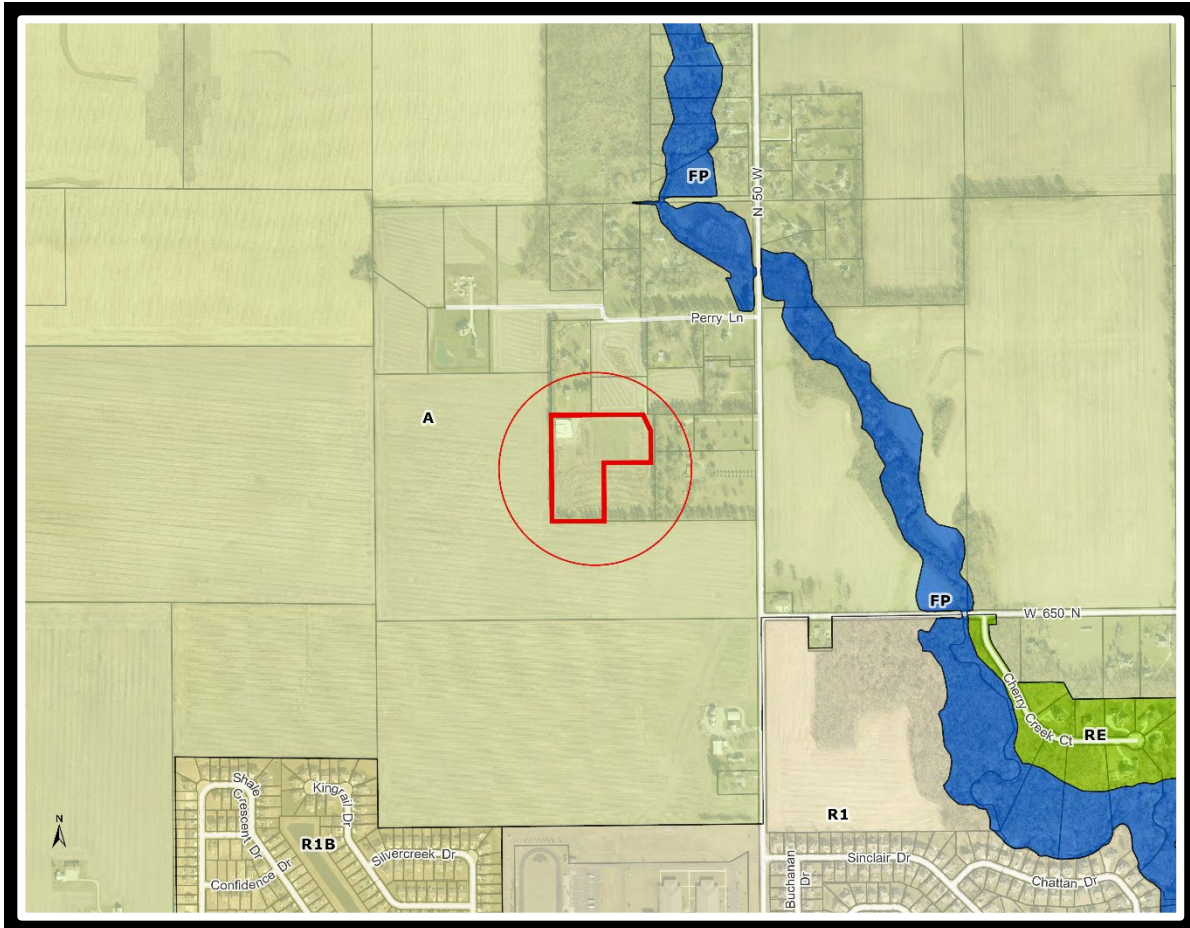

BZA-2101 and BZA-2098
JOHN SCHRADER AND ANTHONY HAAN
(variance & special exception)

STAFF REPORT
April 20, 2023



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Variance & Special Exception

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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioners, John Schrader of Ball & Eggleston law firm and property owner Anthony Haan, are requesting a variance (BZA-2101) and an accompanying special exception (BZA-2098) in order to legitimize an existing plumbing business (SIC 17), operating during daylight hours from March through October, and from 7am to 6pm from November through February, every day of the week. This 7.211-acre tract is commonly known as 617 Perry Lane, Tippecanoe 19 (NE) 24-4. This request is the result of a zoning violation enforcement action arising from a complaint filed by a neighbor in 2023.

The variance requested (BZA-2101) is to increase the 8,000 square foot maximum gross floor area of the largest building in an A zone for the above-mentioned plumbing business to a building of 11,400 square feet.

AREA ZONING PATTERNS:

The subject property is currently zoned A, as is all the property's immediate surroundings. This area of the county has been zoned Agricultural since the inception of zoning in 1965. Residential zones (R1 and R1B) are found farther to the south, and Flood Plain zoning is found farther to the east of the property along Burnett Creek.

AREA LAND USE PATTERNS:

A partially enclosed pole barn is currently found on the site. The existing use, Construction-Special Trade Contractors (SIC group 17), is permitted in all three agricultural zones by special exception.

Single-family houses on parcelized lots are found immediately to the north and the east of the subject property. Land west and south of the property is used for row-crop production. These uses predominate further out in the area's surroundings.

TRAFFIC AND TRANSPORTATION:

Perry Lane is a private, dead-end gravel road. All traffic from Perry Lane enters and exits from CR 50 W, which is classified as a secondary arterial according to the adopted *Thoroughfare Plan*.

