

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

MINUTES

Wednesday, February 8, 2023
1:30 p.m.

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

MEMBERS PRESENT:

Molly Hannon
Robert Hawley
Donny Ritsema
Sidney Shafer
DJ Tavernier
Joe Velleman
Lance Roush (Zoom)

ALSO PRESENT:

Abby Wiles
Carl Brown-Grimm
Shawn Klein
Mae Kratzer
Shelley Marker
Brandie Ecker, Counsel

DJ Tavernier started the meeting at 1:30 p.m.

PUBLIC HEARINGS:

(Audio Position: 0:01:53.8)

DJ Tavernier: Recused himself from petition number one at 1:32 p.m.

Robert Hawley as Vice Chairman took over the meeting for petition number one.

- 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: 0:02:59.0)

Shawn Klein: This petition was first heard in October 2022, since then the petitioner has exhausted all of their administrative tabling's. It would have been heard in January 2023, but we did not have a quorum. This will need to be heard by the board today. Staff is recommending denial of the variance on the grounds that there is no established practical difficulty and that would be detrimental to the use and value of the area adjacent to the property.

Robert Hawley: Is the petitioner here?

Brandie Ecker: In the event the petitioner is not here the board has the option to table the petition or to dismiss it. Normally you all table it but in this particular situation given how long it has been pending and there has been some indication from the petitioner she may not be interested in pursuing this anymore but has been unclear.

Shawn Klein: That is correct. Verbally she has suggested that she would like to withdraw the petition, we just never received anything formal.

Donny Ritsema: But if we deny it...

Brandie Ecker: We require the petitioner to be here in order to act formally to approve or deny - the options you have when somebody is not here or table or dismiss. And dismissal has the same effect as a denial. With a six-month bar on refiling.

Robert Hawley: At this point, we need a motion to either table or dismiss it.

Joe Velleman: I would make a motion to dismiss the petition.

Donny Ritsema: I'll second.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and unanimously carried 5-0, a petition by ANDERSON TERESA A seeking the following variances: 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 was dismissed as presented.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - Abstain
Molly Hannon - Yes

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

(Audio position: 0:06:02.2)

Robert Hawley called the Chairman DJ Tavnier back into the meeting.

- 2. 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: 0:07:15.0)

Abby Wiles: This is one parcel of a larger three parcel development that will include a total of eight proposed single-family homes. A variance was granted for the two parcels immediately east on July 14, 2022 to allow a lot width of 53' where 60' is required for properties served by public water and sewer. This request was originally to be heard at the meeting last month but was tabled by the petitioner so they could have a full board.

Part of the Zoning Ordinance - there are varying lot widths for single-family residential depending on if it's a lot is served by well or septic or municipal water and sewer because this is both it is a required lot with of 60'. The subject property is approximately 132' in width. We require 60' as I said previously. The petitioner is proposing split the existing parcel into two lots, one with approximately 53' and the other with approximately 78.7'.

The petitioner could sub-divide this property by right into lots that are both over 60' without requiring the variance and file for the subdivision, under the existing terms of the Zoning Ordinance. Staff is recommending denial on that basis.

These are the photos of the subject property along Burdette and Bailey.

Turning to the state code criteria, approval would not be injurious to the public health, safety, morals, and general welfare. The surrounding area does include a range of lot widths. The use and value of the area adjacent would not be affected in a substantially adverse manner because we already have an established reduced lot width along this block. However, strict application to the terms of this chapter does not result in practical difficulties in the use of the property. Because there is an existing parcel that has 132' of lot width. Our minimum is 60', they can split the existing parcel into two lots by right with no variance. So, Staff is recommending denial because what they are proposing to do is already allowed under the terms of the Ordinance. It is that they are asking for the variance so that the lot located at the intersection of the western most lot can have a larger yard.

Donny Ritsema: What is the intent for that western most lot. Did they share what the intent would be?

Abby Wiles: It is my understanding that they are proposing to construct a single-family home. We did receive a letter that Shelley shared with you all prior to the meeting from Peter Agostino who represents Mike and Lisa Dobson.

