

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY
MINUTES OF A PUBLIC HEARING

DATE.....May 26, 2021
TIME..... 6:00 P.M.
PLACE..... COUNTY OFFICE BUILDING
20 N. 3RD STREET
LAFAYETTE, IN 47901

This meeting was held in-person, with an option to attend virtually.

MEMBERS PRESENT

Steve Clevenger
Ed Butz
Gary Schroeder
Tom Andrew
Michelle Dennis
Jen Dekker (virtual)

MEMBERS ABSENT

Frank Donaldson

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 26th day of May 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 April 28, 2021 BZA public hearing. Tom Andrew seconded and the minutes, as submitted, were approved by unanimous voice vote.

II. PUBLIC HEARING

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. Tom Andrew seconded, and the motion carried by voice vote.

BZA-2053 CASEY GILES:

Petitioner is requesting a special exception to use an existing single-family house as a Transient Guest House (as defined in the ordinance). The proposed hours of operation are 24 hours a day, seven days per week. The property is zoned Agricultural (A) and is located at 7342 Abby Marle East, in Tippecanoe 16 (SW) 24-4. (UZO 3-2) WITH COMMITMENT AND CONDITION. Continued from the April meeting to publish the *Journal and Courier* legal ad. (First Continuance)

Gary Schroeder moved to hear and vote on **BZA-2053 CASEY GILES**. Tom Andrew seconded.

APC staff Ryan O’Gara presented the zoning map, site plan, and aerial photos. He noted that the property is advertised on an online short-term rental site as being able to accommodate up to 30 guests. Mr. O’Gara asserted that the proposal would likely significantly alter the residential nature of the area. Additionally, as proposed, its use would incorporate more than one “family”, as defined by the zoning ordinance, and would therefore exceed the scope of the single-family dwelling use contemplated for this property by both the zoning ordinance and the comprehensive plan.

The findings of fact were presented with a staff recommendation of denial.

Casey Giles, petitioner, presented his request. He maintained that the property could appropriately continue to be used as a short-term rental establishment. He noted that he brings a lot of guests in from out of state and he employs a cleaning crew, which benefits the county.

Chairperson Clevenger asked if there was anyone in favor of the petition. There was no response. He then called forward remonstrators.

Ryan O’Gara read a remonstrance letter, written and submitted by the Abby Marle Homeowners Association, which opposed the request and included a petition with 19 signers.

Mr. O’Gara then read a letter of remonstrance written and submitted by Suzanne and Thomas McConville, 7204 Abby Marle East, West Lafayette.

Thomas Emwater, 7442 Abby Marle East, spoke as president of the homeowners association in opposition to the request. He noted that the neighborhood was designed as a quiet, rural neighborhood, and consists of 17 homes with 30 adults and 15 children, with most of the children living between the neighborhood entrance and the subject lot. He asserted that the additional traffic, noise and activity caused by the use is inappropriate for this neighborhood. He noted that property’s renters typically use the property for festive reasons, which incorporates quite a bit of noise and nuisance. The HOA has received several complaints about the use.

Mr. Emwater disagreed with the APC suggestion, gleaned from the staff report, that the intensity of use could be mitigated by limiting the number of users of the property at any one time. He also noted that the use violates the HOA covenants, and that the use is even more onerous because it is the primary use of the site; neither Mr. Giles, nor anyone else, occupies the site full-time. It is solely used for transient rental.

Ian Fox, 7367 Abby Marle East, spoke against the request. He lives directly across the road from the subject site. He noted that the regular rotation of drivers unfamiliar with the neighborhood’s roads pose a safety hazard, given those roads’ narrow and winding nature.

Dr. Christina Hupy, 7300 Abby Marle East, spoke against the request. She and her husband chose the neighborhood specifically because of its quiet and peaceful nature. She noted that a large group occupied the property on May 21st, with ten SUVs and 20-plus guests on the property. She noted that the renters used foul language and created a general ruckus, and she called attention to the fact that these renters are largely unknown to the property owner, and are wholly unsupervised during their stay.

Mr. Clevenger called for the petitioner’s rebuttal. Mr. Giles stated that he noticed that other neighbors in the area have parties, and so the fact that his renters have parties shouldn’t be so noteworthy.

Mr. Clevenger asked if the board members had any questions.

Mr. Schroeder asked staff if the road running through the neighborhood is private. Mr. O’Gara confirmed that the road is indeed private.

Mr. Clevenger called for the vote.

Eric Burns received five physical ballots and one electronic ballot and noted the result:

The Board voted by ballot 6-no to 0-yes to deny **BZA-2053 CASEY GILES.**

BZA-2054 RIETH-RILEY CONSTRUCTION CO. INC.:

Petitioner is requesting a variance to allow a 15' setback from the minimum requirement of 25' from O'Farrell Road to build a 32' x 35.5' addition to their existing office in an I3 zone. The property is located at 3425 O'Farrell Road, Fairfield, Longlois Reserve.

Gary Schroeder moved to hear and vote on **BZA-2054 RIETH-RILEY CONSTRUCTION.** Tom Andrew seconded.

APC staff Ryan O'Gara presented the zoning map, site plan, and aerial photos. He noted that the subject area and its surroundings are heavily industrial. The subject site is home to the Rieth-Riley construction business. With this request, a 1136 square-foot addition is proposed to the existing structure. The originally structure's required setback would have been lesser because, at the time, the lot fronted a private road. The road has since been made public, and now a greater setback is required. Additionally, the public road terminates into the property, so it has little public purpose.

