

**AREA BOARD OF ZONING APPEALS
ST. JOSEPH COUNTY, INDIANA**

MINUTES

Wednesday, January 11, 2023
1:30 p.m.

4th Floor, Council Chambers
County-City Building, South Bend, IN

MEMBERS PRESENT:

Robert Hawley
Lance Roush (ZOOM)
Donny Ritsema
DJ Tavernier
Joe Velleman

MEMBERS ABSENT:

Sidney Shafer

ALSO PRESENT:

Abby Wiles
Carl Brown-Grimm
Shawn Klein
Shelley Marker
Brandie Ecker, Council (ZOOM)

DJ Tavernier called the meeting to order at 1:30 p.m.

PUBLIC HEARINGS:

- 1. The petition of ANDERSON TERESA A seeking the following variance(s): 1) From Section 150.070(C)(1)(a)(1) to allow a detached accessory structure building area of 1,592 square feet where a maximum of 960 is permitted, property located at 11879 PRICE ST, Penn Township. Zoned R: Single Family District (County).**

(Audio Position: 0:03:01.7)

DJ Tavernier recused himself from this petition at 1:33 p.m.

Abby Wiles: We do not have a quorum present in person, and per our attorney no action can be taken on this petition. It will automatically be continued to the next scheduled ABZA meeting in February.

Robert Hawley: Is there anything else we need to do in regard to this?

Abby Wiles: No official action can be taken.

Joe Velleman: Why do we allow people on Zoom if we can't be a quorum?

Abby Wiles: Per our electronic meeting rules that were adopted in state statute after COVID, we can have members attend on Zoom, but we still need to have a quorum present in person. With DJ's recusal then we only have three and we don't have a quorum in person.

Joe Velleman: Can we override the rule?

Brandie Ecker: That is a state statute, so unfortunately no.

Robert Hawley: Item number one, property located on Price Street, has been tabled until the next meeting?

Abby Wiles: It gets continued on as if it was not even heard today.

Joe Velleman: It does not count towards the petitioner because of not meeting quorum?

Abby Wiles: Correct. We just continue with reading of the second petition.

Robert Hawley: DJ, please return to the meeting.

DJ Tavernier returned to the meeting at 1:35 p.m.

- 2. The petition of BEALL JEFFREY CHARLES seeking the following variance(s): 1) From Section 154.070 (C)(1)(a)(1) to allow 3593 square feet of accessory structures where a maximum area of detached accessory structures of 1591 square feet is permitted for existing accessory buildings on a proposed subdivision lot; and 2) From Section 154.107 (C)(1) to allow a front setback of 74' from the centerline of the street where a minimum of 75' is required for an existing single family dwelling, property located at 60100 MAYFLOWER RD, Greene Township. Zoned R: Single Family District (County).**

(Audio Position: 0:06:53.1)

Shawn Klein: Unlike most of the variance requests that you see where they are splitting off a house from a farm field, this property is actually zoned R: Single Family District. In this case, the petitioner doesn't need a lot area variance to go down to the 1.14-acre for the residential lot. However, consequently, they do run into an accessory square footage issue when they put all the existing accessory structures onto this smaller residential lot. Currently, it is legal because there is an agricultural use and it is over 5-acres, which even if it is zoned R: Single Family allows you unlimited square footage.

Staff does recommend approval of the variances. The structures are preexisting. They are well setback from neighboring properties and the roads. No adverse impact on the public or the vicinity. The front setback for the house is less than one foot from meeting the existing required front setback. So, it is not really that much of an issue.

Here is the proposed lot and you can see it has the house and the number of accessory structures that are currently on the parcel.

When we turn to the state law criteria, Staff finds that the approval will not be injurious to the public health, safety, morals, and general welfare. Really won't have any impact on general health, morals, and the front set back of 74' is more than adequate to promote public safety.

