

October 19, 2015

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in the Meeting Room 4 and 5; Monday, October 19, 2015. The meeting began at 7:30 p.m. Members present included Sam Himself, Anthony Hession, Sonnie Johnston, Rod Lasley, and Walt O'Riley. Also present were Don Reitz, Secretary, Greg Steuerwald, County Attorney, Owen Young, Planning Technician, and Kim Cearnal, Recording Secretary.

Mr. Himself read the Rules of Procedure for the Board of Zoning Appeals meeting.

Everyone stood and recited the Pledge of Allegiance.

Mr. Himself asked for a motion for approval of the minutes from the September 21, 2015 meeting.

Mrs. Johnston made a motion to approve the September 21, 2015 meeting minutes.

Mr. O'Riley seconded the motion.

Mr. Himself stated that he would have to recuse himself from the first two cases due to a conflict of interest.

VOTE: For- 5 Against- 0 Abstained- APPROVED
SEPTEMBER 21, 2015 MEETING MINUTES

SE 08-15: Sherry J. Minkis (Comer Law Office, LLC) for a Special Exception in accordance with HCZO 4.7 (C) to permit a dwelling, accessory apartment on a 1.13 acre parcel in Brown Township.

The staff made a power point presentation of the facts of the case. Mr. Young pointed to the property that the accessory apartment is located. He stated that the surrounding area is zoned AGR (agricultural residential). Mr. Young stated that there are no permits on file for accessory building or for the septic system.

Ben Comer, 71 W Marion St, Danville, IN., Mr. Comer stated that this apartment was converted from the existing garage that had been built on the property. Mr. Comer said the original fence that had been placed was not accurate, therefore making the accessory structure only 3.5 feet from the actual property line. Mr. Comer stated that his clients had no objections with the **Conditions of Approval 1-7.**

Mr. Hession asked if there were any additional comments from the staff.

Mr. Young stated no.

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Mr. Hession asked if the Board had any questions.

Mrs. Johnston asked if this apartment would be used by just family and friends.

Mr. Comer stated yes, mostly family.

Mr. O'Riley asked about septic system for the apartment.

Mr. Young stated that the septic system runs south of the property and they will need to have necessary septic permit as in **Condition #3**.

Mr. Hession opened the public hearing portion.

No one had signed up to speak.

Mr. Hession closed the public hearing portion.

Mr. Hession asked if the board had any further questions.

There were none.

Mr. Hession asked for a motion on SE 08-15.

Mrs. Johnston made a motion to adopt positive findings of facts for SE 08-15.

Mr. O'Riley seconded the motion.

VOTE: For- 4 Against- 0 Abstained- 1 APPROVED

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

SE 08-15

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 accessory apartment unit** in an **AGR/Agricultural 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 12.7, 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 authorizes the Hendricks County Area Board of Zoning Appeals to approve Special Exceptions.

HCZO Section 4.7 (C) authorizes the approval of an accessory dwelling in the AGR 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 with, and in accordance with, the general objectives and specific objectives of the County's Comprehensive Plan and Zoning Ordinance. The Comprehensive Plan and Zoning Ordinance classify this area as lower density residential and agricultural in character. The proposed use is consistent with this classification and compatible with surrounding land uses in this area. This approval will not alter the existing agricultural and rural residential character of the general 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 area. The existing house/apartment is residential in character, and its continued use will have no deleterious effect on the neighborhood, nor will it have a negative influence on future development patterns. The location of the accessory apartment is such that there is no crowding of, or interference with, surrounding land uses.

- D. 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 proposal will be served adequately by essential public facilities and services; and/or that the persons responsible for the establishment of the proposed use shall be able to provide adequately any such services. The property will retain its residential character and be compatible with neighboring residential and agricultural uses.

- E. 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 not be detrimental to the economic welfare of the community. No additional public service is required as a result of this approval.

- F. 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 proposed use will be strictly residential in character.

- G. 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 utilize existing 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.

- H. 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.

IC 36-7-4-918.2 Exceptions and uses. The 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 during the approval period. 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 BZA 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 applicants and not the real estate.
3. All applicable federal, state, and local approvals are required. This shall include all necessary building and septic system permits.
4. Renting of the accessory apartment to the general public is prohibited.
5. Use of the accessory apartment shall be strictly limited to friends and family of the applicant, Sherry Minkis.
6. Any expansion of the accessory apartment will require a hearing by the Board of Zoning Appeals.
7. A petition for the re-plat of the applicant's contiguous 5 parcels into a single platted parcel that complies with the Hendricks County Subdivision Control Ordinance shall be submitted to the Plan Commission by December 11, 2015.

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 2015.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA

VAR 17-15: Sherry J. Minkis (Comer Law Office, LLC) for a variance from development standards 4.7 (D) to allow an accessory structure to be 3.5 feet off the property line on a 1.13 acre parcel in Brown Township.

