

WABASH COUNTY PLAN COMMISSION

*Wabash County Court House
One West Hill Street
Wabash, IN 46992
Telephone 260-563-0661 EXT 1252, 1267
Fax 260-563-5895
plandirector@wabashcounty.IN.gov*

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

BZA MEETING MINUTES **June 23, 2020**

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

Present: Joe Vogel, Jerry Younce, Mark Milam, Dan Dale, Mike Howard, Larry Thrush, Libby Cook, Robert Kowalczyk, Kristie Bone, Shelley France, Lori Siders, Carol Cly, Trisha Loker, Allison King, Scott Siders, Victor Treska

The Wabash County Board of Zoning Appeals met on Tuesday, June 23, 2020. Board Chairman, Joe Vogel called the meeting to order at 7:00 pm. Mr. Vogel asked if there were any additions or corrections to the minutes of the May 26th meeting, there being none he asked for a motion to approve the minutes. Mark Milam made a motion to approve the minutes as written; this was seconded by Jerry Younce. The minutes will stand approved as written.

Mr. Vogel: The first item on the agenda is Special Exception #6; Leland and Trisha Loker are requesting to construct a pond on their property located in Lagro Township.

Mike Howard: Leland and Trisha Loker live in Lagro Township on a 16.6 acre parcel at 2345 N 750 E., Lagro. Treska Brothers Excavating is the contractor for the pond. The Plan Commission Board reviewed the application for the pond via e-mail; all 9 of the Board members returned their votes in favor of giving a favorable recommendation to the BZA. The Drainage Board reviewed and gave their approval on May 18, 2020. The pond will be 380 feet from the road, 150 feet from the east property line and 943 feet back to the north, they are seeking a variance to be 70 feet from the south property line. The overflow would be on the south end and would go to the extended ravine that is already there, the low area or waterway. It would go down to the neighboring property and then go south and east to a ditch. The pond will have an approximate water surface area of .15 acres, there is no flood plain or flowage easement, and it will have a dam that will be approximately 35 feet long, 20 feet wide at the base and 6 feet at the top.

Overflow tube size will be 12 inches which runs to the waterway which flows to the creek or ditch to the southeast. The maximum depth will be 8 feet, emergency overflow would be natural overflow to the southwest corner, watershed feeding into the pond is approximately 2 acres, no geothermal feed. The closest distance to a noncertified drain would be 6,500 feet. Mr. Howard reviewed orthos showing elevations, the two foot contours from the house to the adjacent property. Mr. Vogel asked, the natural flow goes that way and they would still have the dam down there and the overflow would still continue to go that way? Mr. Howard replied that the base of the dam would be approximately 70 feet from the property line north. Mr. Vogel asked if this is a grass waterway or a creek. Victor Treska, the contractor replied yes it is a grass waterway. Mr. Milam commented that it is about a 30 feet drop in 650 feet. Mr. Dale asked I assume the reason for being closer to the property line is the lay of the land? Mr. Treska replied yes. Mr. Vogel asked Mr. Treska if he could channel the runoff from the overflow pipe down to the ditch, Mr. Treska stated that he plans on bedding the base of the pipe with rip rap to slow that water down. Mr. Vogel asked Mr. Treska, you have two acres coming into the pond from the watershed, do you anticipate that overflowing quite a bit? Mr. Treska replied that he feels it could slow the surface drainage down from what it is right now. Especially in the summer when the evaporation rate is as high as it will be. I don't see any reason that I couldn't slow it down enough to knock off any problems on neighboring property. Mr. Vogel asked if Mr. Treska is willing to address that if there is a problem down the road, Mr. Treska replied yes, and that he would be willing to address any problems. Mr. Vogel then asked if there were any further questions or comments, there being none the Board proceeded to vote. Mr. Howard: the first vote sheet is for the variance from the setback, Mr. Thrush tallied the votes for the variance request, it was approved. Mr. Howard: the second vote sheet is for the pond, the Board then voted on the Special Exception request, Mr. Thrush tallied the votes, the request was approved. Mr. Vogel reminded Mr. Treska to make sure that where it runs over onto the adjoining property, if something happens we will probably be back in here to address that, so the only advice I would have is to make sure you do a good job on that and we will go from there.

