

THE  
AREA BOARD OF ZONING APPEALS  
OF  
TIPPECANOE COUNTY

## NOTICE OF PUBLIC HEARING

DATE :July 28, 2021

TIME: 6:00 P.M.

PLACE: COUNTY OFFICE BUILDING

20 N. 3RD STREET

LAFAYETTE, IN 47901

### AGENDA

**This meeting will be in person.**

Members of the public may choose to watch on the livestream of the meeting on

<https://www.facebook.com/TippecanoeCountyIndiana> or

<https://www.youtube.com/channel/UCJleeA9ZQo9EIIgDZTdjurQ>

### I. APPROVAL OF PREVIOUS MEETING MINUTES

Documents:

[BZA MINUTES 06.23.2021.PDF](#)

### II. NEW BUSINESS

### III. PUBLIC HEARING

#### 1. BZA-2058 DANIEL L. MCDOLE:

Petitioner is requesting a setback of 1' from the minimum requirement of 10' (the minimum setback by averaging) from Forest Street to build a 24' x 24' detached garage on R1B-zoned land. The corner lot is located at 6827 Monroe Street in the unincorporated town of Stockwell, Lauramie 08 (NE) 21-3. (UZO 2-3-7) *Continued from the June meeting to provide paperwork.*

Documents:

**IV. ADMINISTRATIVE MATTERS**

A discussion on procedural changes to the BZA regarding findings of fact.

**V. ADJOURNMENT**

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Area Plan Commission of Tippecanoe County will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. For more information visit [www.tippecanoe.in.gov/ada](http://www.tippecanoe.in.gov/ada)

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

**MINUTES OF A PUBLIC HEARING**

DATE..... June 23, 2021  
TIME.....6:00 P.M.  
PLACE..... COUNTY OFFICE BUILDING  
20 N. 3RD STREET  
LAFAYETTE, IN 47901

*This meeting was held in-person, with no virtual option.*

**MEMBERS PRESENT**

Steve Clevenger  
Ed Butz  
Gary Schroeder  
Frank Donaldson  
Michelle Dennis  
Jen Dekker

**MEMBERS ABSENT**

Tom Andrew

**STAFF PRESENT**

David Hittle  
Ryan O’Gara  
Rabita Foley  
Larry Aukerman  
Eric Burns, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held virtually on the 23<sup>rd</sup> day of June 2021 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

Steve Clevenger called the meeting to order at 6:00 PM.

**I. APPROVAL OF MINUTES**

Gary Schroeder moved to approve the minutes from the May 26, 2021 BZA public hearing. Michelle Dennis seconded and the minutes, as submitted, were approved by unanimous voice vote.

**II. PUBLIC HEARING**

Ryan O’Gara noted that variance petitioner Daniel McDole was awaiting paperwork required for his variance request to be heard, but which had yet to be received. For that reason, it was recommended that Mr. McDole’s case be moved to the back of the agenda.

Steve Clevenger read the meeting procedures.

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. Michelle Dennis seconded, and the motion carried by voice vote.

**BZA-2052 FOX ACQUISITIONS, LLC**

Petitioner is requesting the following variances to construct a 5,500 sq. ft. building for the Blue Fox Heating and Cooling business in a GB zone:

1. To reduce the west side setback to 15 feet from the minimum requirement of 30 feet from the adjoining residential zone and use; (UZO 4-8-5),
2. To reduce a required Type C (30' wide) bufferyard to 15 feet along the western property line; (UZO 4-9-3),
3. To reduce the number of rows of standard plant units located within the buffer yard from two to one; (UZO 4-9-1b and Appendix E-1) and
4. To reduce the number of required parking spaces from 28 to 26; (UZO 4-6-3)

on property located at 1511 W 350 N (former location of The Wild Bird Shoppe), West Lafayette, Wabash 01 (SW) 23-5. *Continued from the April meeting at petitioner's request. (First Continuance)*

Gary Schroeder moved to hear and vote on **BZA-2052 FOX ACQUISITION, LLC.** Michelle Dennis seconded.

