

June 15, 2020

The Hendricks County Board of Zoning Appeals met in the Hendricks County Government Center, Meeting Rooms 4 and 5, Monday, June 15, 2020. The meeting began at 7:30 p.m. Members present included Rod Lasley, Walt O'Riley, Ron Kneeland and Sam Himsel. Also, present were Tim Dombrosky, Planning Director, Greg Steuerwald, County Attorney and Leslie Dardeen, Recording Secretary. Anthony Hession was 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 May 18, 2020 meeting.

Mr. O'Riley made a motion to approve the May 18, 2020 meeting minutes.

Mr. Kneeland seconded the motion.

**VOTE: For- 4                  Against- 0                  Abstained- 0                  APPROVED**  
**May 18, 2020 MEETING MINUTES**

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

**VAR 08-20: Jonathon Hill** Variance to reduce side setback for accessory building from 25' to 19' on a .46-acre AGR-zoned parcel in Lincoln Township: Section 12, Township 16, Range 1E; Key No. 08-1-12-61E 235-004; located approximately 1/8 mile west of N CR 901 E in Sunny Meadows Section 1 Lot 39; 8977 Sunset Ln, Brownsburg, IN 46112.

Mr. Steuerwald informed the board that VAR 08-20 was withdrawn by the petitioner on June 10, 2020.

**VAR 09-20: Anthony Gary** Variance from the development standards for fence height and opacity on an .32-acre PUD-zoned parcel in Lincoln Township: Section 08, Township 16, Range 2E; Key No. 08-1-08-62E 227-008; located in Williamsburg Villages Section 1 Lot 28; 5794 Courtyard Crescent, Indianapolis, IN 46234.

Mr. Dombrosky introduced the property on power point. He explained that the request is for a fence in the front yard. The property is a corner lot and by definition has two front yards, one on each road frontage. The request is to exceed the allowed fence height of 4 feet for a front yard, petitioner has installed a 6-foot fence. He also explained that fencing in the front yard should be no more than 50% opaque; the petitioner's fence is 100% opaque. The petitioner's lot is community-zoned, but if the subdivision's zoning does not include specific regulations for fences the general regulations of the county would then apply. BZA cases in area have no relevance to the case. The comprehensive plan calls for the area to remain suburban residential. Mr. Dombrosky explained that the lot is odd shaped, being on the corner of two curved roads. Plot plan shows location of constructed fence, the setbacks and the drainage/utility easement at the rear of the lot. The county does not stop people from building fences in a utility easement, but it would be at the owner's peril as the utility company can remove the fencing without the homeowner's approval should they need access to the area. The petitioner installed the privacy fence to encompass the whole rear area of his yard and in doing so encroached on the front setback (at the side

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of his house). The HOA stipulates that any fence in the neighborhood must be a 6-foot, 100% opaque privacy fence.

Mr. O'Riley asked for clarification on the discrepancy between the HOA covenants and the county ordinance. Per the HOA rules the fence has to be 6 feet tall and 100% opaque, but the county rules contradict that?

Mr. Dombrosky responded that is correct. He explained that in this case, the contradiction of rules is specific to the "side" yard with frontage on Independence Avenue. The county considers yards with road frontage as front yards and requires fences to be no more than 4 feet in height and 50% opaque. In the rear yard it can be 6 feet in height.

Mr. O'Riley responded that this is then a question of side yard versus rear yard.

Mr. Dombrosky answered yes. He then referenced the HOA covenants provided to the board (which are not enforced by the county), saying that although they address the issue of fencing and front yards, they are less clear on what they consider a front yard. The county ordinance, however, is very clear that any property facing a road is considered a front yard. He went on to explain that this is a development standard variance and needs to address the three points of a variance. He recommended that the board consider points 2 and 3 in particular, the effect on adjacent properties and the practical difficulty in adhering to the strict application of the ordinance. He further explained that staff cannot make an argument that there is a practical difficulty; it is an odd shaped lot, but it was subdivided and platted that way. He believes one could make an argument for practical difficulty for putting a privacy fence around the back yard, but he could not make that argument. The only possible issue he sees with the effect the fence has on adjacent properties is that it sticks out slightly in an area along the road that could be considered a common front yard. The point of the ordinance is to not have any tall fences in front yards near the street that could hinder motorists' sight lines. Staff recommends discussion on those two points.

Mr. Lasley asked if the board had any questions.

There were none at this time.

Mr. Lasley invited the petitioner to address the board.

Mr. Anthony Gary, 5794 Courtyard Crescent, Indianapolis, IN 46234, addressed the board. He explained that he and his wife, while expecting their first child, wanted the fence for privacy and security of the backyard area. They went through the HOA application process, with the HOA's main consideration being the aesthetics of the fence and that the fence be built within property lines. The fence was approved by the HOA, so Mr. Gary reached out to Tonya Cottrell at the building department to make sure he was within the county guidelines. Ms. Cottrell explained that since he was on a corner lot, he would need to obey the "vision triangle" (25' in either direction from the radius of the corner of the parcel). His fence is roughly 70 feet off of that. He referenced a photo he provided to the board showing the vantage point of a car sitting at that corner. The fence does not hinder the sight line in any direction. He also discussed with Ms. Cottrell that the fence would be in a utility easement. She explained that in the unlikely event that a utility company would need access to that area for repairs, etc. they could remove the fence without his permission. He and his wife felt comfortable taking on that risk, as they have lived in the neighborhood for several years and have not had a utility company access that area. Mr. Gary was also informed that he did not need a permit to put up a fence. He felt he had done his due diligence and was building an appropriate

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fence. He continued, explaining that Independence Avenue, which runs along the west side of his property, is the main road into the subdivision of over 500 homes and heavily trafficked. He referenced another photo provided to the board that shows the sight line heading south on Independence Avenue and the rear of his house. The fence is important to maintain privacy from that traffic, otherwise passing motorists can see right inside his home. He concluded that given the circumstances of expecting a child, wanting privacy and security and the unique challenges of the lot, he believed he was building a fence according to complete information and guidelines.

