

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

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

MEMBERS PRESENT

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

MEMBERS ABSENT

Frank Donaldson

STAFF PRESENT

Ryan O’Gara
Kathy Lind
Diana Trader
Zach Williams, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 23th day of January 2019 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.

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

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

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

Steve Clevenger was seated as President.

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

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

Carl Griffin moved that a unanimous ballot be cast for Gary Schroeder for Vice President.
Tom Andrew 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.
Tom Andrew seconded.

Carl Griffin moved that nominations for Secretary be closed.
Tom Andrew seconded, and the motion carried by unanimous voice vote.

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

II. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the December 5, 2018 BZA public hearing. Carl Griffin seconded, and the minutes were approved by unanimous voice vote.

III. NEW BUSINESS

Zach Williams said he had received a request to review the policies and procedures of the Area Board of Zoning Appeals because there is a new board member, Jen Dekker, joining the board tonight. Zach said one of the issues the board will be asked to vote on is whether a special exception should be granted. He said special exceptions are uses designated in the ordinance that are permitted if certain requirements are met. He said when the board votes on special exceptions there are 4 items listed on the Special Exception Ballot and all 4 items need to be approved by the board member in order to vote in favor of the petitioner.

Item #1 is to determine whether the Unified Zoning Ordinance **DOES** or **DOES NOT** authorize the special exception for this use in this zoning district.

Item #2 is to determine whether the requirements and development standards prescribed by the Unified Zoning Ordinance **WILL** or **WILL NOT** be met.

Item #3 is to determine whether granting the special exception **WILL** or **WILL NOT** subvert the general purposes served by the Ordinance.

Item #4 is to determine whether granting the special exception **WILL** or **WILL NOT** materially and permanently injure other property or uses in the same district and vicinity because of:

- 4a) traffic generation
- 4b) outdoor lighting
- 4c) noise
- 4d) hours of operation

Zach said because a special exception requires that all these standards be met, if a board member votes against any of the ballot items it will force him/her to deny the special exception. He said a board member had to find in favor of the petitioner on all ballot items in order to vote that the special exception should be granted. Zach said APC staff will present their findings and recommendation to the board and the petitioner will have a chance to respond. If anyone from the audience wishes to speak to the issue, they will also have an opportunity to do so.

Zach said variance requests are the other issue the board will vote on and they are different from the special exceptions. He said a variance is a specific approval to allow the petitioner to deviate from standards and developments in the Unified Zoning Ordinance. He said there are 5 items on the Variance Ballot and all items need to be approved by the board member in order to vote in favor of the petitioner.

Item #1 is to determine whether a variance **IS** or **IS NOT** a use variance.

Zach said permitted uses are items listed in the table that are allowed by the ordinance. Zach said state law and the Unified Zoning Ordinance do not allow Use Variances.

Item #2 is to determine whether granting the variance **WILL** or **WILL NOT** be injurious to the public health, safety, morals, and general welfare of the community.

Item #3 is to determine whether the use and value of the area adjacent to the property in question **WILL** or **WILL NOT** be affected in a substantially adverse manner.

Zach said often neighboring land owners may attend the meetings to voice their concerns with the petition.

Item #4 is to determine whether the terms of the Unified Zoning Ordinance are being applied to a situation that **IS** or **IS NOT** common to other properties in the same zoning district.

Zach said this is to determine whether this is a unique situation not common to other properties and whether there is a reason the variance should be granted.

Item #5 is to determine whether the strict application of the terms of the Unified Zoning Ordinance **WILL** or **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance.

Zach said board members need to determine if the petitioner will suffer an unusual hardship if a variance is not granted. He said as part of the analysis board members will also:

(Item #5a) determine whether the hardship **IS** or **IS NOT** self-imposed or if it is solely based on a perceived reduction of or restriction on economic gain.

Zach said that hardships cannot be self-imposed, meaning that if a petitioner created the hardship himself, then it is not a hardship.

Zach said the final item is to:

(Item #5b) determine whether the variance **DOES** or **DOES NOT** provide only the minimum relief needed to alleviate the hardship.

Zach said in other words, whether the action taken could be smaller or less impactful and still achieve the same result.

Zach said that APC staff will present their findings and recommendation to the board and the petitioner will have a chance to respond. If anyone from the audience wishes to speak to the issue, they will also have an opportunity to do so.

Zach told the board members that it is very important that they make written findings on their decisions that would provide a reviewing body enough information to understand the reason the board members voted the way they did. He said boards, such as this one, have been criticized in the past for not explaining how they came to their decisions. He said if a petitioner wishes to appeal the board's decision then the reviewing body needs to see this type of information.

