

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Mary Jane Baker, John Simmermon, Bill Hobbs, Bill Maxwell, and Rick Durham.

Members Absent: None

Also Present: Ken Ellis, Planning Director, Gerald Shine, Jr., Attorney, and Elizabeth Bruns, Board Secretary.

Director Ellis informed the BZA members of the May 10th regular Madison County Planning Commission meeting where the Planning Commission voted unanimously to recite the Pledge of Allegiance and have Prayer or a moment of silence prior to roll call for the Planning Commission and the Board of Zoning Appeals meetings.

CURRENT BUSINESS

1. Pledge of Allegiance
2. Prayer by Rick Durham
3. Roll call taken with all members being present.
4. The minutes for April 26, 2011, were mailed to each member prior to this meeting. Member Hobbs made a motion, seconded by Member Maxwell, to approve the minutes as presented. Vote was 4 yes in favor of the motion, and one abstain, Rick Durham.

NEW BUSINESS

1. Petition: 2011-V-005 Variance Zoning: AG
Address: 319 South 500 West
Location: West side of 500 West, approximately ½ mile south of SR 32
Petitioner: Talwar, Ravi & Eleanor
Request: Variance to legally establish a required front yard encroachment and future expansion of the subject legal nonconforming dwelling as per the recorded commitments.

Director Ellis briefed the Board on the circumstances for the encroachment variance. The petitioner's commit to signing and recording the commitment agreement, as presented. (1) No future building encroachments within the 100-foot front building line. (2) Only the existing 1128 (SF) square foot footprint will be legally established with the front elevation maintained as it exists today. (3) Expansion of the dwelling would be allowed as presented at public hearing. (4) If eminent domain action were to proceed, the fair market appraisal would be for the existing 1128 square feet first story footprint and excludes any new construction. (5) The appraised value of that home will be frozen at today's assessment, so if the County were to have to purchase the home to widen CR500 West, it would not include the value of any expansion. This agreement will be signed and duly recorded, and is attached hereto. All they are asking for today is to

legally establish the home for the sole purpose of allowing the homeowner to put on the rear addition and nothing more.

Jim Myers from Myers Real Estate is representing the current owner and the prospective buyer of this property. The prospective buyers would like to add on to the house in the future.

Mr. Shine stated that he talked to Mr. Kilmer, and reviewed the document that you have attached to your packet, and if this is approved by the Board, this has to be recorded and this protects the County in the future. This roadway is one that is designated as a collector road and we are just looking to the future and following our ordinance.

Inquiries made by the Board regarding taxes, septic field and existing barn location.

Steve Priser, 7969 SR 32 West, Anderson, asked if the use of these properties is being changed in any way. Is it still going to be agricultural and residential?

Mr. Shine stated that we don't know that, but at this time there is no request for a change. If they would want to change the zoning on it they would have to come back before the Planning Commission and file a petition.

Director Ellis stated that nothing had been filed for a change and there has been no discussion at all about any changes in use. Mr. Brooks is intending to have a renter in the house and he would be, or may be, utilizing the outbuildings. This plat has been recorded, so they have a legally non-conforming residential structure in the setback. The Petitioner received an Administrative Plat final approval in February. The 86.895 acre parent tract was separated from the original farmstead creating a 5.355 acre lot that is occupied by the primary residence and the farm outbuildings. The remainder is 82.540 acres of vacant production field.

Findings of Fact:

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community?* Without the proposed agreement or similar protections in favor of Madison County, it is not in the public interest to allow the expansion of nonconforming structures in any front yard along CR 500 W. Every dwelling in this neighborhood is similarly affected under a right-of-way take. To protect the general public and the public coffer, the variance requires a property owner commitment to no future building encroachments within the 100-foot front building line. Only the existing 1128 (SF) square foot footprint will be legally established with the front elevation maintained as it exists today. Expansion of the dwelling would be allowed as presented at public hearing. If eminent domain action were to proceed, the fair market appraisal would be for the existing 1128 square feet first story footprint and excludes any new construction.
2. *Would the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?* There will be no new construction in the front yard. The front yard remains as is; compatible with structures in the front yards along CR 500 W. The new construction is in the rear yard. The structural improvement will increase the property's assessment and complement the appearance

of immediate neighborhood and adjacent lots. If the expansion is constructed as presented under the proposed commitment agreement, there will be no negative impact on the adjacent lots or immediate neighborhood.

3. *Would the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?* This situation was self-imposed by Administrative Plat 2011-P-003 creating legally nonconforming structures subject to current nonconforming codes and the 100-foot front yard setback. The existing dwelling cannot be reasonably made conforming because of the limitations put on it by the Madison County Thoroughfare Plan and AG zoning requirements. The front building line is not reduced but maintained. The proposed expansion to the rear of the dwelling improves livability, enjoyable habitability and a reasonable rate of return. It will not be noticeable by someone unfamiliar with the neighborhood. Most important, the essential character of the neighborhood remains rural residential. The county is protected from increased expense and litigation in a right-of-way taking because the appraiser's report will be confined to examination of the fair market value of the 1948 dwelling occupying the original 1128 SF first story footprint and encroaching accessory buildings at the 2011 assessed value. The granting is a win-win situation.

Staff Opinion: The BZA grant Variance 2011-V-005 as presented, adopt BZA staff findings of fact as your own, and accept the petitioner's voluntary commitment agreement, effective and binding, once signed and duly recorded.

