

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, Judy King, Plan Reviewer, Gerald Shine, Jr., Attorney, and Judy King, Plan Reviewer.

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. It was the consensus of the board to table the May 22, 2007 minutes until the next meeting.
3. **Petition #517 of John Eicks, landowner and David Eicks, petitioner, is for Special Use to construct a garage for personal use.** The property is zoned “GI” and is located on the East side of Rangeline Rd. (200E) just North of 100S (Mounds Rd.) in Union Township, with the physical address being 2308 S. Rangeline Rd.

Mr. Hershman said, I talked to David Eicks and they are still stuck at the Division of Water. So, they still have not gotten any approval. They are still on hold.

Mr. Shine said, I think after this length of time we should rule now to require that he refile and notify Mr. Eicks that if its not received by the next meeting that it would need to be refilled. Or notice would have to be issued to all those again.

Mr. Randall said, because the DNR is holding this up I don't think we should hold the petitioner responsible.

Mrs. King informed the board she had an e-mail from David Eicks to Mr. Hershman.

Mr. Hobbs read the following e-mail:

Michael

Would you keep my petition for a special use exception on the agenda, as I'm still awaiting approval from the Department of Natural Resources, Water Way Division. Upon approval we would like to construct the 20' x 30' storage building that we have discussed since December. No plans have changed on our side.

Thank You

David Eicks

(e- mail on file in Plan Commission office).

There were no remonstrators present.

Mrs. Aubrey said, I would make a motion to table Petition #517 until next month.

Mr. Randall seconded the motion.

Petition #517 of John Eicks, landowner and David Eicks, petitioner, is for Special Use to construct a garage for personal use has been tabled until the July meeting.

New Business

Ms Baker said, as items 1 and 2 are related we will discuss them together but vote on them separately.

1. Petition #537 of Phillip R. Hall, landowner and Ryan K. & Crystal D. Jones, petitioner, for Special Use to keep their horses on their residential property consisting of 2.94 acres.

The property is zoned “GC” and is located on the east side of State Road 9 approximately 1/8 mile north of 360N in Richland Township, with the physical address being 3772 North State Road 9, Anderson.

Mr. Hershman said, a mix of houses and businesses characterizes the surrounding area. The site is a house with a paddock in the back. There were 3 inoperable and/or unlicensed vehicles on the property.

Staff has received proof of proper notification.

The petition is the result of a complaint and violation. The applicant is making the request in order to have horses in the GC zoning district. The applicant is also applying for a variance to allow the horses on less than 4 acres. The applicant has submitted a letter from David Younts, Veterinarian; regarding both the animals and the shelter. Mr. Jones has also submitted a letter regarding how the waste will be disposed of.

Ryan and Crystal Jones, 3772 N St. Rd. 9.

Mrs. Jones informed the board there are currently three horses at this location and one will be gone soon.

Mrs. Jones said, two are ours and those are the ones we want to keep. We have had one horse since October and acquired the other in March. Horses have been at this location before.

The board was informed there are a mix of businesses and houses in the area.

Mr. Hershman said, the first 300 feet of the property is zoned GC and the rest is R2.

Mr. Ryan said, the manure is used in my garden and any excess is hauled off. Like my wife said the third horse belongs to my mother-in-law and we were just keeping it there until they get their barn built. So, the two horses are all we really want there.

We have a lot that is adjacent to the trailer park and this will probably give us another acre and three quarters. We were going to try and start on our fencing work but with all the stuff that was going on we decided to hold off and see how this was going to go first before we started to do anything with that. I'm talking about fixing the fence posts right now.

Mr. Shine asked, where is this property in relationship, and is the mapping correct up there?

Mr. Hershman replied, yes.

Mrs. Jones said no, it's on our property. It's actually on our property it's just not fenced in. Out towards the road, closer towards the road and to the south of ours. That's where the fence is going to go. There will be no new buildings as this will be a paddock area. We currently have a 22' x 22' barn that sits in the back.

