

BZA MINUTES

June 20, 2016

Members present: Bill Davis, Phil DeHaven, Jim Hufford, Myron Cougill, Christy Starbuck and Lee DeGuise.

Absent: Charles Addington.

Legal representation: Jason Welch

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

Others present: Ed Thornburg, Mary Beuchat, James Grant, Larry Wiley, Joyce Edwards, John Edwards, Mark Edwards, Tracie Edwards, Norm Hartzell, Gary Foulke, Jan Foulke, Brock Featherston, Diana Nealeigh, Jetta Dungan, Kenny Horner, Trent Kritsch, Ruth Warren, Jerry Warren, Rachel Carpenter

Chairman DeGuise: It is 7 O'clock, June 20, 2016, and I open this meeting of the Randolph County Board of Zoning Appeals. First on the agenda is to approve the minutes from the last meeting. All those in favor signify by saying aye. All those opposed. Minutes have passed. First petition in front of this board tonight is BZA2016-5-V a variance for a Mr. Larry Wiley. Is Mr. Wiley here? Can you come forward sir, please? Mr. Wiley if you would please have a seat and state your name this is a recorded public hearing.

L. Wiley: Larry Wiley, 1015 N 700 E, Union City, Indiana.

Chairman DeGuise: Thank you sir, have you received Article 5, Conduct of Hearings from Debra?

L. Wiley: Yes.

Chairman DeGuise: So, in your own words just tell us what you are up to, what you are here for. We have your application, and all the paperwork you handed in, we're just looking for your words on this.

L. Wiley: I am building a 60'x100' storage building on property that I already have, and want to put a secretary in there and move them from my home. I will use the rest of it for storage, mostly antique tractors and machinery. There will probably be two or three pieces of business equipment there.

Chairman DeGuise: So your property has been changed to C-2 so you are just looking to build a storage building? I guess briefly describe what your need is with the parking lot?

L. Wiley: I just want to continue to use the parking lot that is already there.

D. Johnting: The ordinance says the parking lot will need to be paved within one year since it has been changed to C-2.

Chairman DeGuise: Oh, I didn't realize that it had already been changed to C-2...

D. Johnting: Sorry, that was done before the zoning hearing.

Chairman DeGuise: Does anyone have any questions for Mr. Wiley? You may have a seat sir. Is there anyone in the audience who wishes to speak for or against or have any public comments they'd like to

add to that? Please step forward. Again, this is a public hearing so please state your name and address for the record.

N. Hartzell: Norm Hartzell, 624 N 650 E, Union City, Indiana. And I own the property right next to Larry there, and I was concerned where a parking lot was going to be. Where the new building is going to be?

Chairman DeGuise: It's not really marked on here where he's putting the parking lot.

D. Johnting: The parking lot is already there.

J. Welch: I think he's just asking that he not be required to pave it. I think everything else is going to stay the same.

Chairman DeGuise: So he's asking not to put in a parking lot?

N. Hartzell: Oh, I thought he was wanting not to pave the parking lot.

Chairman DeGuise: He's required because of the zoning change to create a parking lot, but he's asking to be allowed not to create the parking lot.

N. Hartzell: That's what I thought.

Chairman DeGuise: So, I'm assuming you're ok with that part.

N. Hartzell: Well, yes in one respect, I don't know how this works I imagine that instead of paving that parking lot if he could pave that driveway right next to my house where they come in and out all the time.

Chairman DeGuise: Well, he's asking us to give him a variance not to put in a parking lot. He has no interest in paving or putting in a parking lot or anything. Just leave it as it is. He's required to because he changed the zoning. He's asking not to create a parking lot, just leave it as it is. I think you're reading it in reverse.

N. Hartzell: I might be.

Chairman DeGuise: He's asking for what you want, which is not to have a parking lot. Basically.

N. Hartzell: It would be nice if he could just pave that driveway.

J. Hufford: What you need to do is just talk to him personally since you're the property owner next to him and you guys work something out.

N. Hartzell: Ok, I think you answered my questions, thank you.

Chairman DeGuise: Oh no, thank you for coming. Anyone else? Any motions.

C. Starbuck: I make a motion that we move this to a roll call vote.

Chairman DeGuise: All those in favor say aye, all those opposed. Roll call vote please.

D. Johnting: Lee DeGuise, yes, Bill Davis, yes, Phil DeHaven, yes, Jim Hufford, yes, Christy Starbuck, yes, Myron Cougill, yes. Motion passes.

Chairman DeGuise: Motion passes, thank you. Second on tonight's agenda, BZA2016-9-V, a variance for Mr. James Grant. Is Mr. Grant in the audience? Would you please step forward sir? And please state your name and address for the record, sir.