There was substantial discussion at the variance hearing in July for the eastern two parcels in regard to the proposed use being for student housing. They have asked for a written commitment as part of the variance if the variance would be granted, to not allow student housing. I'm recommending denial. You would not be concerned with the commitment if you were to deny the petition. But in the event that the variance was granted, we have a letter from Mike Dobson who is a neighbor and is requesting a commitment that it not be allowed for student housing. Again, I am recommending denial but want to bring it to your attention and to the attention of the public.

DJ Tavernier: Aren't there too many variations of student housing for use to be able to make that a stipulation? I feel like that is not what we are here for.

Abby Wiles: You are here to review a lot width variance. 60' is required 53' is what they are asking for.

DJ Tavernier: Whether or not it is student housing or not is not ... I personally don't feel that is what we are here for.

Abby Wiles: The variance that is in front of you today is for lot width.

Lance Roush: Abby, the lot what I am interpreting is the east the 53' wouldn't that be adjacent to other 53' that we approved in June?

Abby Wiles: That is correct.

PETITIONER

(Audio position: 0:12:13.8)

Robert Nichols, Abonmarche, Consultants, 315 W. Jefferson, South Bend: I am representing the petitioner and Brian is also on the phone if you have questions for him.

Thank you for hearing this and I apologize for the tabling last time DJ, we wanted to hear it in front of full BZA. I'll try and be short and sweet and not carry this on and belabor it this is kind of deja vu from the first one.

The petitioner's intent is to get a variance so he can subdivide this lot with another 53' width to add consistency to development and do the same thing he plans to do on the other lots. He does plan to build his own single-family residence home on that lot. So, he would like that additional width if he could have it and this adds the consistency of the development. Also, follows the precedence as set by the BZA on the other lots. Although Abby is exactly right that the subdivision can happen without the variance.

With that I would be happy to answer any questions. I don't have any answers to housing type or student housing I do know it is not Brian's intent to use this as student housing but like what DJ said that is not what we are here to talk about.

Joe Velleman: I have a question for Staff and particularly our Attorney, it is my understanding this is a different company than the previous petition was under? Is that correct. So, what we talked about, voted on and did things can't really come into bear on this or can they?

Brandie Ecker: It can come into bear in the sense of that the petition is similar to previously granted petitions and you might have been said to have created a precedent for a petition of this type. In that sense then yes what you would have done before in a similar situation would be relevant to a decision now. If you can come up with reasons why it is different, then you don't have to make the same decision.

Joe Velleman: My question is, I have a question of intent. If it is a different company, they can't speak to the intent of the previous company. Is that not going to bear in this what we are talking about here.

Brandie Ecker: You can always ask if he knows but it depends on how involved ...

Joe Velleman: You can tell me if I am wrong. Why was this not done in the first petition? This is ludicrous to me that we did this now it seems so under the table ... it is ridiculous. Why did we not figure this out during the first petition?

Robert Nichols: Because the other partner in the business in the first petition has since left and dissolved. So, the intent for this is completely different now. To add this consistent lot to the other 53'.

DJ Tavernier: And why doesn't he want to do it with a simple split? Because he wants six extra feet?

Robert Nichols: Yes, on his own lot and add the consistency so he can do the same, the same lots and all match on the lots to the east.

Joe Velleman: No one is going to notice seven feet. That was our contention last time but previous time it made sense because how the splits were. It would have made sense the last time based on the way the splits were. This to me seems...shady. It seems like we were not all privy to all the information the first time and now we are trying to do something after the fact.

(Audio position: 0:15:42.8)

Brian Giuffrida, 4105 Vail Divide, Austin, Texas: Joe, I understand how it appears to you but since we petitioned BZA in July, I bought the Dimple's out of the Little Flower Ventures company which was the six lots. My family owned the corner half acre and then we shared ownership of the middle two half acres. Since now they are not partners, I own the whole block, so I wanted to drive consistency across that. That partnership dissolved right after the July meeting of the BZA. Now I own it all and I would like to do the same thing consistently across the entire holding.

Joe Velleman: Understood, thank you.

