

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 Orick, John Simmermon, and Rick Durham

Members Absent: Bill Hobbs

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

CURRENT BUSINESS

1. Pledge of Allegiance
2. Prayer – Member Durham
3. Roll call taken with one member, Bill Hobbs, being absent.
4. The minutes for the September 25, 2012, meeting, were mailed to each member prior to this meeting. Member Durham made a motion to approve the minutes as presented. Member Simmermon seconded the motion; vote was unanimous in favor of the motion. **September Minutes Approved.**

NEW BUSINESS

1. **Petition:** 2012-V-015
Address: 12919 N. 400 W., Alexandria, IN
Location: Approximately 300' S. of the intersection of CR 1300 N., and CR 400 W.
Petitioner: Terry G. and Pamela K. Heater
Owner: Terry G. and Pamela K. Heater
Zoning: AG (Agriculture)
Request: Variance to allow for the construction of a new dwelling while living in the existing dwelling on the same parcel in an (AG) zone.

Director Ellis presented his Staff Report with a favorable recommendation.

Staff Recommendation: In the absence of information that may be presented during public hearing, staff recommends approval as presented, and included in the minutes, a recorded commitment the petitioner will remove the old mobile home sixty days from the time the new modular receives a certificate of occupancy.

Teddy Bowencamp – 2327 Cedar Bend Drive, I am the representative for the Heaters from Redbud Homes. With weather permitting, the Heaters plan to be in their new home before Christmas.

Findings of Fact 2012-V-015

Would the approval be injurious to the public health, safety, morals, and general welfare of the community? The proposed modular would not pose a threat to the safety or welfare of the general community because it will meet all local and state codes for new construction. With a commitment to remove the mobile home once the new modular is certified for occupancy, there should be no negative impact on the immediate neighborhood if the petitioner lives in the existing mobile home while constructing the new one.

Would the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? The proposed dwelling is compatible with the surroundings, and similar in character with other homes in the area. New construction will improve the value of the property. The affected properties will be impacted temporarily during construction.

Would the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property? The character of the neighborhood would not be changed or threatened while the new home is constructed and the petitioners live in their existing home. Without the ability to live in the existing home while the new home is being constructed would be an undue burden. Practical difficulty has been demonstrated.

Terry Heater explained that they would like an updated home to enjoy in their retirement.

Member Simmermon made a motion to approve Petition 2012-V-015 per Staff Findings and one condition being the 60 day commitment to remove the current residence. Member Orick seconded the motion. Vote was unanimous in favor of the motion. **2012-V-015 Approved w/ condition of recorded commitment. (see page 943)**

- 2. Petition:** 2012-V-016
Address: TBA
Location: Southwest corner 200 N. and 500 E. approx. 1/10 mile south on 500 E.
Petitioner: Terry Dotson and Janet Bugert
Owner: Terry Dotson and Janet Bugert
Zoning: AG (Agriculture)
Request: The petitioner proposes an irregular shaped 5.288 acre single family lot with 50-feet of road frontage and 926.28-feet of lot depth in an (AG) zone.

Director Ellis presented his Staff Report with a favorable recommendation.

Staff Recommendation: In the absence of information that may be presented during public hearing, staff recommends approval as presented, and included in the minutes.

Findings of Fact: 2012-V-016

Would the approval be injurious to the public health, safety, morals, and general welfare of the community? The granting of the variance neither harms the public nor undermines the purposes of The Codes. Minimum driveway width is 50-feet and is similar in policy nature as previous approvals. No easement, legal drain or right-of-way is encroached. The variance will not impact the installation of well and septic. The character of the neighborhood would not be

changed or threatened. The proposed granting does not affect the health, safety and welfare of the neighborhood or Madison County.

Would the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? The proposed primary lot is compatible with the area and existing homes in the general neighborhood. Similar lot configurations have been approved without known problems. The granting will not affect adjoining property values in a substantially adverse manner. The proposed wooded residential lot will improve the vacant property and enhance the neighborhood.

Would the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property? This variance request is necessitated by the execution of a life estate pursuant to an allocation of land in the settlement of a decedent's estate for the distribution of property. The subject Lot 4 is wooded and suitable for a single family residence. Without variance, the wooded and natural features of this area of the estate would be inaccessible, and the proposed lot unbuildable.

