

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, in the Meeting Room 4 and 5; Monday, August 15, 2016. The meeting began at 7:30 p.m. Members present included, Anthony Hession, Sonnie Johnston, Rod Lasley, and Walt O'Riley. Also present were Don Reitz, Planning Director, Greg Steuerwald, County Attorney, Nicholas Hufford, Planner, and Kim Cearnal, Recording Secretary.

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

Everyone stood and recited the Pledge of Allegiance.

Mr. Hession asked for a motion for approval of the minutes from the July 20, 2016 meeting.

Mr. Lasley made a motion to approve the July 20, 2016 meeting minutes.

Mrs. Johnston seconded the motion.

**VOTE:        For- 4            Against- 0            Abstained- 1            APPROVED**  
**JULY 20, 2016 MEETING MINUTES**

VAR 09-16: Hendricks Power Cooperative for a Variance from Development Standards 4.15 (D) to permit a building to have a height of 33'-6" on a 7.68 acre parcel in Washington Township.

The Staff presented a power point of the facts of case. Mr. Hufford pointed out where the parcel is located on power point and stated the area is zoned GB with some residential surrounding it. He stated it is located just outside the 36 US Gateway Corridor. Mr. Hufford stated this building is needed for truck maintenance.

Ben Comer, 71 W Marion St., representing Hendricks Power Cooperative Danville, IN. Mr. Comer stated the building is needed to be higher than allowed to get fleet trucks lifted up high enough to work on them. He stated it will also allow Hendricks Power to work on everything inside with the some of the equipment they use. Mr. Comer stated that if approved they would proceed to the Plan Commission with a development plan.

Mr. Hession asked if the Board had any questions.

There were none.

Mr. Hession opened the public meeting.

No one had signed up.

Mr. Hession closed the Public Hearing portion.

Mr. Hession asked if the staff had any further comments.

Mr. Hession asked for a motion VAR 09-16.

Mr. Lasley made a motion to adopt positive findings of facts and approve VAR 09-16.

Mrs. Johnston seconded the motion.

<b>VOTE:</b>	<b>For- 5</b>	<b>Against- 0</b>	<b>Abstained-</b>	<b>APPROVED</b>
	<b>VAR 09-16</b>			

## Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law and Conditions of Approval

**VAR 09/16**

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 additional 7'6" for an accessory building in a General Business/GB 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 12.6 (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) 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 utility is a long-established use at this location. The location is a mix of residential and commercial land uses with a variety of zoning districts. A utility building at the proposed height will not pose any threat to the community nor will it negatively influence current or future land use patterns.

- (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. This property is among a concentration of commercial land uses. The proposed maintenance facility, even with its additional height, will not be out of place among adjacent property.

- (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 additional height is necessary for vital maintenance on vehicles that are crucial for services provided by the applicant.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 15th day of August 2016.

AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA

A handwritten signature in black ink, appearing to read "A. Hession", is written over a horizontal line.

Anthony Hession  
Chairman



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Don F. Reitz, AICP  
*Secretary to the Board*

SE 11-16: Terry & Karen Street for a Special Exception to permit a dwelling, mobile home on 26.66 acre parcel in Liberty Township.

The staff presented a power point presentation over the facts of case. Mr. Hufford stated the mobile home would be for Mr. Streets father-in-law. He stated that Mr. Street wants a mobile home placed there so it can be moved away eventually. He stated that Mr. Street intends to maintain the property to keep it looking nice. Mr. Hufford stated that there are two sites in mind, one being behind the pond and the other site is closer to CR 400 E. Mr. Hufford stated that Mr. Street had not made a decision regarding the home being a manufactured home or mobile home. He stated that the conditions of approval will only allow this to run with the applicant and not the property.

Greg Irby, 47 W Marion St., Danville, Mr. Irby explained that he is representing Mr. Street.

Joe Street, 5998 S CR 400 E, Clayton, Mr. Street stated before the board that his father-in-law doesn't want to live in a trailer and would rather live in a manufactured home. He stated his current accessory apartment is just 400 square feet and his father-in-law doesn't want to live there.

Mr. Hession asked if the board had any questions.

There were none.

Mr. Hession opened the public hearing portion.

David Burton, 4048 Woodview Drive, Clayton. Mr. Burton stated that he disagrees with the new potential structure because of the accessory apartment already there. He stated that he is worried about the structure and it setting a precedent for the area and is worried about it affecting the value of his home.

Ray O'Neal, 3725 E CR 600 S, Clayton, Mr. O'Neal stated that Mr. Street is an asset to the community. He stated he applauds Joe for taking care of his family.