Mr. Lasley asked if the board had any questions for the petitioner.

They did not.

Mr. Lasley asked Mr. Dombrosky why the Building Department did not clarify the county ordinance definition of a front yard versus the HOA covenants.

Mr. Dombrosky was unsure of the nature of the phone conversation between Tonya Cottrell and Mr. Gary in April of last year. He speculated that it was possible that Ms. Cottrell did not have an address of the specific property and was explaining general guidelines.

Mr. Gary added that they did speak about this and the fact that it is a corner lot. He asked the questions he thought were pertinent.

Mr. Dombrosky surmised that there had been a misunderstanding between Ms. Cottrell and Mr. Gary.

Mr. O'Riley asked if the fence blocked any view from a neighbor's home or caused any issue with a neighboring property.

Mr. Dombrosky responded that he does not believe it causes any practical issues. It is outside of the vision triangle by a considerable distance and it's on the outside of the curve of the road causing no vision hazard.

Mr. Gary added that the fence is 25 feet from his neighbor's driveway to the rear of his property. He discussed with both adjoining property owners the amount of space between the corners of the fence and their driveways. Neither expressed any concerns. Most of the neighbors on the petitioner's notification list had no issues with the fence, as it adheres to the HOA standards.

Mr. Lasley asked what Mr. Gary's reasoning was to put up a 6-foot fence instead of a 4-foot.

Mr. Gary answered that it was for privacy. His house sits substantially higher than the street and a 4-foot fence would not have been tall enough to ensure privacy from neighbors or passing vehicles. A 6-foot fence gives extra privacy without causing visibility issue for motorists.

Mr. O'Riley asked that if this petition should be approved, would it set a precedence for future cases of the same nature.

Mr. Steuerwald explained that every case that comes before the BZA is fact sensitive.

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Mr. Lasley asked if there were any more questions for the petitioner.

There were none.

Mr. Lasley opened the public meeting.

Ashley Gary, 5794 Courtyard Crescent, Indianapolis, IN 46234, addressed the board. She stated that she is a stay-at-home mom. She enjoys the privacy and security of the fence since she and her daughter are home and in the yard during the day. She is grateful that her daughter has a safe and contained place to play. They also have a dog and she is not sure that a 4-foot fence would be high enough to contain him, nor does she believe that it would be tall enough to keep other neighborhood dogs out. She added that there has been a few car break-ins and some theft from back yards and garages. She believes that the privacy fence helps to keep their personal property from view and hopefully deter any theft.

Pam Rosenberg, 5789 Courtyard Crescent, Indianapolis, IN 46234, addressed the board. She and her family live directly south, across the street, from the petitioner. They utilize their driveway several times a day and have never had any issue with visibility due to the fence. She added that the fence is attractive and well-built and concluded that she is entirely supportive of the Gary's keeping their fence.

Mr. Lasley closed the public portion of the meeting.

Mr. Lasley asked Mr. Dombrosky if he knew how many fences were in the neighborhood.

Mr. Dombrosky pointed out on the aerial map a few fences, including a couple corner lots that also have fences, but does not know an exact number. He added that he could not guarantee that there were no other fences which violate this particular regulation. The county does not require fence permits, so violations are only known through complaints. He reiterated that in this case he does not find any practical vision hazard, he would only be concerned with the aesthetics and neighbors' comments. It is an odd shaped lot, and one way or another you will see the back of the property, either the house or the fence.

Mr. O'Riley remarked that there is a wavering line whether or not there is practical difficulty.

Mr. Dombrosky concurred. He added that he cannot make a legal argument that there is practical difficulty in this case. If the board thinks there is then he believes it is reasonable to grant the petition, he just does not have substantial proof needed to make that decision.

Mr. Himsel added that other than one letter of opposition, he does not see the fence as an issue. The other neighbors who spoke and signed the petition (provided by Mr. Gary) have no problems.

Mr. Lasley remarked that Mr. Gary came to the Planning and Building Department for information, he did not come in because of a complaint. He made the effort to come in and get the guidelines before he built the fence.

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.

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Mr. Himsel made a motion to approve VAR 09-20 with conditions set by staff.

Mr. Kneeland seconded the motion.

Motion for approval of VAR 09-20 carried unanimously.

**VOTE: For- 4          Against- 0          Abstained-0          APPROVED**  
**VAR 09-20: Anthony Gary**

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

Findings of Fact/Law and Conditions of Approval

VAR 09-20

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 a 6' privacy fence in the front yard.

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 is not in the regulated vision clearance triangle and so poses no threat to public safety.

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**(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 enclose the backyard of the property and not be any more or less disruptive than the current conditions.

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

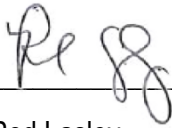
The Board finds that the proposal will meet the standard. The corner lot is hindered by the street layout and subdivision design. The intent of the front yard fence restrictions does not consider a situation exactly like this, and a hardship can be demonstrated.

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

1. The variance applies to the signs and placement described in the application.
2. All other federal, state and local regulations apply.

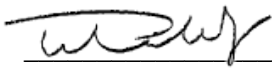
For all the foregoing reasons, the Board APPROVED this request for a development standards Variance on the 15<sup>th</sup> day of June 2020.

AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA



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Rod Lasley  
*Chairperson*



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Tim Dombrosky  
*Secretary to the Board*

**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. Dombrosky introduced the property on power point. It is located at the corner of SR 236 and N SR 39. It is zoned GB as is much of the neighboring properties, including the former Davis

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Orchards. BZA cases in the area are mostly for mobile homes and a radio tower on the neighboring property, nothing very comparable to this petition. Mr. Dombrosky pointed out an existing home on the petitioner's heavily wooded property. He went on to explain that the request is to put up an accessory building that exceeds building height standards by 3 feet. General Business zoned areas have a slightly higher height limit, 26 feet, than AGR, which is 24 feet. The petitioner is asking to put up a 29-foot building.

