

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: Bill Maxwell, John Randall, Jr., Mary Jane Baker, Shirley Aubrey and Bill Hobbs.

Members Absent: None.

Also Present: Michael Hershman, Executive Director, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

CURRENT BUSINESS

1. Roll call was taken and all members were present.
2. The minutes of the preceding meetings were distributed to each member prior to the meeting. Mrs. Aubrey made a motion to approve the minutes with the corrections as stated. Mr. Hobbs seconded the motion. The vote was unanimous in favor of the motion.
3. **Petition #482 of Tony E. and Tracey D. Collins for a special use to expand a legal non-conforming use.** This property is zoned “AG” and is located on the northwest corner of Co. Rd. 900N and Co. Rd. 100W in Monroe Twp. and containing 5.53 acres, more or less. This Petition was tabled at the September 26, 2006 Board of Zoning Appeals meeting.

Mr. Hershman said, south of 900N, the area is residential. North of 900N, the area is in fields. The site is a house, with a cabinet shop. There did appear to be dumpsters located outside of the building.

Proof of proper notification has been received. The newspaper ad was run in sufficient time.

Mr. Collins a.k.a. Cabinet Crafters Corp is adding 40’x70’ addition for a storage area/warehouse and a 50’x25’ addition for a showroom/office to the existing business. On February 24, 1998 the Board granted 1291V, a variance, to run the business from the site. The Board approved it with the following conditions:

- 1) The hours shall be 8 to 5, Monday through Saturday, evening hours by appointment only.
- 2) There shall be no other employees than Tony Collins.
- 3) The garage shall be the only building used for the business.
- 4) There shall be no outside storage.

Currently, Mr. Collins is working from 6:00 am to 5:00 pm and has 13 full time and 2 part time employees. Ultimately, Mr. Collins wants to add additional employees.

Staff has several concerns. First, is there sufficient septic tank capacity to handle the current and future employees? Second, the existing and proposed parking areas/drives/entrances are graveled and appear not to be big enough to handle the existing parking. These need to be paved.

Third, will members of the public/customers be visiting the site? Fourth, the applicant does not appear to be abiding by the conditions under which the original approval was granted.

Mike Dauss, Architect, 227 Historic West 11th Streets, Anderson.

Mr. Dauss informed the board he was present today to represent the petitioners.

Mr. Dauss said, Mr. Collins is proposing at this time to add two additions to the existing structure. The first being to the west is a 40' x 70' and will be used for storage and his product. On the east side is a 25' x 50' addition that will be used as the show room and also office space.

There is sufficient screening I believe on each side of the property lines. We show on the drawings that Mr. Collins is proposing to expand his parking areas in back of the buildings for employees.

Tony Collins, 1044 W 900N.

Mr. Collins told the board as far as the septic systems goes they have a very large system. We have what is called a pumper system. It was put in about seven years ago. We have had no problems with this system.

We are just a small business that is trying to grow.

Mr. Hobbs said, I see you have a gas tank that is sitting right next to your water well and I would suggest that you move that. That is a very bad idea.

The board was informed that none of the new construction had any state approvals or permits and any new construction would also have to have a state design release.

There were no remonstrators present.

Mrs. Aubrey said, I would make a motion to deny Petition #482 for a special use to expand on the existing cabinet shop for the following reasons: The petitioner does not meet our residential and agricultural characters of the surrounding area. The applicant did not and has not kept up the condition of the previous variance concerning time opening and employees and numbers. The applicant did not have a state release on the septic or the building addition did not state approval.

Mr. Randall seconded the motion.

The vote was four yes; Aubrey, Randall, Hobbs and Maxwell. One no; Baker. The motion carried. **Petition #482 of Tony E. and Tracey D. Collins for a special use to expand a legal non-conforming use was denied.**

New Business

1. **Petition #486 of Brian and Rita Doty, landowners, and Hallmark Homes, Inc., petitioners, for a variance for front setback relief.** This property is zoned “CR” and is located on the southeast corner of Co. Rd. 900S and Co. Rd. 800W in Green Twp. and containing .504 acre, more or less.

