

BZA MINUTES**JANUARY 24, 2005**

Members present: Mike Blankley, Charles Addington, Dale Clevenger, Christy Starbuck.

Members absent: Jeff Prescott, Gary Moore, Bill Davis.

Staff present: Cathy Flatter, Executive Director, Jamie Stump, Recording Secretary.

Legal representation: Bob Oliver.

Others present: See attached sheet.

The meeting was called to order by Chairman Charles Addington at 7:00 P.M.

Chr. Addington: Tonight we want to introduce the members of the board. We have a new member with us so she can introduce herself and we will introduce ourselves.

C. Starbuck: My name is Christy Starbuck. Do you need any other back ground?

Chr. Addington: Charlie Addington.

D. Clevenger: Dale Clevenger.

B. Oliver: Passed right by that.

D. Clevenger: Go ahead.

M. Blankley: Mike Blankley.

J. Stump: Jamie Stump, Recording Secretary.

C. Flatter: Cathy Flatter.

B. Oliver: Bob Oliver, attorney.

Chr. Addington: First thing, good evening ladies and gentlemen. Welcome to this Randolph County Board of Zoning Appeals. First thing tonight board members, we need to approve the minutes of the November 15th meeting. Do I hear a motion?

D. Clevenger: So moved.

M. Blankley: Second.

Chr. Addington: All in favor say aye. "Ayes". Opposed (none). The minutes of the November 15th meeting have been approved as written. Next thing I need to do because there is just 4 of us here is read this: At any meeting of the board which has scheduled a petition for the Board of determine whether the meeting is an initial meeting or one continued for any reason and only four board members are present, and that is all we have tonight, the petitioner may request a continuance of the meeting and such continuance shall be granted. The meeting shall be continued at the next regularly scheduled meeting provided, however, that the board may call a special meeting if the petitioner presents sufficient reason and a need for a special meeting. A special meeting hereunder shall be called by an affirmative vote of the majority of the members present and eligible to vote. If you want to decline when you come up here you can decline until there are more of us here because it takes four positive votes for your petition to pass.

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Chr. Addington: Let's see, something else I need to read here. This is kind of for the benefit of everybody here. It tells how we conduct our meeting. A petitioner will be allowed to present the facts and arguments in support of his/her case without interruption by any other person. The board members will then be allowed to ask questions of the petitioner. Any interested person or parties sent a notice shall then be allowed to speak and present their facts and arguments uninterrupted. The board members may then ask questions of these interested parties. Other persons attending the meeting will then be allowed to speak to the board either pertaining to the facts or questioning the board on any matter pertaining to the petition being heard. The way we are going to do that tonight is James & Tammi Burton are you here? Will you come up please?

BZA 2005-2-V (James & Tammi Burton, Winchester)

Chr. Addington: You can identify yourself. This is a recorded meeting.

J. Burton: I am James Burton.

T. Burton: Tammi Burton.

Chr. Addington: Thank you. I need to ask you, did you receive a Conduct of Hearing from the Board of Zoning Appeals when you applied for this hearing?

T. Burton: Yes.

Chr. Addington: You sent notices to all the surrounding property owners?

J. Burton: Yes.

Chr. Addington: Did we get receipts back Jamie?

J. Stump: Yes.

Chr. Addington: It was published in a timely manner?

J. Stump: Yes.

Chr. Addington: This is BZA 2005-2-V. James & Tammi Burton at 403 W. Will Street, Winchester, Indiana. The location is 403 W. Will Street. You can tell us what you would like to do.

J. Burton: I would like to erect a portable carport.

Chr. Addington: Oh yeah. Like I read, you're allowed to decline this if you want to, if you want to postpone it or something on account of there being only four of us here.

J. Burton: I will go with the four that is here.

Chr. Addington: Okay.

J. Burton: I am wanting to erect a portable carport.

Chr. Addington: What else?

J. Burton: That is it.

C. Flatter: As you can see on the drawing that the Burton's submitted, it is only going to be approximately 6 feet off the right-of-way of Wall Street. The required setback off of a street right-of-way is 25 feet so they are asking for a 19 foot variance.

Chr. Addington: Board members do you have any questions?

M. Blankley: When you say portable, is this one of these metal ones?

J. Burton: Yes sir.

M. Blankley: Are you going to have sides on it?

J. Burton: No.

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Chr. Addington: You are talking about 6 feet from where? The sidewalk?