DJ Tavernier: So, do you think that this one lot somebody is going to notice that it is six feet bigger, and the consistency is not going to ... the only time someone will notice if they put up a fence. Is there any other argument to the consistency theory?

Brian Giuffrida: I can't offer you anything other than that.

IN FAVOR

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

REMONSTRANCE

(Audio position: 0:18:43.5)

Peter Agostino, 131 S Taylor Street, South Bend, IN: Speaking on behalf of Mike and Lisa Dobson. To supplement a question that asked by the board, earlier of your attorney on prior

petition and relevance. I think the concern that we had when we spoke on prior occasions was that we would end up with a property that was going to be used for student housing. My client did in fact file a complaint with the Board of Zoning Appeals regarding the fact that six plus cars different plates, activity at the house the prior one did look like there was in fact more than a single-family housing going on. That ties in with the idea of why is there a request for written commitments and what does the law allow. I think it is a mistake to say you are not here to talk about student housing. Your job on that board in considering these variances is to consider a balance of interest between the petitioner's rights and the rights of the people in the neighborhood that get affected by your decision. The statute at 36-7-4-1015 clearly gives you the power to engage commitments and to allow for a private enforcement of those. The reason that it is necessary is because often times in the way county government works is that this enforcement doesn't really come to fruition. It may seem like it is not your role to do that but the statute that allows these variances very clearly says that you do have the power to do that.

I'm not going to belabor it; I think there is good intention here but there is a reason for the request for a commitment based on experience since the granting of your last petition. You should be informed by that and understand that it is something that really does happen. People do ignore and don't follow their intent as it is represented to this. That is why the written commitment process is in place. Thank you.

(Audio position: 0:21:27.3)

Mike Dobson, 54165 Willow Street, South Bend, IN: As Pete indicated if the true intent of the now eight homes would be for single-family then the neighbors including us would not have a problem with that. But the prior partner also indicated that his home was going to be a single-family home. There are renters been there the year before there are now renters in it again. There are six under grads that are in there. As Pete indicated we did file a complaint in regards back in early September and unless something as changed the last communication with the property owner was in October and there has been nothing finalized in regard to the student housing that continues to happen. Six undergrads living in that house that is has always been our biggest concern in regard to this development on Burdette and Bailey. Thank you.

DJ Tavernier: Asked Rob if he wanted to reply to those comments and Rob shook his head no in the gallery.

DJ Tavernier: That Zoning Ordinance that he read off you were looking it up.

Abby Wiles: Yes, you are able to assign written commitments to an approval when you grant it. You cannot assign written commitments for a petition that you deny, nor can you assign written commitments for a property that was included in previously approved variance.

DJ Tavernier: Do we have the previously approved variance for the other section? If I remember correctly, it was a blanket approval...right?

Donny Ritsema: We didn't do any written commitments.

Brandie Ecker: There was a lot of discussion about commitments and Mr. Agostino proposed a set of commitments for his clients and the petitioner proposed a set of commitments that essentially didn't really do anything. Because those proposed commitments just resided the definitions of things that were already in the Zoning Ordinance. The Board of Zoning Appeals, if they wanted somebody other than just the County's employees to be able to enforce commitments, then there would have been a specific provision in them that were not in the proposed commitments. It seems like it was approved without commitments at all.

DJ Tavernier: That is what I thought but wanted to make sure.

Brandie Ecker: It was tabled a couple of times waiting for the petitioner to provide their proposed version of commitments.

Lance Roush: I did read it just before the meeting and it was an approval of the variance as it was written.

(Audio position: 0:25:22.3)

Joe Velleman: Mr. Chairman regardless of my personal feelings about the petitioner now coming forward and then from the previous petition that was approved back in June. The practical difficulties on this lot do not seem the same as what they were at the previous petition. You can modify this house a little bit, move it over, the lot line can move over, and I don't think you are going to see egregious amount difference between a 53' lot in this case to a 60' lot. So, I make a motion to deny the petition as requested.

Sidney Shafer: I will second that.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Sidney Shafer and unanimously carried 7-0, a petition by 54196 BURDETTE STREET, LLC seeking the following variances: 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 was denied as presented, and will issue written Findings of Fact.