Mr. Bowman asked if a cupola counted as part of the building height.

Mr. Dombrosky responded that cupolas and apertures generally do not count.

Mr. Bowman then informed the board that the actual height of the building, without the cupola, would be 25 feet 11 inches.

Mr. Lasley asked how big the proposed building is.

Mr. Bowman answered that the plans are for a 60'x80' building, standing 25'11".

Mr. Lasley then asked the size of the cupola.

Mr. Bowman answered that it is approximately 3 feet square.

Mr. Dombrosky continued that should the building exceed the height limit it would have to adhere to two front setbacks as it has double frontage. The building site is close to the middle of the property. He concluded that since the parcel is so heavily wooded and that the building site is away from the road, there would not be a noticeable difference with an increased building height. Staff has no issue with the petition and would recommend approval.

Mr. Lasley asked if there were any questions for Mr. Dombrosky.

There were none.

Mr. Lasley invited the petitioner to address the board.

Mr. Adam Bowman, 1078 SR 236, Danville, IN 46122, addressed the board. He explained that when he realized he may be exceeding the height limit he asked the builder if the barn could be narrowed down. The builder advised against that because it would compromise structural integrity. Mr. Bowman also explained that he wanted the extra height so that the over-head storage space would be more useable and would allow for him to stand upright.

Mr. Lasley open the public portion of the meeting.

Mr. Justin Dorsey had signed up to speak but declined to do so.

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

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

Mr. O'Riley asked whether the building is or is not in compliance.

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Mr. Dombrosky responded that that is a good question. He explained that there is a height exception for apertures and design features which applies to steeples, spires and crosses. He would probably consider a cupola a design feature. He asked Mr. Steuerwald what his opinion was on the matter.

Mr. Steuerwald said that since notice of the public hearing had been made, the board can take action subject to the Planning and Building Department confirming that a variance is necessary. If it is unnecessary, there is no need to burden a property with a variance. He suggested that if the board is leaning towards approving the variance, they can make a motion to approve VAR 10-20 subject to staff's confirmation of necessity. If it is not needed, the petitioner and board will be notified.

Mr. Steuerwald then suggested that should staff find a variance necessary, the board would document the finding at the next meeting.

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

Mr. Kneeland made a motion to approve VAR 10-20 subject to the staff finding the variance to height requirements necessary and with conditions set by staff.

Mr. O'Riley seconded the motion.

Motion for approval of VAR 10-20 carried unanimously.

**VOTE: For- 4**

**Against- 0**

**Abstained-0**

**APPROVED**

**VAR 10-20: Adam Bowman**

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

Findings of Fact/Law and Conditions of Approval

VAR 10-20

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 a 29' tall accessory 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



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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 height of the accessory structure on this large lot should have no 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 height difference will not be perceptible outside of the property. 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 increase in height by three feet will allow for more efficient utilization while taking less floor area. Strict application of the zoning ordinance will result in the need for a larger structure, or multiple structures. A hardship can be demonstrated.

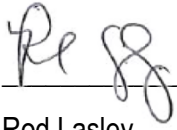
**IC 36-7-4-918.2 Exceptions and uses. The Board may impose reasonable conditions as a part of its approval.**

3. The variance applies to the signs and placement described in the application.
4. 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 15<sup>th</sup> day of June 2020.

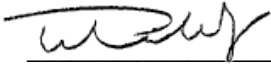
AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA

June 15, 2020



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Rod Lasley  
*Chairperson*



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Tim Dombrosky  
*Secretary to the Board*

**SE 02-20: James & Darinda Dragon/Meme and Dah, LLC** Special Exception to allow the new owner the continuation of wedding events with existing conditions (established via SE 02-15) on a 5.37-acre AGR-zoned parcel in Washington Township: Section 35, Township 16, Range 1E; Key No. 12-1-35-61E 300-011; located approximately ½ mile east of N Avon Ave and ½ west of N CR 800 E on E CR 100 N; 7424 E CR 100 N, Avon, IN 46123.

**SE 03-20: James & Darinda Dragon/Meme and Dah, LLC** Special Exception to allow the new owner the continuation of an accessory dwelling with existing conditions (established via SE 03-15) on a 5.37-acre AGR-zoned parcel in Washington Township: Section 35, Township 16, Range 1E; Key No. 12-1-35-61E 300-011; located approximately ½ mile east of N Avon Ave and ½ west of N CR 800 E on E CR 100 N; 7424 E CR 100 N, Avon, IN 46123.

Mr. Dombrosky introduced the property on power point. He noted that the aerial view shows that a second driveway was added since the original Special Exception establishing the wedding barn. Mr. Dombrosky explained that it is an AGR-zoned property, which was rezoned from RB in order to allow the wedding barn. The surrounding area is mostly RB, with the Town of Avon across the street. Past BZA cases in the area are mainly related to the wedding barn, including three past board approvals on the property: one variance for two principal uses, a wedding venue and a residence; and two special exceptions for the wedding barn and an accessory apartment, both of which are being reconsidered at this meeting. Mr. Dombrosky explained that the variance does not need to be refreshed, as it generically pertains to the property. The two special exceptions need to be refreshed, as they are specific to the Dragons. The comprehensive plan shows this area as remaining suburban residential with some urban residential, which is more densely populated and has mixed/multi use. The comprehensive plan also shows a bit of a gap area, common when an area abuts another municipality. Mr. Dombrosky showed a close-up of the property highlighting the buildings, wedding barn and the residences, and the two entrances onto the property. He pointed out the remnants of an old drive connecting the subject property and the neighboring church property used for access to the church parking lot. Mr. Dombrosky reiterated that the original special exception approvals were specifically for the Dragon family, which was a condition for the approvals. He further explained that they are now wanting to sell the property to Meme and Dah, LLC. The new owners wish to continue operating the wedding barn, but do not technically have the approval to do so. Therefore, they are requesting the approval to do so, with the same conditions of the original Special Exceptions being transferred to their family.