J. Burton: It would be 11 feet from the road is the way it figures out.

Chr. Addington: Eleven feet from the center of the road?

J. Burton: No.

C. Flatter: From the edge of the road. I wrote on here approximately 6 feet from the right-of-way and that is normally right at the inside of a sidewalk, is approximately where you measure that from.

Chr. Addington: Will it extend out farther east than what your fence is?

T. Burton: No.

Chr. Addington: How about the sidewalk, it won't come to the sidewalk?

J. Burton: No it won't come to the sidewalk.

Chr. Addington: How close to the existing garage are you going to set it there?

J. Burton: Probably a foot or so.

Chr. Addington: Board members do you have any questions?

D. Clevenger: Will this be fastened down so the wind won't pick it up and blow it?

J. Burton: Yes they anchor it in the ground.

T. Burton: In the cement.

Chr. Addington: Is that going to be for how long? A long time or do you know?

J. Burton: I don't know. Probably.

T. Burton: Probably as long as we live there.

Chr. Addington: Is there anyone here that wants to come up and speak that got a notice?

M. Blankley: I have a question. How far is this from the corner?

Chr. Addington: It is right on the corner.

M. Blankley: I know the house is but I mean will it block the view any from the intersection?

C. Flatter: From the corner of Will and Wall Street? No Mike. That lot is approximately 72 feet wide and the carport is down at the south end of that lot and you have the majority of the lot that is north of where the carport is going to be.

M. Blankley: That is what I was wondering. I didn't know which one of these buildings was the garage or the house that is the reason I was asking Cathy.

Chr. Addington: The garage is off set Mike. It sets on west farther than the house does, isn't that right?

J. Burton: Right. It won't block the view from the intersection at all.

D. Clevenger: According to this drawing it will be roughly 6 foot farther out than the house? No it won't be that much. It would be 3 foot? It says the carport is 21 feet and your house goes out there 15 feet.

J. Burton: It would be about 6 feet. You're right.

C. Flatter: Six or seven feet Dale when you get the space that he is going to have between his existing garage and where he is going to start the carport. So it will be 6 or 7 feet, closer.

Chr. Addington: The only thing, Phillip and Vivian Zigler are not here. They are the ones that would be most effected to me.

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T. Burton: We talked to them. They didn't have a problem with it.

C. Flatter: Their driveway is on the opposite side of their property too.

Chr. Addington: Okay if there is nobody here in the audience that wants to speak and board members don't have any more questions then I think we are ready to take action on BZA 2005-2-V. Do I hear a motion to that effect?

D. Clevenger: So moved.

M. Blankley: Second.

Chr. Addington: All in favor say aye. "Ayes". Opposed (none). Now I need a motion for a roll call vote.

M. Blankley: So moved.

D. Clevenger: Second.

Chr. Addington: All in favor say aye. "Ayes". Opposed (none). Jamie we are ready for a roll call vote.

A roll call vote was taken: Dale Clevenger, yes; Charles Addington, yes; Mike Blankley, yes; Bill Davis, absent; Gary Moore, absent; Christy Starbuck, yes; Jeff Prescott, absent.

Chr. Addington: Your petition has been approved.

J. Burton: Thank you sir. Thank you board.

C. Flatter: You just need to come in and finish up the paperwork for the permits.

T. Burton: In the morning?

C. Flatter: Yes that is fine.

BZA 2005-1-V (Randolph County Commissioners, Winchester)

Chr. Addington: Now, did we ever get anyone from the Commissioners?

C. Flatter: Drew is back there.

Chr. Addington: Drew could you come up here please. This will be BZA 2005-1-V. Good evening to you. Identify yourself for the record, please.

D. Wright: My name is Drew Wright.

Chr. Addington: You notified all the surrounding property owners almost?

D. Wright: No. We just found out last week that there was one property owner missed.

Chr. Addington: Okay. Did you receive a Conduct of Hearing when you applied for this from the Planning Commission Office?

D. Wright: Yes sir, I did.

Chr. Addington: We got receipts back Jamie in a timely manner?

J. Stump: Except for the one, yes.

Chr. Addington: It was published in a timely manner?

J. Stump: Yes.

C. Flatter: I am going to go ahead and read out of the Rules of Procedure of the Board of Zoning Appeals for everybody's information that is here tonight.