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

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

3. The petition of DAVIS KEVIN L & LINDA J CAMPBELL seeking the following variance(s): 1) From Section 154.070 (C)(1)(a)(1) to allow 3980 square feet of accessory structures where a maximum area of detached accessory structures of 2382 square feet is permitted to allow construction of a new 32'x56' accessory structure , property

**located at 23768 BRICK RD, German Township. Zoned R: Single Family District
(County).**

(Audio Position: 0:27:43.2)

Mae Kratzer: This petitioner is seeking an additional permissible accessory structure area in order to construct a new pole building to store hobby vehicles. There is an existing accessory storage building on site and a shed. The character of the area wouldn't have a negative effect on the petition but there is not a demonstrated practical difficulty in this situation, so Staff recommends denial of the petition.

As you can see on the aerial it is surrounded on three sides by industrial uses. That is looking at the property and this is the existing structure in the rear and current one. Industrial building in the rear of the property, looking east down Brick, and looking west on Brick.

Looking at the state criteria, the approval will not be injurious to the public health, safety, morals, and general welfare of the community. This lot is bordered on the west, south and east by industrial zoning properties in the jurisdiction of South Bend. The additional structure created on the lot will be located behind the house at the rear setback and out of the line of the site of the road. The additional structure will not interfere with industrial operations and may serve as an additional buffer for the residence on site.

The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. As stated, the residential property surrounded by industrial uses the additional structure will not cause the property to be out of character of the surrounding area. With regards to size or quantity of accessory buildings and commercial industrial buildings will not be affected.

The strict application of the terms of this chapter would result in practical difficulties of the property. It would not result in practical difficulties of the property. Given that the petitioner has slightly over an acre they are permitted 1.5 times the ground floor area of their house and detached accessory area or 2,382 square feet. The existing structure is 2,048 square feet and the existing shed is 140 that leaves them with 194 square feet that they could use in an additional accessory storage. Therefore there is not practical difficulty shown.

PETITIONER

(Audio position: 0:30:23.7)

Kevin Davis, 23768 Brick Road, South Bend, IN: First of all I probably did not spell it out well enough in the petition. This is not strictly for storage. My son's and I (my family) we race stock cars. Our current building we have simply outgrew it we have seven cars. We have an area in the present building for spare parts equipment that we use while working/building these cars. We just have run out of room and are unable to get everything in there that we need. This is strictly a hobby we race at South Bend Motors Speedway; Plymouth Motor Speedway and we would like more room to pursue our hobby.

Another issue as she mentioned, the buffer between the building and our property. We currently have an issue with having to pick up trash constantly from the industrial building behind us. It is a three-shift manufacturing plant and they come in at all hours of the night with their music loud and this would provide a buffer to help eliminate some of that issue. The main concern is that we have ran out of room to pursue our hobby and we would like to expand our area to have enough room to do so.

DJ Tavernier: How will you get to it?

Kevin Davis: From the driveway. We pull in next to the house. It will be attached to the present structure. Take out an interior wall and also would like to put an additional overhead door on the east end of that addition.

DJ Tavernier: I drive by your house every day. I obviously don't look in the back yard. Is this a deck or a patio?

Kevin Davis: It is a deck.

DJ Tavernier: If you put some sort of driveway to it will you be taking out your deck?

Kevin Davis: No, sir. There is enough room to get between the deck and the current building to get in. We would put the overhead door right on the west end of the current structure in the new structure.

Sidney Shafer: How big is the current structure?

Kevin Davis: It is 32x64 - 2,048 square feet.

DJ Tavernier: For their main floor they have 194 square feet left over that they can use. But they are asking for...

Sidney Shafer: Are you going to tie the two buildings together?

Kevin Davis: Yes.

Robert Hawley: How many cars do you have in the facility presently?

Kevin Davis: Presently there are five. The last 16' on the west end of the current building is where we store extra parts. We have machinery inside that takes up room, work bench etc. We are tight and out of room. This year we will have eight cars.

Robert Hawley: You build these cars, and then somebody races them, right?

Kevin Davis: Yes.

