

ROLL CALL

Rose Ann Barrick
Jerry Petzel, President
Harry Baumgartner, Jr.
James Schwarzkopf
Keith Masterson

Michael Lautzenheiser, Jr., Secretary

President, Jerry Petzel called the June 26, 2012 meeting for the Board of Zoning Appeals to order at 7:04 p.m. Five members answered roll call.

Rose Ann Barrick made a motion to approve the minutes from the April meeting. James Schwarzkopf seconded the motion and the minutes were approved by a 5-0 vote.

NEW ITEMS:

B12-06-15 HARRISON TWP., NW/4 04-26N-12E Habegger Frauhiger Inc. is requesting a variance to encroach on the public right-of-way and front yard setback. Also to increase a sign height from 20'ft to 22'ft and increase the face of a sign from 100 sqft to 112 sqft. The property is located at 728 W. Market St., Bluffton, IN 46714. The property is zoned I-1.

Jesse Frauhiger and Steve Frauhiger represented the petition. Steve Frauhiger stated that there is no visibility of the store until you are right in front of it. This sign would be visible and make people aware of their location as they go west on Market Street. The store is an ACE store and part of the sign would have that logo. The sign will be illuminated. He stated that the reason for the sign height increase to 22'ft is due to the heavy truck flow that is on Indiana Street. The extra two feet would give the trucks better visibility on Market Street. The post of the sign would be 14'ft from the building and the sign would extend 8'ft past the post.

Jesse Frauhiger advised that the sign would not come to the sidewalk in front of the store along Market Street.

Steve Frauhiger explained the reason for the two sign faces was that one would be an ACE sign and the other a Porter Paint sign. He stated that the signs are already made, therefore which is the reason for asking for the variance. After some discussion about the size of the sign's faces, Jesse Frauhiger stated that the smaller of the two sign faces is actually 4'X8'. There was a misstatement on the petition.

Michael Lautzenheiser, Jr. verified that the petitioners wanted to keep 10'ft from the ground to the bottom of the sign face. He explained that with the 4'X8' and the 8'X8' no variance is needed to increase the sign face.

Steve Frauhiger stated that there have been problems in the area with vandalism and thought that the height might discourage that. He explained that the 8'X8' sign face would be on top of the smaller sign.

Conditions: Verification from City of Bluffton that they will allow the sign to overhang the easement.

Motion to Approve: Rose Ann Barrick

Second: James Schwarzkopf

Vote: 5-0

B12-06-16 UNION TWP., NE/4 09-28N-11E AWS Foundation Inc is appealing the administrative decision for violation V2012-017 for an A-1 Zoning District violation of a group home. The property is located at 3224 W 1100 N, Markle, IN 46770. The property is zoned A-1.

B12-06-17 UNION TWP., SW/4 17-28N-11E AWS Foundation Inc is appealing the administrative decision for violation V2012-017 for an A-1 Zoning District violation of a group home. The property is located at 4759 W 900 N, Markle, IN 46770. The property is zoned A-1.

B12-06-18 JEFFERSON TWP., NE/4 06-28N-13E AWS Foundation Inc is appealing the administrative decision for violation V2012-017 for an A-1 Zoning District violation of a group home. The property is located at 6556 E 1200 N, Ossian, IN 46777. The property is zoned A-1.

(These three were heard together)

Andrew Boxberger, represented AWS Foundation, explained receiving the notice of a zoning violation, which stated that the homes were being used as group homes. He then defined group home under the ordinance. He explained that supervised homes were allowed under A-1 zoning and proceeded to give the ordinance definition of supervised homes. He advised that the AWS homes are supervised homes.

Jeremy Sink, Cason-Boxberger who represents AWS Foundation, explained that homes like these have been around Wells County for 35 years. Two of the AWS homes have been in the area for five years. He explained the 2001 executive order which changed the definition of family. The Department of Justice has required that developmentally disabled people be moved from institutions to community settings. If an ordinance prohibits this, both the Fair Housing Act and the American's with Disabilities Act would be violated. He explained his discussion with Andy Antrim about this falling within the definition of supervised homes.

Mr. Sink explained how Anthony Wayne Services is a legal entity. AWS Foundation, Inc. is an Indiana non-profit. AW Holdings, LLC, who operates the properties, is an Indiana LLC, which is partly owned by the foundation. He advised that they sent this information to Andy Antrim. Jeremy Sink further explained how the properties fall into a supervised home category. The residents receive supervision from AWS in order to live independently and have their life issues handed and taken care of. He stated that at one of the homes there is only one resident that lives there. In one fashion or another, these homes are 24/7 supervised.

Mr. Boxberger further explained that the supervision is on a daily basis and does everything to almost the exact ordinance definition of supervised home. He stated that there are times when an AWS employee is not in the home, but that they are there on a regular basis.

