

Wabash County Plan Commission

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Wabash County Board of Zoning Appeals

Board Members: Dan Dale, Patty Lengel, Mark Milam, Joe Vogel, Jerry Younce

Staff: Mark Frantz, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Meeting Minutes of Tuesday, February 27, 2024

Roll call was taken with the following present:

Board Members: Patty Lengel, Mark Milam, Joe Vogel

Staff: Mark Frantz, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Absent: Dan Dale, Jerry Younce

Others present: Nicky Burnsworth, Bill Burnsworth, Brittany Estep, Kory Estep, Rodney Emerick, Heather Emerick, Rhonda Shea, Rana Poe, Tony Heiser, Sharon Petro, Susan White, David Terflinger, Cory Brainard, Kevin Brainard, Kraig Musselman, Dan Metzger, Latheda Metzger, Suzanne Peebles, Dave Ripplinger, Cheryl Ross, Cris Renn

Speaking but not signed in: Julie Shepherd

The Wabash County Board of Zoning Appeals met on Tuesday, February 27, 2024, in the Commissioners Meeting Room of the Wabash County Courthouse. Board Chairman, Mark Milam called the meeting to order at 7:00 pm. Mr. Milam asked if there were any additions or corrections to the minutes of the February 6, 2024 meeting. There being none, Mr. Milam asked for a motion to approve minutes as written. Motion by Mr. Vogel, second by Ms. Lengel. Board proceeded to roll call vote; motion carried 3-0.

Mr. Milam explained to those present for hearings that with only 3 of 5 board members present, any motions made would require 3 votes in favor to pass.

Petition #1, Rodney and Heather Emerick, requesting to modify conditions and restrictions from Special Exception #9 in 2011 was first on the agenda. Mr. Emerick shared with the board that they reside at 12158 N State Road 15, on 5.73 acres. In 2011 they came before the board requesting a special exception to place a mobile home on the property. At that time the plan presented included plans to eventually build a new home. The special exception was granted with the following restrictions:

1. Mobile home is not to become a rental.
2. If the property is sold, the mobile home must be removed before selling.
3. Mobile home must be removed from the property when accessory use ceases.

Mr. Emerick explained that their situation and plans have changed. They have not built the home they originally planned and would now like to sell the property with the mobile home on it. Mr. & Mrs. Emerick provided board members with pictures of the 1997 / 1998 mobile home, property, and information about improvements (including two pole barns) they have made to the property. Board members discussed the property, stating they felt Mr. & Mrs. Emerick had maintained the property nicely and that the mobile home would make a nice place for someone who would be interested in building a new home on the parcel. There was concern among the board that the potential new owner may not maintain the mobile home as well and questions about the process the new owner would need to follow. Mr. Frantz explained to board members and the property owners that if the board votes to modify the restrictions and allow the sale of the property with the mobile home on it, the new buyer would need to apply for a Special Exception to keep the mobile home on the property; however, if the board denies the request to modify restrictions the property could not be sold without removing the mobile home. Mr. Emerick asked if there would be a chance the special exception requested by the new owner would be

denied. Mr. Milam explained that the board could not say for sure, they would want to hear what the new owner's intention was with the property; however, Mr. Milam added he felt like they had a nice, well kept property. Mr. Frantz added that Mr. & Mrs. Emerick could pursue a joint Special Exception application with the potential new owners, with the purchase agreement being contingent on the Special Exception approval. Mrs. Emerick asked if it would be their responsibility to notify the new owner of the Special Exception requirement. Mr. Frantz explained that the board could require disclosure to purchaser that a Special Exception is required. Mr. Campbell discussed restrictions with the board. It was determined the following restrictions would be placed:

1. Mobile home is not to become a rental (as stated in the original Special Exception)
2. If property is sold the mobile home does not have to be removed, but the new owner must apply for Special Exception (modified from the original Special Exception)
3. Mobile home must be removed from the property when accessory use ceases (as stated in the original Special Exception)

Mr. & Mrs. Emerick agreed to the new restrictions. Mr. Milam asked if there were any further questions or concerns from board members or others in attendance. There being none, he asked for a motion on Petition #1.

Mr. Vogel made a motion to modify restriction #2 to allow the sale of the property with the mobile home on the property, with the requirement that the new owner would have to apply for a Special Exception to keep the mobile home on the property, and with restriction #1 and #3 remaining from the original Special Exception. Second by Ms. Lengel. The board proceeded to roll call vote; motion passed unanimously.