Mr. Jones said, there are three vehicles on the property. The red one is plated and running and the white one runs but is not plated.

Barb Kabrick, 3738 N St. Rd. 9.

Mrs. Kabrick said, this is just south of our property. We own the mobile home park. They maintain the horses and the property. There have been horses on this property before. They take care of all their animals. They are a joy to have next door. I see no problem with them having these horses. The kids in the neighborhood enjoy the horses as well as we do. They put them up at night and let them out in the morning. They are an asset to the neighborhood. I would like for you to approve this request.

Frank Arnett, 3796 N St. Rd. 9.

Mr. Arnett said, I live on the other side of these people. We had no problem until they brought the third horse in. There's only about an acre and a half of pasture back there and that is not enough for three horses.

The only reason that I am up here today is, Ryan told me they wanted to have horses, chickens and a dog kennel. Where does this stop?

Right now his pasture is down to almost nothing. He doesn't keep the thistle cut. He took the barbwire off the top of the fence. The fence wasn't very good to start with but now the horses have tore some of the fence down.

My house is up for sell and this is not helping that situation. Horses bring in a lot of odor and a lot of flies. Why have rules if you don't enforce them. I disagree with this, to have to have four acres and then you allow him to have horses. Common sense says one acre one horse, two acres two horses, and three acres three horses as so forth. But, why do you make these rules anyway?

The big thing here was when I got my letter from them. Number one it had my dead wife's name on it which did upset me. And number two, he mentioned two horses would longer (not audible). Are they actually going to get rid of this third horse? I have no objection to one horse, I have no objections to two horses as long as they maintain the fence. But I do disagree with three horses.

Mr. Randall said, I do believe when it comes to a fence line, a property line fence, that half of that fence is your responsibility.

Mr. Jones said, I was told that when you have a fence on your property that part to the left half is yours and the right half is the other side. But, if they are trying to contain animals then they have to maintain them.

Be have never had complaints from Mr. Arnett before. When we do replace the fence it will be all one type of fencing. We wanted the approval before we started on the fencing.

We have lived there for about two years now.

Someone in the audience said, it is my understanding that on a residential property the barbwire is illegal in the county. Is that right?

Several board members replied they had never heard that.

Crystal Jones, 3772 N St. Rd. 9.

Mrs. Jones said, when I sent out the letters I put his wife's name on there and it had nothing to do out of hatred. It was mainly out of hoping that he would show a little bit of love and support because before we lived there he never once complained about anybody else having horses, livestock or sheep or goats. He's never came to you guys and complained about them to the extent that he has.

Part of the reason to include her name was so he would have an understanding so he may be able to reflect on what may be she would have liked and she would, you know, that would be okay. So, I just wanted to through that out.

All the hearsay regarding to how we are going to do the fence, and the private property signs, I wouldn't have --- my grandpa he meant a lot to me and when we got the notice saying that we are going to have to fight to keep our horses because we did not know that we were out of compliance. We basically put the private fence up --- behind because we felt --- think of it here we've been friends with him, we've been to the neighbor and then --- so that's why --- the

people even thought it may have cause harm or whatever to you keep them at a distance. So that's why I did it and it had nothing to do with anger.

The fence is not up yet. We have a replacement fence but I can assure you because I am very picky, that when we go to replace the fence it will be done in one type of fence. It will be a good fence that is very good to keep horses in. The reason why we haven't started on it obviously is to get the approval from you first.

We have lived here for about two years.

Mr. Hershman said, clarification from the ordinance, under Fence Requirements, all electrified, babe wire, razor wire, and stockade fences are prohibited on all lots not used for agricultural purposes. So, they could have a barbwire fence if it is used for agricultural purposes.

Ms. Baker asked if there was anything in the ordinance that states whether the people who do not have animals are suppose to --- do they also have to maintain that fence?

Mr. Shine replied there is an Indiana Statute on fencing. I have researched it, I don't recall what the statute is at this time. But there is a statute on it.

Opal Lewis, 130 E 360N.