Richard Ward with Richard Ward and Associates is representing the Estate. Terry Dotson has a mini-plat currently next to lot 4, so this will enlarge his lot where he is currently living.

Member Durham asked Mr. Ward if the interior lot lines are established by land use to which Mr. Ward stated that is correct. Board discussion with the Petitioner regarding the 50' drive, and the tillable ground.

Member Orick made a motion to approve Petition 12-V-016 according to Staff Recommendations. Member Durham seconded the motion. Vote was unanimous in favor of the motion. **2012-V-016 Approved.**

- 3. Petition:** 2012-V-018
Address: TBA
Location: Approximately 750' southeast of the SR 32 & SR 13 intersection on the northeast side of SR 13
Petitioner: W.J. Leonard Construction, LLC
Owner: Bobby J and Deanna G. Yancey, Trustees
Zoning: GC (General Commercial)
Request: Variances to allow the construction of a convenience store (Dollar General)

Director Ellis presented his Staff Report with a favorable recommendation.

Staff Recommendation: In the absence of information that may be presented during public hearing, staff recommends approval as presented. I accept the petitioner's findings of fact, and request the staff report be included as part of the minutes.

Findings of Fact: 2012-V-018

Would the approval be injurious to the public health, safety, morals, and general welfare of the community? The location of the proposed structure would not pose a threat to the general community. The character of the neighborhood would not be changed or threatened. The proposed granting does not affect the health, safety and welfare of the neighborhood or Madison County. The Town of Lapel recommends approval.

Would the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? The proposed structure is compatible with the area and existing structures in the immediate neighborhood. The granting will not affect adjoining property values in a substantially adverse manner because it will be compatible with existing and future development. The proposed structure will improve the property and match the look of the neighborhood.

Would the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property? Madison County Land Use and Development Codes are too restrictive to achieve Dollar General's development guidelines. In addition, without variance, the site does not match the existing streetscape. Once annexed, the site will no longer be affected by Madison County zoning and overlay development standards. Standards which are incompatible with current development trends in the Town of Lapel. The Town of Lapel supports the petitioner's request.

Joe Leonard, 14137 Warbler Way North, Carmel, Indiana
Greg Snelling, Civil Engineer, 13295 Illinois Street, Carmel, Indiana

The Board discussed the reasons for this Petition coming before the Board knowing that it is going to be annexed into the City of Lapel. They also discussed the current driveway use and the environmental concerns of any contamination.

Board Attorney asked the Petitioners why this property was not annexed into the Town of Lapel prior to this request for variances from the County.

Mr. Snelling stated that the seller does not wish to annex unless the deal goes through.

Member Orick asked the Director if he felt this was the only way to proceed.

Director Ellis stated, at this site, I think it's unique.

Gary Shuck, 227 East 9th Street, Lapel. I am with the Town of Lapel. We are in favor of the Dollar Store building a new store. We went through the same thing with the Lapel Commons and it has to do with re-plotting. We cannot annex just a certain part of the ground, we must annex it all.

Member Simmermon made a motion to table this Petition until the next BZA meeting. Member Orick seconded the motion. Vote was unanimous in favor of the motion.

Petition 2012-V-018 Tabled.

4. Petition: 2012-V-019
Address: 7748 W. 1050 S. Fortville, IN 46040

Location: North side of 1050 South, approximately ½ mile west of 750 West
Petitioner: Daniel Metschke
Owner: Daniel W. & Annette Y. Metschke
Zoning: CR (Conservation Residential)
Request: To allow an accessory structure (pole barn) to be located closer to the front property line than the setback provided by the primary dwelling.

Director Ellis presented his Staff Report with a favorable recommendation.

Staff Recommendation: In the absence of information that may be presented during public hearing, staff recommends approval as presented, and requests the staff report be included as part of the minutes.

Findings of Fact: 2012-V-019

Would the approval be injurious to the public health, safety, morals, and general welfare of the community? The location of the proposed structure would not pose a threat to the general community. No required setback, easement, legal drain or right-of-way is encroached. The variance will not impact the well and septic locations. The character of the neighborhood would not be changed or threatened. The proposed granting does not affect the health, safety and welfare of the neighborhood or Madison County.

