

WABASH COUNTY PLAN COMMISSION

Wabash County Court House

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BZA MEETING MINUTES

MAY 22, 2018

**Wabash County Board of Zoning Appeals
Wabash County Court House
Wabash IN 46992**

BZA MEMBERS: Dan Dale, Mark Milam, David Schuler, Joe Vogel, Jerry Younce, and Attorney Larry Thrush

PRESENT: Dan Dale, Mark Milam, Jerry Younce, David Schuler, Joe Vogel, Larry Thrush, Mike Howard, Libby Cook, Dennis Jones, Mark Hobbs, Robert Kowalczyk, Kali Kowalczyk, and Brayden Rudy

Board Chairman, Joe Vogel, called the May meeting of the Wabash County Board of Zoning Appeals to order at 7:00 pm. Mr. Vogel asked if there was a motion to approve the minutes of the April 24th BZA meeting. The motion was made by Mark Milam, this was seconded by Dan Dale. The minutes were approved as written. Mr. Vogel then called on Dennis Jones to present his request for a variance from the property line setbacks in the town of LaFontaine.

Plan Director, Mike Howard, gave the Board an overview of the request. Mr. Jones lives at 206 E. Kendall St. in LaFontaine and he is seeking a variance from the neighboring property line setback. He would like to build a lean-to addition onto his garage which will be totally enclosed. Board members were given aerial photos of the property and neighboring property to review.

Mr. Vogel asked if the setbacks from the alley behind the building are ok.

Mr. Howard explained the setbacks for the alley and that the building and addition would meet the requirements. He then asked Mr. Jones how far off the property line to the east he would be?

Mr. Jones: I believe it would be two feet off the line.

Vogel asked Mr. Jones how far off the property line is the building to the east of his property?

Mr. Younce: What is the building to the east of your garage? \

Mr. Jones: That is a carport.

Mr. Vogel asked Mr. Howard, did we have any guidance from the town of LaFontaine?

Mr. Jones, the pool that is shown on my property is gone now.

Mr. Howard: This is very similar to the variance request and permit that was issued to Brian Dawson last year for a garage addition within the town of LaFontaine.

Mark Hobbs, (210 E. Kendall) the neighbor to the east of Mr. Jones spoke stating that he had no objections to the request of Mr. Jones.

Mr. Jones presented a signed petition from the surrounding neighbors stating that they had no problem with the plan.

Mr. Vogel asked if there were any questions or comments before proceeding to vote on the matter.

The vote was taken, Mr. Thrush tallied the votes. The request for Variance #4 was approved.

Mr. Jones thanked the Board.

Mr. Howard reminded Mr. Jones that he needs to come to the Plan Commission office to get his building permit.

Mr. Vogel: The next item on our agenda is Robert Kowalczuk on a judgement in Lagro Twp.

Mr. Kowalczuk: I don't know how familiar all of you are with everything that has been going on. I approached Mr. Howard last year about putting a storage shed in the front yard and using it as a temporary living quarters while I tore down the old house and built a new house. Somehow that got misinterpreted one way or the other and now I've been drug into court and now I can't do that and that I have to remove the building. In October I came to Mr. Howard when he sent the first letter. What can we do to get a permit, how can we make this right, do I have to come in front of your Board. His reply was let it ride. Now here I am facing a judge's decision and all that. I am here to ask if there is a way we can make this right and I can use this storage shed that he likes to call it, which has been studded out and insulated and made into an actual living space and use this as my temporary living quarters while I build the new house. My only other option would be to put that shed on a foundation and put on an addition to make it the required 960 sq. feet. I don't think anybody wants that, as a temporary living yeah, but I have plans here I want to put a nice house up, that goes with the neighborhood, that improves the neighborhood. That is all I am looking to do, all I am asking for is permission to live in that tiny shed for the time it takes me to put the house up. I understand you are considering a change to the ordinances that would have a provision for something to this effect to allow a travel trailer or mobile home I didn't get into the particulars, but something that you guys are considering for that. That is my only issue is asking for your approval and a permit to use the shed to live in for a period of time while I get the house built.

Mr. Younce: Are you building the house yourself or is there a contractor?

Mr. Kowalczuk: Yes sir I am. I am building it all myself, me and my kids and whatever friends I can scrounge up. I know how builders build these houses nowadays. I know how grandma and grandpap built their house in 1958 and it is still built like a rock, it aint going nowhere.

Mr. Milam: Was a time frame established a year ago on completion of the house?