Mr. Young showed on power point where the accessory structure is to the property line. He stated that the existing fence was wrongly placed putting the structure 6 ½ (6.5) feet too close to the property line.

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Mr. Hession asked the board if they had any questions.

There were none.

Mr. Hession opened the public hearing portion.

No one had signed up to speak.

Mr. Hession closed the public hearing portion.

Mr. Hession asked for a motion on VAR 17-15.

Mr. Lasley made a motion to adopt positive findings of facts for VAR 17-15.

Mrs. Johnston seconded the motion.

VOTE: For- 4 Against- 0 Abstained- 1 APPROVED

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law

VAR 17-15

An application for the above noted development standards Variance was filed in the office of the Hendricks County Department of Planning and Building (DPB). The applicant wishes to **reduce the side yard setback from ten feet (10') to three and a half feet (3.5')** in the AGR/Agriculture Residential zoning 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 the DPB office located at 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.

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. General Welfare. 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 accessory structure has been located on the parcel since 1998 when it was originally built. Since 1998, the accessory structure has been converted to a dwelling, accessory apartment, and standards for AGR / Agricultural Residential zoning have been updated. Reducing the side setback to place the side setback line at just to the side of the residence will allow for the applicant to come into compliance with current County plans and allow for the already built accessory structure.

- 2. Adjacent Property. 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 accessory structure has been in place since 1998, located within a wooded area, and is sufficiently setback from any neighboring improvements. Simply moving the side setback line will have no adverse influence on nearby property.

- 3. Practical Difficulty. The strict application of the terms of this Zoning Ordinance will result in practical difficulty in the use of the property. This situation shall not be self-imposed, not be based on a perceived reduction of, or restriction on, economic gain.**

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 strict application of the terms of this Ordinance will result in a practical difficulty in the use of the property because the accessory structure is existing and would be difficult to move. That this situation shall not be self-imposed because the structure was built by Petitioner's former spouse based on belief that a fence was the property line; nor be based on a perceived reduction of, or restriction on, economic gain because the structure was built as a storage building, not economic gain, and the placement was based on a fence line.

HCZO 12.6 (E) Development Standards Variance; Conditions. The Board may impose such reasonable conditions upon its approval as it deems necessary.

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 structure is discontinued during the approval period. Upon such termination, no reestablishment of the structure in any form shall occur without favorable action (including new findings of fact/law and conditions of approval) by the BZA or any successor agency.
2. All applicable federal, state, and local approvals are required. This shall include all necessary building and septic system permits.

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3. A petition for the re-plat for the applicant's contiguous parcels into a single platted parcel that complies with the Hendricks County Subdivision Control Ordinance shall be submitted to the Plan Commission by December 11, 2015.

For all the foregoing reasons, the Board APPROVED this request for a development standard Variance, subject to the conditions set forth, on the 19th day of October, 2015.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA

SE 09-15: Skyway Towers (Clark, Quinn, Moses, Scott, Grah, LLP) for a Special Exception in accordance with HCZO 7.8 to permit a wireless communication facility on a leased .28 use of a 7.42 total parcel in an Liberty Township.

Mr. Young presented the location and facts of case on power point. Mr. Young stated that the tower will be placed next to one of the agriculture structures that are currently on the shared acreage. He stated the area is mostly zoned AGR (Agricultural Residential).

Will Goodin (Clark, Quinn, Moses, Scott & Grah, LLP), 320 North Meridian St., 1100, Indianapolis, IN. Mr. Goodin stated that this location for the tower is a need based decision. Mr. Goodin stated it is based upon wireless, data, and telephone coverage, including streaming video, and email. Mr. Goodin stated that since most phones these days are wireless and less land lines, the need for these towers is great. Mr. Goodin showed the coverage map on power point and explained how this area would greatly benefit from this tower in regards to reception. He stated that this tower would have three (3) other co-locators, so there is space for other providers. Mr. Goodin said this tower would offload some of the surrounding towers also, creating more data capacity. Mr. Goodin stated that the base of this structure will be fenced in. He stated the only traffic that this would bring would be the periodic maintenance and testing of the generator.

Mr. Himsel asked the staff if they had any other comments.

There were none.

Mr. Himsel asked if the board had any questions.

Mr. O'Riley asked about offloading and if adding a new tower would make the other towers run under capacity or would it just be room to grow.

Mr. Goodin stated it would just be room to grow.

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Mr. Himsel asked the board if they had any further questions.

Mr. Himsel opened the public hearing portion.

No one had signed up to speak.

Mr. Hession closed the public hearing portion.

Mr. Himsel asked for a motion on SE 09-15

Mr. Hession made a motion to adopt positive findings of facts for SE 09-15.