We find the use and value of the area adjacent to the property included in the variance will not be affected substantially. These structures are preexisting. the closest one to the neighboring property to the south is setback 60' from the property line. The closest to the public right-of-way is setback 85 feet.

We find that the strict application of the terms of this chapter would result in practical difficulties in the use of the property. In order to separate the house from the agricultural portion of the property to comply with the ordinance, the petitioner would either have to demolish a number of these usable structures or take an additional 4-acres out of the larger agricultural lot. Once it is separated, it is more than certain to fall out of agricultural production. We do recommend approval of the variances, and happy to answer any questions.

Joe Velleman: The remainder of it will zoned "R" too? No outlot opportunity because it is agricultural?

Shawn Klein: That is something we are still working through in the subdivision process. There isn't an outlot opportunity. We are not concerned if it is "R" because by right they can have half acre lots.

Joe Velleman: They can have multiple houses, they are not changing the dynamic of what could occur in the future. It doesn't matter if we do this or don't do this, they have the opportunity to subdivide this up, put half acre lots in, and go from there.

PETITIONER

(Audio position: 0:10:43.6)

Terry Lang, Wightman, 715 S. Michigan Street, South Bend, IN: I am representing Mr. Beall. As Shawn had indicated, there is an existing farmhouse and multiple outbuildings. Mr. Beall lives on the adjacent property to the north and east. He owns about 65-acres total. This piece of property came up for sale, so he was interested in buying it. The home that is there, he has a contingent purchaser on the ability that we can get the variances that we are asking for and submit a minor subdivision according to the Ordinance to make it a legal lot of record.

There are no plans for any additional homes on the property. If you look on the aerial there, you can see just, to the very far right side, is where Mr. Beall's house is located in the back of the woods. Looking to prevent anyone else from buying it and putting in a subdivision. Most likely it will continue to be farmed with what small crop that comes off of it will be a cash crop then for income. Happy to answer any questions you may have.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and carried 5-0, a petition by BEALL JEFFREY CHARLES seeking the following variances: 1) From Section 154.070 (C)(1)(a)(1) to allow 3593 square feet of accessory structures where a maximum area of detached accessory structures of 1591 square feet is permitted for existing accessory buildings on a proposed subdivision lot; and 2) From Section 154.107 (C)(1) to allow a front setback of 74' from the centerline of the street where a minimum of 75' is required for an existing single family dwelling was approved as presented, and will issue written Findings of Fact.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - Yes

Sidney Shafer - Absent
Donny Ritsema - Yes
Lance Roush - Yes

3. **The petition of SZCZYPIORSKI RANDALL F & BETTY J HW seeking the following variance(s): 1) From Section 154.092 (A) to allow a lot area of 1.25 acres where a minimum of 20 acres is required for a lot in a proposed 1-lot and 1- outlot subdivision; ; 2) From Section 154.092 (D) to allow a side (north) setback of 24' where 30' is required for an existing barn and 3) From Section 154.092 (D) to allow a rear (east) setback of 18' where a minimum of 30' is required for an existing barn, property located at 53520 TIMOTHY RD, Olive Township. Zoned A: Agricultural District (County).**

(Audio Position: 0:15:06.1)

Shawn Klein: This parcel is zoned A: Agricultural, so it will need the lot area variance that you are accustomed to. In this case they are also requesting a side setback variance for an existing barn. The side setback is from the north property line, it is 24' verses the 30' that is required. To the rear they are requesting an 18' rear setback where 30' would be required.

Staff recommends approval of the lot area variance and the side setback variance from the north property line. It is already legal non-conforming with respect to the side setback. Whereas we cannot support the rear setback to 18' because it is a new property line that is effectively being drawn through the subdivision, so it is hard to find that there is any practical difficulty in not complying with the Zoning Ordinance moving forward.

The larger agricultural parcel to the north. The petitioner the property owner of this parcel, owns 166-acres.