- Special note: they (Mr. Treska and the Loker's have agreed that they will address any problems that may come up with the pond concerning the adjoining property. They will not be coming back in to the BZA or Drainage Board to correct any problems.

Mr. Vogel: The next item is Variance #5, Rob Kowalczuk. Variance for a structure location in Lagro Twp.

Mr. Howard: Mr. Kowalczuk is requesting a variance from the county ordinance to construct a new residence behind the existing garage. The property is located at 270 Main St., Lagro. The County Ordinance stipulates that in a residential zone the garage may not be forward to the rear of the house. When the house was built years ago it was prior to the county ordinance being in place so the existing house at that time was grandfathered. Mr. Kowalczuk has removed the old house but wants to keep the garage structure. Mr. Kowalczuk is requesting the variance to construct the new house behind the garage. There were two options: requesting a variance from the zoning ordinance, or the second option, we checked with some local realtors and found that if the garage was attached to the house even by a breezeway it would be considered a part of the residence and would not require a variance. Mr. Kowalczuk wants to keep the garage separate from the residence and apply for a variance to place the house behind the garage. Before he met

with the Lagro Town Board he did resubmit the house plans, he did not change any dimensions of the house, he just rotated the house on the lot about 5 degrees. Mr. Kowalczuk did meet with the Town Board of Lagro, Mr. Kowalczuk was given their approval for the garage to be in front of the new house, and the board required a one year timeline for the exterior of the house to be completely finished. The way we have addressed this as a Board is that the exterior has to be completely finished (this would include the following: any masonry, overhangs, soffit, fascia, guttering, porches, exterior lighting, painting, roofing, siding, windows, all doors, stucco, backfill, leveling and seeding), the timeline would not apply to the interior of the house. Mr. Howard reviewed the site plan for the home, he asked Mr. Kowalczuk if any of the existing basement structure would be used, Mr. Kowalczuk replied no. Mr. Howard stated that the backfill would need to be complete but that we realize that there could be some settling after that point in time. Mr. Kowalczuk replied that there is a little bit of the cement left from the old house and he has left it until he receives the new permit. Mr. Vogel asked if the setback requirements are being met, Mr. Howard replied that as an accessory structure the garage does meet the county requirements regarding setbacks. Mr. Howard stated that if he did choose to attach the garage to the residential structure the garage would become part of the residential structure and would not meet the county ordinance setback requirements, as an accessory structure it does meet the setbacks. Mr. Milam asked if there was any of the foundation from the old house still there, Mr. Howard said that there might be a little of the cement from the old structure. Mr. Kowalczuk said that there is a little bit of the cement from the old basement, when my first permit ran out I didn't have it demolished and I didn't want to do anything with it until I got my new permit.

Mr. Dale: Since you have rotated the house just a little bit is it now pretty much square with the garage? Mr. Kowalczuk replied that it is pretty much square with the garage.

Mr. Vogel asked if the house and garage will be the same style finished to match, Mr. Kowalczuk stated that was one condition the Town Board requested and I assured them that it would be made to match, it might not be in the first year, but I am going to make it match

Mr. Howard shared the signed agreement between Mr. Kowalczuk and the Town Board of Lagro.

Mr. Dale asked about the fence that is visible in the photos. Mr. Kowalczuk stated that the fence on the east side it is about 4 ½ feet inside the property line and is just there to allow the neighbor lady to walk onto the back of her property and I don't have to worry about her tripping or falling. That fence will come down once construction is finished.

Mr. Vogel asked if there would be a new driveway to the west of the garage. Mr. Kowalczuk replied no, the existing driveway goes to the front of the garage and that would be what he would use. There would be a sidewalk put in from the west side of the garage to the house. Mr. Vogel asked if there were any other questions or comments, he then reviewed the requirements of the Town of Lagro and asked Mr. Kowalczuk if he was good with those, he stated that he is.

Kristie Bone introduced herself as the Town Clerk of Lagro. Ms. Bone stated that one stipulation the Board also required was that the barrels on the property would be lined up along the side of the garage. Mr. Kowalczuk replied that this has been done.

Allison King, a neighbor to the Kowalczyk property asked what would happen if the exterior of the home is not completed within the one year time frame.