Staff asserts that the findings of fact have been met and recommends approval of this request.

Ryan Garrett, representing petitioner Rieth-Riley, 3425 O'Farrell Road, spoke. He noted that he has little to add to staff's verbal report and requested approval.

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. After a pause for social media comment (there were none), Mr. Clevenger asked for a vote.

Eric Burns received five physical ballots and one electronic ballot and noted the result:

The Board voted by ballot 6-yes to 0-no to grant **BZA-2054 RIETH-RILEY CONSTRUCTION.**

BZA-2055 TONYA LOWRY:

Petitioner is requesting a variance to allow a 20' setback from the minimum requirement of 60' from I-65 to build a 3,830 sq. ft. barn in an R1 zone. The property is located at 3115 E 200 N, Fairfield 14 (NW) 23-4. (UZO 2-1-7).

Gary Schroeder moved to hear and vote on **BZA-2055 TONYA LOWRY.** Tom Andrew seconded.

APC staff Larry Aukerman presented the zoning map, site plan, and aerial photos. He noted that the subject lot is the last house on the lane and is largely unnoticeable to passing motorists. He noted that staff acknowledged that, because of site constraints, there is no clearly better spot on the site for construction of a new accessory structure. However, though there may be a practical difficulty relative to the site, there is no clear hardship, which is what must be shown to satisfy findings. So, staff recommends denial.

Tonya Lowry, petitioner, presented the variance request. She noted that she and her husband desire to remove an existing carport and erect the proposed barn, which will then be just large enough to house all that needs to be stored.

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

Mr. Clevenger asked if staff was aware of the petitioner's plans to remove the carport. Mr. Aukerman replied that staff was not aware of that contingency.

Eric Burns received five physical ballots and one electronic ballot and noted the result:

The Board voted by ballot 6-yes to 0-no to grant **BZA-2055 TONYA LOWRY.**

BZA-2056 WEST LAFAYETTE GREENHOUSE FACILITY, LLC:

Petitioner is requesting a variance to reduce the lot coverage to 36.8% from the minimum requirement of 25% to build a new greenhouse addition in an OR zone. The property is located at 3315 Kent Avenue, West Lafayette, Wabash 01 (SE) 23-5. (UZO 2-14-6)

Gary Schroeder moved to hear and vote on **BZA-2056 WEST LAFAYETTE GREENHOUSE FACILITY, LLC.** Tom Andrew seconded.

APC staff Ryan O'Gara presented the zoning map, site plan, and aerial photos. He noted that the subject property is located in the Purdue Research Park, is zoned OR, and is used by an agricultural research development company. The petitioner seeks to add greenhouse space, but doing so would provide for less open space than is required by the zoning ordinance. He noted that staff cannot find a hardship associated with the proposed project, so required findings of fact would not be met. Mr. O'Gara also noted that there exists a design solution, in that a slice of the adjoining lot could be added to this lot to increase its overall area, thus increasing the area allowable for development.

Marianne Owen, of Stuart and Branigin, LLP, attorney representing the petitioner, presented the case for the variance. She noted that the proposed building expansion would allow the building tenant, Inari, to increase its research capability, which is centered on issues of sustainability. She noted that the petitioner mostly agrees with staff's comments, but disagrees with staff's assertion relative to hardship. She noted that the adjoining lot lacks sufficient area to accommodate the proposed development, and that the project proposed would fit well with surrounding development.

Jeremy Slater, Associate Vice President of Real Estate and Facilities for the Purdue Research Foundation, noted that he also agreed largely with the staff report. He asserted that the project fits the Foundation's mission well and is complementary to surrounding uses. He also noted that the ordinance would allow for the paving of the lot but would not allow for this proposed greenhouse expansion.

Steve Clevenger asked for any additional comment from supporters, remonstrators or social media. There was none.

Gary Schroeder noted that staff's argument that the request does not meet the ordinance is likely true, but additionally noted that this commercial zone allows only 25% lot coverage, which seems thin to him. He further asserted that this project's remaining greenspace would be appropriate for the area.

Mr. Clevenger called for a vote.

Eric Burns received five physical ballots and one electronic ballot and noted the result:

The Board voted by ballot 6-yes to 0-no to grant **BZA-2056 WEST LAFAYETTE GREENHOUSE FACILITY, LLC.**

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.

Steve Clevenger asked about the provision within the draft resolution which requires 48 hours of notice for any ABZA member which intends to participate virtually, and opened up that provision for discussion.

David Hittle asked if this resolution was proposed to be added to the ABZA by-laws. Eric Burns answered, stating that the resolution should be tried out more informally for a few months before being officially added to the by-laws.

Gary Schroeder asked if the resolution is driven by the fact that the governor's emergency order (allowing for virtual meetings) was ending soon. Eric Burns responded affirmatively. Mr. Schroeder then suggested that the matter be tabled for a month or longer to consider whether ongoing allowances for virtual participation are truly necessary.

Gary Schroeder suggested the matter be continued until time uncertain, and consensus agreement was indicated by the ABZA members.

IV. ADJOURNMENT

Gary Schroeder moved for adjournment.

The meeting adjourned at 7:41 p.m.

Respectfully submitted,

David Hittle
Executive Director