

BZA MINUTES

MARCH 15, 2004

Members present: Dale Clevenger, Mike Blankley, Charles Addington, Bill Davis, James Trautman.

Members absent: Gary Moore Jeff Prescott.

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

Legal representation: Robert C. Oliver.

Others present: See attached sheet.

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

Chr. Addington: Good evening ladies and gentlemen. Welcome to the Randolph County BZA Meeting. First thing board members, we need to approve the minutes of the February 23rd meeting or change.

B. Davis: So moved.

J. Trautman: Second.

Chr. Addington: All in favor say aye. "Ayes". Opposed (none). The minutes of the February 23rd meeting have been approved as written. Next I will read the following for the benefit of everyone here. The 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 party sent a notice shall 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 hearing should then be allowed to speak to the board either presenting the facts or questioning the board on any matter pertaining to the petition being heard.

BZA 2004-3-V (David Torres, Farmland, IN)

Chr. Addington: First on the agenda this evening is BZA 2004-3-V, David Torres. He lives at 7463 W. 250 South, Farmland, IN. Would you guys come forward please?

C. Flatter: David we need you right over here.

D. Torres: Is Larry supposed to come up?

Chr. Addington: Yes come up to the microphone.

C. Flatter: Only if he is going to speak for you then he can come up.

D. Torres: Okay.

Chr. Addington: Come up to the microphone. This is a recorded meeting so you need to talk into the recorder. State your name for the record.

D. Torres: Dave Torres, Farmland, Indiana.

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Chr. Addington: Did you receive an Article V, Conduct of Hearing when you applied for the hearing?

D. Torres: I believe I did.

Chr. Addington: You notified the surrounding property owners?

D. Torres: Yes I did.

Chr. Addington: Did we get the receipts back Jamie?

J. Stump: Yes.

Chr. Addington: Was it published in the News Gazette in a timely manner?

J. Stump: Yes.

Chr. Addington: Okay David you can tell us what you want to do.

D. Torres: Well I would like to build a pond in my side yard. A small pond. I just don't have quite enough room on Larry Pugh's side because I am going to come 8 foot off his property line. This is why I am here. To my knowledge that is the only line that I didn't have enough room on because I have 85 feet on the back and Mr. Morris's woods over there I have plenty of room there and plenty of room from the Bennett's, which is across from me.

Chr. Addington: On the back, meaning to the west?

D. Torres: To the south, which is Larry's line also.

C. Flatter: Just for the boards information for a pond, the setback requirement off of property lines is 50 feet so that is why Dave is here tonight. He is only going to be 8 feet from the east property line.

Chr. Addington: Has that ever been a wetland or anything in there? Has it ever been declared as wetland?

D. Torres: No. You have some low ditches in there but the water runs freely and I have a home built there now on the corner and I have not had any water problems. It does stay within line of the ditches. It handles it real well.

C. Flatter: He has already been approved by the drainage board.

Chr. Addington: Are there any questions from the board members?

D. Clevenger: How deep will your pond be?

D. Torres: Between 8 and 10 feet. It is only going to have, on Larry's side, the bank is only going to be like 2 feet up on his side. It is not going to be a real high bank because from my garage and everything I get water off the back, not a lot but it is going to help out the ditch system as well there. I might as well catch some of it in a pond versus flooding the ditches with it. It would be at my advantage. I have a drawing here if any of you would care to see it.

C. Flatter: Is this the drawing you are talking about Dave?

D. Torres: Yes it is.

Chr. Addington: We got that.

C. Flatter: We include that in all the packages.

D. Torres: I've also got aerial pictures I took of the flagged area if any of you would care to see that also. That is strictly up to you.

Chr. Addington: If you present the pictures we would keep those.

D. Torres: That is fine. I mean there are just three of them here.

Chr. Addington: You can start them with Mr. Clevenger.

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D. Clevenger: Is it going to be with runoff water?

D. Torres: Yes.

M. Blankley: It is going to be about 81 foot long?

D. Torres: Right. This is the road side and this is my property line where that stake is. This is Pugh's property over here. This is Larry's property. This is the property line and where the flags are the pond will be in there. This picture here, this is my home and my garage and the pond area will be right in this area. Donald Tinsman is the contractor so I am real confident with him. He does good work and he shoots elevations and will do it right. It is not something that is just going to be pushed up and left.

Chr. Addington: Do we have any more questions from the board members? If not is there anyone here in the audience that wants to speak about this? No one? Okay. We are ready to take action on BZA 2004-3-V, David Torres, Farmland, Indiana. Do I hear a motion to take action?