APC staff David Hittle presented the zoning map, site plan, and aerial photos. He noted that the property is improved with two buildings, the northernmost of which would be retained, and the southernmost of which would be removed and replaced with a new building. Three of the four variance request pertain to the west side property line and the new proposed building's relationship to it. He noted that each of the four requests is supportable and represent minor and acceptable deviations from the zoning ordinance. He noted, broadly, that what is proposed would amount to a significant improvement on what's existing, in the eyes of the ordinance.

Kevin Riley, representing the petitioner, presented his request and noted agreement with staff's comments. He added that he was not aware of any objections from neighboring properties, and also pledged that the petitioner would install a privacy fence along the west property line, for at least the length of the buffer yard, to provide additional screening.

Chairperson Clevenger asked if there was anyone in favor of the petition, or in opposition to it. There was no response.

Mr. Clevenger called for the vote.

Eric Burns received the six physical ballots and noted the result:

The Board voted by ballot 6-YES to 0-NO to approve all four requests of **BZA-2052 FOX ACQUISITION, LLC.**

**BZA-2057 AMERICAN REALTY OF LAFAYETTE, LLC:**

Petitioner is requesting a variance to eliminate the required half of type C, 30-foot-wide bufferyard to construct a 9,676 sq. ft. office/shop building in an I3 zone. The 19.4 acres is located on the south side of CR 350 S and east of CR 500 E, specifically, 5121 E Old 350 S, Sheffield 07(SW) 22-3.

Gary Schroeder moved to hear and vote on **BZA-2057 AMERICAN REALTY OF LAFAYETTE, LLC.** Michelle Dennis seconded.

APC staff Ryan O'Gara presented the zoning map, site plan, and aerial photos. He noted that the subject area was rezoned for industrial use in the 1990s and has been developing industrially steadily ever since. He asserted that the bufferyard is reasonably required here, and that the required findings have not been met. Therefore, staff recommends denial of the request.

Dan Teder, representing the petitioner, spoke. He noted that the site plan is being amended, such that what was originally labeled as a "dry detention pond", will actually be a wet detention pond. He also noted the subject buffer yard would be a minimum of ten feet in height and 20 feet in width along the entirety of the 350-foot east lot line. Thirdly, he noted that the petitioner would be switching stockpile areas, such that the crushed aggregate and asphalt would be on the west side of the site, and the topsoil on the east side.

Mr. Teder referenced three handouts he provided. He noted that the petitioner has created a minimum 10' x 20' x 350' berm, using soil removed in the making of the wet pond. Mr. Teder stated that crushing would take place only once a year. He also stated that the neighbor on the other side of the buffer yard is a farmer, and so would be employing on that site all the activities typical to a farm. For that reason, the buffer yard requirement does not make sense here, Mr. Teder asserted, and in fact the neighboring farmer has indicated that he wants to the yard left just as it is.

Mr. Clevenger asked if anyone wished to speak in favor or against the petition. There was no response. He asked for additional questions or comments from the board. There were none. Mr. Clevenger asked for a vote.

Eric Burns received six physical ballots and noted the result:

The Board voted by ballot 6-yes to 0-no to grant **BZA-2057 AMERICAN REALTY OF LAFAYETTE, LLC.**

**BZA-2059 HERITAGE AGGREGATES, LLC.**

Petitioner is requesting a special exception to allow the continuation of sand and gravel mining (SIC 14) in the I3 zone, permitted under BZA-1819 (granted in May of 2011) to extend another 10 years. Mining operations would occur from 6:00am to 5:00pm Monday through Saturday with occasional night work; the property is located at 5070 Swisher Road, in Prophetstown State Park, Tippecanoe, Burnetts Reserve 5 (N1/2) 24-4.

Gary Schroeder moved to hear and vote on **BZA-2059 HERITAGE AGGREGATES, LLC.** Michelle Dennis seconded.

APC staff David Hittle presented the zoning map, site plan, and aerial photos. He noted that the I-3-zoned, 83-acre subject site is surrounded by Prophetstown State Park and the Town of Battleground. He also noted that the petitioner requests a 10-year continuation of the long-term use of the site, which is gravel and sand extraction, and that the next many years' of work would provide for the connection of two existing ponds, as contemplated in the standing reclamation plan.