Mr. Kowalczuk: There was no time frame set on that. I told Mr. Howard that I am building this myself is there any timeframe. I asked all this before I ever got any permits; he said no that as long as you are making progress we can renew it for a year. I am like 'ok it is a new fee, a new permit' no big deal I don't care. I just want to build the house right and keep everybody happy with the permits and whatever is required

Mark Milam: What has been the progress from a year ago today?

Mr. Kowalczuk: The old house is gone other than a small section of the poured foundation which I may use for a like a root cellar under the walkway to the new house up against the basement. That is about the only point left other than hauling out the rock and dirt from the old foundation, it was an old flagstone foundation. Money that I had to pay Mr. Thrush to do the judgement is what I was planning on to buy my block with and get my foundation going, so it is going to be put behind a little. I am trying to get this done; I just want to have a nice house that is all I am asking for.

Mr. Milam: What did the judge say?

Mr. Kowalczuk: The order was that I had 60 days to either get the shed off the property or obtain a permit from you guys.

Mr. Howard: I have the judgement in front of me and I can read it, it was from Judge Tandy. Basically within 60 days after this date which was 4/27/2018 was the filing date, it was ordered on the 27th day of April 2018 "within 60 days after this date the defendant shall cease using for residential purposes the utility building located on the premises commonly known as 270 Main St., Lagro IN and shall have either removed the utility building from the property or have obtained a permit authorizing it's placement from the Wabash Co. Plan Director or the Wabash County Plan Commission. That was what I requested when the Judge asked me. Obviously the Judge has ordered to cease using it for residential purposes. He asked me about allowing it to stay on the property and I told him that should go before the Board and that should be a determination made by the board and not by me. So whether the utility shed is allowed to stay on the property or not I don't know Larry does it matter if that judgement is made by the BZA or the PC Board, I had told him the PC Board.

Mr. Thrush: Who would normally make that decision? The Judge probably doesn't care. He said the Plan Commission, did he?

Mr. Howard: That is what I suggest, the Wabash Co. Plan Commission and that is what I told him that day.

Mr. Howard: As far as just for the use for residential purposes the Judge ordered to cease using it for residential purposes and this Board can't overstep that bound, that is an order from the judge.

Mr. Kowalczuk: It says or obtain the permit

Mr. Thrush: Well isn't it remove the thing or "you can't live in it".

Mr. Kowalczuk: Why not?

Mr. Thrush: You either have to remove it or get a permit to leave it there but not as a residence.

Mr. Howard: It says within 60 days after this date the defendant shall cease using for residential purposes the utility building located on the premises, and shall have either removed the utility building from the property or have obtained a permit authorizing its placement. The placement was just to stay as a utility building not to be used for residential purposes.

Mr. Thrush: That's the way I understood the judgement.

Mr. Kowalczuk stated that "I asked if I could still live in it once I obtained the permit and the Judge said yes".

Mr. Thrush: I don't remember him saying that. A Court only speaks through its order book whatever he said from the bench if he said something contrary to what his written order is, the written order stands, he would have to amend that. I think the only issue would be is that if you get a permit to leave it there but you can't live in it. The judge has said you can't live in it.

Mr. Kowalczuk: I think that would be something that would have to be clarified at the following hearing, because the way that I interpret it and I asked specifically that I could still live there if I obtained the permit. I know it was brought up about living there because trying to pay your lawyer fees and get it off the property; I am not made of money. I am living under a bridge; my kids are living under a bridge. I will lose visitation with my other 3 children because of this. I came to Mr. Howard to ask permission is this ok to do before I ever started anything. His reply at that time was that it was a temporary building while you build your new house, no permit was required and you could do that.

Mr. Vogel: I don't remember visiting with you on this, but wasn't it a structure to be used for storage of materials, tools and things while you were building the house?

Mr. Howard: Yes.

Mr. Kowalczuk: No because I specifically said to you Mr. Howard repeatedly that I want to live in it, I am going to hook up utilities, water, sewage, have a full bathroom, I was very clear on what I told you at the initial time I brought it up. I even asked Scott Snyder (Siders) beforehand you are the Lagro man, do you have an issue with this and it was "you have to go to Mr. Howard

and if he is ok then I am ok with it". And that is why I went through and I got the building, spent a ton of money to make it livable. Because at the time I was under the impression I was ok. I am not from Wabash, I don't have family here.

