

BZA MINUTES

MARCH 19, 2019

Members present: Bill Davis, Jon Peacock, Jason Hawley, Bryn Albertson, Myron Cougill and Don Calhoun

Absent: John Brutchen

Legal Representation: Jason Welch

Staff present: Randy Abel, Executive Director, Debra Johnting, Recording Secretary

Others present: Ed Thornburg, Jan Etchison, Rusty and Joyce Clements

Chairman Hawley: It is 7 o'clock on the dot by my watch, and I'd like to call this meeting to order. It is Tuesday, March 19, 2019. The first thing on the agenda is to approve the minutes from the last meeting which was held February 19, 2019. Do I hear a motion? It has been moved and seconded to approve the minutes as written, all in favor say aye, all opposed? The minutes are approved as written. Alright, we have two cases on the docket tonight. Let's start with Mr. Smiley, BZA2019-6-V, Mr. Smiley would you come on up and tell the board what you are requesting to do there.

C. Smiley: My name is Chris Smiley, I live at 2533 West 200 North, Winchester, Indiana. I am planning on building a 52' x 36' building for cars and storage. The way my property is laid out it is not feasible to put it behind my house because of the rolling ground, thickets, woods, and wet area so I would like to put it in front of my house, about fifty feet off the property line. And I think if you have the drawing there it's going to be about 300 feet from any neighbor's house. It's a flat spot, I have access to the driveway, gas access and electricity there so that's why I am asking for a variance.

Chairman Hawley: And it's just a standard garage?

C. Smiley: Right, it's going to be a pole barn, it's going to be decorative, it's not going to be an eyesore or a cow barn or anything. It's just for my truck, car and maybe a woodshop. Man cave.

Chairman Hawley: I gotcha. Anybody else have any questions from the board? Is there anybody else from the community that would like to speak for or against the proposal.

D. Johnting: We were contacted by three of the neighbors and they have no problem with it. They all agreed that it was the only place to put a building.

Chairman Hawley: Well, I would accept a motion to take a vote? It has been moved and seconded to take a roll call vote.

D. Johnting: Bryn Albertson, yes, Bill Davis, yes, Don Calhoun, yes, Jason Hawley, yes, John Brutchen is absent, Jon Peacock, yes, Myron Cougill, yes. Motion is approved.

Chairman Hawley: Congratulations.

C. Smiley: Thank you. I didn't sleep for a month and that wasn't bad at all.

Chairman Hawley: Ok, next on the docket we have BZA2019-7-V, Thomas Clements. If you would like to come up and state your name and address for the record please.

T. Clements: Alright, Thomas Clements.

Chairman Hawley: Before you start did you receive Article V, Conduct of Hearings?

T. Clements: Yes.

Chairman Hawley: So, why don't you tell us a little bit about what you are proposing to do?

T. Clements: Thank you, we bought a home out at Indian Trail Lake and it doesn't have a garage to it and we are wanting to add a garage. I think since man caves are going through tonight I may just call it a man cave. We'd like to have about a two and a half car garage, about 24' x 36', also decorative style pole barn type of a garage and so we made that note to the community out there and we sent our letters out and we had to take a look at where it can be placed. And there is so much you allow for a setback, I think there is an addendum or something to this to show the committee out there voted to allow us to put it ten feet away from the right of way. So that it's in a position that is the best for the neighborhood out there.

Chairman Hawley: I saw the plan, and it suggests that a garage would be indicated in the area requested. And there is a potential attachment?

R. Abel: No, we just submitted an optional photo, he's not requesting that. Just in case you wanted to see if that would work.

Chairman Hawley: Ok, I just wanted to make sure I was reading it right.

R. Abel: And we gave you a letter from the association, with the agreement to the ten foot setback. The association usually requires a twenty foot setback from the property line.

Chairman Hawley: And is there any questions from the panel? Is there anyone in the audience who would like to speak for or against the proposal? Thank you Mr. Clements, if you would like to step forward? Please state your name and address for the record please.

