

RUSH COUNTY
BOARD OF ZONING APPEALS MEETING MINUTES
APRIL 13TH, 2022 5:00 P.M.

President Sandra Jackson calls the meeting to order at 5:00 P.M.

ROLL CALL: Kenny Aulbach, Virgil Bremmer, Vice President, Denny Corn, Dohn Green, Sandra Jackson, President. Also present was Geoff Wesling, Attorney and Staff Secretary, Linda Ashwill.

APPROVAL OF MINUTES for February 8th and March 8th, 2022 meetings. Sandra asked for a motion for the approval of the minutes and asked if there were any additions or corrections. Hearing none Denny made the motion to approve the minutes as written. Seconded by Don. All were in favor. Minutes were approved.

NEW BUSINESS:

1. BZA-2022-4 Cory Crafton is requesting a Variance to 7.10.2(e3) in the Rush County Ordinance to allow a barn dominium (new dwelling) to be built ten (10) feet on the Southside of property line. This property is located at 10851 South 850 West Saint Paul, IN Parcel # 70-13-26-376-003.000-005, in Orange Township, zoned A-3, regulated livestock.

Linda gave the Staff report as follows: Minimum front yard setback is one hundred (100) feet measured from the edge of the public right-of-way, which Cory meets. The minimum side yard setback is forty (40) feet, which Cory would meet on the West side of the road. Since Cory wants to face the front of his barn dominium to the East, so he can drive into his garage from the existing drive way. This would leave the Southside of his property with only ten (10) feet from the property line. This lot is approximately 2.37 acres. Linda stated all green certified cards have been returned and this was properly advertised. Cory has talked with his neighbors on the South and Northside of his property. Staff recommends to approve this request. Linda points out on the visual the old trailer that used to be on the property that has been removed, and pointed out the present driveway that Cory wants to use to drive directly into his driveway.

Cory was present as representative and handed out pictures of the dwelling he wants to build and the location from the driveway.

Sandra asked if the Board had any other questions. Virgil asked if the lines on the visual where his septic fingers system. Cory stated they were. That's one of the reasons he wants to locate the dwelling this far south. Virgil asked about the green cards. Linda stated they had all came back into the office. Virgil asked Cory again if he had talked with the neighbors about this. Cory said he had and everyone was fine with it. The neighbor on the Southside has a building behind his house and he told him he could use that driveway also. There was no more questions form the Board at this time. Sandra excused Mr. Crafton from the podium. Sandra opens ups the meeting for public hearing for questions from the audience. Hearing no public comments Sandra closes the public hearing and asked for a motion. Virgil asked Linda where the red x was for the trailer it was no longer there. Linda said that is correct. It's a vacant lot.

Dohn makes a motion to approve this variance on BZA-2022-4 for the variance on 7.10.2 (3e) of ten (10) foot from the Southside of the property line of property located at 10851 South 850 West Saint Paul. This was seconded by Denny. All were in favor. Motion carried.

2. BZA-2022-5 L & P, LLC also known as Pave Gas Station Project is requesting a Variance from 7.6.4 to build a new convenience center located at 7972 South SR#3 Milroy, IN in Anderson Township. Parcel # 70-14-12-352-008.000-001 Zoned Commercial.

Sandra asked if there was a representative. Richard Malcolm and Steve Pavey, President of the LLC, were present as representatives.

Linda gave the Staff report as follows: Minimum rear lot in Rush County is in no case less than thirty (30) feet. Steve Pavey is requesting the East setback to be twenty-three and one-half (23.5'). The adjoining property to the East is a cemetery. This setback requested would add additional entrance from State Road 3, which would be a good thing. There is no sprinkler system needed. We have the State Construction Design Release on file. There will be adequate parking places for this 4,800 Square Foot building.

All green cards have been returned. Staff recommends approval of this request with a stipulation of a dead line for the current buildings to be demolished within a given time limit.