Discussion: Concerns were expressed that we could possibly be setting a precedent. Mr. Ellis said that in the situation of a new home he would be concerned about this, I would be opposed to this if I knew that the road were slated for improvement, but I don't see anything in the near future. Member Hobbs stated that he is impressed with the thoughtfulness that Director Ellis went through on this staff report.

Motion: Member Simmermon made a motion to approve petition 2011-V-005 accepting the findings of facts set before us, plus Member Maxwell's finding stating that this home was built to the specifications required at the time of construction in 1948. Member Simmermon added that we accept the agreement being recorded. Member Hobbs seconded the motion. Vote was unanimous in favor of the motion. **Petition 2011-V-005 Approved with recorded agreement.**

4
EX 37

2011006132 MISC DOC \$17.00
05/24/2011 02:04:00P 4 PGS
Angela Shelton
Madison County Recorder IN
Recorded as Presented

Madison County
Government Center
16 E. 9th Street, Box 13
Anderson, IN 46016
Phone: (765) 641-9541
www.madisoncounty.in.gov

mcbza

Madison County
Board of Zoning Appeals

May 24, 2011

RE: 2011-V-005

Ravi & Eleanor Talwar
10608 Walnut Creek Dr. W.
Carmel, IN 46032

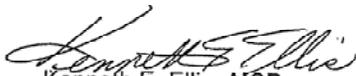
Dear Mr. & Mrs. Talwar:

This letter is to serve notice that after a public hearing held on May 24, 2011, in accordance with IC 36-7-4-920, the Madison County Board of Zoning Appeals approved your Development Standard Variance to legally establish a required front yard encroachment and future expansion of the subject legal nonconforming dwelling (only) as presented at public hearing; and as per the recorded commitment agreement..

Please note that this letter does not substitute as an Improvement Location Permit (ILP). If an ILP is required for construction, you must obtain that permit with the Madison County Plan Commission prior to any work.

If you have any questions about this letter or other planning and development issues, please feel free to contact me at 765-641-9541, or by email at kellis@madisoncounty.in.gov

Respectfully,


Kenneth E. Ellis, AICP
Executive Director

RECEIVED

MAY 24 2011

BY: _____

AGREEMENT

In consideration for the Madison County Board of Zoning Appeals granting to applicant a variance from the required front yard encroachment for the property located at 319 South 500 West, Anderson, Indiana, and more particularly described as follows, to-wit:

SEE ATTACHED EXHIBIT "A"
FOR LEGAL DESCRIPTION

the applicant agrees to the following:

1. Expansion of the existing 1128 square feet first story footprint shall not exceed 1.5 times the AG district 1500 square feet minimum living area; and shall not exceed the AG district minimum height of 35 feet for any new story addition.
2. New additions and bump-outs shall not exceed the plane of the existing front building elevation.
3. There shall be no new primary and accessory structure building line encroachments.
4. Any eminent domain fair market appraisal shall only be for the existing 1128 square feet first story dwelling footprint as presented at public hearing, and will exclude all new Class II residential additions or bump-outs.
5. In the event of a right-of-way taking to improve the 500 West collector road, the property owner shall accept the official eminent domain fair market appraisal with no remonstrations or appeal.
6. This document shall be recorded and be binding on the applicants, heirs and assigns, as well as all subsequent owners of this real estate.

Agreed this 16th day of May, 2011.

Ravi R. Talwar
RAVIR. TALWAR, Applicant

Eleanor C. Talwar
ELEANOR C. TALWAR, Applicant

EXHIBIT "A"

A parcel of ground being in the Southeast Quarter of Section 18, Township 19 North, Range 7 East, of the Second Principal Meridian, Stony Creek Township, Madison County, Indiana, being more particularly described as follows:

Beginning at the Northeast corner of said Southeast Quarter; thence South 00 degrees 48 minutes 55 seconds West (assumed bearing) along the East line of said Southeast Quarter, a distance of 386.00 feet; thence North 89 degrees 37 minutes 09 seconds West, a distance of 741.96 feet; thence North 00 degrees 48 minutes 54 seconds East, a distance of 170.97 feet; thence North 86 degrees 52 minutes 01 seconds East, a distance of 484.00 feet; thence North 00 degrees 48 minutes 55 seconds East, a distance of 185.42 feet to a point on the North line of said Southeast Quarter; thence South 89 degrees 36 minutes 29 seconds East along said North line of said Southeast Quarter, a distance of 259.10 feet to the point of beginning, contains 4.355 Acres, more or less.

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
 COUNTY OF MADISON)

Before me, a Notary Public in and for said County and State, personally appeared RAVI R. TALWAR and ELEANOR C. TALWAR and acknowledged the execution of the foregoing Agreement and having been duly sworn, stated that any representations therein contained are true.

Witness my hand and seal this 13th day of May, 2011.

My Commission Expires:
 May 31, 2015



Joseph R. Kilmer

 JOSEPH R. KILMER, Notary Public
 Residing in Madison County

I affirm under the penalties of perjury that I have taken reasonable care to redact each Social Security number in this document unless required by law.

Joseph R. Kilmer

 JOSEPH R. KILMER, Attorney at Law

This Instrument prepared by:
 JOSEPH R. KILMER
 Attorney at Law #5186-48
 100 E. High Street
 P.O. Box 241
 Pendleton, IN 46064
 Tel: (765) 778-7178

Mr. Shine informed the Board that the Commissioners approved the installation of a new presentation system that will include multiple TV screens with computer hookup to better serve our needs.

Member Durham moved for adjournment.

Chairman Baker adjourned the meeting.

Adjournment: 9:31:34 A.M.

Mary Jane Baker, Chairman

Elizabeth Bruns, Secretary