THE
AREA BOARD OF ZONING APPEALS
OF
TIPPECANOE COUNTY

NOTICE OF PUBLIC HEARING

DATE: JANUARY 23, 2019
TIME: 6:00 P.M.
PLACE: COUNTY OFFICE BUILDING
       20 N. 3RD STREET
       LAFAYETTE, IN 47901

AGENDA

I. ELECTION OF OFFICERS

II. APPROVAL OF PREVIOUS MEETING MINUTES

   Documents:

      BZA 12.05.2018.PDF

III. NEW BUSINESS

IV. PUBLIC HEARING

   1. BZA-1999 ISRAEL AVILA GAYTAN AND MARIA DE LA LUZ RAMOS MUNOZ
      Petitioner is requesting a special exception to allow an Agricultural Rental Hall (SIC 799)
      on 8.628 acres in the Agricultural zone. The proposed hours of operation were originally:
      8am to 10pm, Sunday through Thursday and 8am to 1am, Friday and Saturday. This
      has now been revised to the following: 10:00am to 10:00pm Sunday through Thursday
      and 10:00am to midnight, Friday and Saturday. The property is located on the east side
      (UZO 3-2) Continued from the December ABZA meeting at petitioner's request.

      Documents:

      BZA-1999 ISRAEL GAYTAN ORIGINAL STAFF REPORT AND REVISED SITE
      PLAN.PDF

   2. BZA-2001 FORBICK ENTERPRISES, LLC:
      Petitioner is requesting a setback variance of 35' from the minimum requirement of 40'

      Documents:

      BZA-2001 FORBICK ENTERPRISES, LLC.PDF
from Klondike Road to construct six duplexes (12 units) in an R2 zone. (The setback only impacts two of the proposed duplex buildings.) The site in question is Lindberg Pointe Villas Subdivision, located on the west side of Klondike Road, south of the KB & S railroad tracks and north of Lindberg Road, more specifically, 2270 Klondike, Wabash 10 (SE) 23-5. (UZO 2-6-7)

Documents:

BZA-2001 FORBICK ENTERPRISES, LLC.PDF

V. ADMINISTRATIVE MATTERS

VI. ADJOURNMENT

VII. MEETING RESULTS:
President: Steve Clevenger
Vice President: Gary Schroeder

BZA-1999 continued by petition to the February 27th BZA meeting
BZA-2001 approved 6 yes - 0 no
The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 5th day of December 2018 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

Steve Clevenger called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the October 24, 2018 BZA public hearing. Steve Schreckengast seconded and the minutes were approved by unanimous voice vote.

II. NEW BUSINESS

Ryan O’Gara said that both the cases on the December 5, 2018 BZA agenda have been continued.

**BZA-1999 ISRAEL AVILA GAYTAN AND MARIA DE LA LUZ RAMOS MUNOZ** is being continued to the January 23, 2019 ABZA meeting at petitioner’s request. This is their first continuance.

**BZA-2000 JOE KEPNER, PRESIDENT, BLACK DAWG ENTERPRISE, LLC** is being continued to the February 27, 2019 ABZA meeting at petitioner’s request. This is their first continuance.

III. PUBLIC HEARING

Tom Andrew 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.
Tom Andrew moved to continue BZA-1999 ISRAEL AVILA GAYTAN AND MARIA DE LA LUZ RAMOS MUNOZ to the January 23, 2019 Board of Zoning Appeals public hearing at petitioner’s request. Carl Griffin seconded and the motion was approved by unanimous voice vote.

Tom Andrew moved to continue BZA-2000 JOE KEPNER, PRESIDENT, BLACK DAWG ENTERPRISE, LLC to the February 27, 2019 Board of Zoning Appeals public hearing at petitioner’s request. Carl Griffin seconded.

V. ADMINISTRATIVE MATTERS

None

VI. ADJOURNMENT

Gary Schroeder moved for adjournment.

The meeting adjourned at 6:06 p.m.

Respectfully submitted,

Diana E. Trader
Acting Recording Secretary

Reviewed by,

Sallie Dell Fahey
Executive Director
A NOTE FOLLOWING THE JANUARY 23RD ABZA MEETING:
After the staff report and BZA packet were sent out on Thursday, January 17th, a revised site plan was submitted by petitioner’s representative. This revised site plan has not yet been reviewed by APC staff or other county offices. It has been attached to this staff report because staff has received requests from the public to see this site plan. But this staff report remains unchanged and was written based on the original site plan. A revised staff report, based on the revised site plan, will be written and posted on this website prior to the February 27th meeting (on Thursday, February 21st).