Jason Kittle, 3797 E CR 600 S, Clayton, Mr. Kittle stated he commends Mr. Street for taking care of this family. He stated he no problem with the manufactured home going in and doesn't think it will set any precedent for other manufactured homes to go in.

Jerry Goldsberry, 5879 Scenic Lane, Clayton, Mr. Goldsberry stated that the gun range that Mr. Street got a Variance for in 2014 is very bothersome. He stated that Mr. Street does not take care of his property as the grass is very long and he doesn't think the property will be taken care of if he is allowed this Special Exception. He stated he also thinks the trailer will set precedence.

Wendal Daniel, 3740 E CR 700 S., Clayton, Mr. Daniel stated he is concerned about the length of the grass as well. Mr. Daniel stated he was told that the property is mowed for hay, but stated that even the smaller fenced-in area has not been mowed. Mr. Daniel expressed his concerns about future property owners asking BZA for mobile homes also. He stated that his property value will go down if this is allowed to happen.

Gary Rifkin, 6578 S CR 400 E., Clayton, Mr. Rifkin stated he and his family owns Martha's Apple Orchard which is at this address. He stated that his own father-in-law who was in need of assistance moved in with his grandson. Mr. Rifkin stated he too is afraid the property values will go down.

Alandria and Justin Wells, 3288 Biddle St., Cartersburg, The Wells stated they bail the Streets' hay for them. Mr. Wells stated he didn't understand why people were against the Special Exception when there is a trash business on the same road.

Steve Welsh, 3650 E CR 700 S., Clayton, Mr. Welsh stated he is also concerned with the property value and also stated that the lawn does not get properly maintained.

Jonathan Rifkin, 6670 S CR 400 E., Clayton, Mr. Rifkin stated he moved his grandfather in with him, but understands Mr. Streets' dilemma. Mr. Rifkin stated he is indifferent to the matter.

Ralph Severeid, 4072 E CR 601 S., Clayton, Mr. Severeid stated that what Mr. Street wants to do is foul. He stated that the Streets' have other options. He stated that he did the right thing with his own parents and moved them in with him and his wife. Mr. Severeid stated that past history should show the Mr. Street is not going to keep up with the lawn maintenance.

Ryan Harvey, 4022 E CR 601 S., Mr. Harvey referred back to his letter he sent to Board of Zoning Appeals. He stated the same about the lawn maintenance and future problems with having a mobile home in the area.

Kent Dickerson, 3366 Challenger Dr., Plainfield, IN. Through a letter Mr. Dickerson explained that he is not concerned about the possible home being placed for Terry's father-in-law. He stated that he owns 27 acres to the west of Mr. Streets' property. He stated they are getting ready to build in the field next to the Street's property and are not worried about a temporary home sitting there.

Mr. Hession closed the public meeting.

Mr. Irby stated this will be a manufactured home. He said it will not be on wheels like a mobile home.

Mr. O'Riley asked if it will be a new structure.

Mr. Irby replied yes.

Mr. O'Riley asked if it would be a steel frame or wood.

Mr. Street stated they will choose the best type of home.

Mr. O'Riley stated that the steel frame homes are less value than wood.

Mr. Street said he apologized but didn't know enough to speak on the topic. Mr. Street stated that if it takes making a contract to do the things to satisfy neighbors that he would. Mr. Street stated he doesn't want to cause trouble he just needs this for his father-in-law. He stated that he just needs to put something on the property that can be moved away when it's time.

Mr. Himsel asked where the original accessory apartment is.

Mr. Irby pointed to the structure on power point. Mr. Irby stated this apartment was for the in-laws to stay in when they visited. He stated there are two buildings there. Mr. Irby stated one is a wood shop with the current accessory apartment in it. He stated that the kitchen and bathroom would be removed from this apartment if approved. Mr. Irby stated that Mr. Streets' father-in-law doesn't want to live in a wood shop the rest of his life.

Mr. Himsel asked if is sectioned off.

Mr. Street stated yes, it's just a small little apartment.

Mr. Lasley asked if both buildings were the wood shop.

Mr. Irby stated the other building is Mr. Streets' gunsmithing business.

Mr. Lasley asked if they were just taking the kitchen out or the whole wood shop.

Mr. Irby stated the kitchen because it for approval the accessory cannot be lived in.

Mr. Reitz stated taking the kitchen out makes it inhabitable.

Mr. Himsel asked what the reason was for the father-in-law not wanting to live there.