Sandra asked if there were any additional comments from the representatives that hadn't already been said. Steven spoke and stated the present convenience store is a modular building approximately 1,500 square feet. He stated he didn't know the present building would need to be removed. He possibly might want this for another retail facility. Geoff said that was just for the record. Linda stated she thought all buildings were going to be gone or that was what she was told when Dick brought in the application. Denny asked if they were going to move it or something. Mr. Pavey said they were going to sale hardware or something to that effect. Denny asked if there was going to be enough room for parking if they had that too. Linda asked if there would be enough space between the two buildings. Steven said they had separated the modular from the new building when it was set so in the future they could build this new building. Linda said the State Plan right now is just for the new building. Steven said that is correct. Linda said as far as she could tell there were two parcels adjoining but they both have the same parcel number. Linda point out with the visual the two parcels in question. The parcel north of where the new building is to be located has the same parcel number. Steven said there were several parcels there. He stated the parcel had been purchased separately. He was surprised it had the same parcel number. Mr. Malcolm stated they own all the way up to Harcourt's. Denny asked where they were going to put the building down there. North of where you are now? Steven said no it's south of the modular building where we are now. Pretty much in the center of the area basically. Virgil asked if the blue line was the parcel where the new building was to be progression. Linda said that is where it is to be set on and just east of that, which you can't really see on this visual, is the cemetery. Linda said the only thing she was worried about, since I thought Mr. Malcolm had said all the other buildings were going to be moved, was the setback on the east side. You have already been approved for the convenience center that you have now. Virgil asked the distance between the modular building and the new to be built? Steven said he thought approximately sixty (60) feet maybe. Virgil said he was just thinking about fire equipment to have access to. Steven said there was driveways from the tavern which has two entries. We have a driveway coming off of the modular now. The new building farther south of that will have a drive.

Sandra asked if there were any other questions from the Board. Virgil said so we're just on the one variance for the 23.5 feet from the East side. That's all we're really looking for. Sandra excuses Mr. Malcolm and Mr. Pavey from the podium stating they had no more questions at this time. If they had some later they would call them back. Sandra opens the public hearing. She asks if anyone has any comments or questions about the item that needs to be discussed. Seeing none, Sandra closes the public hearing. She asks the Board if they have any other questions. Hearing none Sandra entertains a motion.

Virgil moves to approve BZA-2022-5 to allow twenty-three & one half foot (23.5') variance for the rear yard setback. This was seconded by Denny. All were in favor. Variance was approved for this location.

3. BZA-2022-6 Richard & Katie Schrock, are requesting Variances from 7.10.1 (1e & 2e) for front and side yards setbacks of existing housing on property located at 2501 and 2437 West 900 South Milroy, IN Zoned A-3, regulated livestock. Parcel #'s 70-14-23-200-002.000-001 & 70-14.23-200-001.000-001. Andy Scholle was present as representative.

Linda gave staff report as the Schock's are wanting to make three (3) lots for the existing acreage of 1.355 & 16.679 in Section 23/Township 12/Range9-Lot 1 or Tract 1 has an existing house that is only 19.7 feet from the East side of the property line and 79.8 feet from the Road-Right-of-Way. Variances are needed for both the side yard and front yard setbacks. Lot #2 or Tract #2 the house is 63 feet from the new property line but only 95.5 from the Road-Right-of-Way. A variance is needed for the house frontage also.

Since this new survey will clean up the previous existing survey, Staff recommends approval for these variances. Linda stated she couldn't get the whole picture on the visual of these three tracts but she had made paper copies of the survey that they could look at that shows how the house is situated. The present survey right now has a property going through a barn.

Andy Scholle speaks as representative for the Schock's and points out the 1.3 acre tract on the screen and on the west side of it there is an existing barn with the property line through it. We want to reposition that line over to the west and ten feet off the barn but by doing so that only leaves about seven feet from existing house. That's why we decided the setback variance for the existing houses and side yard setbacks. Virgil asked if they were just shifting the property lines over. Linda handed out print outs that explained this a little bit better. Showing where the property lines are presently and where they will be located after. Andy stated the blue lines are the proposed lines and the red lines are what is existing now. Virgil asked for explanation in regard to the property lines. Lot #3 or Tract 3 is separate.

Sandra asked if there were any other questions from the Board. Virgil said then you end up with a parcel that has a barn in it and house in it. Then another parcel that has another house in it. Andy said yes. Sandra said if no more Board questions she would open up the public hearing. Linda told the Board that we could do the survey in house since this is over the two acres. This is one reason why she wants to get the variances done first. Sandra asked for any other comments. Hearing none Sandra closes the public hearing and asked for a motion.

Denny makes a motion to approve BZA-2022-6 for the Schock's on the setbacks on Track #1 for the 19.7 feet and Tract # 2 for the 79.8 feet. This was seconded by Dohn. All were in favor. Motion carries for these variances on Parcel 70-14-23-200.000-001 & 70-14-23-200-001.000-001.

4. BZA-2022-7 Wilbur E. Sheets is requesting a Special Exception from Rush County Zoning Ordinance 7.10.2 (2) to allow a mobile home for his elderly parents on the eastside of his Lot # 16. Parcel 70-09-15-405-001.000-014 in Walker Township with address of 9381 West Jackson Street Manilla, IN. Zoned Residential.