REQUEST MADE, PROPOSED USE, LOCATION:
Petitioners, who are also the owners, represented by Attorney Chris Shelmon are requesting a special exception for an Agricultural Rental Hall (SIC 799) on 8.628 acres in the Agricultural zone. The business would operate from 8:00 am to 10:00 pm, Sunday through Thursday and 8:00 am to 1:00 am, Friday and Saturday. The property is located east of Old SR 25 and northeast of the Shafers Acres subdivision, Washington 36(NE) 24-3.

Early this year, a building permit was issued to construct a pole barn for personal use at this location. Petitioner completed the construction without proper inspections from the County Building Commissioner’s office and started using the substandard pole barn as a commercial agricultural rental hall.

AREA ZONING PATTERNS:
The land in this request and the surrounding properties are zoned Agricultural. Flood Plain zoning associated with the Wabash River is farther to the northwest.

There have been no recent rezones or BZA cases in the immediate vicinity.

AREA LAND USE PATTERNS:
The recently constructed pole barn is located in the northeast corner of the property in this request; the remaining site is undeveloped. Petitioners' home is adjacent to the west. More single-family homes line Old SR 25. The houses which line Marimak Drive to the southwest are less than 1000’ from the pole barn. The Technoseeds research and product development business is on the land to the east. Adjoining property to the south is farmland.
TRAFFIC AND TRANSPORTATION:
The site does not have a direct access from Old SR 25. The property in question is adjacent to a separate tract of land, also owned by petitioners, which would provide access to the site.

The Thoroughfare Plan classifies Old SR 25 as a secondary arterial road. An average daily traffic count taken in 2017 shows 4,435 vehicles travel on Old SR 25 daily. The submitted site plan shows the agricultural rental hall would use the existing residential driveway on the adjoining property along Old SR 25 (An Exemption E land transfer is proposed). Conversion of this access to meet the standards of a commercial driveway would be reviewed by the County Highway Department before the issuance of an Improvement Location Permit (ILP).

The parking standard for an agricultural rental hall is “1 space per 4 patrons to the maximum capacity of the facility inclusive of both indoor, if any, and outdoor capability.” Additional grass or gravel overflow parking areas are required for an agricultural rental hall in rural zones to the satisfaction of the Administrative Officer. The site plan shows 75 required (for a maximum occupancy of 300 people) and 15 overflow parking spaces. Required accessible parking is shown close to the pole barn structure.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:
The site currently has a small septic and well; however, the rental hall is required to have a commercial septic system. Both the Indiana Board of Health and County Health Department must review the design and location of a commercial septic needed for this operation before the issuance of an ILP.

STAFF COMMENTS:
Petitioners are seeking a special exception to establish an agricultural rental hall on their 8.628-acre land. The site currently has an approved 10,080 sq. ft. pole barn which has yet to receive a Certificate of Occupancy. The permit to construct an accessory structure was granted in February of 2018 for storage purposes only. However, a stop-work order was issued by the Building Commissioner in August stating “you are in violation of filing an incorrect application, occupying the pole barn without a final [inspection], not building per your plans, pouring concrete and running plumbing and electric without inspections”. Furthermore, the structure was being used to host large parties without ABZA approval. Following the identification of various building code violations and numerous complaints from the neighbors regarding loud noise, the Building Commissioner’s Office red-tagged the structure.

For a commercial project, review and approval from various regulatory bodies, both at the state and local level are required before construction and operation of the business. Although these processes take time, they are designed to ensure the health and safety of the public that uses these event halls. Staff is aware that the conversion of the storage structure to a building that meets the commercial standards would be difficult. Since 2017, upon staff’s recommendation, the board has approved a total of four Agricultural Rental Halls. Only one request out of four so far has acquired all the necessary approvals to construct a rental hall. Because special exceptions cease to be valid if the use is not established within one year of the date that the request is granted, staff is concerned that
upgrading the substandard structure to meet the required commercial standards would require an enormous amount of time. It is likely petitioners would not be able to be in compliance in the one-year time period, such as the William S. Bond special exception (BZA-1958).

The access to the venue is proposed to be from Old SR 25 through an existing gravel driveway. Petitioner would have to install a commercial drive per requirements of the County Highway Department. There are multiple residential driveways near (less than 100 feet) to the proposed commercial access. Staff is concerned about the possible traffic blockage caused by traffic generated by the proposed business.

