

September 21, 2009

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in Meeting Rooms 4 & 5, Monday, September 21, 2009. The meeting began at 7:30 p.m. Members present included Jo Ann Groves, C. Richard Whicker, Anthony Hession, Rodger Ward 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 five (5) members present. Ms. Groves asked for an approval of the August 17, 2009 meeting minutes.

Mr. Ward made a motion to approve the August 17, 2009 meeting minutes as submitted.

Mr. Hession seconded the motion.

VOTE: For- 5 Against- 0 Abstained- 0 APPROVED
AUGUST 17, 2009 MEETING MINUTES

SE 09/09: COREY A. SHAFFER for a special exception in accordance with HCZO Section 4.7 C to permit a home business in a AGR/Agricultural Residential district, Middle Township, S17-T16N-R1E, located at the intersection of 450 East and 450 North, on the north side, 4576 East County Road 450 North, Danville Indiana, 46122, 2.68 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Reitz stated the sales area would be in the basement of the home and use 400 square feet.

Mr. Corey Shaffer appeared before the Board and stated he wished to sell firearms; he had an application from the Bureau of Alcohol Tobacco and Firearms and needed an approval for the home business. Mr. Shaffer stated the local zoning laws were reviewed by the ATF and he would do the majority of his business from the internet and gun shows. Mr. Shaffer stated he did not want a sign and would not advertise. Mr. Shaffer stated the hours he planned to operate would be Saturday and Sunday from 12:00 to 4:00 p.m. Mr. Shaffer stated the only time someone would be at the home to pick up a firearm would be if they lived close and did not want the item shipped.

Mr. Whicker asked about the regulations if someone did need to come to the property and how much traffic may be generated.

Mr. Shaffer stated the firearm needed to be transferred from the location that was licensed, which was his home. Mr. Shaffer stated the only exception was at a gun show inside your home state. Mr. Shaffer stated the amount of traffic would be minimal to his property and he may sell one per month.

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

September 21, 2009

Mr. Reitz stated in the conditions of approval under item five (5) the hours of operation would need to be added.

Ms. Groves stated the hours that had been discussed were Saturday and Sunday 12:00 – 4:00 p.m. and asked if Mr. Shaffer agreed.

Mr. Shaffer stated yes, that was what he had turned in to the ATF.

Ms. Groves asked if there would be any testing of the guns sold at the property.

Mr. Shaffer stated the guns he sold would not be tested there although he did hunt on the property.

Mr. Ward made a motion to adopt the positive findings of fact with conditions of approval and approve SE 09/09: COREY A. SHAFFER, with the hours of operation to be Saturday and Sunday from 12:00 to 4:00 p.m. Mr. Ward added condition number seven (7) which stated there would be no testing of firearms by the customers at the property.

Mr. Himsel seconded the motion.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

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 (firearm sales) 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.

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:

- 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 home business requirements of the Zoning Ordinance are intended to maintain the residential use of the property as the primary use. 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. 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 area. By virtue of this approval the proposed firearm sales will be conducted under the home business requirement of the Zoning Ordinance which ensures compatibility between the use and residential character of the surroundings. 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;

September 21, 2009

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. Moreover, regulation of the business by the Bureau of Alcohol, Tobacco, and Firearms ensures that the operation is conducted with adequate safeguards.

- 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 home business provisions of the Zoning Ordinance 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.

September 21, 2009

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. Hours of operation shall be limited to Saturday and Sunday, noon to 4 p.m.
6. Signage related to the home business shall be prohibited.
7. No customer testing of firearms on the property.

For all the foregoing reasons, the Board approved this request for a special exception, subject to the conditions set forth, the 21st day of September 2009.

VOTE: For- 5 Against- 0 Abstained- 0 APPROVED
SE 09/09: COREY A. SHAFFER

VAR 08/09: NEW WINCHESTER PROPERTIES, LLC (Daniel Taylor, Attorney) for a variance from the development standards as required in HCZO Section 4.3 C to permit a second principal use – propane gas exchange/non retail in a LI/Light Industrial district, Marion Township, S4-T15N-R2W, located on the northeast corner of the intersection of U.S. 36 and State Road 75, 6980 West U.S. Highway 36, Danville Indiana, 46122, 1.71 acres.

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

September 21, 2009

Mr. Dan Taylor, Attorney, 105 North Washington Street, Crawfordsville Indiana appeared before the Board and stated the petitioner would like more than one use at the location and it was discussed with the Plan Commission that the use be shielded from the north and east side. Mr. Taylor stated the second use would be as low impact as possible and a row of evergreens would be placed as a screen for the property to the east. Mr. Taylor stated the trees extend twenty five feet to the north and south of the tank. Mr. Taylor stated this was a wholesale operation and the grain elevator was the last one in the County. Mr. Taylor stated the petitioner did agree with the findings of fact.

Ms. Groves asked about the location of the main facility.

Mr. Taylor stated the New Winchester location was now the main facility.

Mr. Himsel asked if a new tank was placed.

Mr. Taylor stated no, the existing tank was larger and this was why the trees were placed.

