

December 19, 2022

The Hendricks County Board of Zoning Appeals convened in the Hendricks County Government Center, Meeting Rooms 4 & 5, Monday, December 19, 2022. The meeting began at 7:30 p.m. Members present included Rod Lasley, Walt O'Riley, Anthony Hession, Russ Hesler and Ron Kneeland. Also present were Greg Steuerwald, County Attorney, Tim Dombrosky, Planning Director, and Leslie Dardeen, Recording Secretary.

Everyone stood and recited the Pledge of Allegiance.

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

He asked for a motion to approve the minutes from the November 21, 2022 meeting.

Mr. Kneeland made a motion to approve the November 21, 2022 minutes.

Mr. O'Riley seconded the motion.

Motion to approve the November 21, 2022 minutes passed.

VOTE: For- 5 Against- 0 Abstained- 0 APPROVED
November 21, 2022: MEETING MINUTES

Mr. Steuerwald presented the cases.

VAR 29-22: David Lugo Variance to allow accessory structure in front of principal dwelling on a 1.16-acre RB-zoned parcel in Washington Township: Section 10, Township 15, Range 1E; Key No. 12-3-10-51E 415-002; located on lot 3 of Lake Forest Estates; 6591 Lake Forest Dr, Avon, IN 46123.

Mr. Dombrosky gave an overview of the property. He reminded the board that Mr. Lugo had brought this petition before the board at the April 2022 meeting. He explained that, because the board found cause to deny the petition in April and nothing has changed, staff recommends denial. If there had been significant changes to the site plan or the petitioner demonstrated significant hardship, the staff would have recommended that the board re-evaluate their previous denial. Again, nothing of significance has changed and, therefore, Mr. Dombrosky cannot recommend approval.

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

There were none.

Mr. Lasley then asked the petitioner to address the board.

Mr. David Lugo, 6591 Lake Forest Dr, Avon, IN 46123, addressed the board. He explained that there are many challenges to building on the property. He could not put the carport behind the house or existing driveway because the property has a significant slope. The site of the carport is the only flat spot large enough for the carport. It also has significant tree coverage that provides a buffer between the carport and the neighbor to the east and to Lake Forest Drive. He further stated that he had been approved for the new driveway that runs from Lake Forest Drive to the carport. Mr. Lugo concluded that the carport is only used to park his vehicles, he does not use it for storage.

Mr. Lasley asked Mr. Dombrosky who approves driveways.

Mr. Dombrosky responded that there is no "approval process" through a board. More than likely, Mr. Lugo is inferring that the driveway was okayed by the county engineer, John Ayers.

Mr. O'Riley asked Mr. Lugo what has changed since his petition was denied in April.

Mr. Lugo answered that he has put gravel down for the driveway and for the "floor" of the carport. It now has the appearance of a carport and not a storage unit, which was a concern for some of his neighbors at the April meeting. It's only being used as a carport for his vehicles and to avoid parking those vehicles on the side of the road.

Mr. Lasley asked why the driveway leading to the house couldn't be used to park the extra vehicles.

Mr. Lugo responded that the driveway is only as wide as the two-car garage. Parking extra vehicles in that driveway would then block the cars in the garage.

Mr. Kneeland asked why the carport couldn't be placed behind the existing driveway.

Mr. Lugo responded that the yard slants from the driveway down to the lake making it very difficult to build on.

Mr. Hession asked for clarification on the picture of the carport included in the board packet. He asked if the picture was taken from Lake Forest Drive looking towards the carport.

Mr. Lugo answered that the picture was taken from the road, looking up the driveway to the carport.

Mr. Hesler added that at the last meeting, one of the issues was from a neighbor who looked out her front door directly at the carport.

Mr. Lasley opened the public meeting.

Mrs. Jill Byers, 6685 Cross St, Avon, IN 46123, addressed the board. She explained that she is a neighbor and that she and her husband walk by Mr. Lugo's property every day. She commented that the property is very large and heavily wooded, making the carport minimally visible. She and her husband are in favor of the carport. It is well maintained and looks nice. Mrs. Byers also added that the terrain makes it extremely difficult to place the carport closer to the home. She concluded that Mr. Lugo is taking care of his property, and the carport looks nice and is well-made.

Mr. Lasley closed the public meeting as no one else had signed up to speak.

He then asked if there were any further questions or comments from the board.

Mr. Hession commented that the petitioner was denied in April for the carport. Nothing since then has changed, other than the petitioner going against the denial and improving the structure, so the board has little reason to change their initial ruling. He further stated that by approving it now, a precedent would be set thus diminishing the board's authority.