The agricultural rental hall is proposed to operate when an event is being set up, occurring, or being taken down, seven days a week. More specifically, the listed hours of operation are 8am-10pm, Sunday through Thursday and 8am -1am, Friday and Saturday. The nearest structure on the neighbor’s property to the north is approximately 60 feet from the property in this request. Currently, a thin line of deciduous trees is on part of the northern boundary. These seasonally shedding trees may function as a temporary noise and visual barrier, but it may not provide sufficient buffer during winter time. Considering the noise complaints from the neighboring property owners, staff would be in favor of changing the hours of operation on the weekends to midnight (instead of 1am) to reduce late night noise pollution. Additionally, the pole barn should be insulated at a minimum, or preferably soundproofed to assist in containing the noise pollution.

According to the site plan, a pole light will be located in the parking area and four motion sensor security lights will be mounted on the building. All lighting will be hooded or directed in a manner not to bleed over onto adjacent property. The proposed lighting appears to be minimal. As the proposed lighting in the petition and the site plan site are inconsistent, the petitioner must amend the petition to reflect the site plan before the meeting.

This site is located on land zoned Agricultural, which does not permit eating and/or drinking establishments (restaurant). For this reason, the zoning ordinance places a limit on food service. There cannot be any preparation of food on site, and as such, all food must be brought by a licensed caterer. The UZO allows signage for this business, but no signage proposal has been filed at this point. The Health Department has informed us that the soil test was submitted to the State Board of Health. However, the information regarding the status of drainage, the commercial driveway and state construction reviews and approvals for this project were not provided to staff and are assumed not to have been filed.

In the earliest of these kinds of cases, we allowed some of these items to be taken care of by adding conditions; however, based on numerous unsuccessful experiences, staff believes that the better course of action is to require these approvals prior to the Board hearing the request.

At its meeting on November 21, 2018 the Area Plan Commission voted that granting this request would not substantially adversely affect the Comprehensive Plan.
Regarding the ballot items:

1. Section 3.1 of the Unified Zoning Ordinance **DOES** authorize the special exception for an Agricultural Rental Hall (SIC 799) in the Agricultural zoning district.

And it is staff’s opinion that:

2. The requirements and development standards for the requested use as prescribed by the Unified Zoning Ordinance **WILL NOT** be met without first obtaining the approvals needed as proposed for a commercial driveway and septic system (UZO 4-6-15 e and UZO 4-3-1). The site has been designed with sufficient parking areas, lot coverage, vegetative coverage, and building setbacks.

3. Granting the special exception **WILL** subvert the general purposes served by the Ordinance unless relevant state and local agencies review and approve the standards for the commercial driveway, on-site drainage, commercial septic and the building plans for the event hall.

4. Granting the special exception **WILL** materially and permanently injure other property or uses in the same district and vicinity because of:
   a. Traffic generation: While the operation will be open 7 days per week, the majority of traffic will likely be on the weekends. The site is located on a secondary arterial road, which is designed to support a higher than average amount of traffic. However, the proximity of a commercial driveway to other residential driveways is of concern because the traffic generated due to this use has a high probability of causing traffic blockage which leads to rear end crashes.
   
   b. Placement of outdoor lighting: Only one light pole to serve the parking lot area is proposed close to the building. No lighting is proposed at the entrance or along an approximately 500’ long driveway. Wayfinding may be an issue in a rural setting. Four wall mounted building lights will be directed downward and will help mitigate any light trespass to neighboring properties.
   
   c. Noise production: Without a soundproofed building and year-round plant buffering, the neighbors are unprotected from the noise generated by this use. Vehicles coming and going on a gravel driveway as well as music coming from an un-insulated building will be the primary sources of noise production. A neighbor’s home to the north is approximately 60 feet from the property in this request. Any deciduous tree buffer will be ineffective during the winter season. No outdoor activity is proposed.
   
   c. Hours of operation: These hours are typical for this type of use, but in this residential/rural setting with long established subdivisions nearby, events ending at earlier hours would protect neighboring property owners.

**STAFF RECOMMENDATION:**

Denial
Note: A special exception approval ceases to be valid if the use is not established (open for business) within one year of the date that the special exception was granted.
BZA-2001
FORBICK ENTERPRISES, LLC
(variance)

STAFF REPORT
January 17, 2019
REQUEST MADE, PROPOSED USE, LOCATION:
Petitioner, with consent of the owner Lindberg Properties, LLC and represented by attorney Daniel Teder, is requesting a setback variance of 35 feet instead of the minimum requirement of 40 feet from Klondike Road. Petitioner plans to construct six duplex buildings (12 units) in an R2 zone; although only two of the buildings would require a 35' setback variance. The property is located on the west side of Klondike just south of the KB & S Railroad crossing, at 2270 Klondike Road, Wabash 10 (SE) 23-5.