Mr. O'Riley seconded the motion.

VOTE: For- 5 Against- 0 Abstained- APPROVED

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law & Conditions of Approval

SE 09-15

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 **Wireless Communication Facility** in an AGR/Agricultural 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 12.7, 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 authorizes the Hendricks County Area Board of Zoning Appeals to approve Special Exceptions.

HCZO Section 4.7 (C) authorizes the approval Wireless Communication Facility in the AGR zoning district, in conjunction with the development standards outlined in HCZO Section 7.8 – Wireless Communication Facilities.

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. Approval of this petition will satisfy Objectives 1 and 2 of Goal 6.2 in the Comprehensive Plan, to: "encourage technology access throughout the county;" and, "ensure that adequate infrastructure including emergency services is available for healthy economic development." Also, the applicant indicates the ability to co-locate three (3) users which should reduce the need for other towers with the same coverage needs in the area. Additionally, the applicant has met all the requirements and development standards specifically outlined in HCZO Section 7.8 for Wireless Communication Facilities, including being located within the AGR zoning district.

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 proposed tower will have a galvanized gray finish and the facility will be fenced and landscaped on all sides in order to reduce the visual impact. Security lighting will be motion sensor activated, thus minimizing light intrusion. The proposed Wireless Telecommunication Facility will be unstaffed and automated except for periods of maintenance and/or repair. Furthermore, conditions have been established to protect the established rural residential and agricultural land use pattern of the area.

- D. 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 proposal will not be hazardous or disturbing to existing or future neighboring uses. The tower will conform to FCC and FAA rules and regulations, manufacture's specification, ANS/TIA, EIA standards, and all applicable state and local building and electrical codes. The proposed tower will be painted silver or have a galvanized finish and landscaping will be maintained on all four (4) sides of the facility, whether existing or new, in order to reduce the visual impact. The proposed Wireless Communication Facility will be unstaffed, and completely automated. The only noise generated by this use is the emergency generator, which operates only during tests, which are done remotely, during normal work hours, and in the case of emergency power outages.

- E. 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 not be detrimental to the economic welfare of the community. No additional public service is required as a result of this approval. Also, 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. The only essential utilities are electrical and telephone lines which will be provided by the utility easements by the property owner.

- F. 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 proposed tower will have painted silver or a galvanized finish in order to reduce glare and the visual impact. The proposed Wireless Communication Facility will be unstaffed and completely automated; therefore, the proposed use will not create excessive traffic. Approval of this request will not be detrimental to any person or the general welfare. The only noise generated by this use is the emergency backup generator, which will operate only to test, which is done remotely, during normal work hours, and in the case of emergency power outages. The structure is less than 200 feet in height and therefore does not require additional lighting, other than security lighting on equipment structure.

- G. 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

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use will have a negligible effect on local traffic volume or patterns. Once constructed, the traffic will only be for repair and maintenance visits.

H. 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.

IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions 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 during the approval period. 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. Approval shall be valid only if the proposed use is established within twelve months of the date of this approval.
3. All applicable federal, state, and local approvals are required. Applicable approvals shall include Building Permits as required.
4. A recorded access agreement shall be provided to the Planning and Building Department by the 19th day of January 2016
5. A Development Plan is subject to an administrative review by the Planning & Building Department prior to development of the site.
6. Approval is subject to the review and approval from the Technical Advisory Committee.
7. The Wireless Communication Facility tower shall comply with HCZO Section 7.8.
 - a. Plant species shall be chosen from HCZO Table 7.12 and shall specify an 'at planting' height. Furthermore, the plantings shall be on all four (4) sides of the Wireless Communication Facility.
 - b. The tower shall be 'painted silver or have a galvanized finish' as specified in HCZO 7.8 (D)(9.).
 - c. Any security lighting shall be motion sensor activated.
8. Any expansion of the use beyond that shown on the site plan dated 8/06/2015 shall require new Special Exception approval by the BZA.

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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 2015.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA

SE 10-15: Skyway Towers (Clark, Quinn, Moses, Scott, Grahn, LLP) for a Special Exception in accordance with HCZO 7.8 to permit a wireless communication facility on a leased .13 use of a 45.8 total parcel in Gilford Township.

Mr. Young presented the facts of case on power point. He stated that the area is mainly zoned AGR with a small area east of 725 E being zoned HB. Mr. Young stated that Skyway Towers will have to come back through TAC (Technical Advisory Committee) or apply for a variance if they plan on keeping the current site configuration because of issues with right of way. Mr. Young stated the main carrier of the tower will be Verizon Wireless.