D. Clevenger: So moved.

B. Davis: 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; Bill Davis, yes; Mike Blankley, yes; Charles Addington, yes; Gary Moore, absent; Jeff Prescott, yes; James Trautman, yes.

Chr. Addington: Your petition has been approved.

D. Torres: Thank you.

C. Flatter: Is it still staked out Dave?

D. Torres: Yes.

C. Flatter: What I will have to do is come out there and verify that you are no closer than the 8 feet and I will be able to issue the permit. You can come in and pay the \$5.00 filing fee or have Don come in and do it and then I will come out and verify....

D. Torres: Either I can come in or he can come in and pay for the permit. When will he know that you have been there? Will you notify me?

C. Flatter: I will leave the permits there at your house. The permit, it is only one permit.

D. Torres: Okay. If nobody is there just stick it in the mail box. I appreciate it.

Chr. Addington: Thanks.

D. Torres: Thank you gentlemen.

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BZA 2004-4-V (Joe & Stacy Line, Parker City)

Chr. Addington: Next on the agenda will be BZA 2004-4-V. Joe & Stacy Line at 6006 Robert Rd., Muncie, Indiana. The hearing will be for 132 N. Fifth St., Parker City, Indiana. Will you come up please both of you? This is Joe and Stacy Line. Did you receive a Conduct of Hearing when you applied for this hearing with the Area Planning Department?

S. Line: Yes.

Chr. Addington: Did you notify all the surrounding property owners?

J. Line: Yes.

Chr. Addington: State your names for the record.

J. Line: Joe Line, Jr.

S. Line: Stacy Line.

Chr. Addington: Jamie did we get receipts back on that?

J. Stump: Yes.

Chr. Addington: Was it published in the News Gazette in a timely manner?

J. Stump: Yes.

Chr. Addington: Okay. You can tell us what you would like to do.

J. Line: The land that we bought is an odd shape and we would like to change the variance for High Street road frontage. We are not wide enough to go by the standard on the chart and we would like to change it to 10 feet from the road rather than 25 feet.

Chr. Addington: Is there anything else?

J. Line: I think we are covered on the rest of it.

S. Line: Are we alright on the back one Cathy?

C. Flatter: Yes.

S. Line: Okay we are good on the back 5 feet.

Chr. Addington: When are you going to try to do this?

J. Line: As soon as we can.

Chr. Addington: Okay. Fairly soon then? This spring?

J. Line: Yes.

Chr. Addington: Where your south line is, is that by the four small evergreen trees there?

J. Line: Yes.

Chr. Addington: That is your south line there?

J. Line: Yes that is actually the divider.

Chr. Addington: Any other questions from the board?

C. Flatter: Again, just to clarify, Joe and Stacy rezoned the lot when, last spring?

S. Line: Last fall.

C. Flatter: Fall, I lose track of time very easily. It was zoned single-family residential and they wanted to build the duplex on there and they were informed at the time of the zoning change that they would also have to file for a variance. As you can tell on the aerial it is a very narrow, long lot.

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C. Flatter: It is 50' x 170' and it is basically a double frontage lot and they are supposed to be 25 feet off of the street right-of-way of those streets. So to be able to fit the duplex on there which is going to be a 35' x 120' that is why they are having to request the 15 foot variance off of High Street.

Chr. Addington: There used to be a residence there and you guys take care of it?

J. Line: Yes.

Chr. Addington: Any other questions board members? Is there anybody in the audience that would like to speak about this? If not, we are ready to take action on BZA 2004-4-V. Do I hear a motion?

B. Davis: So moved.

D. Clevenger: Second.

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

B. Davis: So moved.

M. Blankley: 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: James Trautman, yes; Jeff Prescott, absent; Gary Moore, absent; Bill Davis, yes; Dale Clevenger, yes; Mike Blankley, yes; Charles Addington, yes. The petition was granted.

Chr. Addington: Your petition has been granted.

S. Line: Thank you.

J. Line: Thank you.

(Dana Chasteen, Lynn, Indiana)

Chr. Addington: Next on the docket will be David & Felicia Legg.

C. Flatter: No, Dana Chasteen.

Chr. Addington: Okay, I saw that at the top.

C. Flatter: Go by the agenda.

Chr. Addington: The agenda is...Dana Chasteen. This will be a recorded meeting and this will be a discussion of stipulations on hearing of David and Felicia Legg. State your names please for the record.

D. Chasteen: Dana Chasteen.

D. Chasteen: Darby Chasteen.

Chr. Addington: You can tell us what you are thinking.

