

BOARD OF ZONING MEETING MINUTES

June 9TH, 2020

6:00 P.M.

President Ben Wicker called the meeting to order at 6:00 P.M.

**ROLL CALL:** Dohn Green, Vice President Sandra Jackson, Craig Trent via Zoom teleconference, Phil Shanahan, President Ben Wicker. Also present was Geoff Wesling Attorney, and Gregg Duke Director.

Mr. Wicker explained some Board members , and public participants are present by teleconference.

**APPROVAL OF MINUTES FOR May 12TH, 2020 Meeting:** Motion was made by Mr. Shanahan to approve minutes as written and seconded by Mr Green. All in favor. Minutes approved.

Before starting with the New Business Mr. Wicker gave a quick explanation for the process and procedure of the meeting this evening to be conducted as written in Rules and Procedures.

**NEW BUSINESS:**

- I. Mr. Wicker introduced the first item of new business BZA 2020-8 Wilson and Mary Brooks and agent Andy Scholle are requesting development standard variances to 7.10.2(a and d1) to allow a subdivision at 5527 S. 650 West, Rushville, IN. Mr. Duke then read findings of fact as follows:**

The Brooks are requesting a variance from development standards listed in 7.10.2(a and d1) to allow a 2 acre subdivision in an A-3 district. The remainder of the parent tract will be 23 acres. The Brooks are separating house from farm ground.

The lot size of 2 acres is nonconforming and will require a variance to development standard 7.10.2(a). The standard requires a minimum lot size of 40 acres in an A-3 district. The remaining 23 acre parent parcel also falls below the minimum and will require a variance to 7.10.2(a).

The dwelling on the 2 acre tract is only 17 feet from the County Right of Way and will require a variance to 7.10.2(d1). The standard requires the dwelling to be 100 feet from the County Right of Way.

Planning staff finds no reason to believe the variances would be injurious to public health, safety, morals, or welfare of the community. Further, the land division should not be damaging to surrounding property values.

Notice of this public hearing was locally advertised ten days prior and adjacent property owners were notified.

Recommendation:

Staff recommendation would be to approve the variances to development standards 7.10.2(a) to allow the creation of a 2 acre and a 23 acre subdivision and a development standard variance to 7.10.2(d1) to allow a 17 foot dwelling setback at 5527 S. 650 West.

Andy Scholle gave a brief presentation. No further comment heard. Mr. Green motioned to approve the variances, seconded by Ms. Jackson. Voice vote was unanimous.

**2. Mr. Wicker introduced the next item of new business BZA 2020-9 4 Daughters Dirt LLC and agents Kyle and Katrina Meal are requesting a Special Exception and development standard variance to 7.10.2(a) to allow a subdivision at 8900 W 900 South, Waldron, IN. Mr. Duke then read findings of fact as follows:**

4 Daughters Dirt is requesting a variance from development standards listed in 7.10.2(a) to allow a 5.021 acre subdivision in an A-3 district for a building lot. The remainder of the parent tract will be 40.919 acres.

The lot size of 5.021 acres is nonconforming and will require a variance to development standard 7.10.2(a). The standard requires a minimum lot size of 40 acres in an A-3 district.

A-3 zoning only allows a dwelling by Special Exception or score 27 or higher on the Regulated Livestock Housing Scoring System. Below that level, applicants scoring 21 to 26 are allowed to be heard by the BZA for a Special Exception. The applicant's scored 21 on the Regulated Livestock Housing Scoring System and have signed Appendix "D" Notice of Agricultural Activity. No unnecessary hardship was presented.

Planning staff finds the following for a Special Exception:

- 1.) Ingress/egress should not be a problem since only residential traffic should be generated on a rural road.
- 2.) This Special Exception should have little effect on the surrounding properties (mainly agricultural and rural residential).
- 3.) Refuse and service areas will not be affected.
- 4.) Utilities will not be impacted and no unexpected wastewater or air pollution should be generated. The soil is suitable for a septic system, but basements are not recommended
- 5.) No screening or buffering expected.
- 6.) No signs or extra lighting other than usual residential use is expected or requested at this time
- 7.) The parcel size is 5.021 acres. The applicants are asking for a variance to the 40 acre development standard.
- 8.) Housing density in the area is light. This proposed housing seems compatible to the area. This will be a new dwelling.

Planning staff finds no reason to believe the variances would be injurious to public health, safety, morals, or welfare of the community. Further, the land division should not be damaging to surrounding property values.

Notice of this public hearing was locally advertised ten days prior and adjacent property owners were notified.

Recommendation:

Staff recommendation would be to approve the variances to development standards 7.10.2(a) to allow the creation of a 5.021 acre subdivision and a Special Exception to allow a dwelling at 8900 W 900 South.

Katrina Meal gave a brief presentation. No further comment heard. Ms. Jackson motioned to approve the variance and Special Exception, seconded by Mr. Shanahan. Voice vote was unanimous.