Mr. Howard: I am not going to sit here and argue the situation with you. We went through the whole situation in court. When you asked about the utility building you asked if you could put a utility building on the property to store stuff in while you worked on the structure. I said yes, but it would require a permit. You did not get a permit for the utility building, what you used it for was not what you said the intended use was for. I am not going to argue anymore, the Judge says you cannot use it as a residential structure and that is what stands. If you want to wait until July 3rd to argue that with the Judge that is your prerogative.

Mr. Thrush: This Board really isn't in a position to change what the Judge ordered.

Mr. Kowalczuk: The reason I came to this Board is because in your proposed amendment to the ordinance it says to go through the Board of Zoning Appeals for a permit for the two years. That is why I am here tonight. I asked Mr. Howard in October what I have to do to make this right, do I have to go before the Board. And you even testified in court I came to you and you approved me to live in this for 6 months. Why all of a sudden is it not approved?

Mr. Howard: Right, I grant you that when you came back in and you were already living in it I said I would work with you and allow that to be used in place of a mobile home, a camper, I would consider that your camper, and it was for 180 days. 180 days has ceased and it is gone, that time period is gone. You were given 180 days and that has expired.

Mr. Kowalczuk: Originally I was told I couldn't use a camper trailer at all to live in because it had to be moved every 30 days; otherwise I would have bought a camper trailer.

Mr. Howard: That is not correct. You never asked me about a camper trailer.

Mr. Kowalczuk: No, I didn't ask you. I asked Scott Siders and that is what he told me. So why would I talk to you about it when he had already told me, denied me using it. I was told that I couldn't use a camper trailer, but you guys are considering in your 2 year ordinance thing that you can. What do I gotta do, throw it on a frame with some wheels and call it a trailer, call it a mobile home. Cause if I gotta move and everything else it is pointless to have that living quarters and I am going to be homeless. Is that where you guys stand, that you guys stand that you can't over (pause), you take that as I can't live in it period is that how you interpret that?

Mr. Thrush: Yes, absolutely that is what he said; this Board can't override the judge.

Mr. Kowalczuk: The fact that I asked for a continuance for the Judge to begin with and was denied a continuance. Okay, obviously I am not going to get anywhere here and I will have to file a civil rights lawsuit against the county. Thank you gentlemen for your time, I am sorry, I am a bit upset.

Mr. Vogel: I understand. I don't think there is anything we can do but follow the law. I wish you luck.

Mr. Kowalczuk: Because that is why the Judge asked you if it could stay there, if I obtained the permit. So that it could stay there and I could live in it. That is what the Judge said.

Mr. Thrush: The Judge can only speak through his order book.

Mr. Howard: That is what the judgement said.

Mr. Kowalczuk: Sorry to waste your time gentlemen have a good night.

At that time Mr. Kowalczuk along with his daughter and her friend left the meeting.

Mr. Howard gave the Board the following updates:

- NIPSCO has a project that we have had some calls on. They are bleeding off a line to make repairs. Neighbors are complaining of the noise. This is expected to last for up to 3 weeks.
- Wind Ordinance, shared an article regarding lawsuits in Miami and Cass Counties in reference to property line setback vs setback from a structure.
- Farmland preservation, shared an article regarding the loss of farmland over recent years. I feel it supports what we are trying to do in Wabash County in conserving farmland.
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Board members discussed these issues.

At this time Kali Kowalczuk and Brayden Rudy returned to ask the Board to discuss the case of Mr. Kowalczuk.

Brayden Rudy: We had something to say about the Robert Kowalczuk case. I apologize for his hasty decision to storm out of here like that, but there are some things that need saying, and there are some things that other people are saying that just are not lining up. At that court hearing there was people not sworn in, anything that a judge says on the bench is supposed to be recorded. So if both of said people recall information that isn't recorded, it should have been which is ample enough to call it a mistrial. The way we see it is anything that is in that should be voided. Obviously we are middle, second class, we work hard. We have taken all accounts into consideration, that building that was prefab and then placed on the property is within all the building codes, all property line requirements and all other (pause).

Kali Kowalczuk: We are meeting all requirements except for the said permit. As my dad said we are not from here, we are from out of state. We approached people we know like my dad said, like Scott about this to get a starting point and he told us to meet with Mr. Howard and my dad did. Before my dad would even come into those meetings with Mr. Howard, me and him discussed everything we would do over, what permits do we need, what you know we. I know what my dad asked Mr. Howard, we know what his answer was, and he is now going back on

what he said and that he never said any of that. And because of that we are now about to be homeless. How is that right?