J. Grant: Can she come too, my hearing is not the best all the time. I apologize for that. My name is James Edward Grant, I live at 405 West Willow Drive, Union City, Indiana.

Chairman DeGuise: Have you received Article V, Conduct of hearings from Debra.

J. Grant: Yes I have.

Chairman DeGuise: So, just tell us in your own words what you would like to do.

J. Grant: I would like a variance to put up a garage beside my house. All the lots around my house run at an angle like this, so I have more room at the back of the property. I have a camper, a boat and a small utility trailer and by getting the approval to get this garage put up I can put all this stuff away, it won't be setting outside. And also the neighbors to the east of me have a deck that sets up rather high, so it will give both of us a little more privacy. I have talked to the neighbor and his wife and both about that.

Chairman DeGuise: I don't really have any questions, does anybody have any questions for him.

J. Hufford: I notice on the map here it says that your setback on the side here at the end 1 ½ feet. Would it be any more than that?

J. Grant: The one and a half feet is actually at the end of the driveway when you come off of the street. Back where the building would start it's 4 feet. The lots run at an angle there, and in order to get enough driveway to get the building in back there and have enough room to come in off the street, I have to be that close.

R. Abel: If there was room to put it behind the house the setback would only be 5 feet. But since it has to go forward it's a 10 foot setback.

J. Hufford: It says on here that it's 1 ½ feet, and then it says 4 feet on the map, I just wondered, it's confusing.

R. Abel: It's 1 ½ feet at the end of the driveway, then it tapers back to the building which is 4 feet away, and then at the very back it's 7 feet away from the property line.

Chairman DeGuise: Does anyone on the board have any comments? Are there any comments from anyone in the audience? Please come up ma'am. This is a public hearing, so you need to state your name and address.

D. Nealeigh: Diana Nealeigh, 1151 N Howard Street, Union City, Indiana. And I am the neighbor who signed the paper that said he could do it. But I really didn't think about it. I have been thinking about my property values, it will probably lower my property value with a garage that close to my property line.

When he came to us he said it was going to be an enclosed carport, and I am against it. If I had thought about it, or had more time to think about it I would have said no in the beginning.

Chairman DeGuise: Is there a fence line between your property and his property?

D. Nealeigh: There is a fence.

Chairman DeGuise: It's hard for us to tell, there's just a black line on the GIS Map, that's why I'm asking.

D. Nealeigh: It's just a wire fence.

Chairman DeGuise: So, It's a chain link fence?

D. Nealeigh: Yes.

P. DeHaven: Owned by?

D. Nealeigh: By me.

Chairman DeGuise: May I ask, I'm a real estate broker, may I ask why you think it would be detrimental to the value?

D. Nealeigh: I don't know, but I know it's nice looking out there and I don't want to see that blocked off. OI have a small lot out there anyway. And you are a realtor? And I know I looked at a house at one point that had a big antique place beside it with a big gray wall on the driveway and it was very unsightly and that's what kept me from buying that house. And that's why after thinking about it...

Chairman DeGuise: Ok, thanks for that answer. You may have a seat.

J. Hufford: I have a question for Jim, what kind of building is this going to be? Why type of garage are you putting up, is it a pole style or frame like the house?

J. Grant: It's a steel building. All steel.

J. Hufford: Is it going to be the same colors as the house?

J. Grant: It's going to be white, all white.

J. Hufford: Ok.

P. DeHaven: Isn't the driveway already in?

J. Grant: Yes, I haven't put the finish gravel on top yet, it's packed down but I need to go another inch higher. I'm not trying to cause any problems, but I have a paper here. Before this project ever started, I talked to Diane and Tony both back on April 10 and asked them if they had any objections to me building this and they gave me permission to build a metal garage on the property line at my house. I realize that she's had second thoughts since then, but if I had known to start with that she had a problem with this I would have never gone to the expense of doing this.

J. Hufford: That's all I've got.

R. Abel: Are you planning to park your boat and car over on that side.

J. Grant: My camper, and a little utility trailer, they'll all fit in there.

R. Abel: But you're planning to park them over there regardless if there's a building there or not?

J. Grant: Yeah, they'll be there regardless, right now I've got them crammed to one side and I don't have room for where my truck is sitting and my wife backs out at 5:00 in the morning to go to work in Greenville. So she's got to be real careful getting out of there because my truck sits out so far. So if I move all that to the other side then she'll be able to see better. And for anyone else parked in their driveway.

P. DeHaven: I guess I do have maybe more of a comment. So we're saying here at the street on Willow Drive right now with the drive way where you intended it, it is one and a half feet from her property.

