

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

DATE.....January 22, 2020
TIME..... 6:00 P.M.
PLACE..... COUNTY OFFICE BUILDING
20 N. 3RD STREET
LAFAYETTE, IN 47901

MEMBERS PRESENT

Steve Clevenger
Tom Andrew
Gary Schroeder
Frank Donaldson
Carl Griffin
Ed Butz
Jen Dekker

MEMBERS ABSENT

STAFF PRESENT

Ryan O’Gara
Kathy Lind
Chyna Lynch
Zach Williams, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 22nd day of January 2020 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

Attorney Zach Williams called the meeting to order.

I. ELECTION OF OFFICERS

Zach Williams opened the floor for nominations for president.

Tom Andrew nominated Steve Clevenger for President.
Carl Griffin seconded.

Carl Griffin moved that nominations for President be closed.
Gary Schroeder seconded, and the motion carried by unanimous voice vote.

Carl Griffin moved that a unanimous ballot be cast for Steve Clevenger for President.
Gary Schroeder seconded, and the motion carried by unanimous voice vote.

Steve Clevenger was seated as President.

Carl Griffin nominated Gary Schroeder for Vice President.
Gary Schroeder seconded.

Carl Griffin moved that nominations for Vice President be closed.
Gary Schroeder seconded, and the motion carried by unanimous voice vote.

Carl Griffin moved that a unanimous ballot be cast for Gary Schroeder for Vice President.
Gary Schroeder seconded, and the motion carried by unanimous voice vote.

Steve Clevenger requested nominations for Secretary.

Carl Griffin moved that Zach Williams be nominated for Secretary.
Gary Schroeder seconded.

Carl Griffin moved that nominations for Secretary be closed.

Gary Schroeder seconded, and the motion carried by unanimous voice vote.

Carl Griffin moved that a unanimous ballot be cast for Zach Williams for Secretary. Gary Schroeder seconded, and the motion carried by unanimous voice vote.

II. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the December 4, 2019 Board of Zoning Appeals public hearing. Carl Griffin seconded and the minutes were approved by unanimous voice vote.

III. NEW BUSINESS

Ryan O’Gara said **BZA-2030 VITA INVESTMENT HOLDINGS, LLC.** would be continued to the February 26, 2020 meeting due to an error in sign posting. The other two cases are ready to be heard.

Jen Dekker joined the meeting at 6:03 p.m.

IV. PUBLIC HEARING

Gary Schroeder moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Carl Griffin seconded, and the motion carried by voice vote.

Steve Clevenger read the meeting procedures.

BZA-2027 SCOTT JONES:

Petitioner is requesting a special exception to use an existing single-family house as a Transient Guest House (as defined in the ordinance). The proposed hours of operation are 24 hours a day, seven days per week. The R2-zoned property is located at 107 Digby Drive, Lafayette, Fairfield 28 (NW) 23-4. (UZO 3-2) WITH CONDITION.

Gary Schroeder moved to hear and vote on **BZA-2027 SCOTT JONES.** Carl Griffin seconded.

Ryan O’Gara presented the zoning map, site plan, and aerial photos. He said the site is a single-family residence with a single car attached garage. There is a variety of single and two-family residential uses in the vicinity as well as the Fowler House and the Haan Museum. The driveway can easily accommodate the two-car parking requirement. The definition of family applies with the use of the units. Staff acknowledged recent similar petitions in this area which were approved for transient guest rental use. This use meets the required tests. Staff is recommending approval with condition:

Condition

1. An operational permit must be obtained from the City of Lafayette for the Transient Rental House.

Ken Jones, 922 Highland Avenue, Lafayette, IN 47905, representative for petitioner, said he understands why neighbors may have concerns about a transient guest house in the neighborhood. He has lived next to a transient guest home for two years and initially shared the same concerns. During his forty years living in his home, the neighboring home has been owner occupied or rented. There have been more issues with owners than with renters. The fact that the home is rented through Airbnb has not affected the character of the home, neighborhood or his home. Reviews of the home on Airbnb mention how great the neighborhood is. The house in this proposal is a 3-bedroom, 2-bathroom home that sits on a generous lot with a wooded ravine. This is not meant to be a home where 20 people come to stay. The rules of the

house do not allow parties and calls for quiet at 9 p.m. Guests of the home are expected to be aware of the pleasant nature of the neighborhood and to honor it. There is a term within Airbnb to cancel a guest's stay if there is a noise complaint. There is adequate on-site parking. There may be concerns with the Fowler House being a venue that would make this a party house. He has spoken with representatives of the Fowler House and believe that will not be the case. There is a concern of the transient guest house reducing the value of the surrounding properties. This is a rental home; rental homes do not decrease the value of properties.