Brayden Rudy: You got to think we have put \$20,000 into this shed. 15 to 16 of which was the shed itself. To us it is not a shed this is our house.

Kali Kowalczyk: If we were to bring in pictures or if any of you were to see it. If you were to go on the inside it does not look like a shed, it is a house. It has a full kitchen, a full bathroom, it has 3 bedrooms.

Brayden Rudy: Granted two of those are lofts, they are in the upstairs portion. But it is to code it is there, I mean you can't just pick up 20 almost 30 thousand dollars and move it or get rid of it.

Kali Kowalczyk: We have no other options.

Brayden Rudy: Neither of us sees that it is remotely right for a judge or anybody to stop and say, it can't be there, without this we are homeless. There is nowhere to go. We had to use the project money that was for the new house that was permitted, agreed on and set forth but we had to use that to pay off court bills because of certain things that people aren't letting line up. We are just trying to get that permit that allows the building there. You have seen that show Tiny House Big Living stuff like that, that is us right now, but it is temporary, granted it may be like a max of 2 to 3 years, but it will be removed later. It is not permanent, all the utilities are easily accessible and detachable, it is not on a poured foundation or anything, it is on cinder blocks so it is possible to relocate which is where the idea was of using that for the basis on the poured foundation where the previous house was. Now it is said that unless the Board allows the building to stay, if you guys can't let the building stay then we are out of money we are out of a house, we are out of the start for a possible new house. This is his daughter, I am her fiancé, we all live there. It is well kept, it is a beautiful place. The one we were projecting to build would not only increase nearby property value, but it would help with the aesthetics of the town itself especially in Lagro's state right now. Granted there is another building being built right next to ours from a previous fire, which is where we believe a lot of attention is been drawn to the area. We didn't have a half million dollars like they did, the house they have is a lot. The one we are projecting to build, for us to build it ourselves to the T and meet all the regulations and everything is projected to cost about \$30,000 - \$40,000 that was just for building costs. So there is enough there, obviously you can see the potential for improvements around the area. We were cut short by the court we had to pay \$5,000 for the court date or hearing and everything that is what the bills ended up. And like he said that was the start for our block and our board for the flooring. So not only now we can't, like he said we are getting kicked out.

Kali Kowalczyk: See we tried to avoid all this by coming to Mr. Howard and finding out what you guys conditions were, what we had to do to make it possible to live on our property and build this house there at the same time. Cause we don't have the money to have a crew come and do it.

Brayden Rudy: It was stated from day 1 that the usage of the shed was for living quarters.

Kali Kowalczuk: It has always been the plan for temporary, until we get the new house all up and done.

Brayden Rudy: Before it was ever built.

KaliKowalczuk: Months before we even bought the shed. We were talking about this trying to figure out how this was going to work, who we had to talk to, what we had to obtain to make this possible.

Mr. Thrush: Since the Court has said that you can't live there do you think that this Board can overrule the judge?

Kali Kowalczuk: Obviously not.

Brayden Rudy: That is what his potential statement was by unless you obtain the permit.

Mr. Thrush: You can't live there; he said you can't live there. We can't change that.

Kali Kowalczuk: According to what dad (Rob) said he specifically asked the judge, if he could skip, if he got this permit from you guys.

Mr. Thrush: That is not his order.

Kali Kowalczuk: We will get the minutes then and we will look over the minutes from that court meeting and we will see then, and we will be back.

Mr. Thrush: You can take that to the Supreme Court of the United States and they are not going to reverse it because the court only speaks through its order books. He can sit on the bench, judges don't do this typically, but they could say something completely contrary to their written order, it means nothing because their written order is what controls.

Kali Kowalczuk: And clearly that order has a lot of room for different interpretations, since you are clearly interpreting it one way and we are interpreting it another.

Mr. Thrush: He said you can't live there, that is not subject to interpretation. This Board can't change it; I don't know what you expect them to do. They would be in contempt of court if they said oh yeah you can live there.

Kali Kowalczuk: That court is already in contempt for not swearing in people.

Mr. Howard: Can I ask a question, who did they not swear in?

Kali Kowalczuk: You, sir.

Mr. Howard: Yes I did, I was the very first one. Then your father had the opportunity to speak and ask me questions, and he asked me several questions and then the judge asked Mr. Thrush if he wanted to ask your father any questions and he said no that he didn't think he had anything for him, he thought he was pretty well satisfied with what had been presented at that time.
Brayden: Obviously he was not satisfied as you saw earlier, he said he was done and left.

