

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY**

**MINUTES OF A PUBLIC HEARING**

DATE..... APRIL 24, 2019  
TIME..... 6:00 P.M.  
PLACE..... CO. OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE, IN 47901

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

**STAFF PRESENT**

Ryan O’Gara  
Rabita Foley  
Diana Trader  
Zach Williams, Atty

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 24th day of April 2019 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Steve Clevenger called the meeting to order.

**I. APPROVAL OF MINUTES**

Carl Griffin moved to approve the minutes from the March 27, 2019 BZA public hearing. Gary Schroeder seconded, and the minutes were approved by unanimous voice vote.

**II. NEW BUSINESS**

Ryan O’Gara said **BZA-2000 JOE KEPNER, PRESIDENT, BLACK DAWG ENTERPRISE, LLC** has been withdrawn by the petitioner.

**III. PUBLIC HEARING**

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

Steve Clevenger read the meeting procedures.

**1. BZA-2003 LISA AND STEVE ROBINSON:**

Petitioner is requesting a variance to reduce the street setback to 36 feet from the minimum requirement of 60 feet from SR 26 E to build an attached garage to an existing single-family home in an R1 zone. The property is located at 1 Pineview Lane, Perry 19 (SE) 23-3. (UZO 2-1-7) *Continued due to an inconclusive vote at the March ABZA meeting.*

Carl Griffin moved to hear and vote on **BZA-2003 LISA AND STEVE ROBINSON.** Gary Schroeder seconded.

Ryan O’Gara presented the site plan, the zoning map, and aerial photos. Ryan said nothing material has changed with this petition since it was heard at the March 27, 2019 ABZA meeting. Ryan said the petition is to request a variance to reduce the street setback to 36-ft from the requirement of 60-ft. along SR 26. Ryan said staff listed their reasons for not recommending approval for this petition in their previous presentation and since nothing has changed their recommendation for denial has not changed.

Lisa and Steve Robinson, 1 Pineview Lane, Lafayette, IN 47905, petitioners. Lisa Robinson said they purchased the home 5 or 6 months ago. Lisa said the home was built in 1960 and they simply want to modernize it now. She said it was built with a 1-car garage which was standard at the time, but they would like to build a larger garage now. She said they are limited on where that can be done on the property.

Steve Robinson said he wanted to point out that the other houses in the area face SR 26, but their house is perpendicular to the highway. Steve said the access to their property is on Pineview Lane and not on SR 26. He said there are several issues with them putting a new garage on the north side of the house as staff had suggested. He said there are 17 mature trees on that end of the house which he does not want to take down. He said other factors that limit where they can build the garage are where the sump pit drains and where the finger system for the septic tank is located.

Lisa Robinson said that if they built the garage on the north end of the property the new driveway would have to go over the finger system.

Steve Robinson said that the wellhead is located within the 60-ft setback. He said there is an older home directly across the highway that has a setback of only about 40-ft.

Lisa Robinson said they understand that there may be plans to widen SR 26 at some point but that may be years in the future. She said there is nothing currently in the works. She said they simply want to build a garage and they are only asking for 24-ft of the 60-ft setback. She said they are very limited on how they can do that.

Carl Griffin asked if the north side of the house was bedrooms and if the other houses along SR 26 have setbacks of 60-ft or more.

Steve Robinson said the north side of their house is where the bedrooms are located. Steve said the other houses do have 60-ft setbacks but they all face SR 26. He said their house sits perpendicular to SR 26.

Gary Schroeder said it looked like the lot is .198 acres total, so it is about 8,600 square feet.

Steve Robinson said they own both portions of the property, so it is actually larger than that.

Jen Dekker asked the Robinsons to explain the need for the expansion outside of the desire to have a larger garage, and what kind of hardship this is causing for them.

Lisa Robinson said there is no hardship, they simply want to update their property.

Jen Dekker said she is speaking to the nature of the statute that asks whether strict adherence to the zoning ordinance will cause a hardship.

Carl Griffin said the Robinsons need to help the board understand the hardship that will come about if the variance is not granted.

Lisa Robinson said the hardship is lack of storage space for their vehicles and lawn mower.

Frank Donaldson said that last month there was discussion about SR 26 and the transportation plan from 2006, and how that might impact the need for eminent domain. Frank asked if there has been any new information on that in the last month. He said it has been 13 years now and it could be 13 more years before the plans to widen SR 26 come about.

