

BZA MEETING

August 20, 2020

The White County Area Board of Zoning Appeals met Thursday, August 20, 2020, at 6:00 p.m. in the Commissioners Meeting Room, Second Floor, White County Government Center, Monticello, Indiana.

Present: Dennis Sterrett, Abbey Gross, Stan Minnick, Randy Conwell and Jeff Guingrich

Also attending were Executive Director Joseph W. Rogers, Board Secretary Erika Martinez, and Area Plan Attorney Abigail Diener.

Visitors attending were: Betsy Salyer, John Ahrens, David Hill, Seth Wiseley, Mike Smolek

The meeting was called to order by Chair Abbey Gross at 6:00 p.m.

Minutes:

There was a motion by Stan Minnick and a second by Dennis Sterrett to approve the meeting minutes and finding of facts dated July 16, 2020 as written. Motion carried unanimously.

Note: At the introduction of each case hearing, Director Rogers entered all documents provided to the Board in their pre-meeting packets, the Staff Report and all other file documents into the official record of the meeting. All documents entered into the record along with all hearing testimony and completed ballots will be used in establishing the Findings of Fact for each hearing.

Variance #3017

Director Rogers read the call log into the record. The calls were from Lester Markle, Phil Brookbank and John Ahrens. Mr. Markle is interested in purchasing property in the area of the variance request for a future dwelling. Mr. Markle saw the sign and called in to find out what the variance request pertained to. Mr. Brookbank resides at 6688 E Riverview Rd and wanted clarification on the 8' setback vs 20' required. After

explanation of the request, Mr. Brookbank stated that he has to park along the road of his property and is concerned over any structure blocking the view along Riverview Rd. Mr. Brookbank is neither for nor against the request. Mr. Ahrens called to find out additional information on the variance request. Mr. Ahrens sent in photos to be shared with the Board.

Director Rogers stated the applicants are requesting an 8' rear (roadside) setback vs 20' required to construct a new dwelling. The Staff found no history of building permits, variance requests or rezone requests for the subject property. The A-1 zoning is the base line zoning that was established at the time the zoning ordinance came into being in 1972. The Staff found one variance located near the subject site. Variance # 2292 for 6658 E Riverview Rd. for a 3' roadside setback to build a room addition to attach the existing garage to the existing dwelling and a 5' setback. Variance # 2292 was granted on April 15, 2004.

Director Rogers stated that the site is zoned A-1, but is subject to Footnote 4 of Appendix B which stated that "Any lot determined to be in a lake area which has a property line abutting a road shall require the applicable property line meet a 20' minimum setback." Therefore, setbacks for the proposed structure are 30' front (waterside), 20' rear (roadside) and 4' side. The subject property is located along Riverview Rd, which is a paved road just under 20' wide and subject to a 30-mph speed limit. The parcel of land is trapezoid in shape and is approximately 62' wide and 160' in length and 8,233 sq. ft. The current zoning ordinance standards for an A-1 district were created with lots designed with a minimum of 150' in width and 43,560 sq. ft.; neither of which this site meets. In the opinion of the Staff, the topography of the land is the driving force of the variance request. It is not uncommon for small, grandfathered lots to be confronted with practical difficulties for development.

Director Rogers then displayed for the Board and the audience a series of photos he had taken at the site showing both the area of the site as well as the surrounding area to the property.

David Hill, property owner, stepped to the podium to represent the current request. Mr. Hill stated that the top third of the site is fairly manageable, it has a flat part that is 20 to 30 feet off the road, the middle third of the property is where the property becomes really steep. Mr. Hill stated that he is trying to avoid pushing the house back beyond the middle third of the property because an excavator will not be able to get down the steep slope. Mr. Hill stated that the footers for the back of the proposed dwelling as it has been proposed, will have to be hand dug because of the slope.

Chair Abbey Gross asked if there was anyone attending that wished to speak in support of the request; no one came forward.

Chair Abbey Gross asked if there was anyone attending that wished to speak against the request. John Ahrens was present at the meeting to express concerns.

John Ahrens stated that if the subject site is granted an 8' variance all the other lots are going to request an 8' setback off Riverview Rd. Mr. Ahrens is also concerned that the proposed construction will block his view, when he decides to build, if the Board

approves the 8' setback. Mr. Ahrens expressed that Mr. Hills property will have a 22' reduction to the setback compared to every other house in the county. Mr. Ahrens also stated that his concern is the area between the proposed dwelling and road will become a gravel pit.