My property faces 360N. My property borders their property and I have five acres. I really enjoy the horses. We have had horses ourselves. I have no objections at all. I have never met this family but I am in favor of them having the horses. I have no problem with this.

Mr. Jones said, not only do we use the pasture but the horses are supplied with grain and hay also. They don't just rely on the pasture for food.

Mr. Hershman said, we have two letters that were submitted after packets went out. One is from a David Younts, D.V.M. (Letter on file in Plan Commission office). It is a favorable letter from Mr. Younts.

Mr. Hershman read the following:

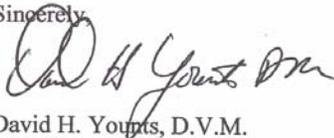
DAVID H. YOUNTS, D.V.M.
15344 E. 196TH STREET
NOBLESVILLE, IN 46060
(765)534-4108

June 22, 2007

To Whom It May Concern:

On June 22, 2007, I was called to examine three horses for Crystal Jones at 3772 N. St. Rd. 9, Anderson, IN. There was a 4 year old grey half Arabian mare, a 2 year old bay Arabian mare and a yearling chestnut Arabian mare which I was informed will be leaving the premises in the near future. All three horses were in good health and appeared to be well taken care of. The stabling and turn out area was adequate for 2 – 3 horses.

Sincerely,



David H. Younts, D.V.M.

RECEIVED
JUN 25 2007
BY: MH

The other letter is from Ryan and Crystal Jones regarding manure management on the property. (Letter on file in the Plan Commission office).

Mr. Hershman read the following:

To Whom It May Concern;

We are writing to inform you how we intend to dispose of the manure from our horses we are trying to keep. The manure produced from our horses will be kept in a compost pile on our property.

The compost will be used on our vegetable and flower gardens. The process of composting is first to mix the manure with sand and dirt, the fall leaves are also added, ashes from fallen limbs and burnt horse bedding supplies the compost with potash. When explaining how a compost pile works, the first question usually asked is, "What about the smell?"

The smell is caused by the escape of nitrogen in the form of ammonia (NH₃). The application of land plaster or gypsum dust over the compost pile will prevent the escape of ammonia. The ammonia will bond with the gypsum dust to form sulphate of ammonia.

At the end of the season any unused or excess compost will be hauled away to the Madison County transfer station.

If these methods are deemed unacceptable by the board we also have a local company that will remove the collected manure via a dumpster that they place on our property. However, the loss of fertilizer would be replaced by purchased manure and peat moss, which we feel would be an unnecessary expense.

Sincerely,

Ryan K. and Crystal D Jones

RECEIVED
JUN 25 2007
BY: *MH*

Mr. Shine said, I had requested Mr. Hershman to contact the applicants and get that information for the board.

Mr. Hershman informed the first 300 feet of this property is zoned GC and the back, which is the pasture, is primarily zoned R2.

Mrs. Aubrey said, I will make a motion to approve Petition #537 for keeping horses on the property with the following stipulations; the maximum of two horses only. No chickens or any other animals except a dog or a cat. A fence must be replaced between Arnett's property and the Jones's. Per Facts of Findings, it will not be injurious to the public health and safety. The property will not be detrimental to other properties surrounding the area as this property has been for many years.

The proposal also meets most of the standards of the State and ordinance. Removal of any excess manure from the property must be made.

Mr. Randall seconded the motion.

The vote was unanimous in favor of the motion. **Petition #537 of Phillip R. Hall, landowner and Ryan K. & Crystal D. Jones, petitioner, for Special Use to keep their horses on their residential property consisting of 2.94 acres was approved.**

Mr. Shine asked, as there is third horse on that property would 60 days be reasonable to have it removed?

The reply from the board members was yes.

2. Petition #538 of Phillip R. Hall, landowner and Ryan K. & Crystal D. Jones, petitioner, for Variance to keep their horses on 2.94 acres when county requires a minimum of 4 acres. The property is zoned "GC" and is located on the east side of State Road 9 approximately 1/8 mile north of 360N in Richland Township, with the physical address being 3772 North State Road 9, Anderson.

