

July 20, 2020

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, Meeting Rooms 4 and 5, Monday, July 20, 2020. The meeting began at 7:30 p.m. Members present included Rod Lasley, Anthony Hession and Walt O'Riley. Also, present were Tim Dombrosky, Planning Director, Greg Steuerwald, County Attorney and Leslie Dardeen, Recording Secretary. Sam Himsel and Ron Kneeland were absent.

Everyone stood and recited the Pledge of Allegiance, led by Mr. Lasley.

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

He then asked for a motion to approve the minutes from the June 15, 2020 meeting.

Mr. O'Riley made a motion to approve the June 15, 2020 meeting minutes.

Mr. Lasley seconded the motion.

VOTE: For- 3	Against- 0	Abstained-	APPROVED
June 15, 2020 MEETING MINUTES			

Mr. Lasley asked Mr. Steuerwald to present the cases.

Old Business:

VAR 10-20: Adam Bowman Variance to exceed maximum allowed height of accessory structure from 26' to 29' on an 3.36-acre GB-zoned parcel in Center Township: Section 32, Township 16, Range 1W; Key No. 02-1-32-61W 400-004; located approximately 1/4 mile northwest of intersection SR 236 and N SR 39; 1078 SR 236, Danville, IN 46122.

Mr. Lasley reminded the board that there was a question of necessity for VAR 10-20 at the June meeting. He asked Mr. Dombrosky for a review.

Mr. Dombrosky stated that the petitioner has not responded to the staff's attempts to contact him. He has not applied for permits either. However, after review, staff finds the variance is not necessary. Mr. Dombrosky then asked Mr. Steuerwald if the board needed to make a formal action to void the approval.

Mr. O'Riley asked if the petitioner knows that the variance is not necessary.

Mr. Dombrosky answered that there have been several attempts to contact Mr. Bowman, and through messages he has been told of the findings.

Mr. Steuerwald asked for confirmation that the original approval was subject to staff review.

Mr. Dombrosky responded that was correct.

Mr. Steuerwald said that a vote is not needed, just the recorded statement that based on staff findings the variance is not needed.

July 20, 2020

Mr. Lasley concluded that the July minutes would note that staff finds the variance is not needed, therefore vacating VAR 10-20.

New Business:

VAR 11-20: David Newberry Variance to allow accessory building prior to principal dwelling on an 11.41-acre AGR-zoned parcel in Marion Township: Section 11, Township 15, Range 2W; Key No. 09-02-11-52W 210-002; located approximately ½ mile east of intersection S CR 450 W and W US Hwy 36; 4015 W US Hwy 36, Danville, IN 46122.

Mr. Dombrosky introduced the property on power point. The property is located west of Danville in a mostly AGR-zoned area. He noted that the parcel was recently platted, split off from a larger parcel to create a buildable lot. He then pointed out past BZA cases in the area, including two with accessories prior to principals. Other BZA cases involve lot standards, typical to the area. Comprehensive plan shows the area remaining AGR, just outside of the bubble of suburban residential. Close-up of the property shows it to be undeveloped, but recently platted. There is a creek along the front of the parcel, with plans showing a driveway crossing the creek and going to the back of the parcel (site of the future residence). Mr. Dombrosky showed the site plan for the future residence and noted that the barn would be in front of the garage area. He reiterated that the petition is for an accessory prior to a principal. Staff finds no issue with the petition and would recommend approval.

Mr. Lasley asked if the petitioner was going to live in the accessory building until the principal was built.

Mr. Dombrosky answered no.

Mr. Lasley invited the petitioner to address the board.

Mr. David Newberry, 2750 Foltz St, Indianapolis, IN 46241, addressed the board. He explained that the barn would be built by Midland. He also noted that he already has building plans for the house. He received his final plot plan from the engineering department on Friday prior to the BZA meeting, which shows the building layout, location of well and septic.

Mr. Hession asked for Mr. Newberry to point out the approximate future location of the house and barn.

Mr. Newberry pointed out the building sites and also the updated layout of the driveway.

Mr. O'Riley asked what the barn size would be.

Mr. Newberry answered that it would be 60' x 80'.

Mr. O'Riley asked about the height of the building.

Mr. Newberry said that it would be 16'.

Mr. Hession asked if that was 16' to the eave.

July 20, 2020

Mr. Newberry answered yes.

Mr. Lasley asked if there were any more questions from the board.

Mr. Dombrosky suggested they discuss building timelines.

Mr. Lasley asked the petitioner what his timeline is for building the barn and then building the house.