Mr. Sheets owns two lots at this location Lot #17 and #16. He needs to locate his elderly parents closer to him. Presently they live out of County. He has more than enough room to meet the twenty-five (25) foot set back from Jackson Street from the side property line. He has an existing sewer hook-up for this Lot # 16 that goes into the Western Rush County Regional Water & Sewer District and has permission to do so.

Since this could be considered a hardship under "The plight of the owner is due to unique circumstances; and that the Variation, if granted, will not alter the essential character of the locality." There are several mobile homes around this area to the south and the north.

Since 7.10.7 (2) is going to be used by a blood relative as a permanent dwelling and will be put on a permanent foundation with tie downs and skirting, Staff recommends approval of this Special Exception.

Linda said if she has read this correctly this Special Exception would be granted for two years and could be renewed. Linda said he wasn't sure how we could do this with this being on a permanent foundation. Kenny said normally when you put skirting around you don't put a foundation down. Linda said it's got to be tied down. So this would be considered a permanent foundation. Linda asked Mr. Sheets how he was going to fix this. Mr. Sheets said he had checked with mobile home places and it's going to be put on pillars or cement blocks. Kenny said when it's this way you will be able to move it. Mr. Sheets said yes, but he is not planning on moving it. He was hoping that he wouldn't have to move it, because when he gets elderly he could go there and let his kids have the house, and they could take care of him also. Linda said so we will still do the two year permission. Kenny said we pretty near got to. Then he has to come back and reapply. Virgil asked if that was a garage in the bottom of Lot #16. Wilbur said that was a pole barn they use as a garage. Virgil asked Linda again if it met all the setbacks from the property lines. Linda stated the way Mr. Sheets talked it was going to be put it would met the setbacks. This is zoned residential so you only have to have ten foot on sides. He hasn't come in for the ILP yet. Wilbur said he measured it out and he can setback off the road twenty-five (25) foot at the beginning of the trailer. It's an eighty (80) foot trailer which will make it fourteen (14) foot off the pole barn. Virgil asked if these were currently just one parcel Lot (16 & 17). Linda said it was all one parcel. Linda stated he owns two lots but it's all under one parcel number. Sandra asked if there were any other questions for the Board. Virgil asked Mr. Sheets if there is a way to split the two lots and have Lot 17 have an adequate setback or different parcel. Kenny said the biggest thing he sees here in giving the exception doesn't the County Ordinance say we can't have mobile homes without being in a park? For this special exception you are allowed to do this for a relative with the two years Special Exception. He's asking to make this a permanent residence. Linda said we can't do that, right? Geoff said could give it two years and then he can reapply. Sandra said he would have to come back in two years and reapply. Geoff said that is probably what has happen around him. Kenny asked Geoff if that's the way he interrupted this. Geoff said he sees it as a two year Special Exception and we can redo that after two years, unless you want to change the Ordinance. Even give it to the Director to allow this two year Special Exception. He didn't think our present rules for this can be a permanent one. Kenny asked if there was anyone here to contest this. Sandra asked if there was anyone else here that wants to speak on this BZA-2022-7. Linda

stated she didn't get the one green card back on Keith & Beverly Palmer. But you said you had talked with your neighbors. Wilbur said they are adjunct to his pole barn. Linda said right and they live in a trailer. She stated 7.1.11 states "A mobile home may be permitted as a Temporary Special Exception on a lot where a permanent dwelling unit exists and may be used by a blood relative who requires using care from the resident of the existing dwelling unit. Linda said she doesn't see the two years in this new Ordinance adopted and signed in February. Geoff said he thought we had always just done it or say two years to make it temporary. It could be two weeks or 200 hundred years. With his elderly parents not knowing their life expectancy, you know. Geoff something like this does give us some latitude to come up with something different than just two years. Linda said maybe after their death or something to that effect. We don't know how long that will be.

Sandra excuses Wilbur from the podium. If they have any other questions she stated they would call him back. Geoff said you can grant Temporary Special Exceptions. Linda found in the Ordinance 7.10.7 (4) that states if a Special is granted by the BZA: 1. The Special Exception must contain a requirement that applicant remain in compliance with the aforementioned requirements and provide an updated of such compliance to BZA every two (2) years from the date the Special Exception was originally granted. 11. Failure to comply with the aforementioned compliance updates will result in the denial of an extension or renewal of the Special Exception. Geoff said so essentially he would come in and tell the Director your parents were still living there and you didn't build a deck on the back of it. Sandra asked if he came to the Board or office. Geoff said just go to the Director's office.