Mr. Hittle noted that staff is supportive of the request, as it meets the required findings of fact.

Joe Bumbleberg, representing the petitioner, presented the special exception request. He noted that the facts of the case today are similar to those presented to the ABZA at each of the petitioner's prior requests. He asserted that the provided documentation shows satisfaction of the required findings, and requested approval.

Jason Getz, employee of the Department of Natural Resources and property manager of Prophetstown State Park, spoke of the positive relationship the park enjoys with Heritage Aggregates, and urged approval of the request.

Steve Clevenger asked if there was anyone else in favor or opposition, or on social media, wishing to comment. There was no response.

Eric Burns received six physical ballots and noted the result:

The Board voted by ballot 6-yes to 0-no to grant **BZA-2059 HERITAGE AGGREGATES, LLC.**

**BZA-2060 GROWRU, LLC:**

Petitioner is requesting a variance to allow a reduction in required parking in the NB zone, from 68 spaces to 60 parking spaces at Brokerage Brewery. This parking variance would allow the

addition of a patio on site, located at the northeast corner of Sagamore Parkway West and Covington Street, specifically, 2506 Covington, West Lafayette, Wabash.

Gary Schroeder moved to hear and vote on **BZA-2060 GROWRU, LLC**. Michelle Dennis seconded.

APC staff Ryan O’Gara presented the zoning map, site plan, and aerial photos. He noted that the subject structure currently is occupied by a real estate office and a restaurant. The restaurant, the petitioning entity, seeks to replace parking spaces with a patio with patron seating. Mr. O’Gara also noted that there exists an area on site which could accommodate the required parking spaces, so the need for the variance would be self-imposed. Staff recommends denial.

Attorney Chris Shelmon spoke on behalf of the petitioner. He noted that his client has learned that outdoor seating is highly desirable, particularly during the pandemic. He also noted that the parking requirement applied here is not realistic as differing tenants experience highest parking needs during different times of day. He also noted that many area customers arrive on foot or via bike, and that street parking is ample, too.

Chad Spitznagle, Building Commissioner for the City of West Lafayette, noted that the city has no concerns with the request.

Mr. Clevenger called for a vote.

Eric Burns received six physical ballots and noted the result:

The Board voted by ballot 6-yes to 0-no to grant **BZA-2060 GROWRU, LLC**.

Ryan O’Gara reported that Mr. McDole had not yet produced documentation required for his case to be heard, and so it should be continued for one month.

Gary Schroeder moved to continue **BZA-2058 DANIEL MCDOLE** to the July 2021 ABZA meeting. Michelle Dennis seconded, and unanimous voice vote followed.

### III. ADMINISTRATIVE MATTERS

Eric Burns referred to a proposed draft resolution he’d forwarded to BZA members. He noted that the resolution, which defines how ABZA members may participate in future ABZA meetings virtually, is mostly a recitation of state code.

Gary Schroeder noted that the Ordinance Committee discussed the matter at its most recent meeting and the Plan Commission has decided to return to live, in-person meetings without any option for virtual participation. He encouraged the ABZA to make the same decision. Eric Burns reminded the members that they would have the option in the future, at any given time, as necessary, to decide to adopt the resolution, and that they could decide in the interim to simply table this resolution for an undetermined length of time. The board by unanimous voice vote did decide to table the matter for an undetermined length of time.

Steve Clevenger acknowledged Rabita Foley and her good work as she prepares to leave the APC for a job at Purdue. Rabita spoke briefly, graciously accepting Steve’s kind words and reciprocating appreciation for her time with the APC.

### IV. ADJOURNMENT

Gary Schroeder moved for adjournment. The meeting adjourned at 7:20 p.m.