Turning to the state law criteria we find that the approval will not be injurious to the public health, safety, morals, and general welfare. They are creating the 1 ¼ -acre lot with house and the outbuildings and leaving the cultivated land in an outlot. It will not provide for any additional residential use in the A: Agricultural District. There is very little danger that this action would result in an additional residential use particularly because the outlot itself has no frontage. It would be difficult to get any variances to enable any future property owner to try and build a home.

Turning to the use and value of the area adjacent it is an existing structure, that it is not meeting the side setback that is requested. Allowing it to remain on the parcel, we feel it would not result in any adverse impact on the use and value of the adjacent area.

The third criteria, strict application would result in practical difficulties for the lot area variance because it would prohibit the house from being sold off and then the 7-acres retained with the 166-acres that are currently under the same owner. The side setback from the north, there are practical difficulties there because it is existing, and it is currently not meeting the side setback and the side property line is not moving.

When you get to the third variance, we don't feel there is practical difficulty. That rear property line could be drawn 30' from that existing structure rather than the 18'. This will take a trace amount of acreage from the proposed outlot, but it is really only .08 acres, there about, at the end of the day. So, it is not really any substantial amount of land taken out of agricultural production.

Staff supports the first two variances, but we support denial of third due to lack of practical difficulty. Happy to answer any questions.

PETITIONER

(Audio position: 0:19:06.2)

Terry Lang, Wightman, 715 S. Michigan Street, South Bend, IN: I am representing the petitioners here. The petitioners are the adjacent property owners to the north, and they are farmers. The parcel immediately to the north is 166 some acres. They purchased this property for the agricultural property value a couple of years ago. They decided they want to sell the home off and are tired of being landlord and have a contingent purchaser for that. They asked for the parcel size to be the yard area, the variances that we are asking for is the yard area. We would be taking a portion of that out of agricultural production, which was the main reason why the guy bought the property to begin with for all the agricultural use of the property and didn't care about the house so much. The variance that we are asking for on the easterly side, the 18' is plenty of room to do maintenance on the side of the building. It is not like we are asking for 5' or something like that. That is what the farmer had been farming up to all this time also. If the Staff is going to require it, then so be it. But he would like to farm everything he can.

Joe Velleman: It is 18', it is like when negotiating for a car who cares about \$200, right. Somebody has to give. Leaving the tillable land in there just because the lot line doesn't move doesn't mean he can't till it if he has an agreement with the next home owner, correct.

Terry Lang: Potentially, yes.

Joe Velleman: Compounding variance, upon variance, upon variance ...

Terry Lang: We were trying to save agricultural property, too. It is not a large portion of it, but we were trying to maintain for the yard area previously.

DJ Tavernier: He can have an agreement with this guy but then this guy sells and the other guy wants to put up a fence.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

(Audio position: 0:22:42.0)

Joe Velleman: DJ, while I appreciate the Staff's view on the 18' or 12' of difference between the two, I do believe leaving the tillable land in that state without having to make complications for subsequent homeowners and this has been an existing property in the same state for as many years that I have driven down that road. I would make a motion we approve all three variances as requested.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and carried 5-0, a petition by SZCZYPIORSKI RANDALL F & BETTY J HW seeking the following variances: 1) From Section 154.092 (A) to allow a lot area of 1.25 acres where a minimum of 20 acres is required for a lot in a proposed 1-lot and 1- outlot subdivision; 2) From Section 154.092 (D) to allow a side (north) setback of 24' where 30' is required for an existing barn and 3) From Section 154.092 (D) to allow a rear (east) setback of 18' where a minimum of 30' is required for an existing barn was approved as presented, and will issue written Findings of Fact.

