

WABASH COUNTY PLAN COMMISSION

Wabash County Court House

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BZA MEETING MINUTES **NOVEMBER 26, 2019**

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, Joe Vogel, Jerry Younce, Larry Thrush, Mike Howard, Libby Cook, Ileen Silvers, Doyle Silvers, Jim & Kara Miller, Gary & Marthene Burnau, Janet Pattee, Jay Gillespie, Cole Wyatt

Board Chairman, Joe Vogel, opened the November 26th meeting of the Wabash County BZA at 7:00 pm. Mr. Vogel asked for a motion on the minutes of the October 22nd meeting. Mr. Dale noted an error on page 3, it currently reads

- Cost. The Board has never made a decision based on the potential income that could be made by a business and we should do that tonight. It should read “we should NOT do that tonight.”

The correction will be made; Mr. Dale made the motion to approve the minutes as written with the correction. This was seconded by Jerry Younce. The minutes will stand approved.

Mr. Vogel: The first item on the agenda is Kenneth Norman, Special Exception #11 for a pond in Lagro Twp.

Mike Howard: Mr. Norman had a schedule conflict and could not be here tonight. Mr. Norman is seeking to construct a pond on his property located at 1950 E US 24, Lagro Township; it is a 10 acre parcel. The Plan Commission Board and the Drainage Board have both given a favorable recommendation for the pond. There is currently a pond on the property that is not in good condition, as the new pond is constructed they will use dirt from it to fill in the existing pond. Mr. Howard reviewed the pond specifications: Scott Eads will be the contractor, pond will have approximately .75 acres water surface, it will require a variance from the property line setback. The neighboring property owners are family members and have no objection. Maximum depth will be about 12 feet, watershed into the pond is approximately 3 acres, it will also have geothermal feed. Closet drainage is a creek to the west of this property. Mr. Vogel asked if there

were any questions or comments from the Board or audience. There being none the Board proceeded to vote on the Variance request, Mr. Thrush tallied the votes, and the request was approved. The Board then voted on the Special Exception request, Mr. Thrush tallied the votes, the request was approved.

Mr. Vogel: The second item on the agenda is SE #12, Cole Wyatt, for construction of a pond in Liberty Township.

Mr. Howard: Mr. Wyatt is seeking to construct a pond on his property located at 6686 S 300 E, Liberty Township; this is a 3.02 acre parcel. The request has been given a favorable recommendation by the Plan Commission Board and the Drainage Board. Mr. Wyatt has constructed the pond himself while employed by Brainard Excavating. The approximate water surface area is .10 acres. He does need a variance from the property line setback; we have received a letter from the neighboring property owner stating that he is fully aware of the pond and the close location to his property. It is approximately 30 feet from the property line. There is a little bit of flood plain in that area. He is taking soil out and has put some rip rap in; he took out more than he put in so he is ok as far as the flood plain. There is no flowage easement involved. The pond has a dam 110' in length 45' base width, and 10' top width; 6" outlet drain; approximate depth will be 9 feet; it will have an emergency over flow; water shed into the pond approximately 1 acre; it will be used for geothermal feed; the distance to the nearest certified or uncertified drain is 80' to an unnamed tributary of Treaty Creek. Mr. Younce asked about the flood plain area shown on the maps of the property. Mr. Howard stated that on the DNR Best Available mapping there is a small portion to the north and west of the house that shows flood plain. This is indicated on the application so he is covered. Mr. Younce asked if that was from Treaty Creek, Mr. Howard replied that it is just from an unnamed tributary to Treaty Creek. Mr. Vogel asked if there were any questions from the Board or audience, there being none the Board proceeded to vote first on the variance request. Mr. Thrush tallied the votes, the request was approved. The Board then voted on the Special Exception request, Mr. Thrush tallied the votes, the request was approved.

Mr. Vogel: The third item on the agenda is Variance #14, Gary & Marthene Burnau.