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Mr. O'Riley asked if this meant that the request would be approved before the property has actually been sold. His concern is that there is no guarantee who the new owner may be.

Mr. Dombrosky answered that he is not sure of the conditions of the sale, whether it is contingent on approval of the special exceptions, but Mr. O'Riley is right that there is no guarantee of who the buyer will be. Therefore, the board could put a condition of approval to be valid for a specific buyer. Otherwise, there is no guarantee that the business would be run by a certain individual or family.

Mr. Himsel asked what uses were granted with the original approvals.

Mr. Dombrosky said that he would leave it to Ms. Elliott, representative for Meme and Dah, LLC, to explain the specifics of the conditions, but in general the original approvals allowed for two principal uses and operation of a wedding barn with an accessory apartment.

Mr. Lasley asked if the accessory apartment was part of the original case.

Mr. Dombrosky responded that the accessory apartment was part of it. He then clarified that the variance was for two principal uses on one parcel of land (in this case allowing a primary residence and a business). The accessory dwelling is part of a Special Exception and completely separate from the primary residence.

Mr. O'Riley clarified that there are two separate dwellings and a wedding barn on the property.

Mr. Dombrosky answered that was correct. He went on to explain that since there are two special exceptions being sought, each will have to meet the nine criteria. He pointed out two criteria, in particular, to discuss. Those being number 3, after being operational for five years is the wedding barn still compatible with the surrounding area, and number 7, will it involve uses that are offensive to neighboring properties.

Mr. Lasley asked if the board had any questions.

There were none at this time.

Mr. Lasley invited the petitioner to address the board.

Ms. Amy Comer-Elliott, Comer Law Office 71 W Marion St, Danville, IN, representing the petitioner, addressed the board. She represented the Dragons five years ago when the wedding barn was first established. She explained that the Dragons had been hosting private weddings in the barn since 2010 for their children, friends of their children and other family members. They have also been involved in church and missionary-related events and charitable work. The cottage/accessory apartment has been available for their children, missionaries, etc. to have a place to stay. She explained that when they rezoned the property and established the wedding barn as a business, the cottage became a place to stay for out-of-town wedding guests and families. It is either used in association with the wedding barn or for personal use, it is not available to the general public to rent or to stay in. Ms. Elliott went on to add that the cottage has been on the property for several years and the barn has been on the property for decades. The barn

is a typical farm building, and the Dragons just added insulation in the last year to help with climate control and soundproofing. Ms. Elliott explained that the addition of the extra driveway is due to the addition of on-

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site parking. Until 2018, the Dragons had an agreement with the neighboring church to allow wedding and event guests to use their parking lot. The Dragons would then escort the guest from the church lot to the wedding barn. Eventually all the parking was moved to the front of their own property. The extra driveway is used to establish directional traffic flow to and from the new parking lot. She provided the board with a larger map of the surrounding area. She pointed out the uniqueness of the property, being a small agricultural parcel in the middle of the Town of Avon. Ms. Elliott continued that because the Dragons have lived on-site, they have never operated the wedding barn as it would have been in a commercial-zoned area. There are stricter requirements, and they only work with vendors (caterers, photographers, DJs, etc.) who respect that it is in a residential area.

Ms. Elliott ran through the conditions of the original approvals. They included: events limited to Fridays, Saturdays, Sundays and one weekday of their choosing. Events are over and all equipment, microphones, speakers, lights, are off by 10:30 pm. (weekday event has a 9:00 pm closing time). Events are also limited to weddings and faith-based events, no different than the types of events held at the church next door. Ms. Elliott confirmed that the new owners, Meme and Dah, LLC, will operate under the same conditions, but are requesting one exception. They are asking for a change in allowed guest capacity. At the time of the original approval, the limit was set at 200 people. The Wheelers (Meme and Dah, LLC.) would like to increase that to 225 people as per the limit set by the fire code. This would exclude any staff or vendors working at an event. Ms. Elliott also pointed out that it is known who the new owners will be, so they are not requesting that the conditions pertaining to a particular family are completely removed. They are only asking that the permission be transferred from the Dragons to the Wheelers. Should the Wheelers sell the property in the future, the special exceptions will need to be renewed by the new owners if they wish to continue with the business. The purpose of the approval being tied to a specific owner is to help maintain the integrity of the neighboring residential areas. It is helpful and pertinent to have the business owners as actual residents of the property, as they would presumably have the same ideology to maintain the character of the area and manage the behavior of guests and noise levels accordingly. They are more personally vested in how they run the business.

Ms. Elliott then introduced the Wheeler family members who make up the Meme and Dah, LLC., parents Barbara and Anthony and son Brian. Brian has lived in Hendricks County for 20 plus years and has had a 20 plus year relationship with the Dragon family. Barbara and Anthony currently live in Kentucky, with plans of purchasing and moving to the Dragon's property. There is a purchase agreement in place that is subject to the approval of the special exceptions to continue operation of the wedding barn. The Wheelers are equally as charitable minded as the Dragons and intend to also be as charitable with the profits of the business as the Dragons have been. The Dragons lived on the property first, they did not move to the property with the intention to start or run a business, so they felt it was only right to donate a large portion of the profits to local charities and organizations. Barbara and Anthony Wheeler will live on the property and the title will be in the name of Meme and Dah, LLC. Ms. Elliott added that she agrees with Mr. Dombrosky's assessment that the petitioners are looking to "refresh" the approvals from 2015. When looking at the questioned criteria highlighted by Mr. Dombrosky concerning compatibility to the area, none of the conditions have changed. There is no new development in the area, large tracts of land all around the property have remained the same. With the exception of increasing number of guests by 25, the conditions will remain the same. At this point, Ms. Elliott invited the Wheeler family to address the board.