Mr. Hershman said, a mix of fields and houses characterizes the surrounding area. The site is an existing .504-acre vacant house lot.

Proof of proper notification has been received.

The applicant is making the request in order to build a 3,000 sq ft+ house on the property. The proposed house would be 116.4 feet from the center of the road. The Ordinance requirement is 140 feet. The house on the adjacent property is closer than the Ordinance requirement. The proposed house appears to be in keeping with this house. There is also a small creek running through the property.

Lillie Wilson with Hallmark Homes, 431 E 53rd Street was present representing the petitioners.

The board was informed this lot does have sanitary sewers available to it and a permit has already been obtained.

The new house that is being proposed will be about the same distant back as the house to the north.

There were no remonstrators present.

Mr. Hobbs made a motion to approve Petition #486 based on the Findings of Fact. It would not be injurious to public health, safety, morals or the welfare of the community. The values of the adjacent areas would be unaffected by the request. And the strict application of the ordinance would prevent a residence from being built on a lot already platted.

Mr. Maxwell seconded the motion.

The vote was unanimous in favor of the motion. **Petition #486 of Brian and Rita Doty, landowners, and Hallmark Homes, Inc., petitioners, for a variance for front setback relief was approved.**

2. **Petition #487 of Gary and Pamela Glass for a special use for a Home Occupation Type II.** This property is zoned “AG” and is located on the east side of Co. Rd. 300W approx. ½ mile north of St. Rd. 28 in Monroe Twp. and containing 12 acres, more or less.

Fields and scattered houses characterize the surrounding area. The site is a house lot with a residence and several out buildings.

Proof of proper notification has been submitted.

The applicant is making the request in order to put a single station beauty shop in an attached garage.

The Board approved a variance of the secondary structure in front of a primary structure on the property during the August hearing.

The applicant will have to obtain a state design release for the modifications to the building.

Pamela Glass, 12516N 300W, Alexandria.

Mrs. Glass said, I work in Anderson now but with two kids I would like to put a single station beauty shop in my home, even just one a day a week, it would be a help for me. My husband's working hours vary from day to day. It would be nice to have an adult close to home to help with the kids.

This is a two-car garage but the whole space will not be used for my shop. We do not want to put up any walls for separation.

I have already spoken to the state and asked what their regulations would be.

There will be no signage or sales of any kind on the property.

There were no remonstrators present.

Mr. Maxwell said, I would make a motion to approve Petition #487 with these conditions: All property permits must be obtained. Property shall be kept free of any debris. No sales on the property. One person being yourself as the operator and one chair. It is a good location. It sits back like it is it is not going to bother any of the neighbors. One day to be open. It should not be injurious to the public health, safety, morals and general welfare of the community. This is not going to affect the property values on either side of you. And it stays in the character of the zoning district.

Mr. Randall seconded the motion.

The vote was four yes: Baker, Maxwell, Randall and Hobbs. One no: Aubrey. The motion carried. Petition #487 of Gary and Pamela Glass for a special use for a Home Occupation Type II was approved.

3. Petition #488 of Harry and Terra Stumpf for a variance for front setback relief. This property is zoned "CR" and is located on the east side of Co. Rd. 50W where Co. Rd. 600S ends in Fall Creek Twp. and containing .60 acre, more or less.

Mr. Hershman said, residences characterize the immediate surrounding area. The property is a home site with an existing garage on it. At the time of the inspection, there were the remnants of a prior mobile home on the property. The property does have a hill in the back.

Proof of proper notification has been received.

The applicant is also requesting a variance of minimum living area requirement. The applicant is making the request in order to replace a manufactured home on the property. The home is proposed to be 78 feet to the center of the road. The Ordinance requirement is 140 feet. The home will be placed behind the existing garage. And the applicant is proposing to place a 14' x 70', 980 square foot home.

Mr. Hershman said, for discussion purposes we can discuss this item and the following item, Petition #489 as they are interrelated.

Harry Stumpf, Jr., 5964 S. 50W.