Ryan O'Gara said that is how INDOT operates. He said they will put plans in place and pre-engineer them, but then they have to wait for funding for the road projects. Ryan said if INDOT needs to acquire the house they would pay fair market value for it. Ryan said there is currently no timeline for the road improvement project, but it will happen one day.

Jen Dekker asked Ryan O'Gara if by granting the additional 24-ft., it would change whether INDOT would need to take the entire property rather than just taking some of it.

Ryan O'Gara said that if the road improvements go into the building then INDOT will take the whole property.

Jen Dekker asked Ryan O'Gara what the standard procedure for INDOT taking land for road projects would be.

Ryan O'Gara said there is a required half-width on either side of the road.

Steve Clevenger said it looked like they would need 40-ft from the center line.

Jen Dekker asked if the board grants the Robinsons the 24-ft variance will INDOT then need to take the house rather than solely taking land.

Ryan O'Gara said that is a possibility. Ryan said if the property is left the way it is INDOT may just need to take some of the land but not the house. He said the house may become non-conforming as a result but that would not be the fault of the owner. He said if the road improvements go into the actual building then INDOT will be compelled to take the entire property.

Rabita Foley said staff did reach out to INDOT with questions from the board and INDOT was unable to answer them. Rabita said since INDOT did not know, staff cannot answer the questions on their behalf.

Steve Clevenger said granting the variance would leave just 36-ft of setback. Steve said even if the road project didn't take the house the actual setback would be a lot less once INDOT takes the right-of-way.

Ryan said until the final engineering for the road project is completed there is no way to know exactly how the Robinsons' property will be affected.

Carl Griffin asked about the house to the south of the Robinsons' property. Carl thought it had about a 30-ft. setback.

Rabita Foley said that according to the plans INDOT had shared with them there is a drainage pipe that goes through the Robinsons' property but not through the property to the south. Rabita said she believes that is why INDOT plans to expand in the direction of the Robinsons' property and not to the south. Rabita said staff was concerned that INDOT might need the space in question for drainage expansion, but they were not able to get confirmation from INDOT about that.

Jen Dekker said there is a bridge not far from the property in question that has a substantial drainage ditch on the right-hand side.

Carl Griffin said the house across the street is about 30-ft back from the pavement edge.

Rabita Foley said that was correct.

Tom Andrew said the staff report mentioned clear-cutting the lot behind the Robinsons' house and pouring a new driveway. Tom asked what that would look like. He also said it was likely that even if they did that the state may come through there at some point and take the entire property for the road widening project.

He said if they cut the trees down and built the garage on the north end of the house they would not need to come before this board to ask for a variance.

Ryan O'Gara said it is a corner lot so there are two road frontages and from staff's perspective building the garage on the north side makes sense.

Steve Robinson said there is 40-ft of right-of-way before their 60-ft setback starts. Steve said that is a lot of room.

Carl Griffin said the right-of way line is 40-ft back from the mid-line of the road and the building requirement was 60-ft more from there.

The board voted by ballot 4-Yes and 3-No to approve **BZA-2003 LISA AND STEVE ROBINSON:**

**Yes Votes**

Tom Andrew  
Frank Donaldson  
Gary Schroeder  
Ed Butz

**No Votes**

Carl Griffin  
Jen Dekker  
Stephen Clevenger

**2. BZA-2011 SECOND CIRCLE ACQUISITIONS, LLC:**

Petitioner is requesting the following variances to construct a Dollar General store on GB-zoned land:

1. To reduce the off-street parking to 30 spaces from the minimum requirement of 46; (UZO 4-6-3)
2. To reduce the length of the required bufferyard along the northern property line to 198 feet from the required 540 feet; (UZO 4-9-3)
3. To reduce the length of the required bufferyard along the southern property line to 176 - feet from the required 485 feet; (UZO 4-9-3)
4. To remove the required bufferyard along the western boundary; (UZO 4-9-3) and
5. ~~To vary the bufferyard width along the northern property line (UZO 4-9-3)~~ withdrawn; on proposed Lot 1 in SCI West Point First Addition Subdivision (primary approval for this subdivision is expected at the April APC meeting). The property is located on the west side of SR 25 South, near the unincorporated town of West Point, Wayne, Burnetts Reserve Section 5 (NE) 22-6. Continued from the March ABZA meeting at petitioner's request to add variances.