Mr. O'Riley concurred with Mr. Hession's comments. The petition was denied, and that ruling was ignored.

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

Mr. Hession made a motion to deny VAR 29-22.

Mr. O'Riley seconded the motion.

Motion to deny VAR 29-22 carried unanimously.

VOTE: For- 5 Against- 0 Abstained-0 DENIED
VAR 29-22: David Lugo

Before moving onto the next case, Mr. Lasley wanted to clarify the denial. With the last denial there was a time frame to allow Mr. Lugo to remove the carport, which he did not. He instead re-petitioned the board. With the current denial, Mr. Lasley believes it important to set a reasonable time frame for Mr. Lugo to remove the carport. He does not want another six months to pass only for Mr. Lugo to come back with another variance request.

Mr. Dombrosky responded that enough time needs to be given that the ground is not frozen, and weather is more favorable.

Mr. Steuerwald also responded that the current petition has been denied and if the structure is not removed in a timely fashion, Mr. Lugo will be sent a notice of violation with a date for compliance.

Mr. O'Riley asked if Mr. Steuerwald monitors that.

Mr. Steuerwald responded that Mr. Dombrosky's office monitors it and forwards it to him.

Mr. Lasley asked what the normal time frame would be.

Mr. Dombrosky responded that there is usually a follow-up to the violation notice at about 30 days.

Mr. Lasley told Mr. Lugo that Mr. Dombrosky would be following up with him in 30 days to determine an official time frame for removal. He went on to state that the board understands that weather will be a factor.

Mr. Lugo asked what he will have to do now that the petition has been denied.

Mr. Lasley answered that the structure will have to be removed. The carport has been denied twice, it will need to be removed.

Mr. Kneeland questioned why the board was even hearing the case again since it was denied before.

Mr. Lugo responded that he didn't think his request was clear to the board or to his neighbors before. He asked why it was denied this time.

Mr. Lasley responded that his request was denied because it does not meet the standards of a variance.

Mr. Lugo questioned why it does not meet the standards.

Mr. Steuerwald explained that there are specific standards outlined in the county ordinance for a variance to be either granted or denied. The Board of Zoning Appeals sits as a quasi-judicial body, judging the facts of the case against the ordinance. They made a determination based upon the standards of the ordinance that this petition did not qualify. Therefore, they denied the petition.

Mr. Lugo questioned whether this denial was only because the petition had been denied once before. He stated that he doesn't think the board has been fair in their consideration. He further asserted that the board did not take into consideration that there were no neighbors present that are against the carport.

Mr. Steuerwald responded that the board's decision is not up for debate. They granted Mr. Lugo a second hearing even though he was denied at the April meeting. The petition did not fit the ordinance.

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

VAR 29-22

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 building in front of a primary residence in an RB/Single Family Residential zoning district.

December 19, 2022

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 aesthetic design and placement have no impact on the public health, safety, morals, and general welfare of the community.

- (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.**

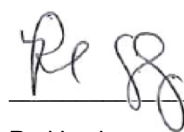
The Board finds that the proposal will not meet this standard. The structure placement is not common to the subdivision and surrounding properties and will be a detraction that will negatively impact surrounding properties.

- (3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.**

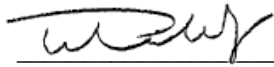
The Board finds that the proposal will not meet the standard. There is no condition unique to the property involved that warrants a variance.

For all the foregoing reasons, the Board DENIED this request for a development standards Variance on the 19th day of December 2022.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA



Rod Lasley
Chairperson



Tim Dombrosky
Secretary to the Board

VAR 30-22: Hendricks Gateway Park III, LLC Variance to allow an 8' fence in front of an industrial property on a 26.148-acre PB-zoned parcel in Liberty Township: Section 36, Township 14, Range 1W; Key No. 07-3-35-41W 412-001; located southwest of the intersection at I-70 and SR 39; 1772 Gateway Point, Clayton, IN 46118.

Mr. Dombrosky gave an overview of the property. It is at the exit 59 interchange off of I-70. The industrial park has four major sites. The petition tonight involves the site currently being built on. Hendricks Gateway Park now has a tenant for that building, which requires 8-foot security fencing to enclose the loading docks. Since the area to be fenced in is road-facing to I-70, it is considered the "front yard" and requires a variance for an 8-foot fence. There are exceptions for higher fences in industrial settings, but it still does not apply to a front yard. The site plan and building have been approved by the Plan Commission, but at that time the tenant wasn't secured. Now that there is a tenant, the plan with the fence has changed and now needs a variance. Mr. Dombrosky pointed out on the site plan where the fence would be placed along I-70, a major highway with no access and no allowed access to the site. It is a heavy wooded area with a true tree barrier, much higher than 8 feet. The neighboring property across the highway is an industrial property as well. He concluded that looking at the three standards of a variance, all criteria has been met and recommends approval.