Mr. Stumpf said, most of my land is on an incline from the road up about 78 feet and then the rest is a steep incline after that which would make it real difficult to place structures. And because of my wife's health we don't need more square footage for her to take care of.

We lived in the existing mobile home on this property for 20 years.

There were no remonstrators present.

Mrs. Aubrey said, I move to approve Petition #488 for a variance for front setback requirements for the following reasons: The variance will not be injurious to the public health and safety. The garage is closer to the road than the home actually will be. Adjacent properties have structures closer to the road than what your home will be. Applicant is placing an all ready established home on the same location with a foundation. The value of the adjacent properties will not be affected. Terms of the zoning ordinance result in practical difficulty do to the hill on the back and the slope in the front. The proposal does meet the requirement set forth by the state law and our ordinance.

Mr. Hobbs seconded the motion.

The vote was unanimous in favor of the motion. **Petition #488 of Harry and Terra Stumpf for a variance for front setback relief was approved.**

4. Petition #489 of Harry and Terra Stumpf for a variance for relief of minimum square footage of home. This property is zoned "CR" and is located on the east side of Co. Rd. 50W where Co. Rd. 600S ends in Fall Creek Twp. and containing .60 acre, more or less.

There were no remonstrators present.

As this was also discussed with the above petition, Mrs. Aubrey said, I move to approve Petition #489 for a variance for a minimum square of living area requirements for the following reasons: The approval of the variance would not be injurious to public health or welfare. The home would be replacing one that already existed. The adjacent properties would not be affected in an adverse manner. The terms of the zoning ordinance would be practically difficult due to the hill and the slope of the property. The request does meet the standards set forth both by the state law and our ordinance. The approval shall not set precedence.

Mr. Hobbs seconded the motion.

The vote was unanimous in favor of the motion. **Petition #489 of Harry and Terra Stumpf for a variance for relief of minimum square footage of home was approved.**

It was the consensus of the board to take a ten minute recess 10:04:55 A.M.

The meeting was called back to order 10:18:48 A.M.

5. Petition #467 of Kenneth Jarrett, landowner, and Rick Jarrett, petitioner, for reconsideration of conditions placed on a confined feeding operation. This property is zoned AG and is located on the northeast corner of Co. Rd. 1300N and Co. Rd. 700W in Duck Creek Twp. and containing 152 acres, more or less.

Mr. Hershman told the board that in their packets they have two letters from Bose, McKinney and Evans LLP, dated August 24, 2006 (letter on file in the Plan Commission office).

Mr. Shine said, the letter is in reference to, they are requesting a reconsideration on the Findings that we had. Those Findings were prior to the Plan Commission and the rules and regulations coming up concerning the CAFO's. Once those came up and were recommended to the board I provided a copy of those new proposed rules to each of the councils for both the petitioners and the remonstrators.

We have since received a reply from those from the petitioners. Both parties are present today and I understand the remonstrators would like to make a statement after the petitioner does on whether or not reconsideration should be held this morning by this board.

Daniel McInerny, with Bose, McKinney and Evans, 135 North Pennsylvania Street, Indianapolis, was present representing the petitioners.

Mr. McInerny said, as you may recall on July 25 the board considered Mr. Jarrett's request for a special use and did grant the special use and placed several conditions upon it. We did not provide any comment, any evidence, any testimony what so ever regarding those conditions. So, they were granted with the conditions with no input as to those conditions. Subsequent to the meeting when we got a copy of the minutes and were able to study the conditions many of them were fine. We had not problem with them but a few of the conditions seem to present some pretty serious concerns regarding whether or not the could be legally instituted, whether they were technically in from an engineering stand point capable of being preformed.

I spoke with Mr. Shine and discussed our concerns. We didn't feel it would be appropriate at that time to file a permit for writ of certiorari in the circuit court, which is the official method of appealing a BZA decision. It doesn't mean we weren't able to present any evidence on the conditions at that time and discuss that with Mr. Shine and I did send him my letter requesting that the conditions be reconsidered within 30 days of the July 25 meeting.

