

Wabash County Plan Commission

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Wabash County Board of Zoning Appeals

Board Members: Dan Dale, Patty Lengel, Mark Milam, Joe Vogel, Jerry Younce

Staff: Larry Thrush, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Meeting Minutes of Tuesday, October 24, 2023

Roll call was taken with the following present:

Board Members: Patty Lengel, Mark Milam, Joe Vogel, Jerry Younce

Staff: Larry Thrush, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Absent: Dan Dale

Others present: David Blocher, Emily Blocher, Joe Goshert, Nicky Burnsworth, Bill Burnsworth, Jim Tackett, Steven Truss, Brenda Tomson, Mike Tomson, David Wintrode, Ryan Stout, Suzanne Peebles, Bill Urschel, Joe Eddingfield (spoke but did not sign in)

The Wabash County Board of Zoning Appeals met on Tuesday, October 24, 2023, in the Commissioners Meeting Room of the Wabash County Courthouse. 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 October 10, 2023 meeting. Ms. Lengel noted one typographical error. Mr. Vogel asked for a motion to approve minutes with that correction being made. Motion by Ms. Lengel, second by Mr. Younce. Board proceeded to roll call vote; motion carried 3-0-1, with Mr. Milam abstaining since he was not present for that meeting.

Mr. Vogel stated first on the agenda is Special Exception #5, David Wintrode, for construction of a pond with a variance from property line setbacks. Mr. Campbell informed the Board that Mr. Wintrode is applying for a pond on his property located at 4495 S 700 E in Lagro Township. Mr. Wintrode originally came before the Plan Commission and Board of Zoning Appeals in August 2014 for the pond project. At that time the project was approved, but the project was delayed. He is now reapplying for the pond. The Drainage Board has given Mr. Wintrode a favorable recommendation on August 21, 2023. The Plan Commission also gave a favorable recommendation on October 5, 2023. The plans submitted by Mr. Wintrode show the pond will be close to a United States Army Corp of Engineers flowage easement. Mr. Campbell verified with Mr. Chase Wilson of the Army Corp that there are no concerns with the plans. Mr. Campbell added that the original plan was created for Mr. Wintrode with assistance of Mr. Terry Roser at NRCS in 2014. The pond Mr. Wintrode is applying for currently is essentially the same as it was in 2014, with the possibility of a slight size change. Mr. Wintrode added that the pond size will be between $\frac{1}{4}$ and $\frac{1}{2}$ acre and will be approximately 68' from the east property line so a variance will be required. Mr. Wintrode owns a separate parcel to the north and west of the pond location so the setbacks are not a concern on those sides. Mr. Campbell informed the board that no questions or concerns had been addressed in the office regarding the project. Mr. Vogel asked if any board members or others in attendance had any questions or concerns. There being none, he asked for a motion to approve or deny Special Exception #5 for the construction of a pond as presented. Motion to approve was made by Mr. Milam; second by Mr. Younce. The Board proceeded to roll call vote; motion passed unanimously. Mr. Vogel then asked if there were any questions or concerns regarding the variance from the property line setbacks. There being none, he asked for a motion to approve or deny the property line setback variance included in the Special Exception application. Motion to approve the variance was made by Mr. Milam; second by Mr. Younce. The Board proceeded to roll call vote; motion passed unanimously.

Mr. Vogel indicated next would be Special Exception #9, McKillip Seeds / Ryan Stout, for construction of a pond. Mr. Campbell informed the Board that Mr. Stout is applying to build a pond on his property located at 4086 W. Division Road in Noble Township. A copy of the pond application and plan was provided to board members. The pond project received favorable recommendations from the Drainage Board on September 5, 2023 and the Plan Commission on October 5, 2023. Mr. Campbell added that two neighbors contacted the Plan Commission Office with questions about the project. The first was Mr. Rick Fisher, who lives across the street. Mr. Fisher came in and asked about the nature of the project due to the notification he received in the mail. Mr. Campbell reviewed the plans Mr. Stout had submitted with Mr. Fisher; Mr. Fisher had no concerns after review. Ms. Denise Carpenter-Foltz also contacted the office with questions about the notification she received in the mail. Mr. Campbell explained the pond plan to her. Her response was as long as it did not add additional water to the ditch, she had no problems with it. Mr. Campbell reiterated to her that the Drainage Board had reviewed and approved the plan. Mr. Stout spoke about the proposed pond, indicating that it would be approximately $\frac{1}{4}$ acre. Mr. Stout stated Troy Eads would be the contractor for the project. Mr. Vogel asked if there were any questions or concerns from board members or those in attendance. There being none, he asked for a motion to approve or deny Special Exception #9 as presented. Motion to approve made by Ms. Lengel; second by Mr. Milam. Roll call was taken; motion passed unanimously.