Mr. Howard explained that the Burnau's are seeking a variance from the East side property line setback of their property located at 64 W. Lakeside Dr., Lot 50, Sandy Beach, Pleasant Township. The Burnau's are planning to tear down the current structure and build a new home, using the existing footer that is there. The original structure was built in 1958; the ordinances were not in effect at that time so the current setbacks were not met. In order to go forward and build they need to apply for a variance from the property line setback on the east property line. The current foundation is 4' 1" from the property line and 8' 2" to the adjoining property owner's structure. The new home will be the same distance from the side lot line as the current house, the Burnau's are planning to extend the new home toward the lake and add a garage to the south side (road side) of the property. The setback from the road is 35 feet and they have noted on the plans that they will be about 24 feet to the edge of the street; this is included in their variance request. Mr. Burnau stated that they will be putting in a new foundation where the existing one is. Mr. Vogel asked if they would be able to park a car outside of the garage and have it completely off the road. Mr. Burnau replied that yes, they would. Mr. Vogel then asked if the

garage would cause any visibility problems from the roadway. Mr. Burnau replied that it would not affect visibility. Mrs. Burnau replied that it will not, it will be in line with other garages along the road. Mr. Vogel asked if there were any questions from the Board members or audience, there being none the Board proceeded to vote. Mr. Thrush tallied the votes, the variance was approved.

Mr. Vogel: The next item on the agenda is discussion of an appointment of new Board member to the BZA. Mr. Howard informed the Board that Patty Godfroy has agreed to fill the vacant position on the BZA. This will need to be approved by the Wabash County Commissioners. Ms. Godfroy also serves on the Plan Commission Board. Board members agreed to the appointment of Patty Godfroy to the BZA.

Also, we will have a new Ag Natural Resources person who will be filling the position left by the retirement of Curt Campbell, his name is Geoff Schortgen. Geoff will attend the January meeting with Curt. Curt will still be the voting member at that meeting.

Mr. Howard: in other business,

Regarding the status of the Ileen Silvers property located at 3 E. Parker St. in Lafontaine. The one year extension to the permit for the construction of a new home will expire on Nov. 27, 2019. Mrs. Silvers' son, Doyle Silvers, had applied for a permit to construct a new residential structure on the property on November 27, 2017. There was a notice sent from the Town of Lafontaine, shortly after the permit was issued regarding the condition of the existing structure on that property. Mr. Howard shared photos of the property. Through discussion with Mr. Silvers he was planning to tear down the house and breezeway and leave the garage. During the October 23, 2018 BZA meeting, the Board determined that he needed to have a survey completed before they could make a determination as far as the garage and where it sits in relation to the property line. The survey verified the garage did not meet the setback requirements so Mr. Silvers then applied for a variance and that variance was denied. In the process of going through the requirements, the BZA issued a continuation and some conditions for the property. Along with the Nov. 28, 2018 minutes that I sent to Ileen Silvers it identified the conditions that would be put in place. The PCB discussed the conditions to make sure that we were all on the same page. It states in the Dec. 18, 2018 minutes letter sent to Ileen Silvers that the Board unanimously agreed that the structure must be completely finished on the outside and that included: roofing, siding, stucco, masonry, windows, doors, trim and porches. The letter stated that as a reminder that failure to comply would be considered a violation of policy which could result in a fine of up to \$250.00 per day until the violation is terminated. As we were getting close to the deadline I discussed this with the PCB on Nov. 7, 2019, the PCB agreed to send a letter to Ms. Silvers as the deeded owner reminding them of what the requirements were and the deadline. Mr. Howard shared photos of the property which were taken on November 14, 2019 showing the current status of the structure. It is not close to being where it was agreed to be in the 1 year time period. Mr. Silvers also shared photos he has taken of the property.

Mr. Vogel asked Mr. Silvers, so basically you have the foundation in. Mr. Silvers stated that if you look at this from June when I was able to finally get to it because of all the rain we had this spring, that put me 3 months behind if not more, plus the 2 months we had for the survey to be completed and all that to be done. There is 5 months. The photos show the progression from the

start to today. Everything, the floor joists and supports are all in, I am waiting to pour 22 yards of concrete within the next two weeks, then the old structure and the new will be locked together. The forms you see will remain; when we are done the wall will be about 20 inches thick. We did meet the setback that was required by the BZA they told me to the setback minimum is 6 feet and we are 6' 2". There won't be any overhang on the west side because we changed the roof and all the drainage will come off the back. Once the concrete is poured we will do the remaining backfill on the front part of the lot and let it settle and then put the porches on. I do have some work to do in the basement because I have to pour a 12 "x 16" beam across it. It is not like I have just sat and done nothing.