D. Chasteen: Well I called and talked to David Lenkendofer and he told me I should attend this meeting this evening because of the concerns about the manure that we feel is not being cleaned up or taken care of any type of a regular basis. I feel really uncomfortable with their daughter sitting over there. I don't intend to hurt her feelings in any way. I just am concerned because the manure is still piling up and I have called and talked with Cathy Flatter several times on the phone and she has told me that she has tried to contact them and sometimes they didn't return her calls.

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D. Chasteen: She has driven by one time and told them they needed to clean it up and the last time I spoke with her she said that she had contacted them and they had not at that time returned the call. So I called David Lenkensdofer because I feel like it is not being patrolled and taken care of like it should be, like it stated in the variance. I have known of two times, it is not like I sit there and watch to make sure that it is being taken care of but I have noticed two times that Vanessa has been out there trying to clean it up. I was told by Cathy later when I came in to sign up for this meeting, that Felicia told her it was Vanessa's responsibility to clean up this manure. It is being done with their lawn mower that I know of and I don't know if something can be changed or David Lenkensdofer suggested that it needed to be done at least one time a week. I don't know what needs to be done if it is not being taken care of.

D. Chasteen: Darby Chasteen. A lot of it is not even being attempted to be cleaned up. Using a lawn mower is not going to do anything but sling it and it needs to be thatched through so it can circulate through the ground at least. If you go out, if you drive down the road and look in my back yard towards their back yard all you see are big clumps of manure everywhere. I bet you couldn't step three feet in any direction without stepping in it.

Chr. Addington: If I remember right your property line is north?

D. Chasteen: South.

Chr. Addington: Their property line is north of yours isn't it? That is what I was thinking. Yours is south of where the horse is?

C. Flatter: Their back yard is on the south side of the fenced in area where the horse is kept.

Chr. Addington: Right in the corner isn't it? Is it just in the corner?

D. Chasteen: No. Our properties run parallel east and west. About 210 feet of our yard. My concern is....

Chr. Addington: On which side?

D. Chasteen: They live north of us. So the fence would be on the north side of our yard. I just....

D. Chasteen: I think another issue is they really need to do some type of exercise with the horse. The horse looks to me like it is getting ancy. It will buck and kick in one corner and run diagonally from that corner to the farthest corner that it can. My concern with that is if that horse gets really agitated some time I think it could probably come through the fence. If it does it can get out on the road.

C. Flatter: First of all, excuse me for just a second. We are here to discuss the conditions that were put on the hearing back in October. There is no way that the exercising of the horse or how she takes care of the horse has anything to do with what we are discussing here tonight. We just need to keep it on the condition that it needs to be only one horse and good husbandry. As far as how she exercises the horse is nothing that the Board of Zoning Appeals can deal with.

D. Chasteen: It is not being taken care of properly, the good husbandry. To my knowledge, nobody has even tried to enforce that it is being taken care of.

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C. Flatter: I have made phone calls and I was at their house. I spoke with them. Every time that I, I don't know how you actually got the idea that I said they didn't return my calls because each time, maybe not the next day or the same day, but they have always returned my calls. That is what I can do as zoning inspector is to make them aware of the fact that they have a neighbor that is not happy with the situation and that it needs to be taken care of. I can't physically make them go out and do that. I can make them aware of the situation and that is the most that I can do. Unless we would have to take them to court and that is something that we just haven't done.

D. Chasteen: That is what I was told by you that that has never been done because there were more important issues but where I got that from was you said that you had left a note on their door and two weeks had gone by before....

C. Flatter: But they did eventually get back with me.

D. Chasteen: But how long are we supposed to allow that to go by? I felt like I gave, two weeks is a long time to me with out it being acknowledged and so I would wait at least two weeks before I would call back and say that nothing has been done yet and ask where we were at. Well then you would say, "Well I haven't heard from her yet, let me give them another call". Then it is taken care of possibly. But I am not seeing it being cleaned up so that is why I am here. Even though phone calls are being made, I don't....

D. Chasteen: If anybody challenges this being cleaned up or not, I encourage anybody to just drive by the property and look.

Chr. Addington: Do you think it might get better whenever the weather gets warm so it is not frozen?

D. Legg: Can I say something?

Chr. Addington: In a minute.

D. Chasteen: Well that is going to be an issue with, the Board of Health has already said that it is going to be an issue because we are going to have flies and mosquitoes and

Chr. Addington: What I meant to say was I wonder when the weather gets a little better if they might not have a little better husbandry.

D. Chasteen: They have had the horse since last August and I have only known of two times that I noticed Vanessa being out there cleaning it up and

Chr. Addington: When did we approve that Cathy?

D. Chasteen: October.

C. Flatter: October 22.

Chr. Addington: October 22 so that fly time was over then when we approved it.