Mr. Vogel stated next on the agenda was Variance #14, College Corner Brethren Church, requesting a variance from the maximum allowable impervious amount in Waltz Township. Mr. Campbell shared that College Corner Brethren Church is located at 8996 S 500 W in Waltz Township. The property is zoned Ag 1 and is 162,740 sq feet of total area. Currently the existing buildings are 19,542 sq feet or 12% of the total impervious. The proposed new building is 1,440 sq feet and would add an additional 1% to the total impervious for buildings. The asphalt area on the property is approximately 39,160 square feet or 24% of the total impervious. Currently with building and asphalt the property has a total of 36% impervious, which is 1% over the maximum allowed by the ordinance. If considering the compacted gravel, concrete walks, and the structure north of the church, it adds an additional 23,958 sq feet or 15% impervious. This would total 51% impervious without adding the new building. The total impervious allowable per the ordinance is 35%. Mr. Campbell shared the church has presented two options that are indicated on the site plans that have been provided to board members. The Drainage Board gave the church a favorable recommendation on either of the options shown on the plan, as long as the drains carried positive flow thru the roadway. Mr. Campbell added Mr. Lee Myers, the southeast property adjoiner, did call the Plan Commission office and ask questions about the drainage. Mr. Myers was okay with option #1, as it would not affect either his or his sister's farm to the east and southeast. He was concerned going east would add additional water to the waterways already there and might create issues on their properties. Mr. Tackett and Mr. Truss were present on behalf of the church. Mr. Tackett stated the proposed new structure would be a pole building used for cold storage with power available in it. Mr. Truss added the church has purchased a church bus and would like to be able to park it inside. Mr. Milam asked in reviewing the two options on site plan, if option 1 would be more favorable. Mr. Tackett added the church will be getting a survey completed to help determine which is most favorable. Mr. Campbell stated the County Highway Department preferred option 1. Mr. Vogel asked if there was any further questions or concerns from board members or others present. There being none, he asked for a motion. Motion to approve Variance #14 from the maximum impervious amount was made by Mr. Milam; second by Mr. Younce. Roll call vote was taken; motion passed unanimously. Mr. Campbell reminded Mr. Tackett and Mr. Truss to get a building permit from the office.

Mr. Vogel stated next on the agenda is Variance #15, Joe Goshert, for a variance from the roadway setback in Noble Township. Mr. Campbell explained to the Board on September 29th the office was asked to check a property at 1056 E 250 S, Mr. Goshert's property, as it may not be compliance with the ordinance due to the construction of a new pole building. Mr. Campbell checked the site and verified that a permit had not been issued. Mr. Campbell placed a Stop Work Order on the construction, with a copy being posted at the site and copy sent certified mail to Mr. Goshert. Mr. Goshert contacted the Plan Commission office immediately to discuss the process to apply for the necessary variance and permit. Mr. Goshert's property is on Dora Road, which is classified as a primary road. As such, per the ordinance, there is a 95' roadway setback. Mr. Goshert's structure is

approximately 45' from the center of the roadway at its closest point; he is asking for a variance from the roadway setback of 50'. Mr. Campbell has reviewed the property with the Wabash County Highway Department, the Surveyor's Office, and the Drainage Board, none had issues with location of the pole building. Mr. Eddingfield presented information on behalf of Mr. Goshert, stating that the building is replacing a smaller structure and is approximately 45' from the center of the road. The contractor felt that since the plan was to replace an existing structure, it would be a legal non-conforming building, and would not require a permit. Mr. Eddingfield stated Mr. Goshert takes full responsibility as the property owner to be compliant. For the new building he is using the gravel pad that was there from the previous structure. The previous structure was 16' x 22'; the new structure is 24' x 40'. Mr. Eddingfield added, and Mr. Campbell confirmed, Mr. Goshert took proper action with the Stop Work Order and mentioned there had been no questions or concerns from the public. Mr. Eddingfield stated the new building would be used for vehicle parking, at this time there is no plan for water or power. He also noted it does not impede traffic on Dora Road and should increase Mr. Goshert's assessed valuation. Ms. Lengel asked if there were any concerns with distance to other property lines. Mr. Campbell stated the required setback to the side property lines would be 13'; Mr. Goshert's structure is approximately 30'. Mr. Younce asked if the location allowed for a clear line of sight at the road. Mr. Campbell informed the Board the County Highway checked the site and had no concerns. Mr. Vogel asked if there was any further questions or concerns. There being none he asked for a motion to approve or deny Variance #15 as presented. Motion to approve made by Ms. Lengel; second by Mr. Milam. Roll call vote was taken; motion passed unanimously. Mr. Campbell reminded Mr. Goshert to get a building permit from the office.