Mr. Vogel asked about the old foundation that is in the new structure, Mr. Silvers stated that it is all tied in. Mrs. Silvers stated that they kept the basement from the old house. Mr. Vogel said that as he remembers there was a garage, Mr. Silvers stated that they took the garage down and moved the wall over to meet the 6 feet setback, I have re-laid the block. I took the garage down piece by piece so I could salvage as much of it as possible. Mr. Vogel then asked Mr. Howard where we are at on the permit.

Mr. Howard said that as of Nov. 27, 2019 it has been one year, it has been a total of two years on the permit with the extension. It was stated in the meeting minutes that the continuation would be extended for one year. The minutes state that Mr. Howard said if Mr. Silvers extended his permit it would be good for one year from 11/27/2018 which would be today. Mr. Howard also noted that if Mr. Silvers waited till spring to apply for a new permit that would give him more time to meet the board's requirements. Mr. Silvers chose to extend his permit and then asked what completion means that is when the Board listed the requirements. We have never had a permit extension go beyond the one year. It was agreed by the board that failure to have it completed, as required, would be in violation and there would be a penalty assessed per day. If he waits until spring and gets a new permit, which I suggested, it would be good for 1 year from that date.

Mr. Silvers chose to extend his permit and then asked what completed means, A determination was made by the Plan Commission Board as to what was required as completed. Mr. Silvers stated that he thought that Mr. Howard told him to wait until the beginning of the year and apply and that would give him two years, not just one year. Mr. Howard stated that it would have been just one year on a new permit with the potential for an additional year with an extension.

Mrs. Silvers told the Board that her son has been doing this all on his own, at the October meeting I had not seen the survey, and I did receive it the next day. I got a letter in the mail that was dated Nov. 8th and I received it on Nov. 23rd, had I seen it before we could have gotten in touch with you sooner. Mr. Howard stated that he knows what day the letter was mailed, I don't know when she received it, however council member Barb Pearson called and talked to me last week about the letter that was sent, so obviously someone had seen the letter before the 23rd.

Mr. Vogel: So we started with all of this November 27 of 2017. Mr. Howard said that is correct. Mr. Silvers replied that is because he had to file for a permit to get everything moving in the right direction. Mrs. Silvers stated that she was required by the Town Board to have this done in 45 days, you can't contact anybody to tear down a house and have everything disconnected in that length of time during winter months. They did give us more time after going to a Town Board meeting; they said they would give us till June 1, 2018 to have it down. Doyle had someone to tear it down but that got blocked because they didn't think he should do the job, so

we got someone else. We disconnected the utilities on Feb. 12, 2018. Doyle said that the house was down by the end of May 2018. Mr. Silvers said that if you are going to build a house and you filed for a normal permit at the start of construction you would be within your time frame but with the delays and the weather and all it just put him behind. I plan on finishing it out, hopefully by mid-December to the end of December I can have the floor down. Mr. Vogel asked if you get that done within that time frame, what's the time frame you are thinking of to get the walls and the roof on. Mr. Silvers replied that he would start as soon as he could, if the weather is fit just keep working through the winter or until it gets so cold you can't stand it.

Mr. Vogel asked if what we are looking at tonight is whether we are extending the permit or give another permit or not. Mr. Howard said that based on the minutes and the letters that were sent that we are looking at the penalty, if it will be enforced, how much it should be per day.

Mrs. Silvers asked why they are being sanctioned. Mr. Howard said that it is not his personal feelings but that he is going by what the Board has issued and you were notified and told that if it wasn't done within one year there would be a fine issued. Nobody has ever come to this office and told us that they are running way behind until you got your final notice and that notice was sent to you just as a courtesy to let you know that your one year was just about up. I have a hard time just letting it slide by because it sets a precedent for other people in the future. When Doyle came in to apply for the extension I talked to him about waiting until spring and applying for a new permit, he would have a full year. Why would you choose to start in November with winter weather and probably not being able to do any digging or this type of work, but he chose to go ahead with the extension. He is talking about having the floor down by mid-December, but what is the weather going to do? These things were pointed out and they chose to go the route that they did. One person doing the construction and doing it in a timely manner, based on past experience and the information we have before us. Mr. Silvers stated that his boss has told him that his co-workers will have a framing party to help him.