Mr. Newberry responded that they are wanting to build the barn as soon as possible, with a first or second week of August start time. He would like to have it finished by mid to late September. As for the house, they are hoping to have it completed in two years.

Mr. Lasley asked Mr. Dombrosky if there were any stipulations outlined in the ordinance for completion of principal.

Mr. Dombrosky responded that there are not.

Mr. Hession asked how long the driveway is from the road to the home site.

Mr. Newberry answered that it is 900 feet to accommodate the wetland area at the front of the parcel.

Mr. Lasley open and closed the public portion of the meeting as no one had signed up to speak.

Mr. Lasley then asked if there were any further questions from the board.

Being no further questions or comments from the board, Mr. Lasley asked for a motion.

Mr. Hession made a motion to approve VAR 11-20 with conditions set by staff and commitment by petitioner to complete construction of home within a two-year time frame.

Mr. O'Riley seconded the motion.

Motion for approval of VAR 11-20 carried unanimously.

VOTE: For- 3

Against- 0

Abstained-0

APPROVED

VAR 11-20: David Newberry

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

VAR 11-20

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 application sought to vary development standards by allowing an accessory structure prior to the establishment of a primary structure.

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 *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 Board, 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 the proposal will meet this standard. The use of the accessory structure will be personal residential storage which will not be substantially different from agriculture, a permitted use. It should have no ill effect on public health, safety, or morals.

- (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 proposal will meet this standard. The accessory structure will not change the character of the area, and there will be no substantial adverse effect.

- (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 proposal will meet the standard. The need to store personal property for construction, maintenance, and security during construction is a practical difficulty that is not

July 20, 2020

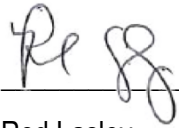
accounted for in the Zoning Ordinance. Strict application of the zoning ordinance will result in the difficulty complying with other ordinance regulations. A hardship can be demonstrated.

IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions as a part of its approval.

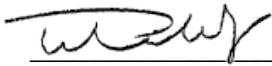
1. Construction of the principle dwelling shall be completed by July 20th, 2022.
2. The variance applies to the structure described in the application.
3. All other federal, state and local regulations apply.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 20th day of July 2020.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA



Rod Lasley
Chairperson



Tim Dombrosky
Secretary to the Board

VAR 12-20: Benjamin Titus Variance to allow accessory building prior to principal dwelling on a 6.08-acre AGR-zoned parcel in Lincoln Township: Section 16, Township 16, Range 1E; Parcel No. 32-07-16-405-003.000-015; located just south of intersection E CR 450 N and N CR 575 E; 4390 N CR 575 E, Brownsburg, IN 46112.

Mr. Dombrosky introduced the property on power point. He noted that the property is on the west side of Brownsburg in a mostly AGR area. It is a recently platted lot, part of a 3-lot subdivision. BZA history of area shows standard variances common to this type of area, including setbacks. Comprehensive plan calls for the area to remain mostly suburban residential, with open space conservation. Site plan shows proposed accessory building and proposed residence. Mr. Dombrosky explained that Mr. Titus is wanting to build the accessory building first to store equipment needed for upkeep and maintenance of property. Staff believes all criteria for a variance have been met and recommends approval.

Mr. Lasley asked if the board had any questions.

There were none at this time.

July 20, 2020

Mr. Lasley invited the petitioner to address the board.

Mr. Benjamin Titus, 1932 Midnight Pass, Brownsburg, IN 46112, addressed the board. He explained that his plan is to have permits pulled for the house in the next one to two years, and have the house completed within 3 years. In the meantime, he would like to get the barn built to store equipment he uses to maintain the property.

Mr. O'Riley asked if there was any issue with a three-year plan.

Mr. Dombrosky answered that the board could make a condition based on the three years or they could make stipulations for the issuance of occupancy based on completion of accessory building.

Mr. Lasley asked if the petitioner is planning on living in the pole barn.

Mr. Titus answered that he will not be living in the barn, it will just be for storage.

Mr. Dombrosky concluded that he does not have an issue with the timeline suggested by the petitioner.

Mr. Hession asked if the property is currently vacant or being used for crops.

Mr. Titus answered that currently it is a wheat field.

Mr. O'Riley asked Mr. Titus the size and height barn he is planning to build.

Mr. Titus answered it will be a 42' x 64' barn with a 16' height.

Mr. Lasley open and closed the public portion of the meeting as no one had signed up to speak.

Mr. Lasley then asked if there were any further questions from the board.

Being no further questions or comments from the board, Mr. Lasley asked for a motion.

Mr. O'Riley made a motion to approve VAR 12-20 with conditions set by staff.