Would the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? The proposed structure is compatible with the area and existing accessory structures in the general neighborhood. Similar variances have been approved without known problems. The granting will not affect adjoining property values in a substantially adverse manner because it will not be noticeable to the public. The proposed structure will improve the property and enhance the neighborhood.

Would the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property? There is no sufficient area due to topography on the subject site to build the proposed accessory structure within the rules of the Ordinance without being located in front of the primary dwelling.

Dan Metschke, 7748 West 1050 South, Fortville. I would like to build this barn to house my toys.

Member Durham made a motion to approve Petition 2012-V-019 with Staff Recommendations. Member Orick seconded the motion. Vote was unanimous in favor of the motion. **2012-V-019 Approved.**

- 5. Petition:** 2012-SU-006
Address: TBA
Location: Southwest corner of SR 32 & SR 13 (Brockway Golf Course)
Petitioner: Sam's Meat & Produce Inc. Noblesville, IN
Owner: Owens-Brockway Glass Container, Inc.
Zoning: GI (General Industrial)
Request: To allow livestock grazing as a permitted special use.

Director Ellis presented his Staff Report with a favorable recommendation.

Staff Recommendation: In the absence of information that may be presented during public hearing, staff recommends conditional approval as presented, and request the staff report be included as part of the minutes. *Condition:* 1 animal unit per acre.

Findings of Fact: 2012-SU-006

The proposal will not be injurious to the public health, safety, morals, and general welfare of the community. The Board of Commissioners has determined that grazing and pasturing of livestock is a special use (exception) in the General Industrial zone as designated by the Zoning Ordinance. The pasturing of buffalo on the subject parcel will not be injurious to the public health, safety, morals, and general welfare of the community because it is found to be an appropriate land use if managed responsibly. Fencing and security cameras will protect the public and the animals. There will be 24-hour security on-site. Animal health is regulated by the State of Indiana.

The requirements and development standards for the requested special use as prescribed by the ordinance will be met. There would be no more adverse impact to adjacent properties than with the previous golf course. The subject parcel is physically suitable for the grazing and pasturing of livestock. The proposed use is compatible with existing industrial uses and those permitted under current zoning. Granting of the Special Use will not affect neighborhood integrity. Animal grazing adjacent to residential occurs in AG and CR zones all over Madison County with no known negative impact.

Granting the special use will not subvert the general purposes served by the ordinance and will not permanently injure other property or uses in the same district and vicinity. The proposed use meets the special use (exception) requirements for the GI zone district. The physical appearance of the subject property would remain the same. There would be no adverse impact to adjacent properties in the GI zone and vicinity. Perimeter fencing will be substantial. The natural features of the property will be maintained and acts as a buffer between adjacent land uses.

The proposed use will be consistent with the character of the zoning district in which it is located and the Madison County Comprehensive Plan. The proposal is responsible land use development. The Madison County Comprehensive Plan calls for the promotion and protection of the rural character and quality of life in this neighborhood by ensuring the viability and integrity of agriculture and the natural environment. The character of the neighborhood will not be changed. The proposed special use will protect the natural features of the site and adjoining lands. Economic development (agri-tourism), social and zoological benefits fall to the community and Madison County. The Town of Lapel government is in favor of the grazing operation at this location.

Arden Johnson, 20880 SR 37 North, Noblesville. I am the CFO of Sam's Meat and Produce. Mr. Johnson stated that they have 49.872 acres and we are looking at grazing 40 cows, 3 bulls and will go up to about 70 animals when they have calves. We pull the calves every six months. We plan on building a baby barn. Every year we purchase bottle fed babies, we currently have camels, zedonks, miniature cattle and we usually have about eight of those, but they'll be sequestered in a small baby barn to allow people to come pet them and feed them a bottle.

We are building two barns, one would be an Ag barn where we will store our hay and equipment, and the other barn would be an open faced baby barn where it will be fenced off and people can walk up and pet the various babies.