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C. Flatter: Under Article IV, which is for hearings, and it is number 3: The appellant or petitioners shall serve notice to owners of property abutting the effected track, parcel or building and this notice shall be by certified mail return receipt not less than 10 days prior to the scheduled hearing date. We discovered early last week that there was one property owner that was not put on the list that the Area Planning Department provided the petitioner and because of that mistake this meeting is going to have to be continued. We would like to do it before, if at all possible, before our next regularly scheduled meeting in March, I mean February, which would have been the 28th. So that we can get that property owner notified and have the petition heard, what I was thinking was February the 7th, if that gives the petitioner and the people that are present here tonight enough time or whatever would work for the board.

Chr. Addington: Can we bring a spokesman up for the others?

C. Flatter: Sure.

Chr. Addington: Who wants to speak for the opposition on this? If anybody does, then please come up and we will discuss this date when we are going to have the meeting. Fred Davis do you want to come up?

D. Matchett: I can come up. I can't speak for other property owners.

Chr. Addington: That is all right. Come on up. As long as we have somebody that can represent you temporarily at least. Identify yourself please.

D. Matchett: My name is Don Matchett. I own the property, my wife and I own the property at 105 and 107 W. Franklin Street.

Chr. Addington: Now what we are talking about it the 7th of February, isn't that right Cathy?

C. Flatter: Yes.

Chr. Addington: Is that going to be agreeable to you folks? I know it is hard, kind of puts you on the spot.

D. Matchett: I can only speak for myself. It would be agreeable to me but I can only speak for myself.

Chr. Addington: Mr. Oliver thought maybe we should put it off one week beyond that even so you guys have time to.....

B. Oliver: I was just going by what I read in the newspaper and then you have a Commissioners meeting Drew on.....

D. Wright: The 31st.

B. Oliver: The 31st, your group SCAN is planning to attend. Is that for a meeting?

D. Matchett: That is correct.

B. Oliver: You are seeking some more time for public input, I guess, isn't that basically your guys position as far as SCAN is concerned?

D. Matchett: For the Commissioners meeting?

B. Oliver: No, as a group, I thought what I read in the paper was more time for public input about what the Commissioners were doing as far as the Courthouse annex, wasn't that.....

D. Matchett: Yes, can I have 6 months?

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B. Oliver: Initially we will say no, but it may end up being that long, but I guess what I was saying is I don't know that you want to rush up here right after you started, it sounds like your communication may start on the 31st if your meeting is the next week and the Commissioners and or the group sees there is a little more time that you need for discussion or want some more time for discussion or the Commissioners may want to set another public hearing, I don't know that you want to come up here for the issue but that, at some point I think we need.....

D. Matchett: I personally can not attend that next weeks meeting, but my wife can be here to represent our interests.

Chr. Addington: Are you talking about this meeting or the Commissioners?

C. Flatter: On the 7th.

D. Matchett: Either one.

B. Oliver: Basically if that is a good date as far as....

D. Matchett: There are other property owners here.

B. Oliver: What is their consensus? Do you speak for them or does anybody have a problem with that date?

C. Flatter: Is there anybody here that is against having the meeting on February the 7th?

Chr. Addington: That is a good way to do it. What did you say Drew?

D. Wright: That is fine with me.

Chr. Addington: Okay.

C. Flatter: We've discussed it.

Chr. Addington: If we don't hear any objections, that is when we will put it then, we will make it the 7th of February.

C. Flatter: Is that agreeable with the board members?

Chr. Addington: Yes we have to do that too. How about you Miss Starbuck?

C. Starbuck: Yes.

Chr. Addington: Dale and Mike, is that okay? At 7:00 P.M.

M. Blankley: Fine with me.

Chr. Addington: Okay. We are going to continue this to the 7th of February 7:00 P.M. right here.

D. Matchett: I have a question. Can others other than the adjoining property owners speak at a BZA meeting? I have been asked that question.

Chr. Addington: Yes. Should we tell them.....?

C. Flatter: As long as we are discussing a variance.

Chr. Addington: Remember when you are speaking to us there is not too much, nothing about financing or noise or pollution or anything.

C. Flatter: All it is is a setback from Franklin Street. They do not meet the required setback so that is what has to be discussed at the Board of Zoning Appeals meeting.

D. Matchett: I understand. Thank you.

Chr. Addington: We will leave it that way and we will see you February 7th. Thank you.