Mr. Street stated his father-in-law wishes to have a bigger space without living with him and his family.

Mr. Hession asked what Mr. Streets' response is to the appearance of his property by his neighbors.

Mr. Street stated that only within the last year did the grass become overgrown looking. He stated he was injured and could not do the yard work. Mr. Street stated he will hire someone to do all the yard work if he isn't able to maintain it.

Mrs. Johnston asked if it was maintained right now.

Mr. Street stated no, it will be cut when it dries out some.

Mr. Hession asked if it had been cut this year thus far.

Mr. Street stated he cut it in the beginning of July.

Mr. Lasley asked if it would have its own entrance.

Mr. Street stated he will comply with whatever needs done. He stated that his father-in-law would like his own drive-way.

Mr. Hession asked if it would need its own septic system.

Mr. Street stated that it is city water and city sewer.

Mrs. Johnston asked Mr. Street if he had read the conditions of approval.

Mr. Irby stated yes.

Mr. Himsel asked if the home were going to be 1500 sq. ft.

Mr. Reitz stated it wouldn't have to be and could be less than 1500 sq. ft. for accessory apartment.

Mrs. Johnston asked if it would have to be on a foundation.

Mr. Reitz stated yes.

Mrs. Johnston stated that the home should be pushed back farther by the pond.

Mr. Hession stated that there are many unanswered questions.

Mrs. Johnston stated they also need to know what kind of home is going in there.

Mr. Hession stated if the case is continued to September that there will not be another public hearing.

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

There were none.

Mr. Hession asked for a motion on SE 11-16.

Mrs. Johnston made a motion to continue SE 11-16.

Mr. Himsel seconded the motion to continue SE 11-16 until September 19, 2016.

**VOTE:            For- 5            Against-            Abstained-            CONTINUED**

SE 12-16: Tamara Randall for a Special Exception HCZO 4.7 (C) to permit a private kennel on a 5 acre parcel in Center Township.

The staff made a power point presentation over the facts of the case. Mr. Hufford stated the area is zoned primarily AGR (agricultural residential). Mr. Hufford stated that Mrs. Randall currently owns seven dogs that she until recently... was able to get a kennel license for. He stated that the trustees no longer give these licenses for having over the maximum number of dogs. Mr. Hufford showed the area for the dogs that is fenced in. He stated that once her number of dogs goes down to four dogs, her Special Exception will be voided as specified as one of the conditions in the Findings of Facts. Mr. Hufford stated at that time, she would have to come back and apply to the BZA to be able to increase number of dogs.

Mr. Himsel asked if that included cats also.

Mr. Hufford stated she is allowed up to three cats.

Tamara Randall, 2324 W US HWY 36, Danville, Mrs. Randall stated she has lived at this residence since July of 1994 and has maintain six to eight dogs at all times and has gotten a kennel license each year. She stated she was told the county did not do kennel licensing anymore. Mrs. Randall stated she wasn't aware she would need a Special Exception until recently. She stated these dogs are their pets and doesn't want to have to part with them. Mrs. Randall stated these dogs are not a nuisance to her neighbors and she does not leave dogs outside if they continue to bark. Mrs. Randall stated she never intended to be out of compliance and will not replace dogs once they die.

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 questions.

Mr. O'Riley asked if there have ever been any issues or complaints from neighbors.

Mrs. Randall stated not until recently. She stated that a storm got the dogs worked up and caused them to fight.

Mr. Himsel made a motion to adopt positive findings of facts and approve SE 12-16.

Mr. O'Riley seconded the motion.

**VOTE:            For- 5            Against-            Abstained-            APPROVED**

### **Hendricks County Area Board of Zoning Appeals**

Findings of Fact/Law and Conditions of Approval

#### **SE 12-16**

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 private kennel in an AGR/Agriculture Residential zone**. 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 of a private kennel 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 a private kennel 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 recommends primarily residential and conservation/open space. The use of a private kennel does not prohibit or provide difficulty to continue those uses.

**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.

**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 adequately served by essential public facilities and services. The necessary agencies have been included in the project and the site will be able to provide for all necessary services.

**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. This proposal is residential in nature and will maintain the residential character of the area. Additionally, conditions of approval have been established to protect persons, property, and the general welfare.

**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 or newly state approved 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.**

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. No historic, scenic, or natural feature is involved in this approval.

**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. This special exception shall run with the applicants and not the property
3. The maximum number of dogs permitted under this special exception approval is 7. The applicant shall not replace any dog until the number of remaining dogs is 4, at which time this special exception shall become null and void.
4. All applicable federal, state, and local regulations apply.