If this exception of use is granted to us we intend on being back here in 60 days with a full set of prints on the restaurant/store. We are going to take the current clubhouse and convert it back into a house for onsite security people (which will be my son living there). We spoke to INDOT Greenfield, and made an arrangement with our neighbor to the west that is the Lapel Animal Clinic, they are granting us access on their driveway, we are going to pave everything for them. The State has asked us to abandon the driveway in front of the house which we will do and then we will improve the driveway further to the east that is at the bottom of the hill. If this is approved, our intent is to start fencing it now, but our operations probably would not start until May of next year.

Discussion on the flood areas and where the buffalo would be when the flooding occurs, the number of animals allowed with this operation, bridge removal and reconstruction, restaurant plans, and possible drainage easements.

Gary Shuck, Town of Lapel. The town's people are in favor of this project. This would be a great asset to the town.

Discussion on the waste water treatment plant and having room for any possible expansion.

Member Simmermon made a motion to approve 2012-SU-006 to concur with Staff Findings, and I add an exception that this approval is for Sam's Meat and Produce, Inc. only, if the project is abandoned and sold that they would have to come in front of the Board. I would like to modify the animal limitation of 1.0 on the staff report to be modified and opened up to the County Restrictions of 2.0 animal units per acre. Member Orick seconded the motion. Roll call taken vote was unanimous in favor of the motion. **2012-SU-006 Approved.**

MISCELLANEOUS – Recorded Commitment for Heater on the following page.

ADJOURNMENT

Chairwoman Baker adjourned the meeting. Adjournment: 10:48:39 A.M.

Mary Jane Baker, Chairman

Elizabeth Bruns, Board Secretary



**Madison County
Board of Zoning Appeals**

Madison County
Government Center
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Phone: (765)641-9541
www.madisoncounty.in.gov

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE

Pursuant to Ind. Code 36-7-4-921, the Owner of the real estate located in Madison County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of the below parcel of real estate:

Owner of Record: Terry G. and Pamela K. Heater
State Parcel: #480508100003000025
Common Address: 12919 N. 400 W. Alexandria, IN 46001
Legal Description: Lot numbered 2 in Mini-Plat No. 231, a Subdivision in Pipe Creek Township, Madison County, Indiana, the plat of which is recorded in Plat book 16, Page 20, in the Office of the Recorder of Madison County, Indiana.

Statement of COMMITMENTS:

- (1) There will not be two homes on one lot after new dwelling construction.
 - a. The existing mobile home will be owner occupied only during construction of the new dwelling.
 - b. The existing mobile home shall be removed completely from the site within sixty days from the date the new home receives a certificate of occupancy.

These COMMITMENTS shall run with the land, be binding on the Owner, subsequent owners of the real estate and other persons acquiring interest therein. These COMMITMENTS may be modified or terminated by a decision of the Madison County Board of Zoning Appeals, made at a public hearing after notice has been given pursuant to the Madison County Board of Zoning Appeals Rules of Procedure.

COMMITMENTS contained in this instrument shall be effective upon the approval of petition #2012-V-015 and shall continue in effect until modified or terminated by the Madison County Board of Zoning Appeals.

The COMMITMENTS may be enforced jointly or severally by:

- (1) Madison County Board of Zoning Appeals
- (2) Madison County Planning Commission
- (3) Madison County Planning Department

2012R017003
10/30/2012 09:32:14 AM
FEE: 0.00 PGS: 2
ANGELA SHELTON
MADISON COUNTY RECORDER, IN
RECORDED AS PRESENTED

The Undersigned hereby authorizes the Board of Zoning Appeals to record this COMMITMENT form in the Office of the Recorder of Madison County, Indiana, upon final approval of petition #2012-V-015.

IN WITNESS WHEREOF, owner has executed this instrument this 26th day of October, 2012.

Terry Heater
Signature
Terry Heater
Print Name, Title

Pamela K. Heater
Signature
Pamela K. Heater
Print Name, Title

STATE OF INDIANA)
) SS:
COUNTY OF MADISON)

Before me, a Notary Public in and for said County and State personally appeared Terry Heater Pamela Heater who acknowledged the execution of the above and foregoing instrument to be a voluntary act and deed and for the purposes stated therein.



Shirley Elsworth
Notary Public (Signature)



OCT 30 AM 9:32