Mr. Hession seconded the motion.

Motion for approval of VAR 12-20 carried unanimously.

VOTE: For- 3

Against- 0

Abstained-0

APPROVED

VAR 12-20: Benjamin Titus

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

VAR 12-20

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 application sought to vary development standards by allowing an accessory structure prior to the establishment of a primary structure.

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 *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 Board, 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:

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

The Board finds that the proposal will meet this standard. The use of the accessory structure will be personal residential storage which will not be substantially different from agriculture, a permitted use. It should have no ill effect on public health, safety, or morals.

- (5) 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 proposal will meet this standard. The accessory structure will not change the character of the area, and there will be no substantial adverse effect.

- (6) 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 proposal will meet the standard. The need to store personal property for construction, maintenance, and security during construction is a practical difficulty that is not

July 20, 2020

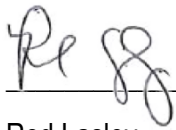
accounted for in the Zoning Ordinance. Strict application of the zoning ordinance will result in the difficulty complying with other ordinance regulations. A hardship can be demonstrated.

IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions as a part of its approval.

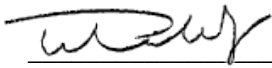
4. The variance applies to the structure described in the application.
5. All other federal, state and local regulations apply.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 20th day of July 2020.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA



Rod Lasley
Chairperson



Tim Dombrosky
Secretary to the Board

VAR 13-20: Joe & Shannon Saldana Variance to allow accessory building prior to principal dwelling on a 8.84-acre AGR-zoned parcel in Eel River Township: Section 8, Township 16, Range 2W; Key No. 04-2-08-62W 200-007; located at intersection of N CR 725 W and W CR 550 N; 5577 N CR 725 W, North Salem, IN 46165.

Mr. Steuerwald asked for the records to reflect that the petitioner has withdrawn VAR 13-20 and requested a continuance to the August meeting.

Mr. Dombrosky confirmed that the petitioner has requested a continuance for VAR 13-20 due to the accessory building exceeding the maximum height limit.

Mr. Lasley asked if the board needed to vote on the continuance.

Mr. Dombrosky and Mr. Steuerwald both affirmed that a vote is needed.

Mr. Lasley asked for a motion.

July 20, 2020

Mr. Hession made a motion to continue VAR 13-20 to the August meeting.

Mr. O'Riley seconded the motion.

Motion for continuance for VAR 13-20 carried unanimously.

VOTE: For- 3 Against- 0
VAR 13-20: Joe & Shannon Saldana

Abstained-0

CONTINUED

Mr. Lasley asked if there was any further business.

Mr. O'Riley brought up for discussion whether there is a need to review the ordinance's position on "accessory buildings prior to principal dwellings". He asked whether it is feasible to make a two-year timeline an administrative decision.

Mr. Dombrosky answered that the ordinance can reflect whatever the board decides. If a general condition of a 2-year timeline takes care of any concerns, then there can be a discussion of putting it in the ordinance. The problem is that the petitioner may say they will have the principal built in two years, but circumstances may change.

Mr. O'Riley asked what options the board has to enforce the 2-year timeline.

Mr. Dombrosky responded that the county would not force someone to take down an accessory building because the principal was not built within the timeline. The county also cannot force someone to build a house. The only real option is to fine the petitioner, which does not accomplish the task of getting them to build a house. He added that because of these difficulties, he does not usually like to put a timeline in his recommendations. However, Mr. Dombrosky reiterated that if having a timeline takes care of the board's concerns, it is something that they can discuss adding to the ordinance.

Mr. O'Riley responded that it has seemed pretty standard with the cases brought before the board that there have been inherent timelines proposed by the petitioners.

Mr. Dombrosky suggested that the board work through the concerns of an accessory being built without a principal. One of his concerns is that the accessory building eventually is used for business purposes.

Mr. O'Riley asked what the difference would be between a petitioner coming before the board and ultimately not building the principal or a petitioner coming before the staff and not building the principal.

Mr. Dombrosky answered that either way it would be a zoning violation. Personally, he believes citing un-approved use would be more enforceable than prohibiting an accessory prior to a principal; it would be easier for the county to pursue anybody who had an illegal use in an accessory building than to go for a petitioner who did not build the house that they committed to. However, if the provision is removed, we could have a lot of people building pole barns with no intention of building a

house. But if they then use the barn for a business or another illegal use, they could be given a zoning violation, making it easier for the county to pursue action against them. If we require them to build a principal within two years, there is theoretically no end to that pursuit versus one where we can shut down a business.