Mr. Lasley asked if there were any question from the board at this time.

Being none, he invited the petitioner to address the board.

Alex Prolly, American Structure Point, 9025 River Rd, Ste 200, Indianapolis, IN 46240, addressed the board. He reiterated that the adjacent properties are all industrial. An 8-foot fence will not detract or devalue the property surrounding it, nor will it look out of place. He also stated that along the I-70 corridor there are many instances of businesses erecting 8-foot fences for security purposes.

Mr. Lasley asked Mr. Dombrosky if there was any fencing along I-70 for the property to the west.

Mr. Dombrosky responded that there is not. Most of the trucks go around the south side of that property and the ports are on the other side of the building.

Mr. O'Riley asked for confirmation that the proposed 8-foot fence would only be along I-70.

Mr. Dombrosky answered that is correct.

Mr. Hesler asked where the entrance gate is located.

Mr. Prolly responded that there are two entrances with gate houses. Both have access points from Gateway Point.

Mr. Hession asked what kind of business will the building be used for.

Mr. Prolly answered that it is a distribution business. The fence will be security for the vehicles used.

Mr. O'Riley asked what kind of vehicles.

Mr. Prolly responded that they would be semi-trucks.

Mr. O'Riley commented that it would be more aesthetically pleasing to see a fence than all the trucks.

Mr. Hesler asked what kind of fencing material will be used.

Mr. Prolly responded that the fence will be chain-link.

Mr. Dombrosky added that he believes it is black, vinyl-coated chain-link. He also stated that the fence is for security, not screening.

Mr. Hesler asked if the fence will go around the entire building.

Mr. Prolly answered that it will, but only the 8-foot section along I-70 requires a variance.

Mr. Lasley opened and closed the public portion of the meeting as no one signed up to speak. He then asked for a motion from the board.

Mr. Hession made a motion to approve VAR 30-22.

Mr. Hesler seconded the motion.

Motion for approval of VAR 30-22 carried unanimously.

VOTE: For- 5 Against- 0 Abstained-0 APPROVED
VAR 30-22: Hendricks Gateway Park III, LLC

Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

VAR 30-22

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 eight-foot-tall fence in a front yard in an PB/Planned Business zoning district.

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 fence does not violate the sight visibility restrictions and is not injurious to the public health, safety, morals, or general welfare.

- (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 fence will be in the character of the area and will not affect the adjacent property in an adverse manner.

- (3) The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.**

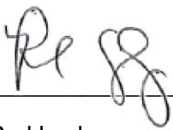
The Board finds that the proposal will meet the standard. The unique layout of the property and placement of the structures creates hardship in compliance with the ordinance.

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

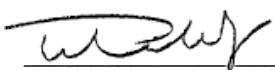
1. The variance shall apply only to the construction described in the application.
2. All other federal, state and local regulations apply.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 19th day of December 2022.

AREA BOARD OF ZONING APPEALS
HENDRICKS COUNTY, INDIANA



Rod Lasley
Chairperson



Tim Dombrosky
Secretary to the Board

December 19, 2022

Mr. Lasley asked if there was any further business.

Mr. Steuerwald answered that the last item on the agenda is the Election of the 2023 Chair and Vice Chair positions.

Mr. Hession nominated Rod Lasley to remain BZA Chair for 2023.

Mr. O'Riley seconded the nomination.

Motion for Mr. Rod Lasley to remain BZA Board Chair for 2023 carried unanimously.

VOTE: For- 5 Against- 0 Abstained-0 APPROVED
2023 BZA CHAIR—Rod Lasley

Mr. Hession then nominated Walt O'Riley to remain BZA Vice-Chairperson for 2023.

Mr. Kneeland seconded the motion.

Motion for Mr. Walt O'Riley to remain BZA Vice-Chairperson for 2023 carried unanimously.

VOTE: For- 5 Against- 0 Abstained-0 APPROVED
2023 BZA VICE-CHAIR—Walt O'Riley

Mr. Lasley asked if there was any further business.

Being nothing further, the meeting was adjourned at 8:00 pm.