Sandra asked if there was any public comment at this time. Hearing none she asked if the Board had any further questions, if not, she would entertain a motion. Dohn makes the motion for approval of BZA-2022-7 for this Special Exception to 7.10.7 (2) to allow the placing of a mobile home for his blood relatives (elderly parents) on this property with the understanding that he will have to request an update every two years. Wilbur asked who he would request this too. Geoff said he would just advise the Area Plan Director or office. This was seconded by Virgil. All were in favor. Motion carries.

OLD BUSINESS:

Linda stated she had a gentleman here that would like to ask some questions from the Board, since he has a peculiar situation. Linda induced Keith Wilson that came to the podium. Linda said she didn't bring his survey down with her, but told him there was a problem with the survey from Coors. She just found out about it and Cathy was addressing it with them. Mr. Wilson states he has a piece of property at 1100 North in Ripley Township. He states he is selling this property and keeping the house. He thinks he has to apply for a variance for the setback of this house. The house has been setting there for 130 years. With the new regulations it's setting too close to the road. Linda said Mr. Wilson is buying this property on contact. Geoff said the house is too close to the road. It's already been built. Mr. Wilson said it had been there 130 years. So what is your concerns? Virgil said you are breaking a parcel into two pieces. Correct? Linda said the variance for the setback from the right-of-way. Mr. Wilson said he bought the property on contact from his step-mom. A few years ago he had an appendicitis attack. Was in the hospital 84 days then rehab 57 days and in a coma. Now his pancreas is flaring up again and he has to have more removed. He wants to pay this property off and pay his debts off and be debt free, so if something happens his two kids won't have to worry about the expenses. Mr. Wilson stated when he went through a major divorce. His ex-wife filed for divorce eight days out of his coma. She had bipolar issues. He stated he sold to a friend of his, Tim Henderson, the fifteen (15) acres and now he's going to

buy the other thirty-two (32) acres. Virgil said that's going to leave the house then. Mr. Wilson this will leave the house and just shy of three (3) acres. Kenny said he wouldn't have to come into the Board because he's selling fifteen (15) acres which meets the ten (10) acre requirement. He doesn't really have to do anything. Virgil said it's just the house setting close to the road that would need a variance. Kenny said this would be the remaining tract. It would be grandfathered. Geoff said he is not creating a larger impact. He's not doing something making it added on to just dividing the parcel. Kenny said the ten acre rule takes care of that one tract by itself. He just has his remaining parcel. Virgil said this isn't making anything any worse. Linda said the only problem is right now, this property is still in Mrs. Barry's name. Mr. Wilson is buying this on contract. I told Mr. Wilson we will need verification from her to be able to split this. Mr. Wilson said he was going to get this notarized but the lady that was going to do this has been exposed to Covid. Kenny said this would take care of itself with the deed for the guy buying the ground. Kenny said when Mr. Wilson sales that ground, Mrs. Barry has to sign off and give him a deed to it so he can sell it. Linda asked how he can divide it off without her signature. Kenny said what she will do, is to give him a deed and he will turn around and give it to the buyer. This will all be done at day of closing. Virgil asked if Mrs. Barry wasn't the one needing to do the subdivision. Kenny said he doesn't even need a subdivision because there is ten (10) or more acres. Mr. Wilson said Mrs. Barry is 96 years old. Kenny said she would be an entity on the land deed. Then she is satisfied, we don't know what the money is. He may be able to pay his property off. Virgil said they just need a good survey and they will be good to go. Mr. Wilson said he had this surveyed. Linda asked so he doesn't need a variance for the house. Kenny said he wouldn't need a variance because it's the remaining parcel. Kenny said the way our rules are set, we can take a parcel and make it into two parcels. Linda asked even though the one parcel is not compliant. Kenny said right. The house is already there. Geoff said so prep nonconforming issue and this is not a created issue. Linda said now if something happens to the house. Kenny said then he would have to set it back off the road. Linda said for set it back off the road. Mr. Wilson said there was plenty of road space to do that. Virgil said you are not cutting the septic system off or anything like that. Mr. Wilson said he had made this deal with her some sixty years ago. After his Mom died and her husband died, my Dad stood up at her wedding, vice versa, so they had been married some twenty-two years. He stated his Dad passed away a couple of years ago. She gets to live there for life. When his Dad died two years ago she thought she was going to have to move, even though it's not in the contract, it was the deal he had made with his Dad and she will get to live there for her life. That's the way it's going to be. Linda said so all we have to do is get the survey in compliance then we're good. Mr. Wilson said he would come down next week and see what they had to get done to the survey. Linda said she has an email in Coors. As soon as they get back with her she will let him know. Mr. Wilson said he knew there was a conversely on the three and half acres. Linda said also when he splits off this property there is only like a nineteen foot easement from the house, but when the neighbor buys the other portion and combines with his the easement will be taken care of. Mr. Wilson said here is what the deal is. When he went through his divorce, he had to pay his ex-wife \$977,066.00. So I had to sell the other property to fifteen acres that is adjacent to this property. He kept the twenty foot right-of-way, so we wouldn't go through the barn lot and yard to get to the field. He could still farm the field. Then when I had all this health problem he rented the barn out to Tim and he farmed the fifteen acres. So when Tim buys the other thirty two acres that nineteen feet will go away. Kenny said so the nineteen feet is going to be included in what he is selling. Mr. Wilson correct. So there will not be need for a right-of-way. Kenny asked where this property was. Mr. Wilson right next to the buffalo farm. Where the twin bridges are its on 900 North so basically he has to come out of Charlottesville across the railroad tracks and the first