For all the foregoing reasons, the Board approved this request for a Special Exception, subject to the conditions set forth, the 15<sup>th</sup> day of August, 2016.

AREA BOARD OF ZONING APPEALS

HENDRICKS COUNTY, INDIANA



Anthony Hession

*Chairman*



Don F. Reitz, AICP

*Secretary to the Board*

VAR 10-16: Jason Warner for a Variance from Development Standards to allow front yard height of fencing from 4ft. to 6ft., and for fencing to more than 50% opaque on a 5 acre parcel in Center Township.

The staff presented a power point presentation with the facts of case. Mr. Hufford stated that he and the zoning inspector had talked to Mr. Warner agreeing that he could put the fence up in his side yard not realizing it was actually extended into being the front yard. He stated that the fence does exceed the height and opacity that the ordinance requires. Mr. Hufford showed photos of fencing put up by Mr. Warner.

Mr. O'Riley asked what the rules would be if it weren't considered the front of the house.

Mr. Hufford stated if it were behind the house and to side only, it would be side yard standards.

Mrs. Johnson asked if there was a tree line separating Mr. Warner's side yard and the backyard of his neighbor.

Mr. Hufford stated correct.

Mrs. Johnson asked if the neighbor could see this fence

Mr. Hufford stated it is visible from either side.

Dr. Jason Warner, 1133 W CR 200 S, Danville, Dr. Warner stated that he contacted the Planning and Building office prior to June 17, 2016 and was told he could construct the fence. He stated soon after the fence was constructed he received a letter from the zoning inspector stating his fence needed to come down because it was going past the side yard into front yard. He stated the letter said the fence was too tall and had 50% or more opaqueness, and this wasn't allowed. Dr. Warner stated that since building the fence the neighbor to his west has cleaned up his property and that was the beginning reason to construct the fence along with extra privacy.

Mr. Hession asked if the board had any questions.

There were none.

Mr. Hession opened the public hearing portion.

Jeremy Fuesler, 2047 S CR 125 W, Danville, Mr. Fuesler stated they live at the newly constructed property to the west of Dr. Warner. Mr. Fuesler stated that the junk that Dr. Warner is referring to was from construction. Mr. Fuesler stated he got a Variance to build his pole barn before the home was built. He stated that Dr. Warner was not happy about this pole barn and voiced his opinion towards it. Mr. Fuesler stated that Dr. Warner did not build the fence until after he had constructed his home. He stated that this fence is a pole barn metal fence and is not meant for a residential area. Mr. Fuesler stated that Dr. Warner built the fence out of spite

because he did not like the pole barn being there. He stated that part of the fence is on part of his property. Mr. Fuesler stated he believes this fence should be torn down by a professional.

Mr. O'Riley asked Mr. Fuesler if there is anything Dr. Warner could do to make fence more attractive or if he was just totally against it.

Mr. Fuesler stated no, that he is totally against.

Linda England, 2095 S CR 125 W, Danville, Mrs. England stated that Mr. Garner has been a good neighbor but she is opposed to the fence. She stated it looks like a salvage yard fence and feels it depreciates their properties. Mrs. England stated she would be fine with a normal privacy fence.

Madonna Bell, mother-in-law to Jeremy Fuesler, Mrs. Bell stated that the fence is hideous and the poles are too high above fence.

Mr. Hession closed the public hearing portion.

Dr. Warner stated that it started when he learned of Mr. Fuesler cutting his trees along the property line. He stated the posts are long because he hasn't had time to cut them. Dr. Warner stated the yard of the Fuesler's did not look good due to construction and he just wanted to block it from view. Dr. Warner stated there were back up beepers and flashing lights quite often.

Mr. Lasley asked Dr. Warner if the beeping and flashing lights were for the house construction only.

Dr. Warner said that Mr. Fuesler would have to answer that.

Mr. Fuesler stated he is in the construction business.

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

Mr O'Riley asked Dr. Warner if there were any suggestions from him on how to make the fence better.

Dr. Warner stated the reason he chose the material he did is because it lasts longer than treated lumber.

Mr. Himsel made a motion to deny VAR 10-16.

Mr. O'Riley seconded the motion.