Mr. Hession asked about truck traffic.

Mr. Taylor stated only deliveries were made, the trucks were filled at the site and then propane was delivered to customers. Mr. Taylor stated one large truck and two smaller trucks were at the site and a few deliveries were made daily. Mr. Taylor stated loading of propane would take place the morning of the delivery.

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

Mr. Himsel made a motion to adopt the positive findings of fact and approve **VAR 08/09: NEW WINCHESTER PROPERTIES, LLC (Daniel Taylor, Attorney)**.

Mr. Hession seconded the motion.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law

In 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 a second principal use in the LI/Light Industrial 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*

September 21, 2009

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 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:

- (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 site under consideration is a well established and longstanding intensive agricultural operation where the storage of propane in bulk occurs as part of the operation. Adding the propane exchange business will help secure the continued operation of the grain elevator—a locally important function—without adding to the land use intensity of the site. Further, commitments as to landscaping/buffering and the particular location of elements of the propane exchange business will ensure that the public will not be affected in any adverse manner by this approval.

- (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 current use of the site under consideration is as a grain elevator where bulk propane storage occurs as part of the operation. The establishment of a propane exchange business will not alter the intensity of the use of the site. Moreover, commitments by the applicant to locate the bulk of the propane business on the west side of the site away from the closest residential properties, and to buffer the residential property to the east with landscaping ensure that the propane exchange operation will have no deleterious effects on neighboring property.

September 21, 2009

- (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 zoning ordinance prohibits two principal uses on a parcel. In this case, a second principal use is considered necessary to maintain the economic viability of a locally important and well established agricultural service. Further, the proposed use fits in with the longstanding agricultural operation by taking advantage of the grain elevator's bulk use of propane in its normal operations. Without permitting a second, well-fitting use on the property, the viability of the grain elevator is questionable.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 21st day of September 2009.

VOTE: For- 5 Against- 0 Abstained- 0 APPROVED
VAR 08/09: NEW WINCHESTER PROPERTIES, LLC (Daniel Taylor, Attorney)

VAR 09/09: MARK GARLAND (Jayson Marksberry, Attorney) for a variance from the development standards as required in HCZO Section 4.7 D to permit a storage building in the set back in a AGR/Agricultural Residential district, Liberty Township, S28-T15N-R1W, located on State Road 39, 0.8 mile north of 400 South, 2920 South State Road 39, Danville Indiana, 46122, 2.87 acres.

The Staff made a Power Point presentation of the facts of the case. Mr. Reitz stated the property was 179 feet in depth by 691 feet which did create a problem for the petitioner.

Mr. Jayson Marksberry, Attorney, appeared before the Board and stated the petitioner had applied for a permit and discovered there were setback and right of way issues to resolve before construction. Mr. Marksberry stated there would be no way to keep structures out of the right of way and some of the existing buildings would be removed. Mr. Marksberry stated the proposed structure would be built no closer than 101 feet from the centerline. Mr. Marksberry stated the size of the structure would be 48 by 96 with a 10 foot overhang on two sides.

Mr. Mark Garland, 2920 S. State Road 39, Danville appeared and stated the height would be 16 feet to the peak.

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

Mr. Whicker asked what the total right of way was at the site.

Mr. Eric Fazzini, Planning Technician, stated the right of way was 100 feet from the centerline.

September 21, 2009

Mr. Garland stated the house was forty five feet from the centerline and the new septic system was 30 feet from the centerline.

Mr. Hession made a motion to adopt the positive findings of fact and approve **VAR 09/09: MARK GARLAND (Jayson Marksberry, Attorney)** with the condition stating the proposed accessory structure shall be located no closer to State Road 39 than 101 feet from the centerline of State Road 39.

Mr. Ward seconded the motion.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law

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 to locate in the front setback 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 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 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:

September 21, 2009

- (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 site under consideration has had legally existing structures on it for at least fifty years. Inasmuch as the proposed structure will be farther back from State Road 39 than existing structures, this approval will have no deleterious effect on traffic safety or any other aspect of 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 parcel under consideration has had structures located on it for more than fifty years. The proposed structure, in terms of use, construction, location, or orientation on the parcel, is simply one more structure in a well established history of rural residential use. No neighboring property will be adversely affected in any way, and no alteration in the longstanding rural residential character of the area will occur.

- (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. Current zoning provisions effectively prevent the continued use of the parcel under consideration. Given the narrow width of the parcel, no new structure located on it can meet both the thoroughfare right of way setback and the front yard setback. Without relief, this effectively precludes building structures, or even replacing structures, on the parcel.

The Board imposed the following condition:

The proposed accessory structure shall be located no closer to State Road 39 than 101 feet from the centerline of State Road 39.

For all the foregoing reasons, the Board approved this request for a development standards variance on the 21st day of September 2009.

VOTE: For- 5 Against- 0 Abstained- 0 APPROVED
VAR 09/09: MARK GARLAND (Jayson Marksberry, Attorney)

Being no further business the meeting was adjourned at 8:05 p.m.

September 21, 2009

Jo Ann Groves, Chairman

Don F. Reitz, Secretary