Our propose is simply to work with the board to come up conditions that are satisfactory to the board but also are capable of being implemented in compliance with the existing state requirements and the engineering and technology.

So, that is why we requested as part of the petition which the board has the authority to hear petitions for special uses, to ask the board to reconsider certain of their conditions.

I wasn't sure whether or not given the fact that the Plan Commission is in the process of proposing new CFO ordinance language whether or not the board might have wanted to substitute those conditions in lieu of the ones that were originally proposed. That's why we sent our letter to you on October 20. Just to give you our comments on those conditions that are very similar to our original concerns and revisions.

We feel it is appropriate since he did not have an opportunity to provide any testimony or evidence regarding the original conditions that we are allowed to come before the board and present our evidence and testimony on behalf of Mr. Jarrett. This would help explain some of our concerns regarding those conditions.

That is our request, that we bring this before you to consider whether the conditions are appropriate and hopefully this can resolve everyone's concerns.

Peter King with the law firm of Cline, King and King, 1225 7th Street, Columbus, IN.

Mr. King said, I am here on behalf of the neighbors and landowners surrounding this particular petition for a special use.

One of the things I thought was very interesting as we proceed this morning is whether or not the request from the petitioner or the applicant follow the applicable law.

In this particular case I think what's being request of this board is taking you down a path that will take you in variance of the applicable law.

As you know you all after very carefully considering information and your Finding of Facts, I believe on July 25, and at that time you appropriately found some conditions that were necessary, given your review of the information and you signed off on that as a final Finding of Facts and order of this court.

Under the applicable law if anyone would have a problem with what you did that day has 30 days in which to file a writ under State Statute to appeal what ever they consider to be a Finding that was inappropriate.

In fact Indiana case law thoroughly defines that. And I provided the opinion to your council Mr. Shine. And it discuss what the authority of a board like yours to modify, clarify or otherwise change a Finding of Facts or order without an appeal. And clearly the courts have come down on, if anyone has a problem with your ruling they must file their writ within 30 days. That has not been done in this case. If that is not what we follow here to day you will have petitions for what I call duellers.

You have a situation here where the folks here who have the application have decided that they don't like your conditions and as a result they now want to add more evidence or testimony to this position.

They seem to want to bring it in to such a conformance with an ordinance that has not such passed, as I understand in this county. If we proceed down this path it is a very slipper slope for your board and your procedures.

We are in a very gray area now. You are in an area of ambiguity and that ambiguity leads to only one result that is a result would lead to more litigation and review by a higher court.

So, I would ask that you all consider carefully two things today. Number one, whether this petition is in compliance with law. I noticed one, your particular agenda it's listed as a new business item. It is clearly more than a clerical review for a correction of a clerical error. The law indicates that you have the authority to in fact clerically amend an order. What you are being asked to do today is much more than a modification and a clarification. You are being asked change certain conditions that you all carefully considered and represented to this public that you would carefully and appropriately protect their interest as citizens of this county. And to go now and reverse and to allow what I call in the schoolyard (not audible) a do over, we need to know exactly what the order is going to be. Probably it's going to take you outside the balance of the State Statue.

As you know you must follow the State law. The appropriate remedy here for this applicant would have been to file the appeal in 30 days. That did not occur.

So, respectfully and on behalf of the landowners that I represent do request that you essentially deny a petition for rehearing because this board does not have jurisdiction now to entertain it.

Mr. Shine said, this is one of those situations where statutorily and pursuant to our agreements and regulations specifically an appeal would be and area, which the petitioners could have and sartorially could have done within the 30 days. However, in the conversations that we had with the petitioner we had advised throughout the hearing that we were considering what ever findings would be that we were in the process of reviewing, having public meetings to come up with what requirements Madison County was going act when we made our changes on our CAFO.

Mr. Jarrett filed his previous to our request for a stay in regards to CAFO's until we made our determinations. At our meeting that we had back when these conditions and the approval was granted these were presented without any comments from the petitioner. Base up on those we did feel at that time that reconsideration could and should be granted to the petitioners so they could present whatever evidence they might have as to the Findings that we presented that day. They had not had an opportunity to review those or to see because we didn't know what conditions were going to be made until we came in to the room and they were made by various members to the board. They should at least have the opportunity to respond to those.