Mr. Brian Wheeler, 7933 Buckthorn Ct, Avon, IN 46123, introduced himself to the board. He is a 20-year resident of the area. He shared that he and his wife were married in the barn before it was the

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“wedding barn”, the first weekend, non-family wedding held there. He explained that he approached the Dragons about potentially buying the property and continuing their legacy. His parents will be living on the property to keep the consistency of what the Dragons have established. They recognize the issue of noise pollution and will be very attentive to that. He is already very familiar with the property, he has helped with mowing and maintaining it. He added that the Dragons have professional operators helping run and manage the business. The Wheelers will continue with the same business manager and her staff. Their hope is to continue the business the same as it is now.

Mr. Lasley asked if there would be an issue with parking should they raise the guest limit, effectively adding 13 more cars to the lot.

Mr. Wheeler responded that he does not foresee an issue. He has discussed with Darinda Dragon why the limit was put at 200 guests. She told him that it was an arbitrary number. The fire chief was the one who recommended raising the level as allowed by the fire code. Mr. Wheeler continued, saying that he had been to the property during numerous events and they handled parking very well. He added that they also had a parking attendant who directed the flow of traffic.

Mr. Lasley mentioned that there had been a letter of descent that raised a couple of questions. It was noted in the letter that there were more events held than what was allowed per the conditions of approval.

Ms. Elliott responded that it was the Dragon’s understanding that events held for monetary gain as part of their business were limited to Friday, Saturday and Sunday nights and one weeknight of their choosing. Their understanding was that they were not limited from holding their own personal events, including church-related events at other times throughout the week.

Mr. Lasley asked if they were still holding church services on Sundays, as stated in the remonstrator’s letter.

Mr. Wheeler responded, it is his understanding that they are not holding actual church services on Sundays. Because of the restrictions of Covid-19, they have allowed Trader’s Point Christian Church to hold specialized worship services on Wednesday evenings. The schedule has been irregular with these meetings being held roughly every couple of weeks. Mr. Wheeler added that his plans would be to allow their home church to hold special events as well.

Mr. Lasley asked Mr. Dombrosky about other special considerations: liquor license, restroom availability, etc.

Mr. Dombrosky responded that there are permanent restrooms available in the venue. As far as a liquor license, BZA does not get involved in that. The property is still on a well, and he is unsure if it has been sufficient for large gatherings that include catering.

Mr. Wheeler responded that with catered events, the caterers bring in their own water for food preparation and for cleanup.

Mr. Himsel asked if there have been complaints against the property.

Mr. Dombrosky said there have been no complaints filed.

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Ms. Elliott interjected and pointed out the proximity to Kingsway Church, an elementary school and a middle school. The area is a conglomeration of mixed uses. She then invited Mrs. Wheeler to the podium.

Mrs. Barbara Wheeler, 14 Nathaniel Ct, Flatwoods, KY 41139, addressed the board. She explained that they have three sons and several grandchildren that live either in the area or elsewhere in Indiana and are looking forward to moving closer to them. She also mentioned that she currently teaches Personal Development classes to young girls and has also worked with several wedding planners helping with events. It is a passion of hers to continue being involved in the community. She and her husband are very active in their church, charity work and community-oriented endeavors. She is a very active volunteer on several civic boards and causes. She plans on continuing these works in the Avon area.

Mr. Lasley open the public portion of the meeting.

Nathan Foushee, 7576 E CR 100 N, Avon 46123, speaking on behalf of himself and his wife Megan, addressed the board. They live two properties away from the wedding barn, he pointed it out on the map. They have lived there since April 2019, through one whole "wedding season". They have never experienced any disturbances caused by events. He said that if they are in their house, they cannot hear any sounds from an event. If they are outside, they can sometimes hear music in the background much like a neighbor with a radio on. They get more noise from the traffic on 10<sup>th</sup> Street than they do from the wedding barn. They have had no issues with events or event guests. He pointed out that the east side of his property abuts the west side of Forrest Commons Subdivision, effectively making his property a buffer area between the venue and the neighborhood. There are a lot of trees along that property line, which would further buffer any noise. He addressed the issue of parking, saying that even during the busiest events parking is contained on the property and not spilling out onto the roadside. He pointed out an adjacent property owned by Mr. Burdett. Mr. Burdett was unable to attend the meeting but had spoken in favor of the original petition in 2015 and continues his support for the new owners. The wedding barn is a positive addition to the neighborhood and community, and he and his wife are in support of the Wheeler's continuation of the venue.

Christine Tillman, 7616 Disciples Way, Avon 46123, addressed the board. She questions why the Wheelers want/need to increase the number of guests. She and her family live in a subdivision behind the subject parcel and have concerns about event guests wandering onto their property. She stated that this has happened in the past.

Mr. Lasley asked for her to point out her property on the map.

Ms. Tillman said that they have put up trees and a border around their property to try and block people from wandering on their lot and to help with the noise. She is concerned that there is a rotating group of unknown people every weekend and the safety issues that presents. She also questions if having permanent residents on the property really helps, and questions how many days of the year they have to live at the property to be classified as permanent. It is important for her and her family that someone is living there at all times to oversee events. She also questions whether the facility will be rented out for events other than weddings, such as fund-raising events and charity work.

Mr. Lasley asked if Ms. Tillman and her family lived at the same address when the Dragons got their approval in 2015.

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Ms. Tillman responded that they did and had attended that meeting as well.

Marc Woernle, 877 Port Dr, Avon 46123, addressed the board. He has lived about a 1 ½ miles from the venue for the past couple of years. He has never had any issues with traffic or noise. He knows Brian Wheeler as a man of integrity and is more than comfortable with him and his family taking over the business.

