

October 19, 2009

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, October 19, 2009. The meeting began at 7:30 p.m. Members present included Jo Ann Groves, C. Richard Whicker, and Rodger Ward. Also present were Don Reitz, Secretary, Eric Fazzini, Planning Technician, Tyler Starkey, for the County Attorney and Gloria Watts, Recording Secretary.

Everyone stood and recited the Pledge of Allegiance.

Ms. Groves stated there was a quorum with three (3) members present. Ms. Groves asked for an approval of the September 21, 2009 meeting minutes.

Mr. Whicker made a motion to approve the September 21, 2009 meeting minutes as submitted.

Mr. Ward seconded the motion.

VOTE: For- 3 Against- 0 Abstained- 0 APPROVED
SEPTEMBER 21, 2009 MEETING MINUTES

SE 10/09: BRADLEY T. HENDERSON (Andrew P. Kult) for a special exception in accordance with HCZO Section 4.7 C to allow an existing manufactured home to remain on the property in an AGR/Agricultural Residential district, Franklin Township, S35-T14N-R2W, located approximately 4,000 feet east of County Road 550 West and 1,400 feet south of Tudor Road, two (2) miles southeast of the Town of Stilesville, 4515 Tudor Road, Stilesville Indiana, 46180, 20 acres.

The Staff made a Power Pointe Presentation of the facts of the case. Mr. Eric Fazzini stated the petitioner wished to lease the mobile home and a second address had been requested which brought the matter to the attention of the Planning and Building Department.

Mr. Andrew Kult, 71 West Marion Street, Danville Indiana, appeared before the Board and stated the Henderson's purchased the property in June 2005 at auction with Lawson and Company. Mr. Kult stated the site was hidden from the road, the manufactured home was behind a row trees, and the property at one time was known as the Old Daddy Barr Farm. Mr. Kult stated the mobile home had been on the property as far back as the 1950's and the location may have changed but was on the same parcel. Mr. Kult stated in 1983 the previous owners placed a newer mobile home before the current home was constructed and later their children lived in the mobile home. Mr. Kult stated the current mobile home was placed in the 1990's and it was assumed the home was grandfathered. Mr. Kult stated the Henderson would like to bring the situation into compliance and keep the mobile home on the property. Mr. Kult stated the Henderson's may move their parents to the property later on and possibly into a newer unit. Mr. Kult stated the conditions were all acceptable and submitted Exhibit A with photographs of the property.

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

Mr. Ward asked if the manufactured home was rented at this time and if an upgrade to a newer unit would be anytime soon.

Mr. Kult stated yes, it was rented and the unit was a 1991 model.

Mr. Henderson stated the roof was the only thing that may need replacing.

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

Mr. Whicker stated there may be a problem with replacing the manufactured home and the Board of Zoning Appeals may need to review the case at that time and place new conditions.

Mr. Kult asked about Conditions 1 and 2 in the Findings of Fact.

Mr. Reitz stated this would depend on what the current manufactured home was replaced with and if the new home was of similar size and placed in the same location. Mr. Reitz stated if the unit was entirely different and placed in another location then that would require a Board of Zoning Appeals approval. Mr. Reitz stated a fourth condition could be added that states the approval was for the current unit only.

Mr. Ward made a motion to adopt the positive findings of fact for **SE 10/09: BRADLEY T. HENDERSON** with the added condition stating the approval was for the existing manufactured home only.

Mr. Whicker seconded the motion.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

SE10/09

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 single unit manufactured dwelling as a secondary dwelling in an 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 12.8, 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.

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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 single unit manufactured dwelling as a secondary dwelling 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. The Comprehensive Plan designates this area for agricultural and rural residential uses and states that new development that may occur will need to remain aware of adjacent uses. The proposed use is, in fact, rural in character, well established, and harmonious with the recommendations of the Comprehensive Plan. Additionally, conditions attached to this approval ensure compatibility between the approved use and the area's rural character.
- 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

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proposed use is a long established rural land use that is remote from surrounding residences and screened from view on three sides. This approval will not alter the character or intensity of the use of the site, nor will it change the nature of the area. Conditions have been attached to this approval ensuring that the proposed use will not be detrimental to persons or property.

- 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. Approving the proposed use 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 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.
- 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. The residential nature of the proposal and the conditions of approval ensure an operation that remains residential in character and is compatible with its surroundings.
- 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.
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.

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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. All applicable federal, state, and local approvals are required. This includes Health Department approval of the septic system and relevant inspections and permitting by the Planning & Building Department.
4. This approval shall apply to the existing manufactured home only. Replacement of the existing unit with another unit shall require BZA approval.

For all the foregoing reasons, the Board approved this request for a special exception, subject to the conditions set forth, the 19th day of October 2009.

VOTE: For- 3 Against- 0 Abstained- 0 APPROVED
SE 10/09: BRADLEY T. HENDERSON (Andrew P. Kult)

Being no further business the meeting was adjourned at 7:50 p.m.

Jo Ann Groves, Chairman

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Don F. Reitz, Secretary