Robert Hawley: Is that in your family also?

Kevin Davis: I race, my sons race and my grandson's race.

Robert Hawley: You are hauling cars in and out.

Kevin Davis: Yes. We are to the point now where to get everybody car under roof we have ran out of room.

DJ Tavernier: Is that what these cars are in the picture.

Kevin Davis: Those are basically spares that are empty shells.

DJ Tavernier: What is going to happen to those when you put a building right there?

Kevin Davis: There is a trailer, a pickup truck and the camper will move over to the corner of the property and the pickup in the driveway. The other two vehicles there are extra bodies. One is my sons which needs to go to his house.

Robert Hawley: How long have you lived here?

Kevin Davis: 30 years.

Robert Hawley: You built the outbuildings that are there?

Kevin Davis: Yes.

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: 0:37:51.4)

Joe Velleman: Mr. Chairman while this is a substantial increase over what is allowed by the Ordinance the effect that is a family affair of an extremely not for profit racing team, I'm sure. I think this would be a fine opportunity for this actual location because of the big commercial buildings around it a large building of this nature will not be injurious it doesn't have any problems but if he can also bring some of those cars out into a building so it looks better. I think it is a better use for the property than what it currently is. I make a motion to approve these variance as requested.

Robert Hawley: I concur with Joe in addition he did mention the commercial aspect of it. But I haven't seen anybody in our audience and or zoom that has complained. I would like to second that motion.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Robert Hawley and carried 6-1, a petition by DAVIS KEVIN L & LINDA J CAMPBELL seeking the following variances: 1) From Section 154.070 (C)(1)(a)(1) to allow 3980 square feet of accessory structures where a maximum area of detached accessory structures of 2382 square feet is permitted to allow construction of a new 32'x56' accessory structure was approved as presented, and will issue written Findings of Fact.

Robert Hawley - Yes
Joe Velleman - Yes
DJ Tavernier - No
Molly Hannon - Yes

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

4. The petition of ROSS MICHAEL C AND KIMBERLY K seeking the following variance(s): 1) From Section 154.070 (C)(d)(1)(a) to allow a 6' privacy fence in the front yard of a corner lot when 3' is permitted, property located at 54981 BUCKEYE RD, Penn Township. Zoned R: Single Family District (County).

(Audio Position: 0:40:22.3)

Mae Kratzer: For this petition they are seeking a 6' privacy fence between their home and a non-access easement along Edison and Buckeye. This is a corner lot the property is in an area where similar fences have been constructed and therefore the proposed fence is in character with area. It will not adversely impact property values the proposed 6' fence does not interfere with the clear site area or rights of way.

This is the proposed fence up to the property line they are going to have to maximize the backyard. This is the clear site area right-of-way the subject property. Staff does recommend approval. Looking south across Edison you can see a similar fence where the fence is in the front yard. Looking north on Buckeye, looking south on Buckeye the neighboring property has done a similar style fence on their backyard.

The state criteria, the approval will not be injurious to the public health, safety, morals, and general welfare of the community. The proposed 6' privacy fence does not hinder the clear site area requirements.

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 proposed 6' privacy fence is in character with the adjacent properties to the immediate south and east they each have 6' privacy fence within the area between their home. And none access or front yard. Other homes in the area have very similar style of fences.

The strict application of the terms of this chapter would result in practical difficulties in the use of the property. Due to the configuration of this corner lot and the position of the single-family residence the proposed 6' privacy fence is limited with placement between within the line of the homes. They can't go out as far as they would like.

Joe Velleman: This representative photograph where they placed the fence on there. Is that exactly where the fence is going to be?

Mae Kratzer: The layers on GIS and where they put it they are responsible for keeping it on their property, yes.

Joe Velleman: They listed it as 37' across. We had this before where we were indifferent where this fence was going to fall. We know it is 37' to the south of the house we know it can't go any further than that. Looks like they are falling right on the property line if they met the Ordinance could the fence be closer to the road?

Mae Kratzer: To me the Ordinance they would have to have the fence in line with the green line (referring to the slide) that is along the house that is where the fence would go.