Mr. Vogel: Opened the floor for comments from the Board or audience.

Karen Miller introduced herself as a sister to Doyle Silvers. I would ask for the Boards consideration, if you have to stay with a policy as far as a fine that it would be \$1.00 a day. We understand that you have to keep policy. Ideally there would be no fine because Doyle has worked nonstop by himself and he has done all of this totally on his own. He has paid for is as he goes, if he is not there working it is because he is out getting supplies. He has put his entire heart into this for he and his kids, the only people who have helped him are his son and his daughter. I feel there should be an exception, and I don't usually do that as a retired school teacher I go by the path which there. We all know farmers that this spring that were not able to get in their fields. This spring he was not able to get in there to get the foundation done. He comes home from work, spends an hour with his children, then goes to work and works on this until dark. The flooring, kitchen cabinets, bathroom fixtures are all in storage so that it is ready to go. He has a big family at work that is ready to help him. I think to do less than let him proceed would be a travesty to mercy of any kind. He has done every bit of the work by himself; I think that is unique in this day and age. I am concerned for my mother who is living on her Social Security income and you are looking at the kinds of fines that you could impose. The property that my mother has is all that she has. We understand that you don't want to make it personal, sometimes in this day and age you have to make some things personal. They have

done everything that the Town Board has asked; they have worked on it as timely as possible. I don't think that it is valid to issue a fine. Mr. Vogel thanked Ms. Miller for her comments.

Jay Gillespie introduced himself as the chairman of the Lafontaine Town Board. The previous house that was there, we worked with the Silvers and Mike to get it tore down, we had been trying to get it tore down for about 2 ½ years. The town of Lafontaine did nothing to block them from doing this. Time after time they came to the Town Board meetings saying they would get it down and nothing happened the position of the town is we aren't going to stop someone from building a new home in town. That being said, we continuously get calls from residents of the town asking what is being done about this property.

Janet Pattee introduced herself as a member of the Lafontaine Town Board stated that she stands behind what Mr. Gillespie said. It is lingering on and on, the community is upset about this, we want it cleaned up and finished.

Mr. Howard: With regards to making it personal, this is the hardest part of this for the board, no matter who comes in that door we have guidelines and rules we have to follow, they apply to everybody. It is a fine of up to \$250.00 per day that is the maximum that the Board would be allowed to levy. I am not saying that we should fine \$250 a day. I am not saying to do that at all. Based on the minutes and the previous application and Doyle knew right up front that he had a timeline going into this, the weather and all should have been taken into consideration. Based on all that I still think there still needs to be consideration of a monetary or some type of penalty set. If we let this one slide we have to go back and look at others that we didn't or give the same consideration to others in the future.

Mrs. Silvers: There are other buildings in Lafontaine that need tore down. I was given 45 days.

Mr. Vogel asked for suggestions for a fine.

Mr. Younce: Like Mike said he knew he had a time limit when he started it, when he was getting behind he should have gotten some help. It is going to be a tough decision.

Mr. Dale: I am a little sympathetic to what he has been through, he picked the worst year in a long time to try to build a house. I am a farmer; we lost 2 months due to weather.

Mr. Silvers: He has been in court for over 11 years over a child and they are wanting money all the time. We have had a difficult time trying to get things done.

Mr. Silvers suggested a fine of \$1.00 per day for the 3 months of time I wasn't able to work, and then make it progressive.

Mr. Vogel asked Mr. Silvers, what are your plans going forward. Mr. Silvers replied that he plans to have the foundation poured in December and start setting the floor joists. Mr. Vogel asked if he has somebody to help him pour it. Mr. Silvers said that he will do it himself. The 2 x 8's that are holding it together are the sill plates, I didn't go out and buy stuff to build it with and then throw it away, I bought the stuff I needed. Mr. Vogel asked if he gets this poured is it

realistic financially that you can purchase the materials to finish the exterior. Mr. Silvers said that within 3 to 4 months it should be up and completely covered that is what I am thinking. Mr. Vogel asked if Mr. Silvers is living close to this property, Mr. Silvers replied that he about ½ block away. Mrs. Silvers stated that she has lived close by for 72 years.