J. Etchison: Jan Etchison II, 3642 Southwest Indian Trail Lake Road, I am not sure whether I am for or against I just want to make sure that all the guidelines and restrictions and everything are followed. I spoke with the board of directors, and I want to start out by saying, I like my neighbors, I really like my neighbors, and I am just here to make sure that, because once a project gets started and ground gets broken and concrete gets poured or gravel's put in it's kind of hard to reel everything back in. I brought some information for you to consider when making your decision. I originally started to sell the property to the people that the Clements bought the house from, I own three lots in front of my house. And, they had had some septic issues and I said you may want to, well, it started out with their builder had a big pile of dirt about fifteen feet into my yard. And he said, oh oh, they told it was their yard and I said well, they bought the property without a survey—you're fifteen feet into my yard, and then the builder showed up and thought I was all upset, and I said no, I'm not upset it's just dirt, it can all be fixed, and the fact is I've got this gravel path here that's all overgrown. If you promise me it's going to look like it's going to look when you're done and put the dirt over there's no harm no foul.

They did not buy the lot off of me, my neighbors, Rusty and Joyce did. And the twenty foot setback is recorded, it's not in your new book but if you go across the hall it's on Plat book 1, on page 275 when they originally incorporated they had a twenty foot setback from the road and twenty five feet from the low water line. So, when the Clements decided that they were going to buy the house they said that they were interested in buying my lot 69. And I said I'd be glad to sell it to them and they did tell me they wanted to build a garage. A small two car garage so I didn't have any problem with that. So, when we did the purchase agreement, we put in there that the deed would contain restrictive covenants for Indian Trail Lake as was amended in the 1999 copy, which has been provided to the purchaser. The purchaser will pay the closing cost. The reason we did that and had that language in there is that in our by-laws there is a 10% setback from the—not the front and back but the sidelines, and because my house sits off the road, and I would be looking off my deck onto any sort of new structure, that was my wife's and my concern. I have had the property surveyed by Beals, Moore and Associates and provided at closing a copy of the survey but before he sent it to me I asked him to include where the twenty foot setback line would be so that it would help them in there. So, I guess my only concern is that, it's a fifty foot wide lot, our rules state that it won't be more than 10%, the width of a building plot at the building line and I did tell our board out there, I didn't care if it was closer to the road. And the reason that I didn't show up to the first meeting was I called the president and I said, are you aware that this building is closer to the setback from the road and they didn't even know anything about it. I have a survey and I said, well it's on there. I've done my research. And I said I really don't have a problem with it being closer than the twenty feet, other than we have several areas that are blind spots. We have a 19.5 mile an hour speed limit and some people who are guests go roaring around there. My wife and I bought our house 17 years ago out there and had young children at the time, they are now in their mid-twenties. It was always scary with them out there on bicycles. Some people adhere to the speed limit, others didn't. And so I said, I don't have a problem with what they are wanting to do, as long as you guys know that you might have a blind spot issue. I don't think it's going to be, coming forward ten feet. My only concern is, Joyce and Rusty and I are going to be in agreement, hey you're going to build your thirty-six foot wide garage on a fifty foot lot, not attach it to your house, and the pictures, and I am sure they didn't lay this out, I am sure their builder did. My only question is, is it in the required 10% and I don't know whether the 10% is the total of the two and a half lots, the fifty, the fifty and the twelve, or the fifty foot lot that I sold them. If it is just the five feet, which is ten percent, I don't have a problem with that but based on these pictures it looks like it possibly is closer than the five feet or the 10%, and they have been awesome, awesome neighbors, mowed my front yard for me, pressure washed my whole concrete patio, and I am not here to cause any kind of problems. I know that they would have. If it is three feet or five feet, you can set a trash toter beside of your garage and it wouldn't be on my property. I'm looking for the future.

B. Davis: Ok, I'm going to stop you right there for a second. First of all, does this have anything other than, I mean, are we voting on this, because of this? Because we're voting on the variance, so this really has nothing to do with us.

J. Welch: Well, it does, it's an additional restriction.

B. Davis: But this can still pass, and he would still have an issue with...

J. Welch: Yes, they can still say no.

B. Davis: With them.

J. Etchison: Who can say no?

J. Welch: Your board. If you have something in the contract that your board put it there then that's between you and them. That has nothing to do with what we're doing, if you understand my point.