Mr. Milam stated next on the agenda was Variance #3, David Ripplinger, requesting a variance from the development standards to place a residential structure that is less than the required minimum square footage in a R1 zone. Mr. Campbell shared with the board that Mr. Ripplinger was applying for the variance for his property located at 35 W. Tanner Street in Servia. The parcel previously had a residence on it; it was razed due to fire. Mr. Ripplinger is planning to sell the parcel to Julie Shepherd; however, the sale is contingent on the variance approval. Ms. Shepherd would like to place a 352 square foot home on the parcel. The home would have a 5/12 roof pitch and would be set on a foundation, not movable like a travel trailer. Ms. Shepherd has received approval from the Wabash County Health Department for a septic system on the parcel. Mr. Campbell noted that a neighbor had contacted the office with questions, but after reviewing the plan had no concerns. Ms. Shepherd addressed questions from board members, indicating that the home would be 1 bedroom, that she would be the only resident, and that the placement of the home would be similar to the placement of the previous residence. Mr. Campbell shared with board members that there is an urban drain the alley to the west of the parcel. The drain would have 75' setback per the drainage board. Per the plan submitted by Ms. Shepherd, Mr. Campbell does not feel there would be an issue with the drain setback. Ms. Shepherd inquired if she would have space to eventually add a 24 x 32 garage. Mr. Campbell reviewed the parcel on GIS with her, explaining that it could fit depending on placement. Mr. Milam asked if there were any further questions or concerns from board members or others present. There being none, he asked for a motion. Ms. Lengel made a motion to approve Variance #3 as presented; second by Mr. Vogel. Roll call vote was taken; motion passed unanimously. Ms. Shepherd was reminded that she would need to get a building permit for the residence after the property is transferred into her name.

Special Exception #1, Cory Brainard, request to construct a pond, lake, or earthen structure with a water surface area greater than 400 square feet was next on the agenda. Mr. Campbell reminded board members that Mr. Brainard's Special Exception hearing was continued from the February 6th meeting because it was discovered he would need a variance. His application now includes Variance #4, a variance from the development standards to outlet a pond overflow directly into a roadside ditch. Mr. Campbell stated the pond had received a favorable recommendation from the Drainage Board and Plan Commission. He added that the County Highway Superintendent, Cole Wyatt, had reviewed the plan and had no concerns. Per the ordinance, a deterrent barrier would be required because the pond will be closer than 150' to the roadway. Mr. Campbell noted he had received written correspondence from Tom Kisner, property owner to the north, with objection to the pond. Mr. Kisner indicated he had concerns about run-off and tiles that were in place because he felt Mr. Brainard's leach field had attributed to a wet area in the field. Mr. Nathan Vrooman, cash renter of Mr. Kisner's property, discussed the plan

with Mr. Campbell in the office. Mr. Vrooman indicated he did not personally have an issue with the pond, but would stand with Mr. Kisner's concerns as the renter of the property. Mr. Campbell explained that after receiving Mr. Kisner's letter he asked the drainage board and county highway to review the property again. It was determined the water would not flow to the north. Mr. Brainard stated his leach field is located southwest of his home; indicating it would not be contributing to the wet location in the field to the north. Mr. Campbell confirmed that, in reviewing previous aerial images of the property, it appears as though a wet spot was in the field prior to Mr. Brainard's home being constructed. Mr. Brainard's property is in the Busch subdivision at 971 N. 150 W. As a part of the sub division, there is a tile running through Mr. Brainard's property; however, only the perimeter drain for the septic is allowed to tie into it, it could not be used for the pond. Mr. Milam asked if there were any further questions or concerns from board members or those present. Dan and Letheda Metzger, adjoining property owners, asked Mr. Brainard and Mr. Kevin Brainard (contractor for the pond) if they had considered using the tile in their field. Mr. Kevin Brainard discussed tile locations and options with Mr. & Mrs. Metzger. Brainard's and Metzger's agreed to work on an option to use an existing tile. Mr. Campbell asked Brainard's to notify the Plan Commission Office if they opt to use the side ditch or a tile; indicating the board could go ahead with approval of the variance at tonight's meeting so the side ditch could be used if needed. Mr. Vogel made a motion to approve Variance #4 to allow a pond outlet to overflow directly into roadside ditch; second by Ms. Lengel. Roll call vote was taken; motion passed unanimously. Ms. Lengel made a motion to approve Special Exception #1 for the construction of a pond as presented; second by Mr. Vogel. Roll call vote was taken; motion passed unanimously.