J. Grant: Yes.

P. DeHaven: Is there a fence there?

J. Grant: Yes.

P. DeHaven: All right, and only four feet at the back of the driveway up to the garage, correct?

J. Grant: Where the garage starts, it's about 7 feet at the back of the garage.

P. DeHaven: Thank you.

J. Grant: Ok.

Chairman DeGuise: Is there anybody else who has anything to say for or against or just a comment? Do I hear any motions? It has been moved and seconded to vote on this variance. All those in favor signify by saying aye. All those opposed. Roll call vote Debra, please.

D. Johnting: Lee DeGuise, yes, Bill Davis, yes, Phil DeHaven, no, Jim Hufford, yes, Christy Starbuck, no, Myron Cougill, no. Motion denied.

Chairman DeGuise: I'm sorry sir, that motion was turned down. We would have had to have four in favor for it to pass and we only had 3. I'm sorry sir.

J. Grant: That's ok.

Chairman DeGuise: Next application tonight, BZA2016-10-V, Trent Kritsch, is Mr. Kritsch here? Please come up to the table and state your name and address for the record.

T. Kritsch: Trent Kritsch, 35 North 300 West, Winchester.

Chairman DeGuise: Basically, Mr. Kritsch, we are going to ask you the same questions as everyone else, in your words, just tell us what you are doing here tonight?

T. Kritsch: Looking at building a farming CAFO on the property. I'd like a variance to go from 40 acres to approximately 25. I'm bringing a partner in with me, and this is strictly going to be on the hogs, he's

not going to have anything to do with the production agriculture side. I'm wanting to put the two buildings in the woods with an approximate 35 to 50 foot access to the buildings in the woods and include the house and the barn that is there on the property as he will potentially be moving in to that house.

Chairman DeGuise: Just so you know, we are looking at that aerial overhead. I do have a question. I assume it must be business related, you do have obviously enough acreage already to do what you want to do without asking us. Why would you go down to the 30 acres and go away from the 40?

T. Kritsch: The partner I am bringing in, due to his limited equity--to buy an extra 10 to 15 acres of farm ground at \$8,000 an acre would impede his ability to acquire financing on this property.

P. DeHaven: So basically this project deals with a financial issue?

T. Kritsch: Yes.

P. DeHaven: Thank you.

Chairman DeGuise: Any other questions?

M. Cougill: How many acres did you say you thought you would need?

T. Kritsch: I think it's around 25, I'm estimating, I think I might have said 30 acres on my application, but after I measured on Google Maps it's more like 25. Depending on how you measure the woods, back when I purchased that in April they said that was 23 acres, and then I would like to have 35 to 50 foot of a driveway from the road to the woods, and then I want to bring the existing building lot into that as well, and they said that was 4.4 acres. We have shrunk that down to approximately two acres I'm guessing off my measurements. So we're going to be in the vicinity of 25 acres. Basically I am just wanted to keep the hog barns and existing house together as one entity and then keep the farm ground separate from that so that my partner does not have to buy farm ground when he's just involved in the hog operation.

Chairman DeGuise: Any other questions? Thank you very much, that's it for now. Anyone in the audience here to state for or against or have a comment. Please step forward. Please state your name and address for the record.

J. Dungan: Jette Dungan, 4020 South Bloomingsport Road, Winchester. And I'm confused. I know that...can I speak with him?

Chairman DeGuise: Yes.

J. Dungan: I'm confused, I know you've got the acreage, I'm confused as to why you want a variance from 40 to 25, is that what he said?

Chairman DeGuise: That's what he said, his petition states 30.

J. Dungan: Ok, regardless, I still don't understand why he needs a that if he's got more than enough acreage.

Chairman DeGuise: In this case Mr. Kritsch's answer was that it was a financial concern because of a partnership, or I am assuming an LLC? An LLC, which is a separate entity would be purchasing the property from Mr. Kritsch, therefore the financing to purchase the property would be greater if it is 40 acres versus if it is 30 acres. So the corporation in essence is going to have a financial problem purchasing the additional 10 acres....

J. Dungan: Oh, the corporation, ok, got that. So, it's not for Mr. Kritsch as an individual it's for the corporation.

Chairman DeGuise: In this case I believe you are...

T. Kritsch: We are going to form an LLC.

J. Dungan: Because I am concerned about the ordinance, of lowering it from 40 to anything else, according to the zoning.

Chairman DeGuise: The way the Unified Zoning Ordinance is written right now in order for someone to do what they are doing it must be ok on everything else, except for the acreage, in which case they would still need to come for a variance if it's below forty acres. No one can just decide hey I've got thirty, I'm going to throw a hog farm on it, no that's not allowed.