Respectfully submitted,

David Hittle  
Executive Director

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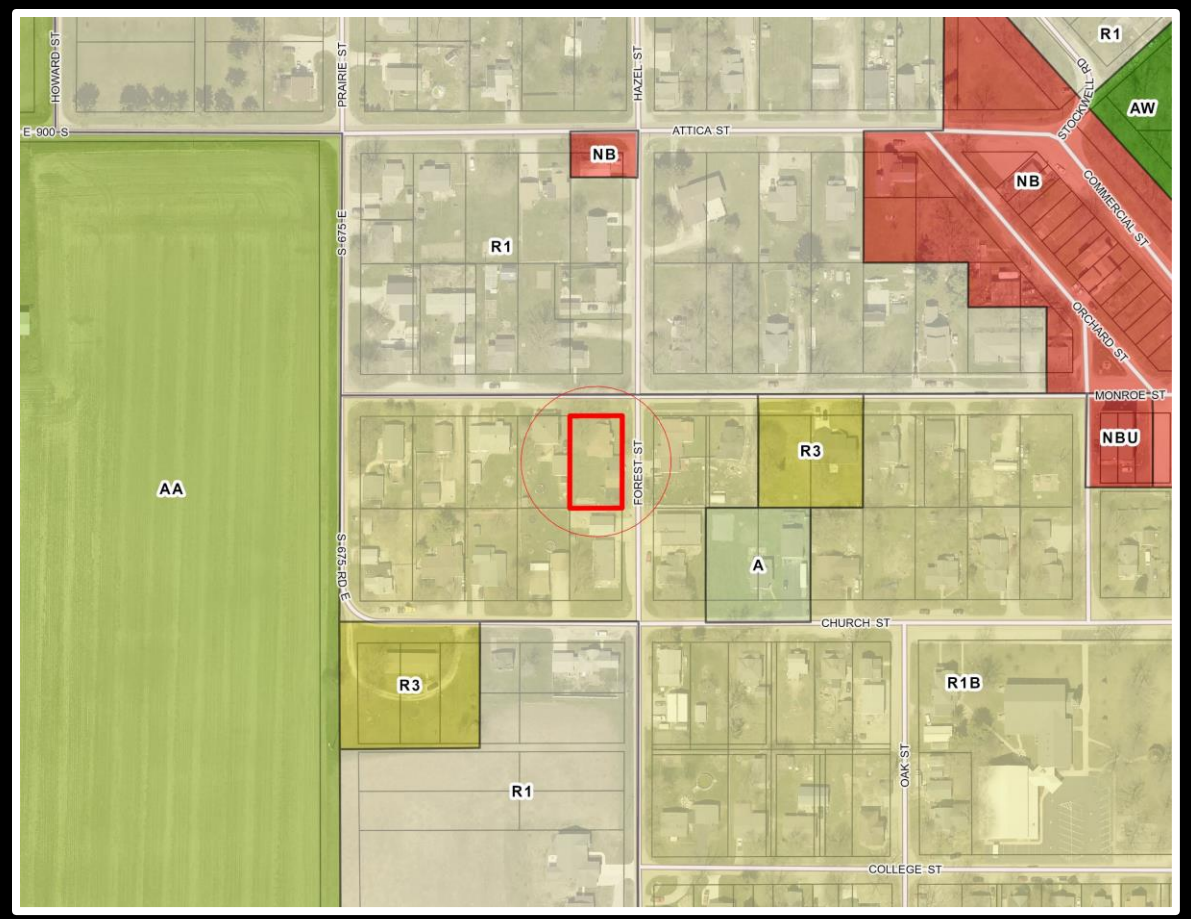
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**BZA-2058**  
**DANIEL L. MCDOLE**  
**(variance)**

**STAFF REPORT**  
**June 17, 2021**

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**BZA-2058**  
**DANIEL L. MCDOLE**  
**Variance**

**Staff Report**  
**June 17, 2021**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, who is also the owner, is requesting a setback variance of 1 foot instead of the required setback of 25 feet. The property is located in Stockwell at the southwest corner of Forest and Monroe Streets. Petitioner would like to rebuild a garage that was recently destroyed in a fire utilizing the old foundation. The site is commonly known as 6827 Monroe Street, in the unincorporated town of Stockwell, Lauramie 8 (NE) 21-3.

**AREA ZONING PATTERNS:**

The lot in question is zoned R1B as is land to the west, south and east. North across Monroe Street properties are zoned R1.

**AREA LAND USE PATTERNS:**

The site supports a single-family home and a carport. Other single-family homes surround this lot.