Abby Wiles: Not in front yard or the buildable area of the lot between the front lot line and the property line.

Joe Velleman: Then my question is could they have built a fence closer to the road than what they are asking for without a variance?

Mae Kratzer: No.

Joe Velleman: We don't know what the dimension is from where that fence is located to the edge of the road but in Staff's opinion there is enough line of sight available to stop at Buckeye and Edison.

Mae Kratzer: It is out of the clear sight area for that property. It doesn't interfere with traffic.

Joe Velleman: There are two trees notes on the plan but no trees on the site.

PETITIONER

(Audio position: 0:45:08.5)

Kimberly Ross, 54981 Buckeye Road, Osceola, IN: As you can see and what we explained as far as it being a safety issue for our children. It is a very highly traveled road on Edison and as well on Buckeye even though Buckeye is considered not it is more a tertiary road than secondary road but they both are highly traveled. We have a lot of other utility vehicles that end up parking on the side on Buckeye.

As far as the 6' fence coming from the front of the house it is more privacy. We definitely have very limited privacy right now. As far as the light of sight, I'm very conscientious about that I am a school bus driver for Penn Harris Madison. There are a couple of other drivers one on Buckeye and one on Cedar Trail we all agree as bus drivers it would not impact the line of sight. We are very conscientious not just from the bus perspective but if we are in our own personal vehicles. We feel ourselves (Mike and I) that having this out would be very beneficial for our family. As you can see on the drawings although the trees are not as highly visible there if we did go off the back of the house like it was presented it was a previous contractor that we had difficulty with the permitting. We have since switched contractors but if it were to come off the back of the house it would be cutting through trees, landscaping it would be keeping outside of our landscape that we want in for extra protection. Right about where that second tree is there is a 35-mph sign and that was hit 1 ½ - 2 years ago. It flew pretty far and if we are there throwing a ball doing frisbees it very well could be an issue for safety. It was permitted before the 32' that would through the drainage field as well as our swing set would not be full encompassed it would be going right through it. As far as the distance it was questioned as far as to the road it is approximately 30' from where we are requesting. I know it is considered two frontages on this property because of it being a corner lot. Even though the privacy fence is coming from front that line of sight is still widely available for vehicular travel.

DJ Tavernier: You are not actually enclosing your entire property?

Kimberly Ross: No. Eventually we would like to do another fence we have animals and want to protect them too. We want the blocking for the privacy.

Robert Hawley: How long have you lived there?

Kimberly Ross: Since 2005 (18 years).

Robert Hawley: I'm surprised you didn't do this before.

Kimberly Ross: Financially. We are preparing for the future as well and this is something we fill would be beneficial for our family.

Joe Velleman: Do you have a style or type of fence you are envisioning for this?

Kimberly Ross: The dog ear wood privacy fence that is treated and aesthetically pleasing to the property.

Robert Hawley: You are ready to move on it if it is approved, right?

Kimberly Ross: We have a new contractor seems to be more available and knowledge wise that we are pleased to go with as soon as the schedule allows in the spring.

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:

(Audio position: 0:50:46.3)

Robert Hawley: Based on safety, noise I would like to make a motion to approve this petition as requested.

Upon a motion by Robert Hawley, being seconded by Sidney Shafer and unanimously carried 7-0, a petition by ROSS MICHAEL C AND KIMBERLY K seeking the following variances: 1) From Section 154.070 (C)(d)(1)(a) to allow a 6' privacy fence in the front yard of a corner lot when 3' is permitted was approved as presented, and will issue written Findings of Fact.

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

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

- 5. The petition of EDISON MAX D AND REBECCA E seeking the following variance(s):
1) From Section 154.092 (A) to allow a lot area of 3.4 acres where a minimum of 20 acres is required for a lot in a proposed 1-lot and 1- outlot subdivision, property located at 63185 REDWOOD RD, Greene Township. Zoned A: Agricultural District (County).**

(Audio Position: 0:52:20.7)

Shawn Klein: The petitioner would like to split off 3.4 acres with the house and outbuildings towards the front of the parcel. The remaining 11+ acres of cultivated land would be joined to the property to the south and to the west which is owned by the same property owner. That would be made into an unbuildable outlot. Staff recommends approval of the variance on the condition that this acreage is joined with other acreage in the outlot creating that 63+ acre outlot. Which is how it is proposed, we just don't want to end up in a situation where the front is split off then we have a parcel with no frontage and just 11 acres of cultivated land. This is the existing house, and you can kind of see some of the outbuildings.