Mr. Steuerwald added that if we asked them to build a principal building and they do not comply the county has little remedy. We would not ask them to tear down the accessory building. But a zoning violation is more enforceable.

Mr. O'Riley commented that there is not enough ability to enforce a timeline for a principal structure.

Mr. Steuerwald reiterated that you can enforce it but there is no remedy. We cannot force someone to build a house.

Mr. Dombrosky added that the only thing the county could do would be to fine the petitioner, and they could be fined into perpetuity until they built a house.

Mr. O'Riley believes there needs to be a "sting" if the petitioner does not uphold the agreement to build a principal.

Mr. Lasley asked whether the ordinance could be changed so that a storage building could be built without a principal. If it is then used for a business, a violation would be enforceable.

Mr. Dombrosky said that is a possibility, and maybe one with more enforceability. However, he raised two concerns with this scenario. One, the petitioner could put an apartment in the accessory building without permits. This is a little harder to remedy; they could be made to either take the living quarters out or apply for the proper permits. Two, the petitioner could use the building to do something highly obnoxious to the surrounding residential area (work on race cars, etc.). It would not necessarily be a business, but it would be disrupting to neighboring properties. The thought behind that is, their dwelling is not there so they are not bothered by the noise, etc.

Mr. Steuerwald concurred that both were good points to take into consideration. Making this change to the ordinance would more than likely result in similar issues.

Mr. Dombrosky compared the situation to the Dragon wedding barn case that was heard last month. It was important that the owners lived on the premises because they were next to the "nuisance". It is a little less of a concern with a residential building than it is with a business, but there are similarities.

Mr. O'Riley agreed that there are negatives and positives either way.

Mr. Hession asked, on average, how many of these cases the board hears per year.

Mr. Dombrosky responded that he estimates there are 6-8 of these cases a year. He added that the case they just continued, is on a property that previously had a variance for an accessory prior to principal where the principal was never built. They had had a 3-year timeline put on it, but it was never enforced. The variance was granted in 2012, there is no principal dwelling and the barn is still there. He went on to add that the worst-case scenario is that there is a barn on a property with no house.

July 20, 2020

Mr. O'Riley commented that if someone has a farm, they can put up a barn without a house.

Mr. Dombrosky confirmed that Ag buildings for agricultural use can be put up without a principal dwelling, just requiring a specific permit.

Mr. O'Riley asked if there was an acreage amount required to put up Ag buildings.

Mr. Dombrosky answered that there is not an acreage requirement, but the applicant does need to sign an affidavit stating that the structure will only be for agricultural use.

Mr. O'Riley stated that if you do away with the "principal situation" then someone could put up a barn and start doing something against the rules or is a nuisance to neighbors.

Mr. Steuerwald said that they could actually raise pigs if they wanted to.

Mr. Dombrosky agreed that this was a good point. Both of the properties at tonight's meeting are zoned AGR and either of the owners could build a pig barn on their property right now and raise pigs on that property. This would be a legal and permitted use. The board needs to consider if having a barn with no principal is worse for neighboring properties than having a pig farm next door, for example. He concluded that there is no water-tight answer.

Mr. O'Riley stated that accessory prior to principal is so hard to enforce; there seems like there would be a better way of regulating it.

Mr. Dombrosky said that it is a fairly common requirement of most zoning ordinances. He concluded saying that he does not have a really good reason why it is in the ordinance other than to minimize the possibility of nuisances.

Mr. Lasley asked how it would be known if someone did build an apartment inside of a barn.

Mr. Dombrosky answered that it would eventually come to our attention if the owner requested an address, or through the assessor's office.

Mr. Lasley asked if this was an issue the board wants the staff to look into further.

Mr. O'Riley responded that he just thought it was worth the conversation. He questions if the board hearing is even necessary for this type of case since most petitioners have building plans for a principal and are getting all the permits for the accessory building.

Mr. Dombrosky offered that with the current process in place, there is accountability that comes with board approval.

Mr. Hession agreed that it offers some level of commitment to building a home.

Mr. Steuerwald added that most petitioners try to uphold the agreement, but some run into circumstances that prevent them from building a house.

July 20, 2020

Mr. Hession concluded that he believes without the current requirements there would be a lot more barns built.

Mr. Steuerwald added that the county attorney's office has tried to enforce a few of these cases. Their stance on enforcement is always trying to bring the property owner into compliance. Removal of an accessory structure would be the absolute last resort. Compliance is always the goal.

Mr. Lasley asked if there were any further comments.

There were none.

Being no further business, the meeting was adjourned at 8:00 P.M.