Robert Hawley - Yes
Joe Velleman -Yes
DJ Tavernier - Yes

Sidney Shafer - Absent
Donny Ritsema -Yes
Lance Roush - Yes

4. **The petition of 54196 BURDETTE STREET, LLC seeking the following variance(s): 1) From 154.107 (B) to allow a lot width of 53' where a minimum of 60' is required for a proposed subdivision lot served by public water and sewer, property located at Unaddressed parcel at the northeast corner of Burdette Street and Bailey Avenue (Lot 262 of Hepler's Morningside Addition), Clay Township. Zoned R: Single Family District (County).**

(Audio Position: 0:23:59.4)

Abby Wiles: Prior to reading of petition number four, the petitioner has requested that it be tabled to the next meeting.

5. **The petition of DIVERSIFIED REAL ESTATE LLC seeking the following variance(s): 1) From Section 154.070 (C)(2)(a)(1)(b) to allow a 6' high ornamental security fence to be located in the front yard where a maximum height of 4' is permitted and 2) From Section 154.332 (B) to allow the preservation of existing natural landscaping in the side and rear yards (along the south and west lot lines) abutting a residential district where Type 2 full screening landscaping is required , property located at 13050 State Road 23 and unaddressed abutting parcel to the south and east , Harris Township. Zoned C: Commercial District (County).**

(Audio Position: 0:25:24.0)

Carl Brown-Grimm: The petitioner is seeking to allow for a 6-foot-tall security fence along the front lot line of the property, and relief from the landscape screening requirements due to the fact that the property abuts a residentially-zoned parcel to the south. Staff recommends approval of these variances. Staff feels that the location of the property, along with the irregular shape constitutes significant practical difficulty in the development of the proposed commercial business on site.

These parcels are zoned C: Commercial. The parcels in question are lot 7a and 7b of the Diversified Major subdivision that is located just off State Road 23 in Granger. Lot 7b is an L shaped parcel and the southern portion includes a large retention pond and a cluster septic system area - both of which are heavily wooded. The petitioner is proposing a self-storage use and will only be developing the north portion of the property. As part of this proposed use, they are requesting a 6-foot security fence around the perimeter of the developed area.

Here is the site plan of the self-storage facility, showing the fence begins approximately 10' off the east, off of the northwest corner, goes south to the opening and along the access drive and south to the lot line of 7A and east and north again. To prevent confusion, I have highlighted here on the power point the exact portion of the fence that needs to be legalized, approximately 120 lineal feet of fence.

This is a view of both Lot 7a and 7b. The southern portion of lot 7b is already naturally screened.

The western portion of the lot to be developed, with a view of the access drive.

Mainly a view of lot 7A, looking west and to the north.

These final few slides show the rear portion of the property, where the retention pond is, and the cluster septic system, again located on the far south of lot 7B.

Looking to the state criteria, approval of the requested variances would not be injurious. As we have seen, the lot is located at the end of a private drive, and due to the irregular shape of the lot, only a small portion of the proposed fence is to be located within the front setback. Because of the nature of the road and traffic seen in the area, the proposed see-through security fence will not block sight and be injurious. Similarly, the unused southern portion of the property is enough to screen the residential use to the south from the operations of the proposed project and thus will not be injurious.

Approval would not affect adjacent property values in any significant manner, given the surrounding commercial uses and significantly naturally screened residential use. We do not feel the requested variances are going to change property values.

Staff finds there are practical difficulties, as the strict application of the ordinance would prevent the petitioner the ability to provide consistent security for a proposed commercial use of the property. Similarly, the landscaping ordinance would require the petitioner to plant 4 evergreen trees for every 30 feet of lot line that is abutting the residential house (115 evergreen trees total) to a portion of land that is already providing screening and buffering the proposed use from the nearby residential structures.

We have received one letter of support for the variance from the neighbor directly to the west, that East Lake facility.

Robert Hawley: Carl, what does the cluster septic system serve?

Carl Brown-Grimm: I think it was an old septic system before the Granger sewer went in. I think it was for that whole commercial area where Martin's is.

Robert Hawley: The system that goes around the town of Granger is right close by.