Steve Clevenger asked if anyone wanted to speak in favor of the petition and no one did. He asked that staff read the letter of opposition.

Ryan O'Gara read a letter of opposition from the following:

David Adam Downey, 1100 Digby Drive, Lafayette, IN 47905

Steve Clevenger said the board would now hear from those in opposition to the case.

David Ponce, 1001 Digby Drive, Lafayette, IN 47905, said he is a partner in a multi-state sports bar franchise company. There are three things wrong with this idea and they speak to the construct of a civilized community. First, if the petitioner wants to be in the hospitality business, there are zones for that. Petitioner can compete with others that pay for real estate in those zones. His company chooses locations in communities like this one. This special exception takes the opportunity and dollars away from those that are operating in the zones for lodging. The idea of a special exception where someone can get into the lodging business without having the resources and funding to compete with other companies is a subversion. Second, anyone can stand up and given anecdotal evidence of their experience with Airbnb. He has stayed in Airbnbs where the owner has complained about other guests. When a transient guest house goes into a neighborhood, all the occupants around it are vested in it with their livelihood. The point of zoning is to keep different uses separate. While a transient guest house may not affect the property value, it will affect the quality of life. The guests staying in the home will not invest in being neighborly like the rest of the neighborhood. Third, in the case that the house rules are not abided by the guest, it will not be the commercial interest that owns the home making sure the guests are compliant; it will be the neighbors. This will take away police officers that need to be doing other things to make sure that cars parked in violation to the ordinance are dealt with. The purpose of zoning is to segregate uses that are supposed to be incompatible. There needs to be commercial lodging, but not like this. It is not fair. Everyone that is on this Board is a keeper of these transactions. They need tell people that want to get into the lodging business to go where it is zoned and not allow people to take advantage of the investment and the value of privately-owned property.

Jessica Holsinger, 1010 Digby Drive, Lafayette, IN 47905, said she is concerned with the safety in this special exception. Her home is positioned where she would experience most of the issues if they were to happen. If people are not careful while driving on Valley Drive, they drive into her yard. There are no sidewalks in this neighborhood so adding people that do not know the area is asking for trouble. Two years ago, a person that was intoxicated after drinking downtown, mistook her home for their short-term rental and broke in. This is not something she wants to happen again. She knows her neighbors well and does not have interest in introducing strangers to the neighborhood. Airbnb has a mutual rating system and it would be the owner's responsibility to vet possible guests. The neighbors would not know who would be staying in this house. Once the request has been granted, there is no going back. It is up to the neighbors to take time out of their day to police this. This is not a risk worth taking.

Dennis Leas, 1103 Digby Drive, Lafayette, IN 47905, thanked the board for opening time for public comment. He introduced himself to Ken Jones. He said he has spoken with all his neighbors and not one has been in favor of this special exception. The special exception is for the property, not for the owner.

The best intentions of the petitioner to maintain the property properly gives no assurance that the next owner would follow the same guidelines. How is a short-term rental for a day or two any different from a hotel? There will be people coming and going frequently and the neighborhood is not interested in having something that operates like a hotel. The staff report mentions the museums and Fowler House as reasons to grant the special exception as they are existing non-residential uses. However, these do not permit overnight visitors and have adequate parking. The visitors of these places are considered assets of the community rather than liabilities like visitors of the transient guest house. The neighborhood is located in an urban forest that is one of a kind in this city. Transient visitors will not give the same respect to the wild life and native plants in the area. The staff report notes that the site can have 3 parked cars; one in the garage and two in the driveway. Yet, when the petitioner and their contractors have been at the property, they have had vehicles parked on the street. If the petitioner does not abide by the parking rules, who is to say the transient guests will? If the special exception is granted, the property could remain vacant for days or weeks at a time. Vacant homes can be problematic. There is a large area in the back with a firepit and seating. With the home being vacant, it could act as a magnet for unauthorized visitors. He gave the Board a signed petition from the neighbors and pictures of the area.

Michael Martin, 1207 Digby Drive, Lafayette, IN 47905, said his home was built in 1950 and he moved there in 1991. He has gotten to know all the neighbors over the years. It is a wonderful place for kids to grow up. He agrees with those have spoken before.