Mr. Hershman said, a mix of houses and businesses characterizes the surrounding area. The site is a house with a paddock in the back. There were 3 inoperable and/or unlicensed vehicles on the property.

Staff has received proof of proper notification.

The petition is the result of a complaint and violation. The applicant is making the request in order to have horses on less than 4 acres. The applicant has also applied for a special use in order to have horses on the property. The applicant has submitted a letter from David Younts, Veterinarian; regard both the animals and the shelter. Mr. Jones has also submitted a letter regarding how the waste will be disposed of.

Ryan and Crystal Jones were present representing this petition.

As this was discussed along with the above Petition #537, Mrs. Aubrey said, I would move that Petition #538 meets the same criteria as before and when the property is sold that it must come back for review for horses.

Mr. Randall seconded the motion.

The vote was unanimous in favor of the motion. **Petition #538 of Phillip R. Hall, landowner and Ryan K. & Crystal D. Jones, petitioner, for Variance to keep their horses on 2.94 acres when county requires a minimum of 4 acres was approved.**

3. **Petition #539 of Winston W. Joslin, landowner and Gregory E. Joslin, petitioner, for Variance to set home 93' from center of State Road 13 (lot in question is only 180x154.7 = .640 Acre).** The property is zoned "AG" and is located on the NW corner of State Road 13 & 500S in Stony Creek Township, with the physical address not yet established.

Mr. Hershman said, on the west side of SR 13 there are houses at the same distance to the road as the proposed house. A mix of houses and farms characterizes the rest of the surrounding area. The site is a vacant house lot.

Staff has received proof of proper notification.

The applicant is making the request in order to set a house on the property. The property has 2 front yards because it is a corner lot. The setback off of SR 13 is 200 feet from the center of the road. The setback off of 500S is 65 feet and the proposed house does meet this requirement. Staff is concerned about being able to fit a septic system on the property given the size and the setback requirements. The lot is nonconforming and can be built on. Staff has talked to the appropriate officials regarding this, and they are of mixed opinions.

Winston and Greg Joslin were present representing this petition.

Winston Joslin, 942 W 500S, Lapel, IN.

Mr. Joslin said, if this is approved I am going to sign the property over to my son. Presently, he and our grandson live with us and my other son lives across 13 on the other side of the highway. When I bought both lots I intended to give one to my son and one of these days he plans to build there. My grandson is currently going to Lapel School and I want to keep him in the Lapel School area. My wife and I baby-sit him while his parents work so we want to keep him close by.

That's the last lot anybody can build on. None of the neighbors have a problem with this and none of them are here. I live in the house just to the west of that.

Greg Joslin, 942 W 500S, Lapel.

Mr. Joslin said, I want to buy a modular home as I am getting married and I would like to have some place to live. You guys want 200 feet off the road and it's only 150 deep so I would like to find a happy medium between the two of us to approve this. I am willing to do whatever it takes.

The home will be at least 1500 square feet in order to met the ordinance requirements.

In 1976 my father bought the property so it was split in to these size lots before that.

Mr. Hershman told the board the office checked in to that when the Joslin's came in to file for their petition.

Mr. Joslin was asked which road his drive would come off of.

Mr. Joslin replied he would prefer it to come off of 500S.

Mr. Joslin said, the houses to the north of him sit back approximately 93 feet from the front of the house to the center of State Road 13. That is about what I will be sitting back.

There were no remonstrators present.

Mrs. Aubrey said, I will make a motion to approve Petition #539 for a front set back requirement per the Findings of Fact. It would not be injurious to the public health, safety or moral values. It would not affect adjacent property in adverse way. Strict application of the ordinance results in a practical difficulty due to their property is only 154.7 feet. The proposal does meet the standards for both State laws and ordinance.

Mr. Hobbs seconded the motion.