Carl Griffin moved to hear and vote on **BZA-2011 SECOND CIRCLE ACQUISITIONS, LLC.** Gary Schroeder seconded.

Rabita Foley presented the site plan, the zoning map, and aerial photos. Rabita said the request is for about 3 acres of land zoned GB close to West Point. Rabita said the land was rezoned specifically to

construct a Dollar General store. Regarding request #1, Rabita said the parking standard for a general merchandise store is 1 space per 200 square feet of gross floor area. She said the petitioner is requesting

a reduction in the number of parking spaces because they only have room for 30 parking spaces. Rabita said the petitioner provided staff with traffic count data from their store in Pendleton, IN, which is similar to the store proposed here. She said the data shows the average shopping time is 10 minutes and they only need between 7 to 9 parking spaces during peak hours in the morning and evening. Rabita said based on this data staff feels the 30 parking spaces shown on the site plan will be sufficient to serve their clientele as well as their staff. Rabita said Dollar General is a convenience store style business and their customer turnover rate is faster than other merchandise style stores. Rabita said based on this staff can support the request for Variance #1.

Regarding requests #2, #3 and #4 bufferyard reduction and removal, Rabita said the petitioner is required to put in 20-ft wide type B bufferyards all around the property where it abuts Agricultural zoned property, except where it would have vehicular access from SR 25.

Rabita said the request for Variance #2 is along the northern property line where the petitioner is required to put in a 20-ft wide type B bufferyard. She said the petitioner is requesting a reduction in the length of this bufferyard from 540 feet to 213 feet. Rabita said after the publication of the staff report on April 18, the petitioner and staff discussed the condition placed on the approval for variance request #2 that addressed an inadequate bufferyard along the northern boundary. Petitioner highlighted practical difficulties to extend this bufferyard as suggested by staff due to the topography required for a dry detention facility. Therefore, the petitioner proposed a different solution which staff believes will protect the residential property to the north from the commercial activity on this site. The new site plan indicating the proposed change was submitted to the staff on April 23, 2019. The new proposal would extend the northern bufferyard and wrap the buffer around part of the building. Petitioner's new plan is to install trees and shrubs directly west of the 9,100 sq. ft. building shielding the residential property to the north from commercial use. A condition related to request #2 in the staff report from April 18 is no longer required.

Regarding Variance #3, the partial bufferyard shown is reasonable because the proposal would provide a buffer from potential noise and glare generated by daily operations. Rabita said adding a partial bufferyard as a visual and physical barrier from the store and parking lot activities will help neighboring residents.

Regarding the request for Variance #4 to remove the bufferyard along the western property line, Rabita said the petitioner is only using about 2/3 of the property for commercial activity. Rabita said the area behind the building is required for commercial septic, drainage, and well. She said the property behind that is zoned Agricultural and is currently used for crop production. Rabita said staff feels that it is unnecessary for the petitioner to add a bufferyard against farmland. Rabita said that it makes sense to require a bufferyard for GB zoning in urban and suburban contexts where a variety of dissimilar uses exist. She said it is pointless to require a bufferyard where it abuts a farm field. Rabita said requiring the petitioner to install a bufferyard for that portion of the lot is unreasonable and will cause a hardship.

Rabita said staff supports the approval of all 4 Variance requests contingent on the following conditions:

1. A construction release from the Indiana Department of Homeland Security;
2. Approval from INDOT for a commercial driveway;
3. Approval from the Indiana State Department of Health and the Tippecanoe County Health Department for an on-site commercial sewage disposal system; and
4. Approval from the Tippecanoe County Surveyor's Office for onsite drainage.

Note: The site is not eligible for an ILP until the final plat of the subdivision has been recorded and a performance bond is filed for the required subdivision public improvements.

Michael Thompson, Civil Engineer for Hamilton Designs, 11988 Fishers Crossing Drive, Suite 154, Fishers, IN 46038, said he is the civil engineer on this project and the developer, Joe Leonard, is also

present. Michael said he has met with staff for the past couple of months and he agrees with the staff report fully. He said he thinks the end product is a good compromise for getting the bufferyards correct and he asked the board to approve the variance requests.