Jennifer Higginbottom, 1001 Digby Drive, Lafayette, IN 47905, said she has lived in the neighborhood for a few months and is very familiar with the home in question as she almost purchased it. The screened in porch could easily have a dozen people in it. The property also includes the two lots behind the home. She is concerned that the firepit cannot be seen from the road. If the home remains vacant, people will be enticed to use the firepit. The neighbors will be forced to police that area when the home is unoccupied. The Fowler House is a beautiful addition to the neighborhood but the parties tend to get out of hand. People almost get hit by cars because there are no sidewalks.

Ken Jones, 922 Highland Avenue, Lafayette, IN 47905, representative for petitioner, said he does not believe an Airbnb will bring down the quality of the neighborhood. He understands the concerns of the neighbors. As far as who will be renting the home, two renters have already been turned down. Guests will be vetted. He has been considering getting rid of the firepit because open fires are not allowed in the city. Regarding parking, guests will be expected to have only one or two cars. Guests are expected to be parents coming to visit students at Purdue, visiting professors, and other professionals. The road is not particularly narrow but is winding further north. Cars were parked on the street during the \$80,000 remodel of the home because the garage was full of debris which has since been removed. The conditioned Transient Guest House permit will also have parking regulations to abide by. If the city deems that the home will create a traffic hazard, the permit will not be issued. He has spoken with the Fowler House regarding weddings and parties. The manager thought that the transient guest home would be useful for visiting families. The manager assured him that drunk and disorderly conduct has not been an issue for the venue in the last few years because of increased security. Most guests take an Uber, Lyft or a cab from the venue which will mitigate foot traffic to the transient guest home. The special exception is for the property, not the owner. The future owner may choose to continue the use, or they may not. The city has ordinances that any owner must adhere to. Asking for a special exception means agreeing to more regulations than a regular long-term rental. The neighborhoods in Lafayette are important and it is encouraging that Lafayette protects the rights of everyone to peacefully enjoy them. This special exception will attract good people that want to spend time in our community.

Tom Andrew asked if on-street parking was not allowed on Digby Drive.

Ryan O'Gara said parking is not at all regulated. There is no yellow curb, so parking would be allowed.

Carl Griffin said the reason for a special exception is to allow public input into something that has been determined to not be automatically allowed. He asked Zach Williams and Steve Clevenger if there is any additional rationale for the special exception that relates to remonstrance that has been heard this evening.

Zach Williams said this topic is something that is seen at the state and local level. There are many opinions on the appropriateness of these transient guest homes. At the state statute level, there have been suggestions to not allow local input unlike Tippecanoe County where people can argue on behalf or against cases. The function of this Board is to determine if the special exception is appropriate in accordance to the ballot items. Will the requirements and development standards be met under the Unified Zoning Ordinance? Board members are trained on making this decision. Will it subvert the general purposes served by the ordinance because the property will be used in a certain way? There are uses in our ordinance that are automatically permitted or prohibited and there are uses that are allowed under special exception cases. The fact that public input is allowed from both sides is very important and our community is lucky to have it.

Steve Clevenger said a special exception commits the petitioner to a specific site plan and conditions. Like conditioning that the petitioner gets the Transient Rental home permit from the City of Lafayette. It is an opportunity to agree to a site plan and conditions that cannot be modified without coming before this Board.

Carl Griffin thanked Zach and Steve for their input because the public is not always aware of this background information.

Steve Clevenger said there are different types of transient housing; if it is owner occupied it is a by-right use. If it is not owner occupied, a special exception must be sought.

Frank Donaldson recused himself due to a conflict of interest.

The board voted by ballot 5-Yes and 1-No to approve **BZA-2027 SCOTT JONES:**

Yes Votes

Tom Andrew
Jen Dekker
Gary Schroeder
Ed Butz
Steve Clevenger

No Votes

Carl Griffin

Frank Donaldson returned to the meeting.

BZA-2029 MARK SHISLER:

Petitioner is requesting a special exception to use an existing single-family house as a Transient Guest House (as defined in the ordinance). The proposed hours of operation are 24 hours a day, seven days per week. The R2U-zoned property is located at 607 S. 24th Street, Lafayette, Fairfield 28 (NE) 23-4. (UZO 3-2) WITH CONDITION.