Mr. Howard asked Mr. Thrush how a fine would be assessed, would it be on added to their tax statement. Mr. Thrush said he didn't think it would automatically. Mr. Thrush questioned how Mr. Silvers is operating legally after the permit expires. Mr. Howard said that something we would have to decide, do we grant another extension. I have not found anything in the ordinance that states that we cannot issue another extension on the permit; we have never issued a second extension since I have been here. Mr. Thrush stated that he didn't remember any. After tomorrow he doesn't have any lawful authority to continue working on it since the permit expires.

Mr. Gillespie stated that the town would like to see another house there. Doyle said that he could have the floors and the walls up in 3 – 4 months so that would be March. Is there any way they could be given a fine free permit until March 27? At that point if he doesn't do what he said then it is whatever. That would be showing some compassion, there is not a fine. He has assured everybody here that he is going to do it; it would show cooperation between everybody.

Mr. Vogel: My concern is we have been dealing with November, the weather and it is getting dark earlier each day, you lose 3 or 4 months. I don't want to work up a compromise that is unrealistic because of the weather. I want to see if we can come up with a compromise. If we give him till June 27 to have the house sided roofed and the yard cleaned up. I feel like you could do that. I would like to give him a chance. There is going to be a time that the chances are going to run out, legally that is tomorrow. Three months would be unrealistic due to the winter months and the weather. If you did have a couple of months of nice weather if you told me that you are going to get it done I would be willing to work with you. Mr. Silvers said that if you give me till June 27, I will have it done

Mr. Dale asked, if we don't give the extension what happens to the property, does it just set there and become an eyesore. Mr. Howard replied that the permit would be revoked and it would be up to the Board to say that it has to be razed and the lot leveled or whatever. Mr. Dale asked if that would be their expense to take it down to bare dirt. Mr. Howard replied that it would be. There is nothing in our ordinance book that says that we are limited to a one time extension, we have never had one go beyond this point. If that is what you want to do I think there has to be a timeline and if we go back to the conditions that the structure has to be completely enclosed and everything done on the outside and if it takes him 5 years to finish the inside so be it, .that is up to the Board. The Board is providing him the opportunity to do this, and if it is not done then we are back to where we are now, with the understanding that the penalty could be very hefty at that time.

Mr. Dale stated that Mr. Gillespie said that the town wants another house there, for us to step in now and end that is kind of harsh and doesn't accomplish anybody's goals. Doyle you may have to hire some help to get it done. Mr. Silvers said the maintenance crew at work will come in and

help me get the walls up. Mr. Dale asked if he can get the cement bought for the foundation, Mr. Silvers replied that he has the money for it.

Mr. Dale asked how the Board should proceed. Mr. Howard suggested a deadline, set a fine after that date. Mr. Dale said that he liked the June 27 deadline date.

Mr. Vogel: The siding, roof, soffit, doors and windows have to be completed by June 27, 2020. The complete exterior of the house has to be done. The interior does not have to be complete at that time. You have put some work into this; if you didn't have this much done I don't think the Board would be willing to work with you so much on this.

Mr. Howard: We can discuss the fine if it reaches that point.

Mr. Vogel told Mr. Silvers that there will be no fines until June 27th, 2020, that gives you 7 months to work on this. We want it to look like a finished house by June 27th.

Mr. Dale made the motion to approve extending the permit to June 27, 2020, the total outside completely done; so that it looks like a completed house or there could be a substantial penalty and you won't have a building permit.

Mr. Vogel: We will not be very favorable to another permit or meeting if this is not done.

Mr. Younce seconded the motion, the motion carried. Mr. Silvers asked about getting the permit, Mr. Howard told him to come to the office and it would be prepared for him.

Mr. Howard: The BZA will meet on Tuesday, Dec. 10th as the regular meeting date falls on Christmas Eve.

There being no further business Mr. Dale made the motion to adjourn, this was seconded by Mr. Younce. The meeting adjourned at 8:25 pm.

Libby Cook
Secretary, Wabash County Board of Zoning Appeals
mth