Tim Marcum, 7616 Disciples Way, Avon 46123, addressed the board. He believes the Dragons have done an excellent job of trying to abide by the set conditions. However, he and his family do hear noise from the venue, and as home-owners in a residential area, they did not expect that. He believes that the lots were set up for residential purposes and not to operate a business. He is concerned that this will invite further business development in the area. He was not as concerned with the Dragons because they lived in the house as residents for a considerable time before they started their wedding barn business. They were invested in the area as a residential area and shared the same sensibilities as their neighbors. His fear is that the new owners will view this as more of a business and less as a residence and operate as such.

Mr. Lasley asked if there was any correlation between people wandering onto his property and parking at the church. He also asked if they saw a change when the parking was moved from the church to the front of the Dragon's property.

Mr. Marcum responded that there was a requirement that they have security guards when the parking was at the church, but that was slowly phased out. He questions how raising the guest limit would not add to the issue of people wandering onto neighboring properties.

Mr. Himsel asked if there was a fence partially around the Dragon's property and if people would wander through the gap and onto their property.

Mr. Marcum answered that was correct. He believes there is a fence but not one that is enclosed all the way around. He continued that the Dragons had conversations about putting in trees along the north east portion of the property, but it was never done.

Mr. Himsel suggested that a privacy fence could be installed.

Mr. Lasley asked Mr. Dombrosky if the land directly behind the subject property was just agricultural.

Mr. Dombrosky answered yes, it is owned by Mr. Sarkine. He went on to point out what appears to be fencing at the back of the property and white picket fencing along the east side.

Mr. O'Riley asked if the silo seen on the map is part of Dragon's property.

Mr. Dombrosky answered that it is.

Mr. O'Riley asked if the property line was directly behind the silo.

Mr. Dombrosky answered yes.

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Mr. Lasley asked if the existing fence could be closed in.

Mr. Dombrosky did not see a reason why it could not be.

Mr. Lasley called the petitioner back to the podium to address the expressed concerns.

Mr. Wheeler responded that understands the concerns for privacy. He shares in those concerns. When the process of buying the property started it was contingent upon his parents moving permanently into the Dragon's home. This will be their sole and permanent residence. He believes that his parents will be at the house far more often than the Dragons have been in recent years as they have spent much of their retirement time at their Florida house. He reiterated that they are asking that the new approval be for his family only and not future owners. Any subsequent owners should have to petition the board and have the same conversation. He pointed out the grassy area between the subject property and the church property that had once been used as a driveway to access the church's parking lot. He explained that the driveway is no longer used, but that area is maintained as an emergency access for fire engines, etc. He said that if it is a condition to do so, they will extend the fence. However, he contends that if someone wants to get over the fence and off the property then they will find a way. He would prefer that they work hard at managing crowd control and feels that would work better than fencing. He further addressed the question of increasing the maximum number of guests. By raising the limit to 225, they will be in alignment with the fire code. Also, it ensures that the number of guests could not increase in the future since it would be set at the maximum. There are no plans of putting up any other structures on the property and no plans of increasing the size of the venue. They are not planning on marketing a larger venue; they may have a couple events actually reach the maximum occupancy, but most would fall beneath the 225 limit.

Ms. Elliott asked if they anticipate hosting fund raising events.

Mr. Wheeler answered that he expects that they will do pretty much what the Dragons have been doing. They support many of the same charities as the Dragons and anticipate allowing the same events that the Dragons have. They are not interested in turning it into a professional, money-making, fundraiser event center. They are only interested in continuing with the organizations that they have personal ties to.

Ms. Elliott also added that they are restricted to the days and timeframes that the board has specified.

Mr. Wheeler concluded his comments with saying that his parents not only want to have the wedding barn, they also want to enjoy the property, the quietness of the area as much as their neighbors. They are committed to being good neighbors.

Mr. Himsel suggested that there should be some way of putting a gate up in the emergency access area.

Mr. Dombrosky said that is something the Wheelers can work out with the fire marshal.

Mr. Wheeler pointed out that there is also an easement along the area where the fencing would go. It is to allow access to the farmland behind the venue.

Mr. Dombrosky said that the fence could not block the easement. He pointed out a potential area on the map where a gate could be installed.



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Mr. Wheeler said that the existing fence is right inside the church's property line.

Mr. Lasley asked if the fence is the church's property.

Mr. Wheeler explained that the Dragons had the fence erected as a nice gesture to thank the church for the use of their parking lot. They then donated the fence to the church. He commented that they can continue the fence to the north, but he would need to work with the owner of the farmland.

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

Mr. O'Riley asked if Mr. Dombrosky had any issues with raising the capacity limit to 225.

Mr. Dombrosky responded that the logistics such as capacity, hours, days of operation, are not issues he will be able to enforce as he will not be at every event to count the number of guests. Enforcement issues are managed through official complaints. He continued by adding that if the use is good, if the use is compatible and appropriate, then the board should approve on those merits. He cannot personally enforce action if there are infractions to the conditions unless they are called to attention through an official complaint.

Ms. Elliott added that the conditions have been in place for five years without any complaints or violations. The venue is set up for smallish weddings and events and is in a great location to do so. It is a great asset to Hendricks County and supports other local businesses. She concluded that she believes it comes down to trusting the integrity of the people running the business so that it does not become necessary to have someone policing the venue.

Mr. O'Riley asked if anyone else had comments on the fencing issue.

Mr. Lasley said that he believes there should be a complete fence along the north and northeast portion of the property.

Mr. Himsel agreed that the corner should be closed off.

Mr. Kneeland asked if it could be closed off by using gates.

Mr. Dombrosky suggested that the existing white fence does not necessarily need to be closed in. The Wheelers could put in new fencing.