J. Etchison: I do.

R. Abel: He's just asking a variance for the rear, not the side setbacks.

J. Etchison: Ok.

R. Abel: So his side setback will still have to meet the requirements of the ordinance. And of your covenant.

J. Welch: The restrictive covenant is between you and the board.

R. Abel: In order for him to build, he's going to have to combine those lots. So, once he combines those lots the ordinance states ten feet or 10% of the lot width, whichever is lesser, so once he combines those it will be a ten foot side setback that he will have to maintain.

J. Etchison: So, that's the same thing I am saying.

B. Davis: Right, but...

R. Abel: It has nothing to do with this variance.

B. Davis: Exactly, that was my point.

J. Etchison: So, I guess that was my concern, was if you have a 10%, where it talks about in f, 90% of the required lot? Is that where you come up with your 10%?

R. Abel: No, it's in a different part of the ordinance. Side setbacks are different in each zone.

J. Etchison: Well, I guess I am here to get educated. I am just saying that once it goes through, and I hope you don't think I am trying to waste your time. My concern would be, is that all of a sudden, there is a little trailer parked on the side of the garage, in between lot 69 and 70 and I own lot 70. If it was only three feet and based on those pictures and if you'd go out and look where the flags are it's not, even if he combines the lots, it's not going to be ten feet away from my property. Are you talking ten feet off the road?

R. Abel: No, off the side property line.

J. Etchison: Well, if you look where the flags are it doesn't appear that that's the case, so. Do you want to see anything else that I have?

J. Peacock: So, if this variance does allow ten feet, and if they go closer to that, what happens? You will be out there checking and making sure that doesn't happen, correct?

R. Abel: Then it will have to be moved.

J. Etchison: Whatever your determination is, ten feet, five feet, like I say I am not here to cause a problem, I just want to make sure that on a fifty foot wide lot, and a thirty-six foot wide building you've got fourteen feet in there for wiggle room...

R. Abel: Well, the survey stakes are there, right?

J. Etchison: Yes.

R. Abel: Well, the contractor should be able to measure off those and keep it ten feet away.

J. Etchison: As the blue flags seem to be now, it doesn't appear to be ten feet away from the line now at the front.

R. Abel: I would say that before they start digging, I will be out there looking at it. If they start before I get there and it's wrong if it needs to be moved, they might just have to move it. And you can also be keeping an eye on it.

J. Etchison: I am not asking you to enforce our covenants, I just brought them because when I did sell them the lot I did ask that they be, you know, in the deeds, so. As I say, I like my neighbors, I don't have any problem with them, it's hard to do what you've got going. I didn't do anything wrong, did I? By coming in and bringing this up?

B. Davis: No.

J. Etchison: Ok.

B. Davis: No, I just kinda thought you were getting on a different tangent that was really not our thing.

J. Etchison: But the side does not appear to be ten feet at this time, it appears to be about three or four.

D. Johnting: And one thing to remember is, there are three lots there now, but that garage can't be built on a lot without a house. So those three lots must be combined before the permit can be issued. At that time, the lots are combined and that's no longer a fifty foot wide lot, it's over the ten feet on the 10% rule so it will require a ten foot side setback.

J. Etchison: And it comes right close within that ten feet. I went to Mr. Caster's office and made him the WTR lines for me, and drew them at the front line, not at the building line which is twenty feet back, which would make it shorter, it was 111.7, with the 50, 50 and the 11.7 or whatever. So, my only concern, and I wasn't saying that I didn't think anyone here wasn't going to do their job or whatever, I just want to make sure that....

J. Hawley: Right, that everybody is on the level and on the up and up.

J. Etchison: And ten feet would give you enough room to park a trailer beside your garage or even if they were at the three feet it's still not going to impede my view, and that was our total big concern and why we put it in the purchase agreement. Because why would I sell a lot and then obstruct my view of the lake? I just wanted you to take a look at it and work with their builder however the thing goes. Would you like a copy of my survey?

