

ROLL CALL

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

Michael Lautzenheiser, Jr., Secretary

The Board of Zoning Appeals meeting, August 26, 2014 was called to order by Board President, Jerry Petzel at 7:00 p.m. Roll call was answered by five members.

APPROVAL OF MINUTES:

Rose Ann Barrick offered a motion to approve the minutes from the July 22, 2014 meeting and James Schwarzkopf seconded the motion, minutes were approved 5-0.

OLD ITEM:

NEW ITEM:

B14-08-21 HARRISON TWP., NW/4 05-26N-12E Dennis M. & Teresa A. Gerwig request a variance to reduce the setback of the secondary front yard from 20ft to 10ft. The property is located at 410 Merchant St., Bluffton, IN 46714. Property is zoned R-3.

Dennis Gerwig stated that they would like to construct a 48ft x 30ft garage. He explained that they are on a cul-de-sac and the setback from the center of the cul-de-sac can't be met because the garage can't be constructed any closer to the house due to the gas line. He advised the board that there will be four overhead doors and that one will face the back yard for the lawn mower, two will be facing the house, and one will be off of the cul-de-sac using the existing driveway.

Conditions:

Motion to Approve: James Schwarzkopf

Second: Harry Baumgartner Jr.

Vote: 5-0

B14-08-22 LANCASTER TWP., NE/4 33-27N-12E Debra S. Elsten requests a variance to correct violation V2014-009 to allow a 10ft x 18ft shed to remain closer to the side yard than the 5ft setback. The property is located at 411 Linnwood Dr., Bluffton, IN 46714. Property is zoned R-2.

Debra Elsten explained that it was a 10ft x 18ft portable garage and not a shed. She stated that she checked with her neighbors and they didn't have any issues with it. She advised that the garage is next to where the driveway is and setting up against the house. She explained that the garage was longer than what the permit was issued for because it needed to be increased due to the car.

Michael Lautzenheiser stated that the permit was issued with the fact that the structure would meet the 5ft setback requirement and upon measurement it did not.

Ms. Elsten explained that the garage was less than 5ft because they couldn't get the building level when it was set right up against the house. She advised the board that there is a stone drive to it off of her existing driveway. She needed to revise her answers to the petition if the board were to approve the variance.

Petition question #1: Ms. Elsten stated that she checked with all of the surrounding neighbors. Dick Gump, the neighbor directly next to the garage, had no issues with it because it wouldn't cause a problem with mowing his yard.

Petition question #2: Ms. Elsten explained that someone with the APC office helped her fill this question out and was told that her answer was okay.

Petition question #3: Ms. Elsten advised that all of the neighbors that she's spoken with have no problem with the garage and said that it looks okay.

Petition question #4: Ms. Elsten explained that the ground was not level near the house and that it needed to be moved further from the house to get the structure level.

Petition question #5: Does not apply

Conditions: With the changed answers to the application

Motion to Approve: James Schwarzkopf

Second: Keith Masterson

Vote: 5-0

B14-08-23 HARRISON TWP., NW/4 10-26N-12E Bluffton-Harrison Metropolitan School District requests a variance to reduce the side and rear yard setback to 0ft for a 5.59ac minor subdivision. The property is located at 1100 E. Spring St., Bluffton, IN 46714. Property is zoned R-1.

Andrew Carnall, attorney for the school, explained that the variance was done in connection with a minor subdivision. He stated that the division was done to finance a project for the elementary school for a new A/C and ventilation system. He explained that the location is at the west end of the elementary school and will cut through the building, which creates a zero setback. He stated that this will not change the structure of the building. He advised that this is done very frequently for building maintenance improvements. He provided the examples of the Bluffton Middle School and Norwell High School.

Conditions:

Motion to Approve: James Schwarzkopf

Second: Rose Ann Barrick

Vote: 5-0

B14-08-24 JEFFERSON TWP., SW/4 16-28N-12E Robert A. & Cynthia A. Williams Jr. request a variance to reduce the front yard setback from 30ft to 17ft. The property is located at 105 S. Siebold St., Ossian, IN 46777. Property is zoned R-2.

Robert Williams explained that they would like to build a porch on the front of the house. He advised that it would not come out any further than the existing garage. He stated that the distance from the house to the garage is 9ft with a 1ft over hang.

Amanda Studebaker explained the distance from the existing garage to the road right-of-way. She stated that the garage was added on to the house and believes that the permit for the garage stated 18ft to the property line. She explained that the 17ft request was to give the petitioner a little bit of leeway during construction.

Conditions:

Motion to Approve: Rose Ann Barrick

Second: Harry Baumgartner Jr.

Vote: 5-0

B14-08-25 LANCASTER TWP. SW/4 31-27N-12E Tri-Hard Farms/Verizon Wireless request a variance to reduce the setback for a 295ft communication tower to the road right-of-way from

324.5ft to 155.5ft, to reduce the setback to the south parcel line from 324.5ft to 195.5ft , and to reduce the setback to the west parcel line from 324.5ft to 164ft. The property is located on the north side of State Road 124 between Meridian Road and Adams Street, Bluffton, IN 46714 and is zoned A-1.