Turning to the state law criteria, Staff finds that the approval will not be injurious to the public health, safety, morals, and general welfare of the community. This variance would not allow for

an additional residential use in the A: Agricultural District beyond the existing house. The 63-acre outlot that is being formed will not have the frontage to convert it into a buildable lot without a future variance.

We find that the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The property will continue to be used as it is now with that residential portion at the street and the tilled acreage will continue to be cultivated at least until the near future which will be assured by being placed in an unbuildable outlot.

The strict application of the terms of this chapter would deny the petitioner the ability to consolidate the 63 acres of cultivated land into one parcel which potentially increases its future value and viability.

PETITIONER

Terry Lang, Wightman, 715 S. Michigan Street, South Bend, IN: I would like to welcome Mae to the Staff she has always been a pleasant one to work with at the Elkhart planning office, so thank you for joining the Staff here.

The petition before you is Mr. Edison passed away last year and Mrs. Edison is in the process of doing some estate planning and wants to be able to down size in the future. Keep the agricultural for cash income so she is very much in favor of creating an outlot to preserve that agricultural use of the property. When she decides it is time to move from the large farmhouse it has already been split off for that. We are doing the split to protect the agricultural property as best we can. That is the split before you and the variances that we are asking for.

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.

Joe Velleman: Mr. Chairman I see this as a great use of this lot to be able to carve it out of useable tillable land and keep the home where it is at. I appreciate Mr. Lang at keeping the 10' so we don't have to have a back variance between that last silo as well to. I make a recommendation to approve the variance as requested with the condition as the rest of the parcel is an outlot.

Donny Ritsema: I will second that.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and unanimously carried 7-0, a petition by EDISON MAX D AND REBECCA E seeking the following variances: 1) From Section 154.092 (A) to allow a lot area of 3.4 acres where a minimum of 20 acres is required for a lot in a proposed 1-lot and 1- outlot subdivision was approved as presented, and will issue written Findings of Fact.

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

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

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact

(Audio position: 0:57:48.8)

A. Approval of the Findings of Fact for January 11, 2023

Upon a motion by Robert Hawley, being seconded by Donny Ritsema and carried 7-0, the Finding of Fact for January 11, 2023, of ABZA meeting were approved.

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

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

2. Minutes

(Audio position: 0:58:41.6)

Upon a motion by Joe Velleman, being seconded by Robert Hawley and carried 7-0, the January 11, 2023, ABZA meeting minutes were approved.

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

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

3. Other Business

None

Brandie Ecker: There is no other business so the training will be the next item on the agenda. Technically speaking in orientation for public officials on their roles and responsibilities is not technically a meeting. It is specifically excluded from the definition of meeting for the purposes

of the “open door law”. Theoretically if you want you can technically adjourn the meeting and then do the training. I don’t see a purpose to it since everyone has left the room and the members of the public did not stay and you will not gain anything and no one on Zoom.

DJ Tavernier: Then everything we say is recorded and our minutes continue on, correct?

Brandie Ecker: This is true.

Abby Wiles: Shelley and Lance can we end the meeting and then it will be a different meeting and restart it?

Brandie Ecker: No longer a meeting a gathering of different people.

Shelley Marker: Yes, we can. I will end the Zoom session after adjournment and restart another one for the training.

Lance Roush: Yes. I am fine with that.

4. Adjournment


(Audio position: 1:00:27.4)

Upon a motion by Donny Ritsema, being seconded by Lance Roush and carried 7-0, the ABZA meeting was adjourned at 2:31 p.m.

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

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

RESPECTFULLY SUBMITTED,



DJ TAVERNIER,
Chairman of the Board

ATTEST:



ABBY WILES,
Secretary of the Board