The vote was unanimous in favor of the motion. **Petition #539 of Winston W. Joslin, landowner and Gregory E. Joslin, petitioner, for Variance to set home 93' from center of State Road 13 (lot in question is only 180x154.7 = .640 Acre) was approved.**

4. Petition #540 of Robert L. Parsons, landowner and petitioner, for Variance to build a home behind the existing barn. The property is zoned "AG" and is located on the east side of County Road 380E, approximately ½ mile north of State Road 236 in Union Township, with the physical address not yet established.

Mr. Hershman said, a mix of houses, fields and a business characterizes the surrounding area. The site has several outbuildings.

Staff has received proof of proper notification.

The Ordinance requires that accessory structures be located behind residences. The applicant is planning on placing a house on the property.

Bonita and Bob Parsons were present representing this petition.

Bonita Parsons, 5604 Columbus Ave., Anderson.

Mr. Parsons said, we would like to build our house here with the barn between it and the road.

Mr. Hershman asked Mr. Parsons if they were running a business out of the property.

Mr. Parsons replied no.

Mr. Hershman said, I visited the site and thought there was a landscaping business being run from the property.

Mrs. Parsons told the board the mulch and flowers belong to her for her personal use.

The existing house will be torn down. The new house will be stick built.

Mr. Hershman asked if there had ever been a residence established in the barn.

The Parsons's replied no. We do have a cook out area that we have with our car club that we do a couple of times a year.

There were no remonstrators present.

Mr. Maxwell said, I would make a motion to approve Petition #540. It will not be injurious to the public health, safety and moral welfare of the community. In fact it would make it more valuable. It's not going to hurt the property values of adjacent properties and it does meet the zoning terms with the exception of the house being behind the building but with the layout of the property and the home and everything I see no problems.

Mr. Randall seconded the motion.

The vote was unanimous in favor of the motion. **Petition #540 of Robert L. Parsons, landowner and petitioner, for Variance to build a home behind the existing barn was approved.**

5. Petition #542 of William McPhearson, landowner and petitioner, for Variance to build a pole barn 5' from side and rear property lines. The property is zoned "AG" and is located on the south side of State Road 28 between 600W and 700W in Pipe Creek Township, with the physical address being 6871 West State Road 128, Frankton.

Mr. Hershman said, residences characterize the south side of SR 128, fields the north side. The site is a residence with several outbuildings. There is a circular drive in front of and to the side of the proposed barn.

Staff has received proof of proper notification.

The applicant wants to build a 48'x30' pole barn 5 feet from the side property line. The requirement is 10' as per the Ordinance.

William McPhearson was present representing this petition.

William McPhearson, 6871 W St. Rd. 128, Frankton.

Mr. McPhearson said, I would like to keep my existing driveway as a round about driveway and with the set back I won't have to cut so much of it off. There's really nothing there but a woods behind me and the neighbor to the right of me doesn't seem to have a problem with it being there.

The other part of my property has got a 1500 foot septic system in it plus there is also a State Highway drain that runs right down through there. So, there is no way of sitting it down in that area.

The rules state I have to be ten feet off the property line and I would like to be at least five feet from the property line. This would be for the east and south lines. I would have to take out at least one of the trees.

The barn will basically be for storage of vehicles. I have two boys and my girlfriend and myself have four wheelers and my garage is suppose to be a two car garage but there is no way you can get two in there let along one of the four wheelers. I've got one sitting out in my driveway all the time. I would like to put a lift in there where I can actually work on my vehicles. I've got a boy ready to turn 16 and I've got a boy that's all ready 22 and I'm all the time working on his vehicle. So, this will be basically for storage and a place to move around.

This will not be used for a business. The woods behind me does not belong to me.

Mr. Randall asked what is the distance between your property lines and where their building is?

Mr. McPhearson said, my property line and their residence (not audible) might be a little less than that I'm not sure what they said on their ---

Mr. Randall said, well approximates was what I was asking. So, it does sit toward the east side of their lot, their house?

Mr. McPhearson said, their house pretty much right in the middle of their lot.