Mr. Howard: Right, but what I am saying though is that Mr. Thrush was satisfied with what had been presented in court.

Kali Kowalczuk: All he wanted was to get the money, because that is all he wants.

Brayden: Most of what was presented in court was not finalized, there is not enough there and we were denied a lawyer and a continuance to get a lawyer.

Mr. Thrush: You can appeal his decision

Brayden Rudy: It will be appealed.

Kali Kowalczuk: We are just trying to make sure you guys understand the situation at the moment.

Mr. Thrush: But you don't appeal it to this Board, you appeal it to the Indiana Court of Appeals.

Kali Kowalczuk: And we know that, and we will do that. We are trying to make you guys understand what is going on.

Brayden Rudy: We are trying to get the permit for the building as the judge said if we get the permit we can keep the building regardless if we are like, putting aside if we are living in it.

Kali Kowalczuk: That's clearly going to have to be a matter for the next court date.

Brayden Rudy: Which it will, we just need you guys to approve the permit for the building itself. Then it will be continued later in a court meeting. That is the whole reason we are here, the whole reason we are fighting for this.

Mr. Vogel: We are not going to get anywhere by arguing. Just for our information, did they come and ask for a permit to our Board to set the building there to store materials and saws, and tools?

Mr. Howard: He asked if they could put a utility building on the premises to store stuff in while they were working at the site.

Mr. Vogel: Did that come before the Board?

Mr. Howard: No, that was just in my office. He did not get a permit for it and then the next thing you know we were informed that the building was there and they are living in it and that is when we sent him a letter.

Mr. Vogel: The biggest thing you have got to hold you back on the building is it is not enough square foot for a living.

Brayden Rudy: Which is where we want to relocate it onto a new foundation and extend it, but we can't do that without a permit to keep the building.

Kali Kowalczuk: We tried to obtain the permit once we got the letter and Mr. Howard said oh don't worry about it; you guys will be fine for the next 6 months don't worry about it.

Mr. Howard: And you were. I allowed you 6 months, over 180 days, and that 180 days ended I think like in very early May or late April.

Kali Kowalczuk: Can we have the permit at the very least to have the shed.

Mr. Howard: Not with the court order right here.

Mr. Vogel: I don't think we can do anything, with the court order already telling us what to do. We can't overrule that.

Kali Kowalczuk: Even with the living aside you guys can't give us.

Mr. Howard: According to this it says, we agreed that this does say that you cease use or using for residential purposes, and shall have either removed the utility building from the property or have obtained a permit authorizing it's placement from the Plan Director and the Wabash County Plan Commission. This is the Board of Zoning Appeals; the Plan Commission is the Board that we suggested to the judge that it needed to go before for them to make a decision whether they would allow it to stay there or not.

Mr. Vogel: That Board meets the first Thursday of the month. It starts at 7:00 pm in this room. (Brayden was confirming the day and time.) You are talking to the wrong people, we are sympathetic, but I don't think your building is ever going to have enough structure and meet standard living code that the county has because of the square footage even if you add on.

Brayden Rudy: Which is where you mentioned the new codes being proposed to be passed on this year. It would meet those codes, granted it doesn't now.

Mr. Howard: What they are talking about is the new county zoning ordinance, what we have been working for the past 5 years.

Mr. Vogel: We haven't lowered the square footage?

Mr. Howard: I would have to look at that and see what they are. I believe it is zoned R3 up there, I think the old R3 is 960, if I remember right. I will have to check it again to make sure, and I will have to look at the new ordinance and see what we put in that, I know we made some changes.

Mr. Vogel: As a suggestion (to Kowalczyks) if you wanted to get some legal counsel to represent you I think you would probably do better and he could inform you what options you have.

Kali Kowalczyk: We did and he told us to come here and meet with you guys but apparently it is the wrong people.

Mr. Vogel: And that is not your fault.

Mr. Howard: Since the hearing I didn't say anything to them about it.

Kali Kowalczyk: No, we have met with a lawyer since and he told us to meet with a Board and apparently it was the wrong Board.

Kali and Brayden thanked the Board for listening to them.

Mr. Vogel asked if there was any further discussion, there being none he asked for a motion to adjourn the meeting. The motion to adjourn was made by Mark Milam, seconded by David Schuler. The meeting was adjourned at 7:55 pm.

Libby Cook
Secretary, Wabash County Board of Zoning Appeals
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