David Hill, property owner, stepped to the podium to respond to Mr. Ahrens concerns. Mr. Hill stated that as shown on the site plan the proposed garage will be 19.63' from the edge of pavement and plenty of room for a driveway, landscaping and a yard. Mr. Hill also stated that the northeast corner of his lot gets very steep really fast and that's why, in the site plan that was submitted, Mr. Hill is setting the house as close as he can to the west property line and away from Mr. Ahrens property.

Being there were no further questions and no one wished to speak further on the matter, Attorney Martin provided each Board Member with a written ballot.

After tabulating the ballots, Chair Abbey Gross read the following results into the record:

Variance #3017 – 5 votes cast; 5 to grant; 0 to deny;

Petition GRANTED

Variance # 3007

Director Rogers stepped to the podium and gave a brief timeline of the variance request. Director Rogers stated that petition # 3007 was scheduled for the March 19th, 2020 meeting. Due to covid-19 restrictions on gatherings, various BZA meetings were cancelled, once the restrictions were lifted the applicant requested on two occasions a continuance in order to gather documents for the meeting.

Director Rogers gave the Board a brief history of the subject site. Five building permits were issued for the subject site that were all related to the recreational activities at the ball park. Those five-building permits were processed accordingly. Director Rogers stated the site plan that was approved for the original development was approved on December 12th, 2013 and building permit # 20140 was issued on January 2nd, 2014. At some point after the CO was issued for operation of the site, on May 26th, 2019, the office received a complaint pertaining to the site not providing proper ADA accessibility. This complaint initiated a formal enforcement action and assigned violation file # 304. Director Rogers stated that on May 26th, 2019 he conducted an inspection of the site and confirmed the site development had failed to incorporate the required ADA elements. As a result of the inspection, a courtesy letter was issued to the property owner on May 27th, 2019.

Director Rogers stated that a responsibility of the Staff is to require compliance to ADA parking and access standards. These are federal standards which have been adopted into local code. ADA standards are minimum standards, local authorities have the ability to require beyond the minimum standards. The office does have requirements that extend beyond the federal standards. The federal requirements for ADA surfaces utilized for parking spaces, access aisles and access routes are that the surface must be "firm, stable and slip resistant." Based on the inspection, the surface does not meet

those standard. The site plan approved by the office indicated that ADA accessible route would be constructed with concrete and the parking lot would be pavement installed at the same grade as the sidewalk.

Director Rogers then displayed for the Board and the audience a series of photos he had taken at the site.

Director Rogers stated that the applicant is requesting the Board approve the current surface vs a firm, stable and slip resistant surface.

Mike Smolek, applicant, stepped to the podium to represent the request. Mr. Smolek stated that when the plans were submitted, the third baseball field had not been constructed. When the third field was constructed, in the north east corner of the lot, the foul balls from that field were breaking the windows of people parked in the handicap area. Mr. Smolek stated that after those incidents, the handicap parking was moved further west. Mr. Smolek stated that the current surface is limestone that is packed down and does not restrict wheelchair use. Concerning the area around the restrooms, concrete ramps and sidewalks will be placed for wheelchair accessibility. The ramps will be placed at both ends of the concession building and the sidewalk will wrap around the building.

Director Rogers stated that the issue isn't the location of the ADA parking but the surface of the parking area and access aisles to the main concession building.

There was a general discussion between Director Rogers and Mike Smolek about ADA requirements. Director Rogers stated that the only area that needs to meet the ADA surface requirements are the ADA parking spaces, access aisles and access routes, the rest of the parking lot does not need to change.

Director Rogers informed the Board and Mr. Smolek that he has never done an inspection to determine if the facilities, as completed, meet all ADA requirements. The office received a complaint on the parking spaces not being ADA compliant and there not being an ADA access route. Director Rogers stated that additional ADA requirements will probably need to be met for the ball park, but the complaint issues for the violation file pertain to the parking spaces and access route.

Chair Abbey Gross asked if there was anyone attending that wished to speak in support of the request, no one came forward.

Chair Abbey Gross asked if there was anyone attending that wished to speak against the request, no one came forward.