Will Goodin (Clark, Quinn, Moses, Scott & Grahn, LLP), 320 North Meridian St., 1100, Indianapolis, IN. Mr. Goodin stated that the need for this tower is the same case compared to SE 09-10. He stated there is simply a need for more coverage in this area. Mr. Goodin explained that since the site is elevated with trees already there, he doesn't see the need for a lot of extra landscaping, as is stated in HCZO Section 7.8.

Mr. Reitz stated that the landscaping issue will have to go before the Development Plan Review.

Mr. Himsel asked if there were any additional comments from the staff.

There were none.

Mr. Himsel opened the public hearing portion.

No one had signed up to speak.

Mr. Hession closed the public hearing portion.

Mr. Himsel asked if the board had any questions or comments.

There were none.

Mr. Himsel asked for a motion on SE 10-15.

Mrs. Johnston made a motion to adopt positive findings of facts for SE 10-15.

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Mr. Hession seconded the motion.

VOTE: For- 5 Against- 0 Abstained- APPROVED

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law & Conditions of Approval

SE 10-15

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 **Wireless Communication Facility** in an AGR/Agricultural 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 12.7, 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 authorizes the Hendricks County Area Board of Zoning Appeals to approve Special Exceptions.

HCZO Section 4.7 (C) authorizes the approval Wireless Communication Facility in the AGR zoning district, in conjunction with the development standards outlined in HCZO Section 7.8 – Wireless Communication Facilities.

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. Approval of this petition will satisfy Objectives 1 and 2 of Goal 6.2 in the Comprehensive Plan, to: "encourage technology access throughout the county;" and, "ensure that adequate infrastructure including emergency services is available for healthy economic development." Also, the applicant indicates the ability to co-locate three (3) users which should reduce the need for other towers with the same coverage needs in the area. Additionally, the applicant has met all the requirements and development standards specifically outlined in HCZO Section 7.8 for Wireless Communication Facilities, including being located within the AGR zoning district.

- 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 proposed tower will have a galvanized gray finish and the facility will be fenced and landscaped on all sides in order to reduce the visual impact. Security lighting will be motion sensor activated. The proposed Wireless Telecommunication Facility will be unstaffed and automated except for periods of maintenance and/or repair. Furthermore, conditions have been established to protect the established rural residential and agricultural land use pattern of the area.

- D. 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 proposal will not be hazardous or disturbing to existing or future neighboring uses. The tower will conform to FCC and FAA rules and regulations, manufacture's specification, ANS/TIA, EIA standards, and all applicable state and local building and electrical codes. The proposed tower will be painted silver or have a galvanized finish and landscaping will be maintained on all four (4) sides of the facility, whether existing or new, in order to reduce the visual impact. The proposed Wireless Communication Facility will be unstaffed, and completely automated. The only noise generated by this use

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is the emergency generator, which operates only during tests, which are done remotely, during normal work hours, and in the case of emergency power outages.

- E. 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 not be detrimental to the economic welfare of the community. No additional public service is required as a result of this approval. Also, 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. The only essential utilities are electrical and telephone lines which will be provided by the utility easements by the property owner.

- F. 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 proposed tower will have painted silver or a galvanized finish in order to reduce glare and the visual impact. The proposed Wireless Communication Facility will be unstaffed and completely automated; therefore, the proposed use will not create excessive traffic. Approval of this request will not be detrimental to any person or the general welfare. The only noise generated by this use is the emergency backup generator, which will operate only to test, which is done remotely, during normal work hours, and in the case of emergency power outages. The structure is less than 200 feet in height and therefore does not require additional lighting, other than security lighting on equipment structure.

- G. 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. Once constructed, the traffic will only be for repair and maintenance visits.

- H. 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.

IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions 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 during the approval period. 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. Approval shall be valid only if the proposed use is established within twelve months of the date of this approval.
3. All applicable federal, state, and local approvals are required. Applicable approvals shall include Building Permits as required.
4. A recorded access agreement shall be provided to the Planning and Building Department by the 19th day of January 2016
5. A Development Plan is subject to an administrative review by the Planning & Building Department prior to development of the site.
6. Approval is subject to the review and approval from the Technical Advisory Committee.
7. The Wireless Communication Facility tower shall comply with HCZO Section 7.8.
 - a. Plant species shall be chosen from HCZO Table 7.12 and shall specify an 'at planting' height. Furthermore, the plantings shall be on all four (4) sides of the Wireless Communication Facility.
 - b. The tower shall be 'painted silver or have a galvanized finish' as specified in HCZO 7.8 (D)(9.).
 - c. Any security lighting shall be motion sensor activated.
8. Any expansion of the use beyond that shown on the site plan dated 8/06/2015 shall require new Special Exception approval by the BZA.

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 2015.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA

Being no further business, the meeting was adjourned at 8:03 p.m.

October 19, 2015



Sam Hinsel,

Chairman



Don F. Reitz, AICP

Secretary