Mr. O'Riley asked if new fencing would be 6-foot privacy fencing.

Mr. Dombrosky responded that it could be.

Ms. Elliott added that she and the Wheelers would prefer if additional fencing were not a condition to approval, as the view of the farmland is what attracts many to the venue.

Mr. Lasley asked for last comments or questions from the board.

Mr. O'Riley asked what the fencing is needed for; is it for privacy, is it to muffle noise coming from the venue, is it to keep people from wandering away from the venue and onto other properties.

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Mr. Dombrosky pointed out that property lines are not visible on their own. People attending events have no idea where the property lines are without a physical barrier of some sort.

Mr. Wheeler offered a fencing option. He asked if it would please the board if they continued the church's split-rail fencing and closed in the corner of the property. Then they could run the fence up to the easement line, leaving the easement open, and add trees for screening. It would also help to maintain the view from the property.

Mr. Lasley reviewed the map of the property and where the fence would potentially be placed. He remarked that it is a lot of farm ground for someone to cross in order to actually trespass in the subdivision.

Mr. Dombrosky concurred that for an event guest to walk into someone else's yard it would be an intentional act.

Mr. Lasley continued that the only real concern he sees is that guests would trespass onto the grassy portion of the farmland directly behind the subject property.

Mr. Wheeler added as an aside that the Dragons actually maintain that portion of Mr. Sarkine's property.

Ms. Elliott pointed out the impracticality of crossing a cornfield in dress attire. The more likely scenario would be that people walk through the church's property and into the yards. In which case, adding to the fence between the subject property and the church property would make more sense.

Mr. Lasley asked for final comments.

Mr. Dombrosky interjected that there was no condition for security when the Dragons petitioned the board, but it was mentioned that there were security guards.

Ms. Elliott explained that the security was for monitoring the parking at the church. Once the parking was no longer at the church the security was no longer needed. There were no security guards on the Dragon property.

Mr. Lasley asked for a motion.

Mr. Dombrosky asked if the board wanted to include the voluntary commitment to restrict approval to new owners.

Mr. O'Riley asked if they could specify who the new owner is going to be.

Mr. Dombrosky answered that they could, Meme and Dah, LLC.

Mr. Himsel made a motion to approve SE 02-20 with conditions set by staff and added conditions of: Meme and Dah, LLC being new owners, maximum of 225 guests (excluding service people) and fence be erected running along the north and east property borders and enclosing the northeast corner of the property.

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Mr. Lasley asked for Mr. Dombrosky to run through the existing conditions that will carry on with new owners.

Mr. Dombrosky went through the conditions that are in addition to the staff findings and conditions set by staff: maximum number of guests limited to 225 (excluding caterers, entertainers, wedding barn staff and other personnel); occurrences of wedding banquets and any other gatherings limited to Friday, Saturday and Sunday with a closing time of 10:30 pm (wedding/meeting activity stopped, PA system and music turned off); applicants can hold one event on the weekday of their choice with closing time at 9 pm (wedding/meeting activity stopped, PA system and music turned off); any expansion of business would require approval; approval is granted for Meme and Dah, LLC. only; a fence is required on the entire north property line and the north 1/3 of the east property line.

Mr. O'Riley seconded the motion, with verification that should Meme and Dah, LLC. sell the property the new owners would have to gain BZA approval to continue the wedding barn.

Mr. Dombrosky responded that the approval would only be for Meme and Dah, LLC. Any new owner would be in the same situation and need to re-petition the board.

Mr. Steuerwald stated he was not comfortable putting the special exception under an LLC, as LLCs can be expanded to include additional people. He asked for the individuals currently comprising the LLC. to be named instead.

Ms. Elliott stated that the LLC is comprised of three members, Brian Wheeler and his parents, Anthony and Barbara Wheeler.

Mr. Steuerwald explained that should the board approve the petition, the special exception will be granted to Brian, Anthony and Barbara Wheeler and not to Meme and Dah, LLC.

Ms. Elliott wanted to clarify that approval included raising the capacity to 225.

Mr. Dombrosky responded that it does.

Mr. O'Riley asked if the fire code was still being adhered to if the number of people at an event exceeded 225 because of the added staff, etc.

Mr. Dombrosky answered that the fire code specifies that the maximum capacity of 225 refers to maximum seating capacity of guests.

Mr. Dombrosky asked if there were any other questions.

Mr. Lasley questioned the number of events and whether it matters if the events are labeled as public or private. He wanted to know if there needed to be any further clarification.

Mr. Himself said that he understood that they could have up to 4 events a week that they charge for and could have private personal events in addition to that.

Mr. Lasley asked if there should be a stipulation on the type of fence required.

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Mr. Himsel suggested a 6-foot privacy fence.

Mr. Kneeland asked if they should make it compatible with what is presently there.

Mr. O'Riley asked what type of fence is already there.

Mr. Dombrosky answered that there looks to be a 3- or 4-foot white picket fence on the east side. There appears to be some type of privacy fence along the back side.

Mr. Wheeler clarified that it was actually a split-rail fence and suggested that it would make sense to continue it along the east side.

Mr. Lasley asked if the board thought that was a reasonable suggestion, or do they think the fence should encompass the whole corner.

Mr. Himsel thought that continuing the split-rail fence along the east side was reasonable.

Mr. Lasley clarified that the fence on the east side would be a continuation of the church's split-rail fencing and that the fence at the back of the property would match up to what is already there.

Motion for approval of SE 02-20 carried unanimously.

**VOTE: For- 4**

**Against- 0**

**Abstained-0**

**APPROVED**

**SE 02-20: James & Darinda Dragon/Meme and Dah, LLC.**

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

Findings of Fact/Law and Conditions of Approval

#### **SE 02-20**

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 **assembly/banquet hall** in an area zoned as AGR (General Business). Acting in its role as staff to the County Board of Zoning Appeals (Board), the DPB staff subsequently created a file containing all documentation of the request and made that file available for public inspection in the County Government Center.