Mr. Howard answered that a lot would depend on how another matter is settled tonight, but there are a few options: 1. The Board could legally impose a fine of up to \$250 per day. 2. It could become a civil matter in the court system. 3. Liens could be placed on the property.

Ms. King stated that she is just concerned for the property values. She definitely wants a nice home there, but she is concerned that any ongoing construction could decrease the value of her property. Mr. Howard said that as it is he would come back in a year and appear before this Board and go from there.

Mr. Vogel asked if there are any other questions or comments. He stated that he feels the Board is willing to take Mr. Kowalczyk's word that the exterior will be completed within one year (this would include the following: any masonry, overhangs, soffit, fascia, guttering, porches, exterior lighting, painting, roofing siding, windows, all doors, stucco, backfill, leveling and seeding). Mr. Kowalczyk said that he will do a lot of the construction himself but he does have a couple of contractors lined up to help.

Mr. Vogel reminded Mr. Kowalczyk that he needs to comply with all of the requests made by the Town of Lagro.

Mr. Kowalczyk replied that if the variance is approved he is ready to start on Thursday (June 25, 2020). Other than final landscaping he feels he can have the construction completed.

Mr. Howard reminded Mr. Kowalczyk that the garage or any portable storage buildings cannot be used for residence during the construction. Mr. Kowalczyk replied okay.

Mr. Vogel thanked the Town of Lagro residents for attending and their input. He then asked if there were any more questions or comments. Mr. Vogel stated that he wants to be able to go there in one year and the house be finished. Mr. Kowalczyk stated that he should have everything done except maybe the final landscaping. There being no further discussion the Board proceeded to vote. Mr. Thrush tallied the votes, Variance #5 was approved. Mr. Kowalczyk was told that he could pick up his permit for the construction of the new home at the meeting, which he did.

Mr. Vogel: The next item is Variance #6, variance from the subdivision ordinance in Liberty Twp., Carol Cly.

Mr. Howard: Mrs. Cly is seeking a variance from the subdivision ordinance. Mrs. Cly's property is located at 8204 S Old St. Rd. 15, Lafontaine, IN 46940. The original parcel was 18.902 acres, they would like to make a split to two parcels of which she would eventually be offering both for sale, each parcel would be less than 20 acres so it requires a variance application. The north parcel would be 8.15 acres with the buildings on it; the south parcel would be 10.94 acres. Mr. Vogel asked how much buildable ground that would leave on the second parcel. Mr. Howard replied that the floodway would take away approximately 4 acres leaving about 6 (+/-) buildable acres. Mr. Vogel asked Mr. Howard if the Board could stipulate no further splits of the two parcels. Mr. Howard said that he felt like they could state that on the parcel with the buildings on it, he then told Mrs. Cly that they would ask her if she had any

objection to no further splits of the second (10 acre) parcel. Ms. Lori Siders stated they would not think there would be any detriment to Mrs. Cly to do that. Mr. Vogel stated that it helps to maintain the integrity of the existing buildings and the neighboring properties. Mr. Vogel asked if there were any further questions or comments, there being none the Board proceeded to vote. Mr. Thrush tallied the votes, Variance #6 was approved.

Mr. Vogel: The next item on the agenda is SE #8, Randy and Deb Curless for a pond in Noble Township.

Mr. Howard: The Curless property is located at 1677 E 500 S, Wabash, in Noble Township. They are in the process of building a new home on the property and are requesting to have a pond constructed also. Once the new home is completed the existing house will be razed. There will be a six foot mound buffer between the pond and the road. Troy Eads is the contractor. No variances are required, the property to the west is owned by Curless Farms. There is no floodplain or flowage easement. The pond will have an approximate 2.2 acre water surface area, it will have a 6" overflow pipe that will connect to a 6" clay tile, maximum depth will be 15 feet, watershed of 2 acres, it will be used for geothermal feed, closest certified or noncertified drain is Treaty Creek which is 4,500 feet west.

Mr. Vogel asked if there were any questions, there being none the Board proceeded to vote. Mr. Thrush tallied the votes, SE #8 was approved.

Mr. Howard updated Board members on the state ruling on AG Educator representative from the Purdue Extension office which will take away voting right on the Board of any educator not living in the county in which they work.