R. Abel: No, we have the map.

J. Etchison: Yes, they are all clearly marked, I have dug, put in eight inch pvc couplers around them, this is the third time I have had it surveyed, and I'm tired of marking the property and the pipes getting moved over so I am going to put cement around them and a piece of pipe in there, so...that was it, like I said the problem with them building a garage with the setbacks so I didn't show up at the first meeting because the president of the board told me it was cancelled and said so you don't need to go. It wasn't that I wasn't an interested party, I just didn't think I needed to come to the first meeting, so.

D. Johnting: Generally, an interested party would not have known that the first meeting was cancelled so they would have been here. This was an unusual circumstance that Jan knew from the Indian Trail board that the meeting was going to be postponed. So he is still considered an interested party even though he wasn't at the first hearing.

J. Etchison: Yes, I went to the Area Planning office and we had a great talk, and there have been a lot of, and the only reason that I even know anything about any of this stuff is there have been people who just decide that they can do whatever they want to do, and that's what your job is, is to make sure that they follow the rules, so.... I do not object to them putting a garage in....

J. Hawley: Just where it is staked off, and says it's going to be here.

J. Etchison: I just want it to follow within whatever your guidelines are. I'm fine with it. The reason the board relented and said they were fine with just ten feet is because I was the one who told them—they didn't even know that the twenty feet was in there. Where are you finding that? They asked me. Well, you have to go to Platbook 1, page 275, and I said you're really going to have a hard time enforcing the twenty foot setback because when you drive down there eighty percent of the people who have put a garage in, some of them are seven, some of them are ten, you really can't penalize Rusty for doing the right thing for coming and saying, "Hey, I need a variance." So. And I don't have any problem with it, if they don't have a problem with it and they don't have a problem with it and they don't think it's going to be a blind spot, which I don't think it will be either. There's enough road so it won't be a blind spot like some of the other turns around there are. Like I say, I don't have any problem with the garage, I just want to make sure that it does fall within whatever parameters you have deemed are necessary.

J. Hawley: And like we have stated, just make sure that everybody is double checking on their measuring, to make sure that we can get zoning involved if that is an issue. I don't think anyone would do it nefariously, but sometimes people try and cut corners when they are in construction and if this is the easiest place to dig and so on.

J. Etchison: Yes, I have been in not in the building industry, but in the alarm industry working on lots of job sites and I know full well what can happen. Thank you.

J. Peacock: I have faith that Randy will make sure that doesn't happen.

J. Hawley: Rusty, was there something else you wanted to add?

R. Clements: I just wanted to state that before we did anything after this meeting I told our contractor that what I would like to do is to be able to where they put the flags up to give them some kind of idea as the size of the building as to what the ground would look like and so. And so I told Chip earlier that

you know that we would work together on this so my next step will be getting my builder out there. He understands now what the parameters are, and as a matter of fact the association came out there and even measured to make sure that we knew exactly where ten feet from the right of way was and the flags in the ground and everything. So when we stake it out, my next phone call will be to Chip to come and look at it and obviously the rest of the body to come and look at it and make sure everything is ok.

J. Etchison: Is it ten feet from the pavement?

R. Abel: Ten feet from the property line.

J. Etchison: Ok.

J. Hawley: Are there any other comments from the audience? I don't see any hands going up or anybody stepping forward, so are there any questions that the board may have? I don't see any, so I will take a motion to vote. It has been moved and seconded for a roll call vote.

D. Johnting: This will be a vote on the amended request for a ten foot variance in the rear (instead of a twenty foot variance) to the rear setback. Don Calhoun, yes, Bryn Albertson, yes, Jason Hawley, yes, Bill Davis, yes, John Brutchen is absent, Jon Peacock, yes, and Myron Cougill, yes. Motion approved.

R. Clements: Thank you very much.

J. Hawley: Alright, is there any business that we need to discuss?

D. Johnting: We do have a meeting next month. We do have a petition already for April.

J. Hawley: Same bat time, same bat channel, see you next month, please don't forget to turn in your paperwork to Debra, it makes her life a lot easier.

B. Davis: I make a motion to adjourn.

J. Hawley: I second that.

B. Davis: All in favor say aye. Meeting adjourned.

Jason Hawley, Chairman

Debra Johnting, Recording Secretary

Bill Davis, Vice Chairman