D. Chasteen: No.

Chr. Addington: Pretty well over anyway.

D. Chasteen: It was pretty warm clear through November.

Chr. Addington: I wonder if we shouldn't at least give them a try here when it is warm weather when they can do something with the manure and hopefully will get something straightened out here. Do you have anything else to add to what has been said?

D. Chasteen: Well the thing is we can give them the time to do it or give them the warm weather to do it but like she says, " She calls and says okay". We've got four weeks of good weather and it has not been touched, then what do you do?

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D. Clevenger: Do you think it's been wet? The weather would have a bearing on that plus the cold weather.

D. Chasteen: Exactly but I am saying that when the good weather comes and it is still not being done with the good husbandry of the horse, where do we go from there? When we call the lady that we are supposed to talk to and she tells us, "Well I can't hold their hand and I can't make them do it." Where do you go from that point?

B. Oliver: I don't think we can advise you about that. Cathy and I can talk about it she wants to take some course of action but we can't advise you about what to do.

D. Chasteen: See when I tried to appeal this no attorney would take me because it was a conflict of interest. So I felt like when this was approved I had no opportunity. I even called attorneys in Richmond. No one would listen to me and we live there and we can't even enjoy our backyard any more. We used to have family functions and there is 210 feet of our yard that is nasty. It smells. Even today there were flies flying around everywhere. I mean it is not even warm yet but there are flies. When it gets really warm there is probably going to be even more concerns. I don't know what we are supposed to do as homeowners. We have to live there with it. We pay property taxes and we can't even enjoy our home any more.

Chr. Addington: If you guys would step down now I want to hear from someone back here, if that is okay. You can come up. State your name for the record please.

D. Legg: David Legg. The freezing weather had a lot to do with it and it wasn't touched for probably a month when there was snow on the ground. It was frozen solid. We attempted to go out and pick up the horse manure but it was frozen to the ground. Vanessa has been out several times. I don't know where they are getting twice from but she has been out several time and I have been out three times myself, not picking it up but

Chr. Addington: Excuse me, Vanessa being your wife?

D. Legg: My daughter. I have been out three times myself on the lawn mower. After the moisture evaporates from it and you hit it with the lawn mower, it is just powder. If you came to the field and walked in the field most of what you are seeing as far as, if you drive down the alley and look, it looks like there is manure everywhere. A lot of it is where the horses impressions, the feet in the ground has turned up some dirt. Most of it is not horse manure. I would welcome anyone to come walk the field and especially down towards the Chasteen's residence. I was out there Sunday and mowed probably 50 or 60 feet of that end of the field. I may have hit 15 to 20 patties in that 210' x 50'. I don't think that is excessive. I mean it is a field and it is a horse.

Chr. Addington: How long had it been since you had done that?

D. Legg: Myself?

Chr. Addington: No, whoever.

D. Legg: Probably a week. I would say a week since she was out there last.

Chr. Addington: A week.

D. Legg: Before we had the horse there we had huge mosquito problems and fly problems. I don't think the horse, I am sure it will bring some horseflies but I don't see an issue. I mean, we live, our house is the same proximity distance wise from the field as there's pretty much.

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Chr. Addington: Does the horse spend more time down at that end or something do you think?

D. Legg: I don't know.

D. Clevenger: You feed it at your end right?

D. Legg: Yes, in the barn.

Chr. Addington: Water is in there too?

D. Legg: Water is in the barn. Everything is in the barn.

D. Clevenger: This summer it will probably stay in the barn more than it will out in the daytime.

D. Legg: Probably to try to get out of the sun, I would say. Yes. It probably will be taken care of better in the summer when the conditions are better. There was a period in the winter when with snow on the ground, which obviously the snow brings out exactly what is laying on top of it, you can see the manure a lot better when the ground was covered with snow. I would welcome anyone to come down and take a look at it. I don't think it looks that bad myself.

B. Davis: David, just a ball park guess, since we approved this last fall, about how many times have you or your family....

D. Legg: I have been out three times. Do you have a number, a guess?

V. Legg: No.

D. Legg: Five to ten times.

Chr. Addington: That was in October so you've probably done it nearly twice a month. When it gets nicer weather do you think you might be able to do it more often?

D. Legg: We intend to do it once a week probably. At least every time we cut grass. Which is sometimes more than once a week in the summer time.

Chr. Addington: Okay thank you. Anybody else that wants to speak about this? Did you folks have any thing else you want to say? State your name again for the record please.