Russell Brown, attorney representing the petitioners, explained that this plan had received conditional approval from the APC subject to going before the BZA in regards to the setback issues. He stated that the land owner attempted to obtain the waivers to try to reduce the setback for the development plan petition, but was only able to get one signed of the three that needed to be. He explained that INDOT would not sign a waiver, but provided a letter which the APC concluded was not a waiver. Mr. Brown described the project along with the property. He explained the difficulties on placement of the tower due to a legal drain that runs through the land. He also stated that a majority of the land is farmed and they want to limit the disturbance to the agricultural use of the property. He advised that the site is a leased space of 100ft x 100ft, which would allow the tower enough space for three additional co-locators there. He went over the anti-climb features and the FAA determination of no hazard. Then Mr. Brown went into further detail over the reason for the tower. He explained coverage maps, data usage, and the percentage of people in Indiana without a land line. He advised the board that it would not be practical to move the tower on the property because it would negatively impact the land and the property owner. He explained the design of the tower and how it is to collapse on itself if any disaster were to occur, which causes it not to be a public safety concern. He stated that the 1.1 times the height setback is one of the larger setbacks in the state for cell towers. He explained that with the conditional APC approval, they would still need to go before the drainage board due to the proximity to the legal open ditch.

Tim Bixler, adjacent property owner, commented that they would like to develop their land in the future to possibly create a subdivision and sell lots for homes. He stated that with a tower being that close, it could hinder their ability to develop the property. He explained that they made improvements to the road to try and begin the process. He advised the board that he was asked to sign the waiver and chose not to. He explained that if the tower met the setbacks that he would have no problem with the project.

The board then discussed limiting the interruption of the agricultural business and financial hardship. They also talked about the cost it would be to take the tower project across the ditch. They further discussed other possible locations on the property and if setbacks could be met.

Keith Masterson commented on the APCs meeting and the fact that the waivers were requested, which only one was received. He addressed the ordinance regulation about the setback waiver to try and not have to file a variance.

Mr. Lautzenheiser commented about the preservation of agriculture and the ditch could be considered hardships, but there is land on the east side of the drive that could potentially be used as the site of the tower. He explained that it would meet the west side setbacks, but it could potentially create an issue with the setbacks on the east side. He addressed that the hardship factor for a variance cannot be for aesthetic or financial reasons.

Mr. Brown commented that throughout the state they hear from boards that one goal is to decrease agricultural disruptions. He stated that if the tower were moved on the property to meet the setbacks, it would still create the same visual impact on the area. He advised that the neighbor's complaint is just for aesthetic, which the courts have said a board can't take into consideration when looking at cellular communication towers. Then, Mr. Brown discussed the fact that the petition still needs to go before the drainage board because of being within 75ft to the top of the ditch, however the tower would not be located that close. They would be going before the board so that they would be okay for future co-locators to develop on the site. He explained that the tower has not been designed yet and they do not have any engineer plans to show where the tower could potentially fall. He advised that the tower could

be designed to fall within 150ft of the property line so that no part would be outside the leased property. He explained that one thing that could also be done would be an indemnification agreement and name the county on the insurance in order to cover the county in case something were to occur. He stated that this could be a condition of approval. He added that the existing lane would be used to get back to the tower site so that they would limit the amount of additional hard surface so as not to increase any drainage issue.

Conditions: Criteria for variance not met. There is more room on the property where the tower could be moved to meet the setbacks. Financial or esthetic reasons are not good enough to grant variance.

Motion to Deny: James Schwarzkopf

Second: Rose Ann Barrick

Vote: 5-0

OTHER BUSINESS:

Halls – Berlin property violation, representative – Barb Sheets

Mr. Lautzenheiser explained that this is in regards to the time frame that the board gave the Halls be out of the Berlin property due to the violation of a residence in an industrial zoned property.

Barb Sheets, realtor for Bill and Rebecca Hall, stated that the Halls are currently renting 2171 E 850 N. She explained that the Halls have placed an offer on a property in Huntington, which has been accepted. However, the property is a short sale and it takes a longer amount of time than a normal sale. She advised the board that the offer was written on June 17, 2014, which was accepted by the home owner. Then the offer goes to the bank, where it is currently in negotiation. She explained that they have been assigned a negotiator, which is a step towards the bank accepting the offer, however they have not been given a date. Ms. Sheets stated that the Halls are asking to remain at the Ossian property until either their offer on the Huntington property is accepted by the bank or the Berlin property sells, which has no known offers on it. She explained that they got the offer extended until November 7, 2014 because she is uncertain when the bank will finalize it. She advised that short sales could take anywhere from three to six months.

Conditions: Must be out of property by November 7, 2014

Motion: Keith Masterson

Second: Harry Baumgartner Jr.

Vote: 5-0

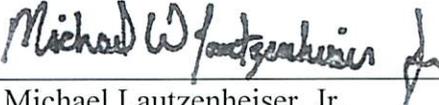
ADVISORY:

James Schwarzkopf made a motion to adjourn the meeting. Keith Masterson seconded the motion and the motion passed with a vote of 5-0. The August 26, 2014, meeting of the Board of Zoning Appeals adjourned at 8:20pm.



Jerry Petzel, President

ATTEST:



Michael Lautzenheiser, Jr.