Mr. Sink stated that the residents that live in the homes are developmentally disabled. He is unsure if they are employed, due to the fact that it would depend on the person and their level of disability. He advised that no more than four individuals live in the homes. Two of the homes have four people and one home has one person. This is to comply with the state Medicaid law. Indiana's FSSA regulates how the structures are built, how many people can live there and how many people per bedroom, which AWS complies with and receive regular visits from.

Michael Lautzenheiser, Jr. explained that this issue was brought to the offices attention through a citizen complaint. He also explained that the newest home was on the one on Marzane Road and 900 North.

Jeremy Sink stated that one person lives at that location. He said that these homes comply with the ordinance and not to change it due to coercion or intimidation.

Philip Harden, former owner of the lot on 1100 North, sold the property to a woman for the asking price. Then, after the title work went through. The deed came back with Anthony Wayne Services. There are restrictions on the lots, which states that no commercial activity shall be conducted. The lots are just to be used for single family dwellings. He feels that AWS is a commercial entity and therefore are in violation of the restrictions. Mr. Harden explained that the neighbor to this property had problems and he stated what they did to try and alleviate those problems. When those possible solutions didn't work, the neighbor gave up and sold his house. He further elaborated on the issues of the residents getting out of the house and being too noisy. He explained a conversation that he had with the realtor after the sale, which the realtor told him that they agreed to the restrictions. Mr. Harden doesn't believe that they lived up to them.

Rose Ann Barrick explained that a group or supervised home that went into Rose Ann Heights and the entire ordeal that they had to go through. She commented on the redefinition of family. She stated her concerns that this was along the same lines of what occurred in Rose Ann Heights.

John Gordy, 3090 W 1100 N, has issues with the same AWS house on 1100 N. He provided pictures for the board of the 8'-10' high and 200'ft long dirt mound that the former neighbors put up. When that wasn't enough to alleviate the problem, those neighbors put up a 6'-8'ft high and 200'ft fence on that mound. He stated that they are in violation of both the A-1 zoning restrictions and the restrictions of the lot that were given to them. Mr. Gordy commented that they were being dishonest when they were building the house. He also that no one that lives or works there has a vested interest in the property so they don't care how it's maintained. He commented that the residents are not 100% supervised and they roam around the property. He stated his concern about not know who lives there. He advised that there is more trash collected from that property than any normal residential property and the containers are over flowing, which will blow on to the neighboring yards. He lives two houses down and can hear the noise.

Mr. Gordy commented that there are too many people coming and going, plus too many vehicles there. He also stated his concern about decreasing property value due to this facility being near his home.

Matt Johnson, 3156 W 1100 N, stated that his house has been referred to a number of times already. He read item #5 of the restrictions for the lot on 1100 N, which stated that no commercial activity shall be conducted on the property. He commented that he purchased the property on April 18th of this year. He was unaware of the group home next to him and he stated that it has been a very unpleasant experience living next to the residents. He stated his concerns about being worried about his children. Mr. Johnson explained the amount of trash that his daughters collect on their property that has blown over from the AWS property. He commented on the devaluing of his property. He does not feel that they are good neighbors and should not be allowed to stay.

Patrick Pine, 10817 N 600 W, does not approve of the group homes. He does not believe that there have been group homes in Wells County for 35 years. He's concerned about who lives in the homes on the properties. He explained some of the conduct that he's witnessed from the residents that live at the properties.

Sherri Harzler, 9617 N 300 W, had several questions about supervised homes, and the difference between the single family dwelling and the definition of family, which she wanted explained. She wanted to clarify that the residence of the houses are mentally handicapped. Ms. Harzler questioned the meaning of the occupants being under the control of the agency and how they are supervised.

Michael Lautzenheiser, Jr. advised that if it's not stated in the definition area in the ordinance, then it is the standard definition as defined by Webster's dictionary.

Jeremy Sink and Andrew Boxberger explained the definition of the single family dwelling unit and tried to clarify that it was a structure. They also tried to clear up the difference between the family unit and the housing structure. Plus, how they work together. They explained that the occupants are mentally and/or physically challenged individuals that need assistants with daily life. They explained the state policies and regulations that need to be followed with the care and supervision of the residents.

Ms. Harzler questioned how the occupants got placed in the homes as residents, if it's through the adult waiver through Medicaid. She also wondered who's control or supervision are the residents in and who employees the workers in the homes. She also addressed her concerns with criminals living in these homes.

Jeremy Sink explained the residents came to live at the houses through the state's Medicaid program due to their disabilities. He explained that Anthony Wayne Services does not pick the people to be residents. The people that occupy the homes come through the state when there is a vacancy with AWS. Mr. Sink explained that Anthony Wayne Services were the ones that provide the supervision of the residents along with the staff. He stated that he was unaware of

any criminal checks done on the residents. There are background checks done on all of the staff employed by AWS.