J. Dungan: Ok, I just wanted clarification of that on public record.

Chairman DeGuise: This hearing is for this particular parcel, this particular person, this particular entity, only. It does not carry on to others.

J. Dungan: Understood, but I was not aware of the other portion of this that's why I was asking the question. Thank you.

Chairman DeGuise: Thank you ma'am, thank you for coming. Is there anyone else? Please step forward. Please state your name and address for the record.

M. Beauchat: Hello, Mary Beauchat, 1763 West 300 South, Winchester. I am also here on behalf of Nate Cash, who was served notice about this hearing but cannot be here because he's out of state. But I do have a notarized document. His concerns pretty much mimic mine, not quite as much because he is much closer. He's worried about the odor, there's enough tree lines that I don't think that will affect me personally. He's concerned about the traffic, as am I, and the roads. Even when they were just cutting in manure and did a great job, I have no complaints, there was no odor, but the road was torn up all along the front until they repaired it. He's concerned that it's between two running streams, both the Salt and Sugar Creeks, both of which run into Winchester. It's also pretty close to a registered DNR classified forest and wild land. And that's according to the Randolph County Geographic information systems per Nate. He's concerned about the bacteria in the area, and the antibiotic resistant bacteria, and I am also aware of that, my sons both worked in them.

Chairman DeGuise: I understand, let me just step back here for a second and just clarify. And it's wonderful that you came up here, but in this particular case the property owner, Mr. Kritsch, he doesn't need our permission to put in a CAFO at all.

M. Beauchat: Ok.

Chairman DeGuise: He can do it without us. The only thing he's asking this particular hearing for is just to reduce the size of the acreage that is needed.

M. Beuchat: And that is what Mr. Cash addresses initially is that he does not understand why it has to be right there. I mean...I understand the financial....

Chairman DeGuise: Well, not even the financial aspect, leaving that completely aside, this is the Board of Zoning Appeals.

M Beuchat: Right....

Chairman DeGuise: We only go on a case by case basis of something that is already out of the ordinary or not conforming to the Unified Zoning Ordinance. In this case, Mr. Kritsch, if he so desired, would never have to come here at all. And he could have put it right where he is putting it.

M. Beuchat: On 25 acres?

Chairman DeGuise: Not on 25 acres.

M. Beuchat: Ok.

Chairman DeGuise: But I just wanted to clarify this it's not if someone wants a CAFO there or doesn't want it there isn't this board's decision. It doesn't matter whether we say yes or no, if we say yes, then so be it, if we say no then Mr. Kritsch can go right back over to Debra tomorrow and just put it there anyway. But just not legally on that 30 acres. What he is looking to do from what we have in front of us is he's looking to parcel off I am assuming looks like somewhere near 100 acres down into a 30 acre parcel but not change the other 70 acres, it would still remain as it is.

M. Beuchat: Which is farm ground.

Chairman DeGuise: Correct. But, even if we were against the 30 acre part, Mr. Kritsch can put it exactly where it is no matter what. The only thing he's asking for from us is that we're voting on is whether we're going to allow the reduction by 10 acres for him to do it today, that's what this board does. We're not Area Planning, and we don't write the zoning ordinance. We just go case by case to the zoning ordinance.

M. Beuchat: So, he's asking to put it on 15 acres less than...

Chairman DeGuise: Well, that part we'll get to because as it states now, the application states 30. That's another point completely. I just want to clarify that what we do here, is we don't condone, we don't approve, we don't disapprove...

M. Beuchat: I just told Nate since he was out of state I would bring his concerns because that's what he was served on that if he had any concerns show up.

Chairman DeGuise: No, I understand that completely, and I am not trying to....

M. Beuchat: And I like literally drove here from Detroit.

Chairman DeGuise: And I am not trying to belittle your comments whatsoever, I am just trying to clarify that, we just decide whether it's ok in this instance to reduce it, and for what reason. As far as where it is placed as long as he meets everything else, we are powerless to change that.

M. Beuchat: I've seen hog operations, my sons worked for them, and they can be run well...

Chairman DeGuise: And we've all seen them, we live here.

M. Beuchat: Yes, by choice.

Chairman DeGuise: But I just wanted to clarify that, and I'm sorry if I interrupted you, I didn't mean to.

M Beuchat: Well, I was pretty much finished.

Chairman DeGuise: I just wanted to clarify what we do and this particular hearing is not a public hearing on CAFOs, per say...

M. Beuchat: No, but its Nate's and mine concerns about a reduced piece of property containing a CAFO. It's pretty close to the road in my opinion. I have driven by some of them and they are way off the road.