**VOTE:            For-                    Against- 5                    Abstained-                    DENIED**  
**VAR 10-16**

## NEGATIVE

### Hendricks County Area Board of Zoning Appeals

Findings of Fact/Law

#### **VAR 10-16**

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 opaque, 6 foot high fence in the front yard** 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 12.6 (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) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;**

The Board finds that the approval will be injurious to the public health, safety, morals, and general welfare of the community. The height and material used—particularly the metal siding—to

build the fence are not appropriate for a residential front yard fence and detract from the residential character 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 use and value of the area adjacent to the property included in the Variance will be affected in a substantially adverse manner. The unusual height of the fence together with its metal paneling adds an industrial character to this well established residential neighborhood that is completely out of place and which does not comply with zoning ordinance fencing standards in any case.

**(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 not result in practical difficulties in the use of the property. The Zoning Ordinance has provisions for erecting fences common to most zoning ordinances. Most fence-related situations can be addressed using standard fencing materials in compliance with the Zoning Ordinance.

For all the foregoing reasons, the Board DENIED this request for a development standards Variance on the 15th day of August 2016.

AREA BOARD OF ZONING APPEALS

HENDRICKS COUNTY, INDIANA

A handwritten signature in dark ink, appearing to read "A. D. Hession", is written over a horizontal line.

Anthony Hession

*Chairman*



Don F. Reitz, AICP

*Secretary to the Board*

VAR 11-16: Barbara Leath for Variance from Development Standards 7.5 (F) & 7.5 (L) to permit a custom landscaping and parking area on a 4.79 acre parcel in Marion township.

The staff made a power point presentation over the facts of the case. Mr. Hufford explained what Mrs. Leath wants to accomplish, which is planting materials that are more native to the region.

Amy Elliott Comer, 71 W Marion Street, Danville, Mrs. Comer stated that the property was given to Mrs. Leath by her parents. She stated that Mrs. Leath has already come in and been approved by the board for a Special Exception to have a wedding venue in this AGR zoned district. Mrs. Comer stated that Mrs. Leath is utilizing the grain bins that are already on the property. She stated the ordinance requires a type 2 buffer yard. Mrs. Comer stated Mrs. Leath wants a more rural feel than the commercial type buffer. Mrs. Comer showed the different types of plants on Power Point that Mrs. Leath wants to use. She stated that the chemicals sprayed in the fields will potentially kill the landscaping required to be placed within a "Type 2 Buffer Yard".

Mr. Hession asked if there are any events going on there now?

Mrs. Leath stated no, it's still in the planning stage.

Mr. Hession asked when the first event is planned for.

Mrs. Leath stated spring of next year.

Mr. Reitz asked if the Variance that is requested is to do this particular plan.

Mrs. Comer stated the Variance is for the landscape requirements in the yard and around the parking lot not to have the specified plants and trees that are listed in the zoning ordinance.

Mr. Reitz asked if they would be submitting these plans with the Development Plan.

Mrs. Comer stated yes.

Mrs. Leath stated she believes it will create a hardship if she had to plant the way the ordinance states because it is too close to the farm fields. She stated this is the basis for the Variance.

Mr. Hession asked if they are asking for a total waiver for how the ordinance states.

Mr. Hufford stated it is not a waiver, that it's a Variance from. It's an attempt to fulfil the intent of the ordinance.

Mr. Lasley asked Mr. Reitz if the Board had done anything like this before concerning landscaping.

Mr. Reitz stated no, not with landscaping, but with stuff like building height.

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 staff had any comments.

There were none.

Mrs. Johnston made a motion to approve VAR 11-16 with positive facts of findings.

Mr. Himsel seconded the motion.

<b>VOTE:</b>	<b>For- 5</b>	<b>Against-</b>	<b>Abstained-</b>	<b>APPROVED</b>
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## **VAR 11-16**

### **Hendricks County Area Board of Zoning Appeals**

Findings of Fact/Law and Conditions of Approval

VAR 11-16

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 *custom parking and buffer landscaping* 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 12.6 (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) 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 surrounding area consists of large tracts of tillable land with residences.

- (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 custom nature of the landscaping intends to increase consistency with the surrounding land uses, and improve the aesthetic quality of the use.

- (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. Without this variance, the property will lose the aesthetic appeal the use depends on to satisfy its marketing image.

The Board imposed the following conditions in furtherance of the Indiana Code and the Hendricks County Zoning Ordinance: None.

For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 15th day of August 2016.

AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA

A handwritten signature in black ink, appearing to read "A. Hession", is written over a horizontal line.

Anthony Hession

*Chairman*

A handwritten signature in blue ink, appearing to read "Don F. Reitz", is written over a horizontal line.

Don F. Reitz, AICP

*Secretary to the Board*