Attorney Martin asked Director Roger to clarify the request that the Board will be voting on. Director Rogers stated that the request is for the applicant to be able to use black top grindings vs asphalt pavement for the ADA parking spaces, access aisles and access routes only. The Board will have to determined, if the request is denied, the timeline that will be given to the applicant to get a site plan submitted and to complete the construction necessary to get the site compliant.

Being there were no further question and no one wished to speak further on the matter, Attorney Martin provided each Board Member with a written ballot.

After tabulating the ballots, Chair Abbey Gross read the following results into the record:

Variance #3007 – 5 votes cast; 2 to grant; 3 to deny;

Petition DENIED

A general discussion pursued between the Board, Director Rogers and Mr. Smolek about a timeline to submit a site plan to the Staff and bring the site into compliance. Mr. Smolek indicated he was having difficulty getting the firm he is using to draw up the site plan to respond. As a result, Director Rogers suggested to the Board that they continue the timeline question to the next meeting to allow Mr. Smolek time to coordinate with his chosen firm on a site plan timeline. In the meantime, Director Rogers will also follow up with the firm to assess their willingness to attend to this matter in a timely fashion. There was a motion by Jeff Guingrich and a second by Dennis Sterrett to continue the discussion about setting a timeline for Mr. Smolek's compliance plan to the next BZA meeting. Motion carried unanimously.

Variance #3019

Director Rogers stated that in the Zoning Ordinance, solar applications are categorized into solar energy systems and solar farms. Solar farms would be located on 500 to 1,000-acre parcels to generate electricity with the sole purpose of selling the electricity to the grid. Solar energy systems are for private use, so this petition is for a solar energy system. When the solar energy system ordinance was written, it was written with residential properties in mind. Typically, accessory structures are not allowed in front yards and are restricted to the side or rear yards. Solar energy systems are considered an accessory structure and therefore restricted to the side or rear yards.

Director Rogers read the analysis portion of the Staff Report to the Board and the audience. Director Rogers stated that the reason accessory structures are not permitted in the front yard is because the office doesn't want 911 addressing to be blocked which would create difficulty for emergency services to locate a dwelling or facility; also, having accessory structures in a front yard could be a detractor from the general character of the area. However, in this case due to the size and configuration of the parcel in question, the Staff sees no negative impact to this site or the surrounding area should this request be granted.

Director Rogers then displayed for the Board and the audience a series of photos he had taken at the site showing both the area of the site as well as the area surrounding the property.

Betsy Salyer from Solar Energy Systems stepped to the podium to represent the request. Ms. Salyer stated that the proposed location is the best area for the solar array due the area being heavily vegetated.

Dennis Sterrett asked Ms. Salyer what the size of the solar array would be. Ms. Salyer answered that the solar array is 533 sq. ft (41' x 13') and will be enough power for most of Mr. Wiseley utility bill.

Director Roger asked Ms. Salyer that with the proposed location of the array what would be the average amount of sunlight the array would receive in a day. Ms. Salyer answered that the array will average about 4 hours of sunlight a day. Ms. Salyer also stated that the array will have a tilt system so Mr. Wiseley can tilt the array to try and get the most possible sunlight.

Chair Abbey Gross asked if there was anyone attending that wished to speak in support of the request, no one came forward.

Chair Abbey Gross asked if there was anyone attending that wished to speak against the request, no one came forward.

After tabulating the ballots, Chair Abbey Gross read the following results into the record:

Variance #3019 – 5 votes cast; 5 to grant; 0 to deny;

Petition GRANTED

Business

Director Rogers announce to the Board that Erika Martinez has resigned from her position with Area Plan and as Secretary of the Board. The Board will need to accept her resignation as the Secretary of the BZA Board. The Board voted unanimously to accept the resignation of Ms. Martinez.

There being no further business, Dennis Sterrett motioned to adjourn the meeting, with a second from Stan Minnick. Motion was passed and meeting adjourned at 7:25 p.m.

Respectfully submitted,



Joseph W. Rogers, Executive Director
White County Area Plan Commission



Prepared by: Erika Martinez, Secretary

Document Prepared By: White County Area Plan Executive Director Joseph W. Rogers,
"I AFFIRM, UNDER THE PENALTIES FOR PERJURY THAT I HAVE TAKEN
REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS
DOCUMENT, UNLESS REQUIRED BY LAW."