This is a gray area and it is very evident from listening to both councils and no matter which way we go there is a likely hood that there could be further legal action taken by either side.

As to your determination today I think it just comes down to individually. We all remember what was said and how the findings came up and do we give the petitioner a chance to respond to those or take the alternative that the petitioner could have had had he not liked those follow the statutory provisions and issue the appeal rather than request the board to reconsider.

Mr. Hobbs said, the conditions that we put on here are not a whole different than what they are considering for an ordinance.

Mr. Hershman informed the board the conditions are similar to the conditions that were placed on Simmerman.

Mr. Shine said, if this change is what they are asking that you reconsider today, it really should have been an appeal. If it is a corrective change, whether it be a clerical error or an interpretation then I believe this board would have the authority to reconsider.

Mrs. Aubrey said, I was of the understanding that when it came up the last time you said to hold off until the next meeting when we were going to vote on the changes after everybody got to see them. That's why we waited for one month. We gave all the specifics, this, this, this, and this is what we expect out of you. They didn't have it. No one had it. They were going to be given it because there was some things he did not like, wait for 30 days their time so they can have the time to go through our responses. He was then to come to us and propose to us his changes so we could vote yea or nay.

Ms. Baker said, my one concern is, if we are in conflict with the law when we set forth the stipulations according to some IDEM rulings to take in to consideration, if we are in conflict with an IC-15-3-3-12.5, I feel like that we are under obligation too conform with State rulings. And if we are in conflict with those State rulings then it is our mistake that we made whether it be through, well I will just say through ignorance because we were not made aware of these State rulings to begin with.

Are we in conflict with IDEM and can we be in conflict with IDEM?

Mr. Hobbs said, I was under the understanding that we can impose a higher standard but not a lower standard.

Mr. McInerny said, at not having seen the conditions and not having been able to comment on them we are glad to get our approval but in the hind site and looking at those conditions we have some serious concerns.

What we are trying to do is have the opportunity to discuss what types of conditions would be appropriate for this type of operation.

It appeared in the case that Mr. King provided to Mr. Shine there was actual discussion at the board meeting regarding a variance specifically about the conditions that were going to be placed on the variance. And they even asked the board to help resolve and agreed on some conditions between the petitioner, neighbors and property owners. There were a couple of things they couldn't agree on and they asked the board to resolve those.

We did not have these conditions in front of the board and in front of us for full discussion of those conditions.

Mr. McInerny asked that he could speak with the board's attorney and the remonstrator's attorney because he had an idea that might help this solution.

The board took a recess for their discussion

The board was called back to order.

Mr. McInerny said, we do not want to in any way put the board in tenuous situation regarding their jurisdiction, their authority, our goal is to simply been to have a discussion regarding the conditions that were placed on the Jarrett approval.

What we would ask at this time is to table our request for reconsideration. We understand that the Plan Commission is moving forward with proposed new ordinance language. We also understand that at the moment your not entertaining petitions for new CAFO's.

Mr. Kane said, we have no objections to the tabling of this petition at this point.

Mrs. Aubrey said, I make a motion to table the request until the fourth Tuesday in January 2007.

Mr. Hobbs seconded the motion.

The vote was unanimous in favor of the motion. **Petition #467 of Kenneth Jarrett, landowner, and Rick Jarrett, petitioner, for reconsideration of conditions placed on a confined feeding operation has been tabled until the January 2007 meeting.**

6. Miscellaneous: Nothing was presented to the board.

Mr. Shine said, just for information during our last recess I received a copy of the new CAFO ordinances that has been in acted in Grant County.

Mr. Randall made a motion, seconded by Mrs. Aubrey to adjourn. The vote was unanimous in favor of the motion.

Adjournment: 11:15:53 A.M.

Mary Jane Baker, Chairman

Beverly Guignet, Secretary