Steve Clevenger said the board had been asked to reverse the 2 cases on the agenda so that **BZA-1999 ISRAEL AVILA GAYTAN AND MARIA DE LA LUZ RAMOS MUNOZ** will be heard after **BZA-2001 FORBICK ENTERPRISES, LLC.** Steve Clevenger said he will take a motion after the Public Hearing motion is read.

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.

Gary Schroeder moved that the board hear BZA-2001 first and then hear BZA-1999. Carl Griffin seconded.

Steve Clevenger explained this was at the request of the attorneys because BZA-2001 will take less time to hear than BZA-1999. The board voted unanimously by voice vote to reverse the order of the cases on the agenda.

Steve Clevenger read the meeting procedures.

1. BZA-2001 FORBICK ENTERPRISES, LLC:

Petitioner is requesting a setback variance of 35 feet from the minimum requirement of 40 feet from Klondike Road to construct six duplexes (12 units) in an R2 zone. Lindberg Point Villas Subdivision, the property in question, is located on the west side of Klondike Road, south of the railroad crossing and north of Lindberg Road, more specifically, 2270 Klondike, Wabash 10 (SE) 23-5. (UZO 2-6-7)

Gary Schroeder moved to hear and vote on. **BZA-2001 FORBICK ENTERPRISES, LLC.** Carl Griffin seconded.

Kathy Lind presented the zoning map, aerial photos of the site and the site plan. Kathy said the property is located on the west side of Klondike Road. She said it is about 1 ½ acres in size and it was rezoned from A to R2 in November 2018. She said it is surrounded by PDRS zoning to the north, west, and south. There is GB across the street. She said there is mainly single-family housing to the north, west, and south and there is a storage warehouse to the east. Kathy said there was a house on the property at one time, but the property was purchased by the county for the Klondike Road widening project. The house has been removed and the 1.5-acre tract was purchased by the petitioner. The property was rezoned to R2 last November and the petitioner filed a 12-unit multi-family subdivision. Kathy said the sketch plan was filed and the preliminary plat was approved at the January 16, 2019 Area Plan Commission meeting. She said it has not been final platted at this time. She said there will be 6 buildings, all duplexes with a private street coming off Klondike Road. Kathy said typically a secondary arterial road requires a 40-ft building setback.

She said the petitioner is requesting a 35-ft setback variance, but it is 35-ft at only one point. She said the northern edge of one building is 35-ft from the new right-of-way line, but it widens out and at the bottom it is closer to 38.5-ft. She said the variance request is tied to the site plan and this is the site plan they will need to use for a future building permit. Kathy said a secondary arterial has a half-width right-of-way of 40-ft. along with a 40-ft building setback. Typically, there would be 80-ft between the edge of a building and the center line of the secondary arterial road. She said in this case, since the county obtained the additional right-of-way for the Klondike Road project, there is 61-ft of half-width right-of-way at the northern edge of the property which tapers down to 55-ft of half-width right-of-way at the southern property line. The requested 35-ft setback would set the northern building 96-ft from the centerline of the road and the southern building would be 90-ft from the centerline of the road. Kathy said in both cases this would be substantially more than the usual 80-ft dimension. Kathy said the issue staff has with this request is that the development is happening after the right-of-way was in place. She said the developer could have redesigned the subdivision to meet the 40-ft required setback, but they have chosen not to. She said staff considers this to be a self-imposed situation and not a hardship. Kathy summarized the ballot items and concluded with a recommendation of denial.

Dan Teder, Reiling, Teder & Schrier, LLC, 250 Main Street, Suite 601, Lafayette, IN 47901, attorney representing the petitioner, Derrin Sorenson, said the duplexes will be large units with about 1,240 square feet of living area and 2-car garages. He said there will be additional parking in the driveways as well.

He said the units will have high-end amenities, the exterior of the buildings will be stone and cement board siding. He said the project design meets all other standards of the ordinance including side and rear yard setbacks, greenspace, lot coverage, height, and parking. Dan Teder said the petitioner is trying to develop something that will be different than the norm. He said that is the reason for not changing the plan to conform to the 40-ft setback standard. He said the developer wants to build duplexes that are nicer than what you would normally see. Dan Teder said he feels that staff has given a weak denial, and he referred to the staff report which states:

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.

Dan Teder said this is a unique and unusual property and that is why the petitioner is asking for the variance. He said the site plan shows houses to the south that are closer to Klondike Road than these duplexes will be with the 35-ft setback. He said the developer is trying to build a small but upscale project that will be an asset to the county. He asked for the board's approval.

Kathy Lind read a letter from the Tippecanoe County Commissioners in favor of the project.

Carl Griffin said he would like to hear the petitioner address the self-imposed hardship and the minimum relief issues to help the board better understand those concerns.