Mr. Vogel: The next item is the Doyle Silvers property in the Town of Lafontaine.

Mr. Howard reviewed the permitting process that is in place for the construction of Mr. Silver's new home in Lafontaine. At the November 26th BZA meeting the Board approved a second extension of Mr. Silvers permit (#2256); the extension will expire on 6/27/2020. The conditions of the extension were agreed to by all Board members and Mr. Silvers signed the agreement which states: The exterior of the residential structure, as presented in the submitted plans must be completely finished by the deadline, (6/27/2020) of Permit #2256 Extension #2, as agreed to by all parties. Conditions include: any masonry, overhangs, soffit, fascia, guttering, porches, exterior lighting, painting, roofing, siding, windows, all doors, stucco, backfill – leveling and seeding. Failure to meet these conditions as established by the BZA in the granting of the second extension of permit #2256 shall result in the BZA implementing a fine of up to \$250.00 per day until said conditions are met. Mr. Howard shared with the Board members a request he has received from Mr. Silvers asking for another extension of time on the permit citing the Corona Virus Pandemic stating that he had difficulty getting documents completed. In the message Mr. Silvers states that he does plan to have the exterior of the house completed by mid-July to mid-August. Mr. Howard stated that as far as we know there were no restrictions put on Mr. Silvers by his employer, construction work was considered essential. Mr. Dale stated that he could have been slowed down due to paperwork; he noted that the property had been transferred from Mr. Silver's mother to Mr. Silvers. Mr. Howard pointed out that if the Board decided to assess a

daily penalty that it could possibly delay construction due to funding, we could state that the fine is due and payable when the exterior of the house is complete. Mr. Howard discussed with Mr. Thrush the possibility of requiring a bond as assurance that the work would be completed. Mr. Howard stated that the current permit (#2256, extension #2) will expire on Friday June 26, 2020. Mr. Vogel suggested that we send Mr. Silvers a letter that he needs to get another permit and give him until September to get the building done, after that time we will enforce a penalty. Mr. Howard suggested that the fines don't become payable until after the exterior of the house is done to the requirements. Mr. Milam suggested stopping the existing permit due to not meeting requirements, he can apply for another permit and pay for the entire cost of a new permit. Mr. Thrush stated that by going through the courts it will be more difficult to get it shut down. Mr. Dale asked if since the property changed hands does that change anything. Mr. Howard stated that Mr. Silvers signed the permit as the agent not the deeded owner and he signed the agreement that listed the requirements of the Board, he signed everything so he is aware of all of the requirements. Mr. Younce stated in reference to the photos taken on June 23rd that most of the work on the flooring and the framing were done this week as he was by the property last week and this was not done. Mr. Thrush said if we filed for an injunction the judge would ask for our reason. Mr. Howard said we have been getting calls from the Town of Lafontaine; also, we don't want to set a precedent. Mr. Howard reviewed the conditions established at the Nov. 26, 2019 BZA meeting. Mr. Milam stated that he would not be opposed to issuing him a 3 month permit, a new permit and require the standard payment for the permit. It was agreed that the deadline should be the day before the September 2020 BZA meeting which would be September 21, 2020. Mr. Vogel asked for a motion on this matter. Mr. Milam made the motion to allow Mr. Silvers to request a new permit which would expire on September 21, 2020, Mr. Silvers would be required to pay the standard permit fees, and meet the requirements established by the BZA at the Nov. 26, 2019 meeting if this timeline is not met then we discuss penalty options. The motion was seconded by Mr. Dale. The motion carried, Mr. Howard will notify Mr. Silvers of the decision.

Mr. Howard gave the following updates:

- Complaints of livestock in the town of Laketon.
- The secretarial position in the Plan Commission Office, Mr. Howard would like to request to have this changed from a part time hourly position to make the job a part time salaried deputy in the Plan Commission Office. Mr. Milam made a motion to accept Mr. Howard's proposal, this was seconded by Mr. Dale. Mr. Howard will proceed with the request.

Mr. Vogel asked if there was any further business to discuss, there being none he asked for a motion to adjourn. Mr. Dale made the motion to adjourn; this was seconded by Mr. Younce. The meeting adjourned at 8:45 pm.

Libby Cook
Secretary, Wabash Co. Board of Zoning Appeals
mth