Mr. Shine asked do you have room to lower that with that five feet?

Mr. McPhearson replied, yes.

Carrie Allison, 7705 N St. Rd. 9.

Mrs. Allison said, I own the woods that's behind the property in question. And this is a permanent structure that's going to be there. I have property at 131 First in Noblesville and you know how that area boomed. And you don't know what can happen in the future. The laws were designed for a reason.

The entrance to my property is off of 700W and it includes all of the wooded area. The second house on 700W is mine. I am worried that building that close could through the property line off.

Mr. McPhearson said, the property line has posts on all four corners. The survey has been done since I bought the house. It was also done six years ago so all the posts are on the mark.

Mr. Shine said, for your information the ten-foot setback is design, normally it's to allow the utilities to get back in to an area around the property. This does not show your property. It does not take any thing a way from your property. It still allows the owner and the future owner that they will have five feet to be able to access to the rear of their property.

Mr. McPhearson said, the property to the west of me, George Kinsel, his garage sits approximately two feet off the property line but the next residence to the west of that is Amick and they are right on the property line with no set backs. They have all been approved and had their garages set back right at the property lines. I am not wanting to go back as far as they are.

Carrie Allison, 7705 N St. Rd 9.

Mrs. Allison said, I am not sure about Amick's, what he said, I let them use about an acre and a half of my property for a garden (not audible).

Ms Baker said, it shows it on the property line on the aerial map.

Mr. Maxwell said, if I'm not mistaken the one on the corner was before us when they built that building, their barn, because as I recall the gentleman had a travel trailer he wanted to put inside. He built that building and I believe he got a variance on that back relief before this board. It's been several years ago. He was concerned about the distance from 700W to the front of the building being so short it was just barely long enough to pull a car off of the road.

I believe in his case he had laterals to the north where that barn is and there is something underground right to the east of where his barn is when that was granted.

Mr. Maxwell asked what the approximate width was of the driveway making the circle back there?

Mr. McPhearson replied it would be almost as long as the barn itself. You might have three or four feet on the each end of the barn but the driveway would not even run that way. According to the drawing the overlap on the concrete would be ten feet. The driveway is not (not audible) pretty much everything else is. It would pretty much sit right on the edge of it. The driveway is

about ten feet wide. I've got a tree right in them middle of the donut and I will keep that one. There is one right there where the barn is going to go that I will remove.

Mr. Maxwell asked is there sewer and water lines out there?

Mr. McPhearson replied no. There's no water, sewer, power lines or anything out there.

I am trying to save as much of the existing drive as I can. I don't want to lose that tree in the center of the drive.

Mr. Randall asked if the State drain goes right across the septic field?

Mr. McPhearson replied yes.

Mr. Maxwell said, I would make a motion to approve Petition #542. Being there's two homes to the west that have buildings closer than the ten foot set back. One of them we approved several years ago and I feel that without city sewer and water being in that area there will not be subdivision of small lots that will be develop out there. So, I feel that any development that would be in those woods is going to be bigger lots. The people wouldn't necessarily need to build within ten foot of the line. I don't think it would really be injurious to the public health, safety, and welfare of the community. Like I said it kind of meets the adjacent property in setbacks. And there will be no business in this building.

Mrs. Aubrey seconded the motion.

The vote was three yes; Baker, Maxwell and Aubrey. Two no's; Randall and Hobbs. The motion carried. **Petition #542 of William McPhearson, landowner and petitioner, for Variance to build a pole barn 5' from side and rear property lines was approved.**

6.Miscellaneous:

Mr. Shine informed the board there is nothing at all wrong with the board members going out and looking at the properties but getting involved in discussions with either the petitioner and/or any of the neighbors may or may not, if it's initiated by you I don't see any problems. If the other party initiates it then you can say that you cannot have any discussions on it. Just have an open mind and make the proper decision.

It was the consensus of the board to adjourn.

Adjournment: 10:21:50 A.M.

Mary Jane Baker, Chairman

Beverly Guignet, Secretary