D. Chasteen: Darby Chasteen.

D. Chasteen: Dana Chasteen.

D. Chasteen: Is this meeting going to have any kind of stipulations or bearings on them as far as what they are going to do from here? Is it going to be like, okay you say you are going to do this once a week or we are going to put this in a motion to clean it once a week or something like that. Is that.....

Chr. Addington: I don't believe we can do that.

B. Oliver: No. Just to air your thoughts, their thoughts, they have heard your concerns and you have heard what they intend to do or what they said they intend to do so I would say at this point, lets just see what happens. That may not be the answer you wanted but there is not any action that can be taken at this point with regard to any additional conditions or changes, no.

D. Chasteen: The only other question would be without really seeing it from your standpoint, there is no really just way of telling you guys, how much is too much manure for this horse? You can say that you saw 20 patties. Maybe his horse is putting out too much for that part of the property. It looks really bad. I do encourage someone just to drive by. It is just off of 27, 322 S. Main St.

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Chr. Addington: I have been there.

D. Chasteen: You can see it from the road.

D. Chasteen: The horse does stay at the end of the field. Our dog just carries on all the time over it. You can see the tracks where the hoof prints are. It does stay in the area.

D. Chasteen: You know I don't discount that he is saying that some of that might be hoof prints but there is a whole lot of it that is the other stuff.

Chr. Addington: Does anyone have any questions? If not I think we have heard all we need to hear about this. We will have to see what materializes I suppose. Hopefully it will, okay.....

K. Kranz: What if it doesn't materialize....

Chr. Addington: Hold on a minute. If you would come up to the mike. If you guys are done. State your name for the record.

K. Kranz: Keith Kranz. I just have a question. Wouldn't you have authority under Article VIII of the Ordinance to enforce that?

Chr. Addington: I am not sure.

C. Flatter: Are you talking about odor?

K. Kranz: Or noxious matter, waste, whatever. It spells it out in your definition.

C. Flatter: It spells it out but we have talked about that too that that is kind of a gray area that is in there as far as what is obnoxious to you and what is obnoxious to me and what is obnoxious to Mr. and Mrs. Legg and again that is something that if I would go to somebody's property and say, basically it is the same thing that I have already told Mr. Legg, that it is offensive to the Chasteen's and they need to clean it up. Well if it is not offensive to them but it is the Chasteen's, a judge is going to have to decide that.

K. Kranz: Correct, which is my question. It is under Article VIII...

C. Flatter: A judge needs to decide whether or not under Article VIII if it is obnoxious and

K. Kranz: No, no.... but as your part of the zoning board, it is your responsibility to enforce that Ordinance, which means it is not necessarily their responsibility to bring it to a judge, in which case, and to enforce that ordinance, if there is a violation, I am asking, it may not be in this situation, but it would be up to you folks to enforce that ordinance, which means you

Chr. Addington: Where do you live there?

K. Kranz: I live right out here south of Winchester.

Chr. Addington: You are not a neighbor or anything?

K. Kranz: No, I am asking a question.

Chr. Addington: I didn't understand so I just asked.

K. Kranz: They asked what their recourse would be if nothing happened.....

Chr. Addington: Thank you. I think we have heard enough. That is good. I don't know the answer to that.

K. Kranz: You don't know whether you are responsible for enforcing that or not?

Chr. Addington: I don't have any more than what Cathy has told you, that is all we know.

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C. Flatter: I feel like I have been doing that by contacting Mr. and Mrs. Legg and letting them know that they need to clean that up and keep it in good shape. I feel like I am doing my part in trying to enforce Article VIII.

K. Kranz: Were they given any set amount of time or are you just leaving it open?

C. Flatter: No, they were not given a set amount of time.

K. Kranz: So other words it is unenforceable you are saying?

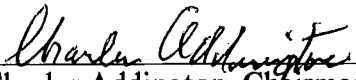
Chr. Addington: I don't believe she said that.

K. Kranz: I don't.....

Chr. Addington: We just have to go back and see how we can get this, with warmer weather coming and see how it works and maybe we can work things out without any body getting to hostile about this. Thank you. Is there anyone else that would like to speak about this? If no one has anything further to add, this meeting is adjourned.

The meeting adjourned at 7:35 P.M.

THE NEXT REGULARLY SCHEDULED MEETING WILL BE HELD APRIL 19, 2004 AT 7:00 P.M. IN THE COMMISSIONERS CONFERENCE ROOM (ON THE SECOND FLOOR) OF THE RANDOLPH CENTER FOR FAMILY OPPORTUNITY, WINCHESTER, INDIANA.



Charles Addington, Chairman

Dale Clevenger, Vice Chairman



Jamie Stump, Recording Secretary