Mr. Milam stated next on the agenda would be Variance #5, Rana Poe, requesting multiple variances from the development standards to place an accessory structure forward of the front of a residential structure in an RL2 zone, from the roadway setback for an accessory structure, and for a fence taller than 4 feet forward of the front of the primary structure in Pleasant Township. Mr. Campbell informed the board Ms. Poe's property is located on a corner lot, with an address of 32 N Lakeview Drive at Sandy Beach Estates. The property was reviewed with board members at the February 6, 2024 meeting when neighbors brought concerns about the condition of the property to the board. Mr. Campbell informed the board since that meeting, Ms. Poe has removed all chickens (including roosters), ducks, and rabbits from the property and has gotten rid of one chicken coop. Ms. Poe has applied for these variances due to:

- A garage being placed on the property, without a permit, 31 feet from road on one side & 41 feet from road on the other side. The required roadway setback is 35 feet.
- The garage being placed forward of the front of the residential structure
- A 20' x 20' dog run with fencing 6 feet high placed in front of the residence, where the maximum allowed fence height per ordinance is 4 feet

Mr. Campbell reviewed the property on GIS and photos he had taken with board members. Board members discussed with Mr. Mark Frantz if structures under 100 square feet, the minimum permissible size, would still be considered accessory structures. After reviewing the definition of accessory structure in the ordinance it was determined structures under 100 square feet would still be considered accessory structures. Mr. Campbell then read emails received in opposition of the variances. In response to the opposition, Ms. Rhonda Shea stated that all the buildings were brand new when they were brought in and that plans are to remove the pallet structure and the other chicken coop. When asked for a time frame for removal, Ms. Poe indicated within 30 days. Ms. Lengel asked if everything except the dog run and garage could be removed from the property within 30 days; Ms. Poe indicated yes. Ms. Shea and Ms. Susan White indicated manure is not being burnt on the property, rather it is being placed on the garden. Ms. Shea stated that Ms. Poe had given up her job to homestead and feels Ms. Poe is doing a good job keeping things clean. They stated that when the fire department was called Ms. Poe was burning pizza boxes. Ms. White stated that she lives at the residence with Ms. Poe. She feels this is a personal attack because there has never been a smell issue; however, she feels there is a smell issue from across the street due to a large number of cats. Ms. Shea stated Ms. Poe had talked with the neighbor who has complained as well as the HOA at a meeting in July. At that point the large coop had already been placed and there were no concerns mentioned. Board members reiterated that according to the Sandy Beach covenants and the Wabash County Zoning Ordinance livestock is not permitted in that zone. Mr. Dave Terflinger presented pictures of the property

to board members. Mr. Terflinger has concerns about the survey compared to the GIS property lines; he feels the greenhouse on the property may be too close to the property line and that a shed may have been placed in the Duke Energy easement. Mr. Terflinger would like the board to consider asking Ms. Poe to move the garage and dog kennel to the other lot she owns, that adjoins this property at the southwest side. Mr. Campbell explained that to move structures on that lot would require Ms. Poe to apply for another variance, as an accessory structure is not allowed on a parcel before the residential structure in this zone. Mr. Terflinger indicated he understands the need for the shed, but would like to see the aesthetics of the neighborhood maintained. Mr. Frantz reminded those in attendance that the HOA/Lake Association should be able to enforce covenants and that properties would need to conform to the covenants and the zoning ordinance. Mr. Ken Combs, a neighbor and association board member, asked Ms. Poe if she had considered shifting the garage building so it would line up with the residence. Ms. Poe responded that the expense is prohibitive; when the building was originally set she was unaware there would be any issues with its location. Mr. Campbell reviewed the line-of-sight requirements on GIS and it was determined the structure does not impede vision at the intersection. After reviewing the property and structures the board asked Ms. Poe if she would be agreeable to the following:

- Greenhouse to be removed within 30 days
- Dog house to be removed within 30 days
- Chicken Coop to be removed within 30 days
- Sloped panel structure to be removed within 30 days
- Dog run to be moved to the west side of the trailer (where the garden had formerly been), not to be forward of the front of the residence, within 30 days
- Garage structure could remain at current location

Ms. Poe indicated she would accept those terms. Mr. Terflinger stated if the other structures are moved out and the dog run moved back, he would be fine with the garage remaining at its current location. Mr. Milam asked if there were any further questions or concerns from board members or others in attendance. There being none he asked for a motion. Ms. Lengel made a motion to deny the request for a fence taller than 4 feet forward of the front of a primary structure; second by Mr. Vogel. The board proceeded to roll call vote; motion passed unanimously. Ms. Lengel then made a motion to approve placement of the garage accessory structure forward of the front of the residence; second by Mr. Vogel. Roll call vote was taken, motion passed 3-0. Ms. Lengel made a motion to approve the roadway setback variance as presented for the garage structure; second by Mr. Vogel. The board proceeded to roll call vote, motion passed 3-0. Mr. Campbell reminded Ms. Poe she would need to get a permit for the garage structure from the Plan Commission Office.