road to you left which is 1100 and the second house on the right. He stated this was four miles from his place. He stated he had farmed that ground since he was sixteen and he's sixty-six. My intention was to keep it, but he didn't know he was going to go through all this. Kenny said he thought it was good to go. Virgil said it sure sounds like it. Linda said as long as we get the survey corrected. We don't have to come before the Board since there is enough acreage as long as we get Mrs. Barry to sign the Deed of Dedication. Mr. Wilson said he greatly appreciated the Boards time and working with him. Linda told Mr. Wilson she would give him a call when she gets the survey back.

Sandra asked if there was any more old business. Hearing none she goes on to reports.

REPORTS:

Attorney: Geoff said one we had a hearing tomorrow that we have to rescheduled, which cannot happen because we didn't have the proper ten day notice. He said if our Secretary, Mrs. Ashwill, can get this into the newspaper, to have this April 27th at 6:00 P.M. Linda asked if he was going to notify the attorneys. He said he would and she would do the same exact same notice we talked about a few days ago with the new date. You will have to get this into tonight or early tomorrow for the deadline. Linda said she would email before she leaves. Geoff said he had heard from both councils today. He has not heard back from Mr. Johnson. Brianna Schroeder stated she could do any day that we picked. Linda asked about Gregg. If he had been contacted. Geoff said he had talked with Gregg and he is available as well. This will be one issue that you guys would continue tomorrows hearing to the 27th. Have Linda post it in the paper with this ten day notice. Also something posted on the bulletin board here. Virgil asked if he needed a motion for this. Geoff said he did. Virgil makes the motion to continue the Special Hearing for the public hearing for the Administrative Appeal to April 27th at 6:00 P.M. Sandra asked for a second to this motion. Denny seconded the motion. All were in favor. Motion to reschedule this Special Meeting to April 27th at 6:00 P.M. was passed. Geoff said to state this as a Public Hearing on the Administrative Appeal. Geoff said don't say anything about they can't speak, etc.

Geoff said he had one other order of business: He had talked to Gregg Duke about him being able to appear tonight or tomorrow. He said he was not appearing tonight because he did not have anyone advise him to do so. He is very conscientious about getting hours in if you guys don't need him. Geoff said it would be his request we request as long as he is able to appear at all the meetings he is able to appear at. He also thinks we should have a discussion about him being in the office whenever he is available to catch up and answer questions. It's probably a good idea to start an email chain with him being included. Linda stated she didn't have his new email. Geoff said he had a new email and he would give it to her. His recommendation was to make a motion to have him appear at all of the hearings as long as he is able to. Given disquisition to help out in the office. Coming in to the office and working on those kind of things. Virgil said you need a motion on this. Linda said as far as being caught up, she is pretty well caught up. Geoff said she was doing a great job. Geoff said we just need to keep it going. It will be nice we get someone hired. At lease speaking for the BZA you guys are ok with me telling him that? Sandra asked for a motion. Virgil made a motion that Gregg be notified that we would like to have him at all of the meetings going forward until we get a new Director and request that he help out in the office to help promote efficiently of the office. Kenny said we probably augh to say we will notify him when he is needed. Linda asked if she was to include him on her emails. Virgil said to keep him in the flow on things. Geoff said the cost to him is so minimal compared to the value of having him here and keeping things running smoothly. He would encourage to have him here at the meetings. Virgil

especially with not having him here we can offset some of that. Denny asked if they had a second. Sandra said she did not have one yet. Dohn said he would seconded this. All were in favor. Motion passes.

Sandra asked if there was anything else to come before the Board. Hearing none she asked for adjournment.

ADJOURNMENT: Dohn makes the motion to adjourn. Seconded by Virgil. All were in favor. Meeting adjourned 5:55 P.M.

Sandra Jackson
President

Kenny Aulbach
Secretary Ika