In accordance with Indiana Code (IC) 5-3-1 and the County Zoning Ordinance (HCZO) Section 12.7, 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 special exception 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 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 Board of Zoning Appeals to approve Special Exceptions.**

**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 assembly/banquet hall is in fact a Special Exception in the Agriculture Residential Zoning District.

**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 meet this standard. The existing business meets Comprehensive Plan goals for development near urban areas, economic development, and utilization of existing infrastructure.

**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 meet this standard. There is no physical change proposed at this time, and the conditions of operation will ensure harmonious appearance.

**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 meet this standard. The use is existing and service providers are already serving the business.

**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 meet this standard. The change in owner/operator will not result in significant changes to the existing demand for services.

**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;**

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The Board finds that the proposal will meet this standard. The use will not significantly change and be disruptive and detrimental to the surrounding area.

**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 meet this standard. The existing entrance is designed to handle the expected traffic.

**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 meet this standard. There will be no substantial loss in natural, scenic, or historic features with the continued operation of the business.

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

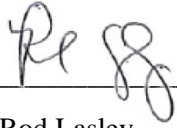
The Board imposed the following conditions in furtherance of the Indiana Code and the Hendricks County Zoning Ordinance:

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. All applicable federal, state, and local approvals are required.
3. The maximum number of guests on the property shall be 225. This requirement excludes caterers, entertainers, Avon Wedding Barn staff, and other service personnel.
4. Occurrences of weddings, banquets, or any other gathering shall be limited to Friday, Saturday, Sunday with a closing time of 10:30 pm (wedding or meeting activities stopped, music and PA systems turned off). The applicants may hold one additional event per week on a weekday of their choice, with a closing time of 9 pm (wedding or meeting activities stopped, music and PA systems turned off).
5. Any expansion of the business shall require BZA approval. Depending on the scale and/or nature of the expansion, development plan review may be required as well.
6. 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.
7. A fence shall be installed and remain along the north property line, the north east property corner, and the northern section of the east property line.

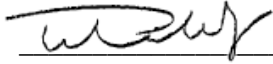
For all the foregoing reasons, the Board APPROVED this request for a Special Exception on the 15<sup>th</sup> day of June 2020.

AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA

June 15, 2020



Rod Lasley  
*Chairperson*



Tim Dombrosky  
*Secretary*

Mr. Lasley then asked for a motion on SE 03-20, an accessory dwelling.

Mr. O'Riley asked if the accessory dwelling could be rented out or is it just for family.

Ms. Elliott explained that it is not rented out to the general public, as per the existing restriction. It is used only in conjunction with wedding barn events and for personal purposes.

Mr. Dombrosky suggested making the condition that the accessory dwelling is only for the use of wedding barn events or personal Wheeler family use. It should not be offered for rent to the general public.

Mr. Lasley asked if there were any further questions.

There were none.

Mr. Lasley then asked for a motion on SE 03-20.

Mr. O'Riley made a motion to approve SE 03-20 with conditions set by staff.

Mr. Kneeland seconded the motion.

Motion for approval of SE 03-20 carried unanimously.

**VOTE: For- 4          Against- 0          Abstained-0**  
**SE 03-20: James & Darinda Dragon/Meme and Dah, LLC.**

**APPROVED**

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

Findings of Fact/Law and Conditions of Approval

#### **SE 03-20**

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 dwelling unit** in an area zoned as AGR (General Business). Acting in its role as staff to the County Board of Zoning Appeals (Board), the DPB staff subsequently created a file containing all documentation of the request and made that file available for public inspection in the County Government Center.

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In accordance with Indiana Code (IC) 5-3-1 and the County Zoning Ordinance (HCZO) Section 12.7, 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 special exception 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 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 Board of Zoning Appeals to approve Special Exceptions.**

**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:**

**I. Is in fact a permitted Special Exception use ... [in] the zoning district involved.**

The Board finds that an accessory dwelling unit is in fact a Special Exception in the Agriculture Residential Zoning District.

**J. 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 meet this standard. The existing use meets Plan goals for development near urban areas, urban residential, and utilization of existing infrastructure.

**K. 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 meet this standard. There is no physical change proposed at this time, and the conditions not related to the owner/operator will stay in place.

**L. 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 meet this standard. The use is existing and service providers are already serving the residence.



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**M. 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 meet this standard. The change in owner/operator will not result in significant changes to the existing demand for services.

**N. 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 meet this standard. The nature of the use will not significantly change and be disruptive and detrimental to the surrounding area.

**O. 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 meet this standard. The existing entrance is designed to handle the expected traffic.

**P. 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 meet this standard. There will be no substantial loss in natural, scenic, or historic features with the continued operation of the business.

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

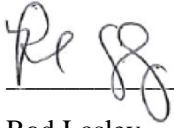
The Board imposed the following conditions in furtherance of the Indiana Code and the Hendricks County Zoning Ordinance:

8. 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.
9. All applicable federal, state, and local approvals are required.
10. The dwelling shall be strictly for the use of activities associated with the Avon Wedding Barn or for the private use of the owner.
11. The dwelling shall not be offered for rent to the general public.
12. Any expansion of the dwelling will require a hearing by the Board of Zoning Appeals.

For all the foregoing reasons, the Board APPROVED this request for a Special Exception on the 15<sup>th</sup> day of June 2020.

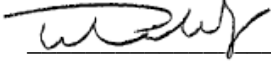
AREA BOARD OF ZONING APPEALS  
HENDRICKS COUNTY, INDIANA

June 15, 2020



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Rod Lasley  
*Chairperson*



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Tim Dombrosky  
*Secretary*

Mr. Lasley asked if there was any further business.

Being no further business, the meeting was adjourned at 9:11 P.M.