to be continued to the August 17, 2009 meeting.

Mr. Whicker asked if the petitioner would have the opportunity to present her case to the absent Board member at the August 17, 2009 meeting. Mr. Whicker stated the remonstrators would also be able to speak again.

Mr. Steuerwald stated the case would be represented again to the Board along with the public hearing to a full quorum.

Ms. Groves explained to the petitioner, Ms. Tesdahl, that she would be presenting her case again at the August 17, 2009 Board of Zoning Appeals meeting. Ms. Groves stated this may be with five (5) members present.

Mr. Glen Barr stated he would be out of town that night and asked if he could mail a letter in for the Board to review.

Ms. Tesdahl asked if she could bring anyone to speak in support.

Ms. Groves stated yes, she could bring anyone in support and Mr. Barr could submit a letter to the Staff which would be presented to the Board.

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

SE 08/09: ROBERT J. ORR (Andrew Kult) for a special exception in accordance with Section 4.7 (C) and 12.7 to permit a dwelling, manufactured unit, (single unit) in a AGR/Agricultural Residential district, Liberty Township, S29-T15N-R1E, located on the west side of 475 East, between 350 South and Gibbs Road, 3114 South County Road 475 East, Plainfield Indiana, 46168, 5.0 acres.

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

Mr. Andy Kult, 71 West Marion, Danville Indiana appeared before the Board and stated the petitioner wished to place a single unit, manufactured dwelling on their property and had torn down the older existing home. Mr. Kult stated they planned to build a new home on the property and had cleaned up the site. Mr. Kult stated they planned to use the existing septic if the Heath Department approved and the existing well would be used.

Mr. Himsel asked how large the single unit would be.

Mr. Kult stated the trailer would be 780 square feet, approximately 14 feet by 44 feet. Mr. Kult stated the trailer would be temporary and have a temporary foundation with skirting.

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

Mr. Kult stated they had talked to the neighbors and all were happy with the clean up and had no problem with the temporary trailer.

Mr. Himsel asked about the track on the aerial and if there were any drainage problems.

Mr. Robert Orr, petitioner, stated the past owners behind his property had built a horse track and the drainage was good. Mr. Orr stated the previous farm property owners had placed drainage culverts that ran east/west and water drained off quickly.

Ms. Groves asked if the Drainage Board would look at this property.

Mr. Reitz stated no, it would not.

Mr. Whicker made a motion to adopt the positive findings of fact and approve **SE 08/09: ROBERT J. ORR (Andrew Kult)** with the conditions of approval for a period of one year, to July 20, 2010.

Mr. Ward seconded the motion.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

SE08/09

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 manufactured home (single unit) 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 manufactured home (single unit 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. This approved temporary residential use is compatible with the residential character of the neighborhood and consistent with the Comprehensive Plan's land use recommendation for the area.

- 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 approved temporary residential use is generally compatible with the neighborhood in terms of size, bulk, and orientation on the lot. The temporary presence of the proposed manufactured home will have no deleterious effect on the neighborhood's residential character.
- 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 property under consideration will retain its residential character and be compatible with neighboring residential 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 service is required as a result of this approval.
- 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 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.

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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 12.7 (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.

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. The applicant shall obtain Health Department approval of the septic system serving the manufactured home.
6. This approval shall terminate on 20 July 2010 at which time the manufactured home shall have been removed from the property.

For all the foregoing reasons, the Board approved this request for a special exception, subject to the conditions set forth, the 20th day of July 2009.

VOTE: For- 4 Against- 0 Abstained- 0 APPROVED
SE 08/09: ROBERT J. ORR (Andrew Kult)

VAR 06/09: CRG MIDWEST, LLC. (Johan Henriksen) for a variance from the development standards as required in Section 7.6 (5) (C) to permit an 8 foot fence in the front yard in a

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PB/Planned Business district, Liberty Township, S26-T14N-R1W, located on the north side of 1000 South and west of State Road 39 (70 West Commerce Park), 90.9 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Reitz stated a fence would be placed around the entire project.

Mr. Jerry Williams, with Paul Kite and Company, appeared before the Board and stated he was representing the case for ClayCo of St. Louis Missouri. Mr. Williams stated the case was regarding Project Centerline, an industrial park at 39 and 70. Mr. Williams stated the fence was for security of the trailers parked as well as the building. Mr. Williams stated the area was almost 91 acres and three sides allowed a taller fence and the petitioner wished to have the front fence eight foot tall as well. Mr. Williams stated the type would be an aluminum picket with two rails for support. Mr. Williams stated the pole would be placed into the ground and only decorative fencing would be visible.

Ms. Groves asked about landscape and stated that would be part of the development plan.

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

Mr. Whicker stated at Stafford and Perry Roads in Plainfield at an industrial site they had the same type of fence with an acceptable appearance.

Mr. Ward made a motion to adopt the positive findings of fact and approve **VAR 06/09: CRG MIDWEST, LLC. (Johan Henriksen)** with conditions of approval.

Mr. Himsel seconded the motion.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law

VAR06/09

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 eight (8) foot fence in a front yard in a PB/Planned/Flex Business 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

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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:

(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. This approval will have no effect on the public interest.

(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 front yard height of the proposed fence is an insignificant aspect of the overall 91 acre, 1.1 million square foot development. Further, the proposed change is consistent with the size and scale of intended development in the industrial park under consideration. Moreover, the additional height will provide desirable visual buffering between the industrial use and the street.

(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 requires a secure building. A four foot high fence in the front yard would not provide even minimal security and would defeat the purpose of the eight foot high fence bordering the majority of the parcel under consideration. Applying the four foot maximum height requirement to the front yard fence will pose a practical difficulty to the applicant in that the necessary security could not be implemented with the fence at four feet in height.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 20th day of July 2009.

VOTE: For- 4 Against- 0 Abstained- 0 APPROVED
VAR 06/09: CRG MIDWEST, LLC. (Johan Henriksen)

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Being no further business the meeting was adjourned at 8:30 p.m.

Jo Ann Groves, Chairman

Don F. Reitz, Secretary