Parking for the proposed use is one space per employee on the largest shift, plus one per 200 sq. ft. of office, sales, or similar floor area. Petitioner has stated that two employees plus the owner/operator will be on the property on the largest shift. This requires three (3) regular parking spaces on the site. A single paved accessible parking space is also a requirement. The rest of the parking area can be gravel. Petitioner has stated that the

work vehicles and machinery are stored in the barn, and on rare occasions, employees will drive their vehicles to the subject property when retrieving or dropping off the work vehicles.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

The pole barn is not served by any electric, sewer or water utilities.

STAFF COMMENTS:

This request is the result of a zoning violation, and according to the petition, this company has been in operation at this site for two years.

The pole barn is the primary storage facility for this business, with equipment and vehicles that are stored on site in this building. The pole barn is 11,400 square feet according to county tax records, well above the maximum of 8,000 square feet that the UZO stipulates. (In fact, this standard was recently increased from a 5,000 square foot maximum to the current 8,000 square foot limit.) For this reason, understandably, the petitioner is requesting a variance to allow the pole barn to be used for the business's operations (at 11,400 square feet).

Nevertheless, staff could not find any hardship that would merit approval of this variance, for the subject property has a large area of space where another legally conforming (and better-shielded) barn could be built to house the business. This tract of land does not have any characteristics that would make it uncommon compared to typical tracts of land in the A zone. Namely, it is a relatively flat, rectangular tract of land that is a viable building site. For this reason, staff must recommend denial of the variance request.

Regarding the special exception request, the petition indicates that a maximum of 2 employees will be on site plus the owner/operator. It must be noted, though, that this proposed special exception does not place a limit on future employees, and if this special exception is approved by the Board, the petitioners may need to get approvals from other county departments.

The UZO requires contractors of this type to be located on properties with a minimum of two acres; this lot is 3.436 acres. An additional requirement necessitates a bufferyard or 6' tall opaque fencing to separate outside storage from adjacent residences or residential zones. Since there will be no outside storage of equipment and vehicles, the owner/operator's property meets this requirement. However, without additional screening, these vehicles will be in open view to neighbors and Perry Lane because the pole barn is not enclosed in front.

It must be emphasized that the primary complaint from neighbors regarding the zoning violation was the noise and traffic that this business generates, particularly from the petitioner's construction vehicles and heavy equipment. Although staff can agree with the petitioner's view that the noise and traffic generated from this business is typical for that generated by farming operations in rural areas, that is not the issue at hand in this matter. Rather, the question of the matter is whether or not the petitioner's business generates an amount of noise and traffic that is similar to a typical single-family residence. Despite its A zoning, this property is located in a neighborhood with virtually all uses along Perry

Lane being residential. It is staff's opinion that the traffic and noise generated by this business is inherently NOT similar to that of a single-family residence, and therefore, staff must recommend denial of the special exception request.

REQUESTED VARIANCE:

Regarding the ballot items for the variance:

1. The Area Plan Commission on April 19, 2023 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 variance will make the existing building legally conforming to allow a special exception to be granted allowing for a plumbing business, and the pole barn has existed on the property in its present form since 1996.
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 existing pole barn in its present configuration has been in existence since 1996 without notable adverse effects.
4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. The subject property is large, relatively level, and rectangular in shape, providing a viable building site for barns and other structures.
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.

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 and solely based on a perceived reduction of or restriction on economic gain. The petitioner has the ability to build a legally conforming barn for the proposed plumbing business under the standard provisions of the Unified Zoning Ordinance.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship. There is no minimum relief because there is no hardship.

STAFF RECOMMENDATION:

Denial

REQUESTED SPECIAL EXCEPTION:

At its meeting on March 1, 2023, the Executive Committee of the Area Plan Commission voted that granting this special exception would not substantially adversely affect the Comprehensive Plan.

Regarding the ballot items for the special exception:

1. Section 3.1 of the Unified Zoning Ordinance **DOES** authorize the special exception for a plumbing (special trade) business in the A zoning district.

And it is staff's opinion that:

2. Provided that the variance request is approved, the requirements and development standards for the requested use as prescribed by the Unified Zoning Ordinance **WILL** be met, because the petitioner's pole barn will meet the conditions of the variance that would be granted (providing for a maximum of 11,400 square feet in building space).
3. Granting the special exception **WILL NOT** subvert the general purposes served by the Ordinance. Legitimizing an existing small plumbing business benefits this area by requiring proper review of the business's compliance with the Unified Zoning Ordinance. This process may also ensure review from additional departments that regulate this business's land use.
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: Although a maximum of 2 employees plus the owner/operator would technically produce a minimal amount of traffic in this rural neighborhood, the fact that the petitioner's business will entail transporting heavy construction machinery and vehicles substantially changes the nature and impact of this traffic. Because all of the other uses on Perry Lane are residential, the traffic generated by this use will not be similar in nature to traffic generated by other residences.
 - b. Placement of outdoor lighting: Per the petitioner, there is and will be no lighting installed on the building, as the building lacks electricity. This amount of lighting is similar in intensity to what is commonly used in rural agricultural areas.
 - c. Noise production: Petitioner indicates that noise will be limited to loading and unloading of equipment during hours of operation, as well as the transportation of construction vehicles. This would not be similar in nature to noise generated by other residences, especially on a noisier gravel road.
 - d. Hours of operation: Daylight hours from March through October, and 7:00 AM to 6:00 PM from November through February are typical for this use.

STAFF RECOMMENDATION:

Denial