ZONING HISTORY AND AREA ZONING PATTERNS:
The site was recently rezoned from A to R2 (Z-2744). A duplex development called Lindberg Pointe Villas has been filed; it received conditional primary approval at the APC meeting on the 16th of January (S-4812). The immediate area contains many zones, including PDRS to the north, west and south. Farther west is R2 and R1 zoning. GB zoning is east across Klondike with R1 beyond. An area of I3 zoning is located north on the other side of the railroad.

AREA LAND USE PATTERNS:
A single-family home occupied this site but was purchased by the County in 2016 for the Klondike Road reconstruction project. The home was razed and this partially wooded site was made available for redevelopment. Single-family homes are located to the north, west and south with duplexes farther west. East across Klondike is a self-storage warehouse business.

TRAFFIC AND TRANSPORTATION:
Klondike Road is classified as a secondary arterial, per the adopted County Thoroughfare Plan. The County Highway Department is reconstructing this road to improve traffic flow, increase pedestrian safety and enhance the drainage system for stormwater. The most recent traffic counts taken in 2015 indicate 3,786 vehicles pass this site daily. The approved preliminary plat as well as the submitted site plan shows a single entrance and private drive connecting the six proposed duplex buildings to Klondike Road.

A typical half-width right-of-way for a secondary arterial is 40'; with a 40' building setback added to it, typically there is 80' between the edge of a building and the centerline of a secondary. In this case, since the county obtained additional right-of-way for the Klondike project, at the northern edge of the property, there is 61' of half-width right-of-way tapering to 55' of half-width right-of-way at the southern property line. With the requested 35'
setback, the northern building would be 96’ from the centerline and the southern duplex
would be 90’ from the centerline. In both cases this would be substantially more than the
usual 80’ dimension.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:
American Suburban Utilities and Indiana American Water provide service to this area.

STAFF COMMENTS:
The county purchased this 1.48-acre tract in 2016 for the Klondike Road improvement
project. Most of this land was not used in the road project, and was sold to the petitioner.
In November, petitioner successfully rezoned this land from A to R2. The APC granted
conditional primary approval for the multi-family subdivision (Lindberg Pointe Villas: S-
4812) containing the area in this request on January 16, 2019.

The site plan shows the driveway from Klondike running through the property serving
three duplexes on each side. A total of 12 units are proposed with attached 2-car garages
for each 2-bedroom unit. The proposed development meets all the ordinance
requirements except the required setback from Klondike.

If this development was completed before the county purchased the new R-O-W width,
the proposed structure could have easily met the 40-foot setback requirement. Any grant
or purchase of right-of-way that makes a conforming structure nonconforming is still
considered conforming as per the ordinance (UZO 5-1-6). However, because this request
is being made after the widening of the right-of-way, Lindberg Pointe Villas must meet the
40’ setback from the new right-of-way line. The site is currently unimproved; the proposed
multi-family subdivision only recently received preliminary plat approval and could have
been redesigned. The UZO does not consider self-imposed situations like this a hardship
and this is, by definition, a self-imposed situation.

Regarding the ballot items:

1. The Area Plan Commission at its January 16, 2019 meeting determined that the
variance requested IS NOT a use variance.

And it is staff’s opinion that:

2. Granting this variance WILL NOT be injurious to the public health, safety, and general
welfare of the community. The proposed development, even with a 35’ setback, will
still be over 70’ from the travel lanes due to the intervening trail and larger right-of-way
width.

3. Use and value of the area adjacent to the property included in the variance request
WILL NOT be affected in a substantially adverse manner. The land surrounding the
proposed project is completely developed. Additionally, all the required setbacks from
the adjoining property lines will be met.

4. The terms of the zoning ordinance are being applied to a situation that IS NOT
common to other properties in the same zoning district. The unusually wide right-of-
way at this site, requiring the buildings to be set even farther from the improved travel
lanes than buildings from a typical secondary arterial, make this an uncommon
situation.

5. However, strict application of the terms of the zoning ordinance WILL NOT result in
an unusual or unnecessary hardship as defined in the zoning ordinance. Petitioner
could reduce the size of the proposed duplexes to adequately meet the ordinance
requirement and still build the same number of residential units with no economic loss.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question
5 above.

5a. The hardship involved IS self-imposed because petitioner did not design the
duplex buildings to meet the development standards, which should have been done
in the beginning of the subdivision process. It is petitioner’s desire to use a layout with
the current duplex size that encroaches on the setback. The subdivision could have
been designed to meet the standards of the ordinance.

5b. The variance sought DOES NOT provide only the minimum relief needed to
alleviate the hardship because the design could be altered and reduced in size to meet
ordinance requirements.

STAFF RECOMMENDATION:
Denial