Variance #6, Kory and Brittany Estep, requesting a variance from the roadway setback in Noble Township was next on the agenda. Mr. Campbell explained that Mr. & Mrs. Estep would like to build an addition to their garage on the property located at 1682 E 250 S. The addition would be 24'x30', located about 65 feet from the center of 250 S. As a primary road, the setback requirement from 250 S is 95 feet; Estep's are requesting a variance of 30 feet from the roadway setback. One neighbor asked questions about the plan, thinking the addition may be going on a structure located at the rear of Estep's property that is near or possibly across the property line. When the plan was reviewed, they indicated they had no concerns with addition to the garage structure at the front of the property. Mr. Milam asked if there were any questions or concerns from board members or those in attendance. There being none, he asked for a motion. Mr. Vogel made a motion to approve Variance #6, to allow a structure closer to roadway setbacks as presented; seconded by Ms. Lengel. Board proceeded to roll call vote; motion passed 3-0. Mr. Campbell reminded Mr. & Mrs. Estep to get a building permit for the project.

Mr. Milam stated next on the agenda would be Variance #7, Sharon Petro, requesting a variance from the development standards to have an accessory structure closer to the minimum side yard setback than required by the ordinance in Liberty Township. Mr. Campbell informed the board Ms. Petro's property is located at 201-205 W. Kendall Street, Lafontaine. He indicated Ms. Petro's plan is to renovate the barn located at 205 W Kendall into a home. The town has verified utilities would be available and that they have no concerns with the plan. Bunnell Surveying completed a survey of the property, indicating splitting 65' off the west end of the property. The variance is needed due to the distance from the proposed new property line to Ms. Petro's garage at 201 W.

Kendall St. The barn would become the primary structure on the new parcel, zoned as General Business. Two neighbors have contacted the Plan Commission office with questions; after reviewing the plans they had no concerns. Mr. Tony Heiser, the west property adjoiner, had questions regarding the property line. Mr. Heiser attended the meeting and stated that after hearing the plan and seeing the aerial images he has no concerns, that he would support the renovation of the barn, and has rechecked the property line and agrees with it as well. Mr. Milam asked if Ms. Petro was intending to add any buildings; she indicated no, the only addition may eventually be a porch to the barn structure. Mr. Campbell informed Ms. Petro she would need to bring plans for the porch to the Plan Commission Office for review and permitting before construction. Mr. Milam asked if there were any further questions or concerns from board members or those in attendance. There being none, he asked for a motion on Variance #7. Mr. Vogel made a motion to approve Variance #7 as presented; second by Ms. Lengel. Board proceeded to roll call vote; motion passed 3-0.

Mr. Campbell shared a complaint update:

- 57 open complaints
- 43 complaints rolled over from 2023
- 6 complaints resolved
- 20 new complaints worked in 2024
- Mr. Curt Arnett's Unsafe Premise Order update – Mr. Arnett's wife passed away a couple weeks ago, have been in contact with Mr. Arnett and both of his sons, planned to give Arnett's another 30 days to provide an update.

Mr. Milam asked if there was any other business to come before the board.

- Mr. Campbell shared a news report about FountainVue Mobile Home Park with board members. The town of Lafontaine has given notice that water may be shut off due to on-going issues. There is to be a Health Board Meeting Thursday evening; Mr. Campbell indicated he is not sure what it may look like if the Wabash County Health Department condemns the property, but at this time the town of Lafontaine and the Health Board are addressing the issues.
- Mr. Kraig Musselman shared with the board that Dollar General has expressed an interest in building a store front on a piece of his property. The property is zoned A2 currently, and is located along State Road 16, near Mr. Musselman's storage building rentals. Mr. Musselman stated the town seems to be in favor of this location. If they proceed, he will file for the necessary Special Exception, Variance, or Rezone. Mr. Campbell reviewed the parcel on GIS with the board; Mr. Vogel stated he felt this location was a much better option than the State Road 15 and State Road 16 location that was recently presented.

There being no other business, Mr. Milam asked for a motion to adjourn. Motion to adjourn was made by Ms. Lengel; second by Mr. Vogel. Vote taken; motion passed unanimously. Meeting adjourned at 9:50 p.m.

Amanda Lyons
Secretary, Board of Zoning Appeals

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