Chairman DeGuise: Well, in this case he meets all the other parts of the Zoning Ordinance. And that part we don't decide, that's up to the Area Planning Commission. Sorry...But basically you are saying in your verbiage you are opposed to us reducing the requirement in this case by that 10 acres.

M. Beuchat: Or whatever the actual acreage is.

Chairman DeGuise: That's another thing that we have to clarify yet, we just haven't gotten there yet. That part we will get clarified. I am going to read this letter really quickly if you don't mind.

M. Beuchat: I have no problem at all. Would you like another copy?

Chairman DeGuise: If you want to hand another one out you are more than welcome. If he took the time to go through all this and get it notarized, I feel that we should read it.

M. Beuchat: He totally couldn't be here, he's out west at his brother's wedding.

Chairman DeGuise: Ok, to capture Mr. Cash's comments, not verbatim, just as a synopsis, he wrote a letter concerning the desire to build said hog farm that states that there is already a guideline that states that 40 acres be a bare minimum, and it is his concern that the farm will be so close to his house, hog farm would increase aggressive traffic, lower property values, it sits between two running streams, operation raises concern about promoting stronger bacteria in the area, he's worried about water contamination, and he apologizes for not being able to be here in person. That's the brief synopsis of the letter, everyone on the board has had a chance to read this letter and it will be entered into the record. Is there anyone else? Mr. Kritsch, if you don't mind coming up I have a question for you. I believe--it is my understanding at least, and I am going to ask for Mr. Welch's opinion as well, we received the petition with it written it as 30 acres, and an aerial showing an approximate 30 acres, if we were to vote yay or nay does it have to adhere to the written 30 acres of the petition?

J. Welch: I think he would have to formally move to amend his petition, if there's going to be a different vote.

Chairman DeGuise: That's was basically why I wanted you to come up here, because your petition is, and I know that it was approximate.

T. Kritsch: We haven't surveyed anything to get an exact number....

Chairman DeGuise: So, your petition says 30 acres, and we really can't change that unless you voluntarily amend your petition, which you can do, and I am giving you the option to do that.

T. Kritsch: I would like to amend it.

Chairman DeGuise: So you would like to amend the petition to?

T. Kritsch: Does it have to be an exact acreage, or can it be a range?

J. Welch: It couldn't be less, so if you say 30, it's got to be at least 30. If you say 25 it's got to be at least 25.

T. Kritsch: So, since I am going to amend it down to 25 acres, then I have to come up here again next month?

C. Starbuck: But we can vote on that tonight?

T. Kritsch: I found out more information after I turned in the petition, and some of the acreage was not what I thought it was. I am adding several pieces of land together and it's hard to calculate how much it's going to come out to.

J. Welch: I would say you want to amend it to whatever your least would be, but they're going to take that into consideration though when they vote on this if you want only 20 instead of 30 that may be a difference to the board. But you need to ask for the least amount you would have is what you want to amend the petition to.

T. Kritsch: I would like to amend the petition to 20, knowing that I can still build this anyway. We are going to some added cost to put this back into the woods, and 1200 feet off the road. The guidelines state that I only have to be 100 feet off the road. So, If we don't have to clear the woods and put that much drive in we can pull it back up to 40 acres and still be where we need to be financially that way.

Chairman DeGuise: Let the record show that the applicant has amended his petition to read approximately 20 acres instead of 30. Are there any more questions? Thank you Mr. Kritsch. Please step forward, and state your name and address for the record, sir.

J. Edwards: I'm John Edwards, 2741 S. Huntsville Road, Winchester, Indiana.

Chairman DeGuise: What can we do for you sir?

J. Edwards: It seems his ground is getting smaller and smaller. I would suggest that you stay at the forty acre limit because we know he can put it up on the forty acres and that's the rule. That's my opinion.

C. Starbuck: I make a motion for a role call vote.

Chairman DeGuise: All those in favor signify by saying aye. Debra, roll call vote please.

D. Johnting: Lee DeGuise, no, Bill Davis, yes, Phil DeHaven, no, Jim Hufford, no, Christy Starbuck, no, Myron Cougill, no. Motion did not pass.

Chairman DeGuise: Sorry Mr. Kritsch, it did not pass. Anyone else have any comments, statements before I close the meeting. Thank you all very much for coming tonight. I'd like to adjourn, is there a motion?

C. Starbuck: I'd like to make that motion to adjourn.

B. Davis: I second.

Chairman DeGuise: All those in favor signify by saying aye. All those opposed, meeting is adjourned.

Lee DeGuise, Chairman

Bill Davis, Vice Chairman

Debra Johnting, Recording Secretary