Gary Schroeder moved to hear and vote on **BZA-2029 MARK SHISLER.** Carl Griffin seconded.

Ryan O'Gara presented the zoning map, site plan, and aerial photos. He said the site is located in the Columbian Park Neighborhood. This neighborhood has a traditional street design with rear alleys. The site is zoned R2U and surrounded by other residential zonings as well. This is a single-family home with three bedrooms, a detached garage and two parking spaces available. There was a special request to

add string lighting during Christmas time. Staff has reviewed all the tests and the request meets each of these requirements. Staff recommends approval with condition:

Condition

1. An operational permit must be obtained from the City of Lafayette for the Transient Rental House.

Wendy Shisler, 3907 Olive Lane, Lafayette, IN 47909, petitioner, said this is a quiet neighborhood and most of the neighbors approve of the special exception. Columbian Park, Arni's and Igloo are only a block away; the neighborhood is used to people in the area. The house will be maintained higher than that of a normal long-term rental to attract positive reviews. She thanked the Board.

The board voted by ballot 7-Yes and 0-No to approve **BZA-2029 MARK SHISLER**.

V. ADMINISTRATIVE MATTERS

None.

VI. CITIZEN COMMENTS AND GRIEVANCES

Jessica Holsinger, 1010 Digby Drive, Lafayette, IN 47905, said she was concerned that there is no recourse if the neighborhood comes across major issues with the transient guest rental. This is a permanent exception. There is no course of action if there are any violations by the petitioner. There is room for temporary exceptions to allow for people that have not made any effort to integrate themselves with the neighborhood. They should have to show their goodwill and intentions without the exception being made permanent.

Jen Dekker said the purview of this Board is to determine allowable uses; whereas many of the concerns that were raised by the neighborhood regarded operational components which would fall under the City of Lafayette issuance of the permit. Taking some of the issues raised to the City of Lafayette would be the recourse.

Jessica Holsinger, 1010 Digby Drive, Lafayette, IN 47905, said the neighborhood understands that to a degree but, they were told the permit was a rubber stamp situation.

Steve Clevenger asked counsel if there is recourse for numerous complaints and zoning violations.

Zach Williams said it is difficult to hypothetically think of the worst-case scenario. From a violation standpoint, most of the time, this will be under the city's ordinance. If there is concern about noise or safety, that will start with the police and maybe go to Ordinance Violation Bureau. If there is a zoning issue, there is a process for that as well. Once a special exception is granted, people are not free to do whatever they please. There are still rules and laws to abided by like anyone else in the neighborhood. Educating the neighborhood on what the options are, if the need would arise, would be a good course of action. There is an avenue of people to reach out to if there is a problem.

Carl Griffin said the concept of transient housing was brought to the county by the City of Lafayette because there were some transient guest houses causing problems for the city. The city wanted to get its arms around better guidelines and protection for residents. After public hearings, guidelines were passed by the Ordinance Committee and the City of Lafayette. The city does not want your neighborhood to be unhappy and will not tolerate abusers of this special exception. He said he dissented in this particular case because the reason for public hearing is to hear how neighbors feel about cases. One or two neighbors frequently come to disagree. He was swayed because the whole neighborhood said they did not want the special exception. A long-term rental is likely not going to be any better than an Airbnb. In

fact, there is a chance that a temporary rental will be better. Long-term rentals stay vacant for longer periods of time.

Steve Clevenger said if the use ceases for a year, the special exception cannot be granted again. If it becomes owner occupied for a year, the use will no longer be granted. Simply because a special exception is granted, does not mean the next owner can have it as an Airbnb. State law does not set up anything to grant a temporary special exception.

Jessica Holsinger, 1010 Digby Drive, Lafayette, IN 47905, said the neighborhood feels like the decision is weighing one person's business interest against the interest of the rest of the neighborhood. She thanked the Board for considering the points raised.

Mark Shisler, 3907 Olive Lane, Lafayette, IN 47909, said he has owned the rental property for a short time and knows more of the neighbors in that neighborhood than in the neighborhood where he has owned his property for 18 years. He said he understands that they want everyone to be neighborly but, they are very lucky to have the neighborhood that they have. It is not like that in most places.

Steve Clevenger stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

VII. ADJOURNMENT

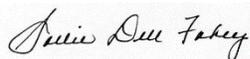
Gary Schroeder moved for adjournment.

The meeting adjourned at 7:12 p.m.

Respectfully submitted,

Chyna Lynch
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director