

June 15, 2009

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, June 15, 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 (4) members present. Ms. Groves asked for an approval of the May 18, 2009 meeting minutes.

Mr. Himsel made a motion to approve the May 18, 2009 meeting minutes as submitted.

Mr. Ward seconded the motion.

Mr. Whicker abstained from the vote because he was not in attendance.

**VOTE: For- 3 Against- 0 Abstained- 1 APPROVED**  
**MAY 18, 2009 MEETING MINUTES**

**SE 06/09: RAND E. SPIEGEL (D.C. Licht)** for a special exception in accordance with 4.15 C to permit an indoor boat and RV storage in a GB/General Business district, Eel River Township, S4-T16N-R2W, located on the west side of State Road 236, just south of 650 North, 6135 State Road 236, North Salem, Indiana, 46165, 1.55 acres.

**VAR 05/09: RAND E. SPIEGEL (D.C. Licht)** for a variance from the development standards as required in Section 4.3 C to permit two (2) principal uses on a lot in a GB/General Business district, Eel River Township, S4-T16NR2W, located on the west side of State Road 236, just south of 650 North, 6135 State Road 236, North Salem, Indiana, 46165, 1.55 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Reitz stated the area was mostly AGR/Agricultural Residential and a development plan would be required after an approval with the Board of Zoning Appeals. Mr. Reitz stated the property was close to a buffer around the town of North Salem and the site would be a good transition from General Business to an AGR type zoning.

Mr. Licht, 8206 Rockville Road, #131, Indianapolis Indiana, 46214 appeared before the Board and stated he was the contractor hired for construction at the site. Mr. Licht stated there would be a few changes on the site plan submitted and would be discussed with the Plan Commission at development plan approval.

Mr. Whicker asked about the type of construction being used.

Mr. Licht stated the building would be a pole structure and have similar siding as the existing buildings. Mr. Licht stated the building would have doors and walls with a concrete floor.

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Ms. Groves opened the public hearing and no one appeared. Ms. Groves closed the public hearing. Ms. Groves stated she had no objections to the project.

Mr. Himsel asked about the height allowed.

Mr. Reitz stated the height allowed would be what was allowed in the General Business district which was fifty (50) feet.

Mr. Ward made a motion to adopt the positive findings of fact with conditions and approve **SE 06/09: RAND E. SPIEGEL (D.C. Licht)**.

Mr. Himsel 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 an indoor boat and RV storage in a GB/General 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 12.8, 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 4.15 (C) authorizes the approval of boat and RV storage in the GB/General Business 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 site under consideration falls within the plan-designated Small Town Mixed Use area of North Salem. In this case, "mixed use" would include non-residential uses among the agricultural and rural residential uses along State Road 236. Further, the proposed use would be housed on property with an existing commercial use.

**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 site under consideration already houses a fully compatible commercial use. Adding the proposed use will not alter the character or intensity of the use of the site, nor will it change the nature of the neighborhood. Further, the Comprehensive Plan designates the area as appropriate for non-residential 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. Adding the proposed use to the site under consideration will have no effect on the character or intensity of the site's use and will have no effect on land use trends in the area.

**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. The proposed use will have no effect on the provision of public facilities and services in the area.

- 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. The proposed use will have no effect on the economic welfare of the community.

- 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 ensure 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. No meaningful change in traffic flow will occur as a result of this approval.

- 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 12.7 (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:

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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. Any expansion of the operation would require BZA approval.

For all the foregoing reasons, the Board approved this request for a special exception, subject to the conditions set forth, the 15th day of June 2009.

**VOTE: For- 4 Against- 0 Abstained- 0 APPROVED**  
**SE 06/09: RAND E. SPIEGEL (D.C. Licht)**

Mr. Ward made a motion to adopt the positive findings of fact and approve **VAR 05/09: RAND E. SPIEGEL (D.C. Licht)**

Mr. Himsel seconded the motion.

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 two principal uses on a lot in a GB/General 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 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:**

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

The Board finds that the approval will not be injurious to the public health, safety, morals, and general welfare of the community. The addition of the proposed use will have no meaningful effect on the site's established commercial character and intensity of use. Further, the site is located within the Comprehensive Plan-designated Small Town Mixed Use Area of North Salem which permits uses other than the agricultural and rural residential uses that characterize the area. This proposal is consistent with the plan-designated character of the area.

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

The Board finds that the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The site currently houses a commercial business consistent with the site's GB/General Business classification. The commercial zoning of the property is longstanding. The addition of the proposed use will allow the site to be more economically productive at the same time required development plan review will ensure that the compatibility of the site with its surroundings will not change.

**(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 is looking to make the GB-zoned site more economically productive. The restriction of this 1.6 acre site to a single low-intensity commercial use will have negative economic consequences for the applicant.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 15th day of June 2009.

**VOTE: For- 4 Against- 0 Abstained- 0 APPROVED**  
**VAR 05/09: RAND E. SPIEGEL (D.C. Licht)**

Mr. Whicker asked about other uses that maybe permitted at the site.

Mr. Reitz stated the approval was for a second principal use and whatever was permitted in the GB zoning district would be allowed.

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There was a discussion regarding a previous approval, **SE 05/09: THE LITEHOUSE FELLOWSHIP, INC. (Brian Richardson)**. Mr. Steuerwald stated the American Center for Law Justice had contacted Hendricks County as well as the County Attorney and it had been determined that the church would be allowed by right to continue services at the Coatesville location.

Mr. Steuerwald stated the Plan Commission and the Commissioners would look at amending the ordinance so that a church would be permitted in a non residential district but would remain a special exception in a residential district.

Mr. Reitz stated a special exception would be approved based on land use issues and a development plan would be required for **SE 05/09: THE LITEHOUSE FELLOWSHIP, INC. (Brian Richardson)**.

Mr. Whicker stated the county could not discriminate and the Board of Zoning Appeals could make a recommendation to the Plan Commission.

Mr. Ward stated the Board had informally, by consensus, read and understood the federal statutes and would turn the decision over to the Plan Commission to do what was needed to come into compliance.

Being no further business the meeting was adjourned at 8:12 p.m.

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Jo Ann Groves, Chairman

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Don F. Reitz, Secretary