The board voted by ballot 7-Yes to 0-No to approve all 4 variance requests for **BZA-2011 SECOND CIRCLE ACQUISITIONS, LLC.**

**3. BZA-2012 WEST LAFAYETTE SCHOOL BUILDING CORPORATION:**

Petitioner is requesting the following variances to construct performing arts and education wing additions to the existing R1-zoned West Lafayette Junior-Senior High School:

1. To decrease vegetative coverage to 35% from the minimum requirement of 40%;(UZO 2-1-6)
2. To increase the building coverage to 34% from the maximum allowed 30%; (UZO 2-1-6) and
3. To reduce the required number of on-site parking spaces from 744 to 222 spaces (currently there are 218 spaces onsite); (UZO 4-6-3)

on property located at 1105 N. Grant St., West Lafayette, Wabash 18 (SE) 23-4.

Carl Griffin moved to hear and vote on **BZA-2012 WEST LAFAYETTE SCHOOL BUILDING CORPORATION.** Gary Schroeder seconded.

Rabita presented the site plan, the zoning map, and aerial photos. Rabita said the school is located in the West Lafayette city limits and the board heard a similar request last year when the school added an aquatic center. Rabita said the school has been there for decades and it does not have enough space to expand. She said the school is land-locked. Rabita said at this time the school is adding a 4,878 sq. ft. education wing on the north side of the building and a 3,383 sq. ft. performing arts center on the south side. She said the ordinance is designed primarily for residential development and not institutional development. Rabita said staff believes that urban school development at this location based on R1 standards is impractical and will result in an ordinance-induced hardship.

Rabita said the school has previously received variances for the reduction of vegetative coverage and increased building coverage. She said the proposed additional expansion has caused the need for the further reduction of vegetative coverage and increased building coverage.

Rabita also said the school will not lose any existing parking spaces. She said the reason the school corporation is seeking a reduction in the number of parking spaces is because they are adding classrooms and the required number of parking spaces is based on the number of classrooms.

Rabita said staff is recommending approval of all 3 variance requests based on the proposed expansion.

Kevin Riley, Reiling, Teder, and Schrier, LLC, 250 Main Street, Suite 601, Lafayette, IN 47901, attorney representing the petitioner, said on the northeast and northwest corners of the school there will be two new education wings with 5 new high school classrooms and 6 new junior high school classrooms. Kevin said on the southeast corner there will be a new performing arts center. He said there will be 3 new practice rooms, a new recording studio, and some upgrades to the auditorium. Kevin said all these new additions are necessary to serve the student population of the school. Kevin said there may be an error in the staff report regarding the number of parking spaces. Kevin wanted to clarify that there are currently 218 parking spaces available at the school and the school is going to add 4 new parking spaces for a total of 222. Kevin said the improvements are not going to encroach on any of the neighbors and he agrees that the property is land-locked. He said unfortunately there is no where else for the school to expand and that is why it requires these variances. He said he agrees with the staff report and staff's conclusions that all ballot items for variance have been satisfied and he asked for the board's approval.

Steve Clevenger said the motion that was read came from the staff report. Steve said the agenda says, "to reduce the required number of parking spaces from 744 to 222", but the staff report says, "to reduce the required number of parking spaces from 692 to 218".

Carl Griffin said he had read the motion from the staff report.

Zach Williams asked Kevin Riley what the requested number of parking spaces was.

Kevin Riley said he thought the staff report was a carry over from last year's request. Kevin said the request this time is for a reduction of the required number of parking spaces from 744 to 222.

Zach Williams asked for a motion to clarify that the request is for 222 parking spaces.

Carl Griffin moved that the required number of parking spaces be reduced from 744 to 222. Gary Schroeder seconded, and the motion passed by unanimous voice vote.

The board voted by ballot 7-Yes to 0-No to approve all 3 variance requests for **BZA-2012 WEST LAFAYETTE SCHOOL BUILDING CORPORATION.**

#### V. ADMINISTRATIVE MATTERS

None

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.

#### VI. ADJOURNMENT

Carl Griffin moved for adjournment.

The meeting adjourned at 7:02 p.m.

Respectfully submitted,

*Diana E. Trader*

Diana E. Trader  
Acting Recording Secretary

Reviewed by,

*Sallie Dell Fahey*

Sallie Dell Fahey  
Executive Director