Donald Gordy, 5677 W 900 N, commented on this being a commercial property and not complying with the lot restrictions. He also made a statement about the house on 900 N only having one resident in it; however there are several people and cars at that location. He stated his concern for the children's safety. Mr. Gordy also questioned why this was not brought before the board before the structure was built. He also wanted it to be known that he is against the group home.

Brenda Bailey, 5017 W 900 N, stated that they should be evicted due to not being honest when getting the permits. She commented on all of the activities that have been occurring at the home on 900N. She does not believe that the residents are disabled. She comments on the number of vehicles. She stated her concern for her children. Ms. Bailey also questions why the neighbors weren't notified before the house was put up.

Michael Lautzenheiser, Jr. explained the reason why there was no public notification for a group or supervised home. He explained the offices role in enforcing the zoning ordinance.

Greg McBride, 9200 N Meridian Rd, commented on the criminal background checks on the residents. He also questioned how much supervision is needed for it to be a supervised home. Plus how much time during the week are the residents actually supervised.

Andrew Boxberger commented that his sister lives in an AWS home and she has supervision 8-5 every single day. However, each person and situation is different.

Andy Marshall, 9124 N Marzane Rd, stated that he lives near the home on 900 N. He questions why the county attorney is not present at this meeting when it sounded like he was in correspondence with the AWS lawyers and made an agreement with them.

Mr. Lautzenheiser stated that Andy Antrim provided written information to the board about his feelings on this matter. Mr. Antrim's written information was provided after his correspondence with the council for AWS.

Mr. Marshall noted that there are 78 homes within Allen County for AWS. He stated that there was no communication with the neighbors when this home was being constructed. He also advised that there are as many as 8 vehicles in the parking area and as many as 10 men at this location on 900 N. He's concerned that there is a different kind of program being run out of this house. He expressed his concerns for the safety of his children and the value of his property. He also thinks that with this property, in the area, that there should be better sheriff monitoring.

Mr. Lautzenheiser commented on his interaction with the employee from Anthony Wayne Services at this site. He stated that there was one resident living there with three employees supervising.

Jeff Shelton, 4541 W 1000 N, questions if there was an agreement made between Mr. Antrim and Anthony Wayne Services. He also questioned the amount of time the residents need to be supervised to be considered a supervised home.

Mr. Lautzenheiser stated that the written information Mr. Antrim provided to the board with just a summary of his thoughts. There was no agreement made between the two parties.

Matt Johnson questioned the fact that there are employees in the homes; therefore wouldn't that make it a commercial structure. Mr. Lautzenheiser explained home occupation. Mr. Johnson commented that this situation would be different due to the fact that the employees are not residence, so it should be a commercial property.

Cliff Bailey, 5017 W 900 N, stated that he opposes the group home. He also commented that there is never just 1 person at the home on 900 N.

Cindy Marshall, 8561 N 600 W, questioned the ages of the residents in the homes. She also wanted to know the difference between a group home and a supervised home. Ms. Marshall also questioned how the cost of operation was handled

Andrew Boxberger and Jeremy Sink stated that AWS helps individuals who are 18 and older, but they were unsure of the exact ages of the residents at these specific homes. Mr. Boxberger used the terms from the ordinance to define group homes and supervised homes. Mr. Sink explained that the FSSA puts together a care plan with the residents' guardians. It's not AWS's decision on how each individual is staffed. He explained that not all of the funding comes from Medicaid.

Rose Ann Barrick explained that a violation of restrictive covenant has nothing to do with this board. She stated that if they believe that it has been violated then that would be an issue to go through the courts.

Mr. Lautzenheiser stated the specifics of the case. He explained how the violation came to light and what was discovered during his visits to the properties. He also stated that when the permits for the properties were obtained that they were listed as single family dwellings.

Josh Crow, 4764 W 1100 N, questioned the supervision details. He stated his concerns on the number of hours that the residents are not under supervision.

Conditions:

Motion to Uphold Violation: James Schwarzkopf

Second: Keith Masterson

Vote: 3-2 (Rose Ann Barrick & Harry Baumgartner, Jr.)

Discussion:

Michael Lautzenheiser, Jr. advised the board that John Brickley's pond is not a violation. Mr. Brickley was going to apply for a variance for the pond, but he has decided to go in a different

route. He explained that he would be meeting with Andy Antrim, due to the results of the appeal. He also informed the board that the 2013 office budget was submitted and it was about \$6,000 less than the budget that was submitted last year. The board also discussed how they would like to receive their meeting information packets either by mail or a digital copy emailed.

ADVISORY:

James Schwarzkopf made a motion to adjourn the meeting. Rose Ann Barrick seconded the motion and the motion passed with a vote of 5-0. The June 26, 2012, meeting of the Board of Zoning Appeals adjourned at 8:53pm.

ATTEST: Michael W. Lautzenheiser, Jr. Rose Ann Barrick
Michael Lautzenheiser, Jr., Secretary ~~Jerry Petzel, President~~
Rose Ann Barrick, VP