C. Flatter: Give them a few minutes to get out of here before we continue.

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B. Terrell: Charles I have a question. What would happen if the majority of the property owners reject it?

C. Flatter: It is still up to the Board of Zoning Appeals. We've got Bill, under the Rules of Procedure where it addresses a Variance, we have certain procedures that we have to go by and we have three different things that they have to meet those requirements but if we had everybody that was notified that didn't agree with it, that doesn't mean it wouldn't pass. It doesn't mean that it would but it doesn't mean that it wouldn't because it is up to the 7 member board.

Chr. Addington: It is such a narrow thing that we've got jurisdiction over or whatever you call it.

C. Flatter: Well basically Bill (a) the approval will not be injurious to the public health, safety, morals, general welfare of the community, (b) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and, (c) that strict applications of the provisions of the Zoning Ordinance will result in practical difficulties in the use of the property.

Chr. Addington: So that is all.....

B. Terrell: I wasn't sure how that would work. I was just curious.

Chr. Addington: People that are coming up to think about the money we are spending or some of that stuff, we can't speak about that.

B. Oliver: The variance is discretionary with the board where as, for example the most recent case they have been involved with, the landfill as a special exception not a variance, and once the petitioner has established the criteria for a special exception basically the board has to approve that. Now there is a little trick bag question there when you start talking about and our Ordinance has it, the property values, whether that is affected. There are some cases that say that makes it discretionary, well that may or may not be but once the petitioner has satisfied those criteria of a special exception you have to grant it. A variance is whatever the board decides if there are 600 people up here and they say, "My house will be reduced to, you know, the value of nothing," it is still up to the board. Those are the guidelines but it is still a discretionary. That is an important distinction between a variance and a special exception. This is a variance from a classic variance, which is a variance from the setback requirements in the ordinance and so forth as opposed to non-conforming uses and things of that nature.

M. Holaday: Should the board decide to vote against it do the Commissioners have a recourse or.....

B. Oliver: Yes.

M. Holaday: Do they?

B. Oliver: Yes they can go to the court against us.

C. Flatter: The commissioners don't, was that your question Max, if the Commissioners could override anything that the Board of Zoning Appeals would decide? No. The petitioner would have to take the Board of Zoning Appeals to court. One more thing. Let's go ahead, I think Bill wants to hang around here.

Chr. Addington: Next thing on the agenda is the election of a Chairman, Vice Chairman and attorney.

D. Clevenger: I make a motion that we keep the officers just the way they are.

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Chr. Addington: Do I hear a motion to that affect?

D. Clevenger: Christy second that.

C. Starbuck: I would like to second that.

D. Clevenger: Thank you.

Chr. Addington: I guess we got a motion and a second so all in favor say aye. "Ayes". Opposed (none). We have Mr. Oliver for our attorney in 2005 and we have Mike Blankley as Vice Chairman and Charlie Addington as Chairman.

C. Flatter: For another year.

Chr. Addington: Anything else board members?

B. Oliver: For the meeting on the 7th, I will contact Jason Welch to see if he can fill in.

Chr. Addington: He did a good job the last time you couldn't be here.

B. Oliver: I trained him well. No, we are interested parties, we have property and interest around the square and I don't know that I would be here one way or the other but just from the standpoint so that there is no question about propriety as to

Chr. Addington: Conflict of interest.

B. Oliver: No matter how I talk, one side thinks I am very fair and the other thinks I am going to be unfair so I haven't checked with him, but I will to see if he can do that.

Chr. Addington: Who is your second choice?

B. Oliver: I don't have a second choice. I will check with Jason.

D. Clevenger: You will take care of it though.

B. Oliver: Well I am hoping. When you think there are so many different people around, there are probably going to be a lot of different attorneys involved in that but I will start with Jason because he has done things here before.

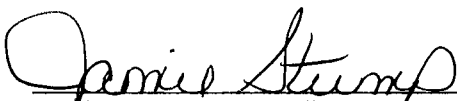
The meeting adjourned at 7:30 P.M.

THE NEXT REGULARLY SCHEDULED MEETING WILL BE HELD FEBRUARY 28, 2005 AT 7:00 P.M. IN THE COMMISSIONERS CONFERENCE ROOM OF THE RANDOLPH CENTER FOR FAMILY OPPORTUNITY, WINCHESTER, INDIANA.



 Charles Addington, Chairman

 Mike Blankley, Vice Chairman



 Jamie Stump, Recording Secretary