**TRAFFIC AND TRANSPORTATION:**

This property has a driveway to Forest Street and a concrete parking pad. Both Forest and Monroe Streets are classified as rural local roads per *The Thoroughfare Plan*.

**ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

Sewer and water serve the site.

**STAFF COMMENTS:**

Petitioner's garage was destroyed by fire earlier this year. This garage, per the Assessor's records was built in 1947. The owner would like to use the existing foundation to rebuild the garage, but the setback from the property line is only 1 foot.

Forest Street was platted with 40 feet of right-of-way and based on aerial photography the pavement appears to be only 15 feet wide. This means that the leading edge of the former garage appeared to be setback further from the right-of-way than it actually was.

The zoning ordinance allows for a setback to be averaged for existing homes on a block face, but never less than 10 feet. In this situation, there is only one other home whose setback can be averaged. The house just south of the subject site appears to have a setback of 12 feet based on aerial photography. Based on averaging, a new garage could be built 12' from the right-of-line. There is nothing preventing the garage from being built

further from the property line except petitioner's desire to re-use the existing cement building foundation.

Regarding the ballot items:

1. The Area Plan Commission at its June 16, 2021 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 former garage was located with a 1 foot setback for decades and staff is not aware of any resulting problems from that location. Rebuilding in this same location will not be injurious to the public health and safety.
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. Again, the garage existed in this location since the 1940's and staff does not believe any surrounding properties will be adversely affected.
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 because the home and former garage were built before zoning requirements were adopted in 1965.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. The ordinance allows for setbacks to be averaged along a block face but never less than 10 feet. The home just south of petitioner's lot appears to have a setback of 12', which would allow for a 12' setback for petitioner's garage. Adequate room exists to rebuild the garage without a variance.

**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 or solely based on a perceived reduction of or restriction on economic gain. While building the garage on a new foundation 12' from the property line causes petitioner a practical difficulty and would cost more, it cannot be considered an ordinance-defined hardship.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship because staff can find no ordinance-defined hardship. Minimum relief would be to build at the 12' averaged setback.

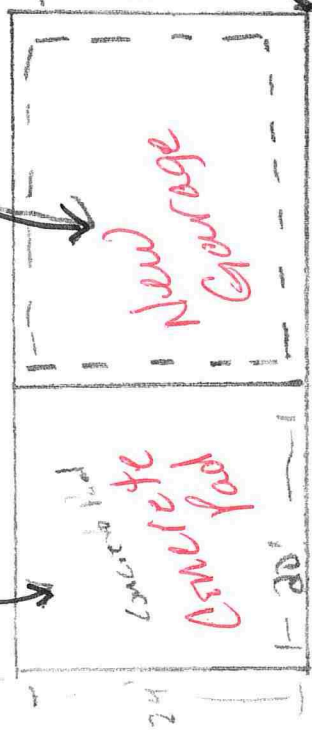
**STAFF RECOMMENDATION:**

Denial

Existing fence on property line

To Rebuild on Existing 24' x 24' Foundation from burnt garage

old 24' x 20' addition that was burned

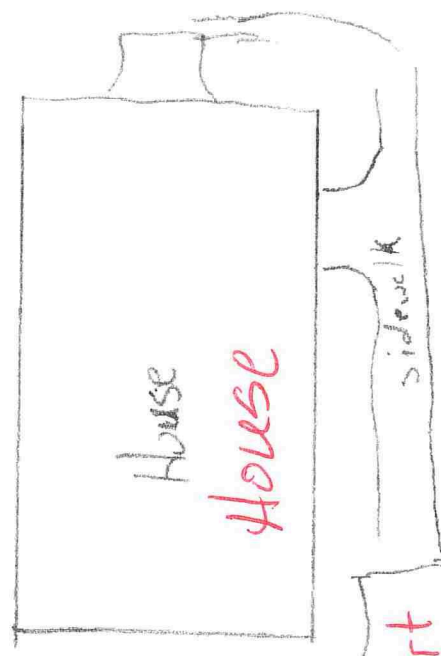


Existing Paved Driveway

21'



Forest St.



sidewalk

Right of Way (PROPERTY LINE)

Edge of Pavement

Monroe St