Carl Brown-Grimm: I think all those lots today are now served by sewer now.

DJ Tavernier: That retention pond won't have to be any bigger?

Carl Brown-Grimm: No.

Abby Wiles: That will be addressed by Engineering in reviewing the site plan depending on how much hard surface was being added.

PETITIONER

(Audio position: 0:30:03.1)

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, IN: I am representing the petitioner. As the Staff has mentioned, what we are asking to do is put an ornamental fence around a proposed self-storage facility. This is a unique situation where we actually did the design for this Diversified Major Subdivision, and it was developed on a private roadway. Per the Ordinance, they still look at that as public street, and what we are asking for is to be able to put security fencing around the self-storage facility. This is ornamental fencing, not the typical 6' chain link fencing that you would see around one of those types of facilities. They are trying to do the upscale portion, but because the way the orientation of the lot is and the configuration that fencing would fall in that front linear setback based on the way the Ordinance is described. So, what we are asking to do be allowed to have that 6' fencing in the front yard setback area.

The second variance that we are asking for, and the Staff described very well, this lot, when we developed the subdivision, the retention basin that you see here when we designed the major subdivision it is designed to handle all the surface run off for all the commercial development withing the Diversified Major Subdivision. As you were asking the question, the basin that is there today is already sized correctly for this proposed development as well. There will not be any changes to the proposed retention system. We did submit a final site plan for them to take a look at to make sure there was no question about additional storage that had to happen on that retention area.

The septic area or the cluster system that is also on that same lot is still being used by all those developments in the Diversified Major Subdivision. At some point in time, if there would ever be a health issue, they could hook up to the Granger system, but as of right now all those commercial uses that you see in the Diversified Major Subdivision are using that cluster system. In this particular case there is not going to be a lot but there is just going to be the one office that will be in the self-storage building that will be tied to that cluster system.

What we are asking for hopefully the board would grant the variances for that front yard setback for the ornamental fencing, and we would be allowed to use all the existing natural landscaping around the perimeter of the larger lot for our screening. If you have any questions, I'd be glad to answer them.

Joe Velleman: The picture on there with the fence, is that the exact fence that will be there?

Mike Danch: That is the one they gave me so I assume that will be the one they will actually use for the perimeter fencing.

Joe Velleman: If it is security fencing how secure is that fence?

Mike Danch: It is actually pretty secure from the standpoint it is 6' high, it is aluminum, and we have used it in other situations. The other good thing that they are going to be doing here is the typical electronic gate as well. You'll have to have the reader card to get in and out of the facility.

Joe Velleman: It has been in my experience any time a perpetrator sees a brand-new person go to a self-storage facility that are broken into that same night. Security is an arbitrary thing there so why bother to put up a fence.

Mike Danch: They own more than one self-storage facility and they have been using this. It is keeping down any of the burglars that go through these. They will have a lot of lighting as well on the buildings for security purposes.

IN FAVOR

Mike Dobson, Diversified Real Estate, 514 Dixieway North, SB, IN: As Mike indicated we are still involved with the cluster septic system. Every five years we submit a deferral from the Granger sewer district. We developed this site just prior to the Granger sewer district going in. To clarify for you Bob, and in addition Joe, the fence is the type of fence we will put out there. The lighting is obviously important, but there will be about 30 security cameras in regard to any activity that goes on at the site.

This site also has a Goodwill, Taco Bell, Sherwin Williams and Mancino's Pit Stop on the front side along with East Lake Gym that will be immediately to the west and Teachers Credit Union which will be immediately north of lot 7B. The back 250' where both the septic system and the retention pond is going to stay just like it is. It is near 275' to the building what is the south border and that residential lot that is on the south side of it is a home that is on Cherry Road, but has near 1,200' of depth on their land. We ask for your support in regard to the variances.