Dan Teder said the building cannot be moved to the back because of the rear setback and it cannot be moved to the side because the setback between the buildings is necessary for emergency access. He said if the design were changed to comply with the 40-ft setback the result would not be as substantial and extraordinary as the original design. He said there have been no objections to the request from anyone and the Tippecanoe County Commissioners are in favor of the project.

Carl Griffin asked if the existing conditions and the wider right-of-way are what imposed the hardship rather than it being self-imposed as staff suggested.

Dan Teder agreed that was the case.

Carl Griffin asked if this was the minimum that could be done to alleviate the hardship.

Dan Teder agreed that was the case.

The Board voted by ballot 6-Yes to 0-No to approve **BZA-2001—FORBICK ENTERPRISES, LLC.**

2. 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 are 8am to 10pm, Sunday through Thursday and 8am to 4am, Friday and Saturday have been amended and are now: 10:00am to 10:00pm Sunday through Thursday and 10:00am to midnight, Friday and Saturday. The property is located on the east side of Old SR 25, northeast of the Shafers Acres subdivision, Washington 36 (NE) 24-3. (UZO 3-2)
Continued from the December ABZA meeting at petitioner's request.

Gary Schroeder moved to hear and vote on **BZA-1999— ISRAEL AVILA GAYTAN AND MARIA DE LA LUZ RAMOS MUNOZ.** Carl Griffin seconded.

Ryan O’Gara presented the zoning map, aerial photos of the site and the site plan. Ryan said the surrounding properties are zoned Agricultural and the properties farther to the northwest are zoned Flood Plain in association with the Wabash River. He said there is some NB zoning to the southwest and the residence is located to the west of the site. Ryan said that in February 2018 a building permit was issued to construct a pole barn at this site. He said subsequent inspections revealed some violations of the building code and zoning ordinance, so it was red tagged. Ryan said the site does not have direct access to the highway, but the petitioner is interested in using existing property that he owns to create an access drive. Ryan said Old State Road 25 is a secondary arterial road and the average daily traffic count in 2017 was 4,435 vehicles daily on that road. Ryan said staff had received an amended site plan, but it was not received in time for staff to adequately review it before this meeting. He said staff’s recommendation is based on the original site plan and since there was not adequate time to review the amended site plan staff is recommending continuance for at least a month. Ryan said staff did share this information with the petitioner and they elected to proceed with the new site plan. Ryan said one of the revisions in the site plan is that the driveway has shifted from having direct access to the highway to going through the petitioner’s property to the south and intersecting with the neighborhood street which then connects with the highway. He said the parking lot has also been revised from 75 parking spaces to 101 parking spaces and the parking lot has shifted somewhat from the original site plan, in regard to the handicapped parking. He said the lighting has not changed so staff’s opinions on noise and lighting have not changed. Ryan said because staff has not done a full review of the amended site plan, he does not want to discuss the issue at length, but it was submitted for the board to review as a replacement to the original site plan. Ryan said he could proceed with the ballot items based on the original site plan or if the board prefers, he can go ahead with the continuance recommendation. He said the hours of operation had been revised, but in terms of the appropriateness of the new design he said he did not have much to add at this point. Ryan said he would continue with discussion of the original site plan because there are elements in common with the new site plan.

Ryan summarized the ballot items and said staff’s recommendation concerning the first site plan is denial. Ryan said staff recommends continuance if the petitioner wants to proceed with the amended site plan. Ryan said there were 9 letters recommending denial of the request.

Zach Williams said that if the petitioner wants to go forward, he has filed all the appropriate paperwork.

Ryan O’Gara concurred.

Chris Shelmon, Gutwein Law, 250 Main Street, Suite 590, Lafayette, IN 47901, attorney for the petitioner, said at this time the petitioner would like to exercise a second continuance.

Zach Williams recommended the board take a 5-minute recess.

Steve Clevenger reconvened the meeting at 6:44 pm.

Chris Shelmon, said the petitioner would like to confirm his request that this case be placed on the agenda for the February 27, 2019 Area Board of Zoning Appeals meeting.

Gary Schroeder moved to continue **BZA-1999—ISRAEL AVILA GAYTAN AND MARIA DE LA LUZ RAMOS MUNOZ** to the February 27, 2019 Area Board of Zoning Appeals meeting. Carl Griffin seconded, and the motion carried by unanimous voice vote.

Steve Clevenger said this will be the last and final continuance for this case.

V. ADMINISTRATIVE MATTERS

Steve Clevenger said he would like to welcome Jen Dekker to the board.

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

Gary Schroeder moved for adjournment.

The meeting adjourned at 6:47 p.m.

Respectfully submitted,



Diana E. Trader
Acting Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director