**3. Mr. Wicker introduced the next item of new business BZA 2020-12 Verizon Wireless/Eco Site and agent Brian Ramirez are requesting development standard variance to 6.3.4 to allow a wireless telecommunication facility/broadband provider at 8701 W. 400 North, Arlington, IN. Mr. Duke then read findings of fact as follows:**

Verizon Wireless is requesting a variance from development standards listed in 6.3.4 to allow a wireless telecommunications tower 120 feet from the property line.

Section 6.3.4 of the Rush County Zoning Ordinance reads as follows:

6.3.4 All structures shall have a minimum setback from front, side, and rear lot lines of one-hundred percent (100%) of the height of the wireless telecommunication facility, with the setback being measured from the center of the base of the structure.

The proposed gross tower height is 299 feet tall. Two property lines are well within the 299 foot required setback. The property line to the East is 120 feet. This exceeds the ordinance by 179 feet. Considerations for a variance:

- (1). The grant will not be injurious to the public health, safety, morals, and general welfare of the community; **The purpose of the property line setback is to help ensure the safety of the adjoining property owners. This application does not ensure future public welfare.**
- (2). The use or value of the area adjacent to the property included in the variance will not be adversely affected; **By subjecting the adjoining property owner to a safety hazard the future use of the property would be in question.**
- (3). The need for the variance arises from some condition peculiar to the property involved and does not exist in similar property in the same zone; **Planning staff cannot find any peculiar condition that would indicate an unnecessary hardship to warrant a variance.**
- (4). The strict application of the terms of the ordinance will constitute an unusual and unnecessary hardship as applied to the property for which a variance is sought; **Locating this tower into a compliant position would occupy roughly a quarter of an acre of ground. Planning Staff finds it difficult to see how occupying an additional ¼ of an acre could create an unnecessary hardship. This seems to be a self-inflicted financial hardship.**

- (5). No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance. **None cited.**

Notice of this public hearing was locally advertised ten days prior and adjacent property owners were notified.

Recommendation:

Staff recommendation would be to deny approval of the variance to zoning ordinance 6.3.4. Applicant has failed to prove an unnecessary hardship exists requiring a variance.

Gregg Read opposition letter from Curt Petty. Brian Ramirez and attorney Dave Coots gave a brief presentation and noted they submitted the engineering study for the collapse radius. Mr. Duke agreed and noted it was submitted late, but suggested it was acceptable and asked the Board if they would want to get a second opinion of the study from another engineering firm. No Board members suggested they would require it. By submitting the collapse study and not requiring a second opinion, the variance became unnecessary. Zoom caller Curt Petty remained concerned about his property value and continued to oppose the variance. With no further comment Mr. Wicker asked for a motion. Mr. Green motioned to approve the variance of setback, seconded by Ms. Jackson. Voice vote for approval was unanimous.

**4. Mr. Wicker introduced the last item of new business BZA 2020-13 Jessica Mastin is requesting a permanent Special Exception to have a Home Occupation at 285 W. 850 North, in Rushville, IN. Mr. Duke then read findings of fact as follows:**

Mrs. Mastin is requesting a permanent Special Exception to have a Massage Therapy, Home Occupation in an A-3 Regulated Livestock district. This is an existing building currently owned by James and Deloris Smith.

A-3 Regulated Livestock zoning only allows Home Occupations with a special exception.

Planning staff finds the following:

- 1.) Ingress/egress is on a rural country road. Emergency vehicle access including fire trucks have an ample outside turn radius of sixty feet.
- 2.) The site will have at least 6 parking places. Although limited this should be a low impact business and not require many more places. The Regulated Livestock district does not have parking requirements for businesses.
- 3.) Refuse and service areas should not be negatively affected. No notable odors, additional refuse, or noise would be expected.
- 4.) Utilities should not be negatively impacted
- 5.) Being in the Regulated Livestock district could pose a potential problem with odors and noises affecting the business thus posing downward public opinion on the surrounding farm businesses. The BZA could require the applicants to sign an appendix D "Notice Of Agricultural Activity" to help protect farm rights in the area. This type business should require

light traffic and vehicles would be provided ample space to turn around before entering the road.

- 6.) No signs are planned at this time. No additional lighting is expected at this time.
- 7.) This use seems to be a product of the pandemic, forcing businesses to appear in sparsely populated areas. These ideas will undoubtedly be more prevalent in the future. Since the building is preexisting, the structure is assumed to be compatible with surrounding buildings also.

Notice of this public hearing was locally advertised ten days prior and adjacent property owners were notified.

Recommendation:

Planning Staff recommends granting the Special Exception for the Home Occupation at 285 W. 850 North.

Zoom caller Linda Ashwill asks if we should grant a temporary Special Exception rather than permanent, but was neutral in support or opposition. Zoom caller Jamie Hamm offered support of the Special Exception.

No further comments Mr. Wicker called for a motion. Motion to approve the permanent Special Exception was made by Mr. Shanahan, and seconded by Mr. Green. Voice vote was unanimous.

**Old Business:**

**Reports:**

**Attorney:** Mr. Wesling had nothing to add.

**Director:** nothing additional

**Adjournment:** Ms. Jackson motioned to adjourn. Seconded by Mr. Green. All in favor. Meeting adjourned at 6:48 P.M.

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Ben Wicker  
President

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Gregg Duke  
Executive Director