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

After careful consideration, the following action was taken:

Upon a motion by Robert Hawley, being seconded by Joe Velleman and carried 5-0, a petition by DIVERSIFIED REAL ESTATE LLC seeking the following variances: 1) From Section 154.070 (C)(2)(a)(1)(b) to allow a 6' high ornamental security fence to be located in the front yard where a maximum height of 4' is permitted and 2) From Section 154.332 (B) to allow the preservation of existing natural landscaping in the side and rear yards (along the south and west lot lines) abutting a residential district where Type 2 full screening landscaping is required was approved as presented, and will issue written Findings of Fact.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - Yes

Sidney Shafer - Absent
Donny Ritsema - Yes
Lance Roush - Yes

(Audio position: 0:37:45.1)

Abby Wiles: DJ prior to moving onto items not requiring a public hearing. We skipped over election of officers. It was left off your agenda. We are required to do it at the first meeting of the year Brandie, and I have communicated, and we will be fine with the petitions that were just heard. But we need to go ahead and do that now.

Joe Velleman: I make a motion to retain Mr. Tavernier as the Chairperson of the Area Board of Zoning Appeals.

Lance Roush seconded the motion and Bob Hawley seconded the motion.

Abby Wiles: Any discussion or any other nomination?

Upon a motion by Joe Velleman, being seconded by Lance Roush and carried 5-0, DJ Tavernier has been nominated as Chairperson, of Area Board of Zoning Appeals for 2023.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - Yes

Sidney Shafer - Absent
Donny Ritsema - Yes
Lance Roush - Yes

Abby Wiles: We need nominations for a Vice Chairman.

Joe Velleman: I make a motion to nominate Robert Hawley as Vice Chairman of the Area Board of Zoning Appeals.

Donny Ritsema: Second the motion.

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and carried 5-0, Robert Hawley has been nominated as Vice Chairperson, of Area Board of Zoning Appeals for 2023.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - Yes

Sidney Shafer - Absent
Donny Ritsema - Yes
Lance Roush - Yes

(Audio position: 0:40:08.4)

Robert Hawley: Can I ask a question? You brought up the fact that you wanted to table Burdette Street.

Abby Wiles: That was requested to be tabled by the petitioner prior to it being read. Administrative tabling is available up to twice prior to the petition being heard by the BZA.

Robert Hawley: Was the petitioner here?

Abby Wiles: Yes.

Robert Hawley: He requested that probably because of what he might have said in the beginning, that we didn't have a quorum.

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact

A. Approval of the Findings of Fact for December 14, 2022 (Audio Position:0:41:19.5)

Upon a motion by Robert Hawley, being seconded by Donny Ritsema and carried 5-0, the Finding of Fact for December 14, 2022, of ABZA meeting were approved.

Robert Hawley - Yes

Joe Velleman -Yes

DJ Tavernier - Yes

Sidney Shafer - Absent

Donny Ritsema -Yes

Lance Roush – Yes

2. Minutes

(Audio Position: 0:41:59.2)

A. Approval of the minutes of November 16, 2022 & December 14, 2022

Joe Velleman: Can I approve them together or do they need to be separate?

Abby Wiles: Brandie, can they approve them together?

Brandie Ecker: If there are changes then that somebody wants to make, I would say do them separately. If not, and want to approve them together, there is not problem.

Upon a motion by Joe Velleman, being seconded by Robert Hawley and carried 5-0, the Minutes for November 16, 2022, and December 14, 2022 meetings of the ABZA were approved.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - Yes

Sidney Shafer - Absent
Donny Ritsema - Yes
Lance Roush - Yes

3. Other Business

4. Adjournment

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and carried 5-0, the ABZA meeting was adjourned at 2:13 p.m.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - Yes


Sidney Shafer - Absent
Donny Ritsema - Yes
Lance Roush - Yes

RESPECTFULLY SUBMITTED,



DJ TAVERNIER,
Chairman of the Board

ATTEST:



ABBY WILES, AICP
Secretary of the Board