Mr. Vogel then stated the Board would continue the hearing from the October 10, 2023 BZA meeting for Special Exception #6, DKB Farms / David Blocher, for an earthen structure on 500 N in Lagro Township. Mr. Vogel asked Mr. Blocher if he had anything new to present; Mr. Blocher responded he did not, but would be happy to answer any further questions. Mr. Milam asked about the probability and frequency that Mr. Blocher intends to use firearms with this structure. Mr. Blocher responded once, maybe twice a week at most. It's a life time investment, and he has ordered suppressors to try to reduce the impact on the neighbors. He works full-time and owns multiple businesses and time is limited right now, that may change in the future but right now time is very limited. Mr. Milam then asked if it would be used during daylight hours only; Mr. Blocher confirmed yes, only in daylight.

Mr. Milam then discussed with the Board and those in attendance that county residents are not educated about the ordinances out there, that the Board and the county have put in place, to protect areas and landowners. In the United States it is a free country; however, there are procedures that you must go through to get things allowed – or not allowed – in certain areas. Public hearings, special exceptions, variances, and the legal system are all done for that. We are not doing a good job of getting our residents educated of the permit process. How do we handle that, to get word out? Newspapers and social media do not seem to get the attention. However, if fines could be imposed on people that do not abide by it because of being naïve to it – not trying to get away with anything, just naïve and unaware. If we fine people when there is a problem the word of mouth is going to spread through the county and spread awareness. Mr. Milam continued, on this structure it could be camouflaged in my opinion with trees at the base, wildflowers, or whatever that would make it more eye appealing. However, it does nothing for the neighbors' insecurities of the stray bullet and danger.

Mr. Blocher agreed the county does need to find a better way of communicating. Communication is hard, technology is supposed to make it easier, but he feels it has in fact made it more difficult. He acknowledges what is currently happening is not working and there needs to be a better way. As for the safety, Mr. Blocher asked if Mr. Milam owned firearms; Mr. Milam responded yes. Mr. Blocher reviewed the four universal firearm safety rules.

1. Treat every gun as if it is loaded.
2. Keep finger off the trigger until you are ready to shoot.
3. Do not point your gun at anything you do not intend to shoot.
4. Know your target and what is around it.

Mr. Blocher stated he feels this structure will help him teach his children to shoot in a safe manner. He stated every individual is responsible for their bullet. If he were to miss a target, it is his responsibility. It is the same for every individual, regardless of being law enforcement, civilian, or whatever. As far as screening it, it is covered in grass currently. We could possibly add trees, I am not sure what they best way to do that is. He stated if the board wanted him to screen it, he would have that conversation. As for the neighbor's safety, Mr. Blocher stated he has been shooting for the 10 years he has lived at this location. He feels building this structure has made it even safer, so he does not understand that concern.

Mr. Campbell informed the Board a variance of use would be needed because a shooting range is not allowed in Ag 1 zone, a variance from the property line setbacks would be required for the line between Mr. Blocher and Mr. Boyd's property, and a special exception for the earthen structure. Mr. Vogel asked since this is for personal use only if screening would be required. Mr. Campbell replied the ordinance states screening is required if approved. Mr. Campbell stated the Board would need to start with a vote on the variance of use first. Mr. Thrush read Statement of Fact for a variance of use, reminding board members what must be proven to pass the variance, and asking Mr. Blocher to address the factors.

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The need for the variance arises from some condition peculiar to the property involved.
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.
5. The approval does not interfere substantially with the comprehensive plan adopted under the zoning law.

Mr. Blocher responded

1. Health and Safety I think we have already covered that.
2. The neighbor closest to the structure is not in here screaming about property values for his home and it is not going to affect value of farm ground.
3. The hill on my property was not big enough so I rearranged dirt to make larger and safe.
4. Unnecessary hardship, I am not sure how they are intending that.
5. Comprehensive Plan – includes the building of roads, infrastructure, so we can grow and thrive together. We all must work together to improve our community.

Mr. Campbell added that he checked with two local real estate professionals and was told by both that it would not affect property values. It might take longer to sell neighboring property, but would not affect values.

Mr. Vogel asked if there were any further questions or concerns. There being none, he asked for a motion on the variance of use. Motion to approve the variance of use made by Mr. Milam; second by Ms. Lengel. Roll call vote was taken; motion passed unanimously. Mr. Vogel then asked for a motion on the property line setback variance. Motion to approve the variance from property line setback by Ms. Lengel; second by Mr. Milam. Roll call vote was taken; motion passed unanimously.

Mr. Milam spoke to Mr. Blocher asking him to accept that screening would need to be communicated with the Board. It would need to be screened in a manner that is pleasing to the eye. Mr. Blocher indicated he would work with the board on screening. Mr. Milam reminded Mr. Blocher to be mindful of the degree of use as discussed in this meeting tonight; if it becomes a problem a complaint will probably be made, which could result in problems. Mr. Milam stated he would expect Mr. Blocher to be considerate and courteous of the neighbors. Mr. Blocher stated he has been courteous in the past with shooting and no complaints had been made. Mr. Vogel then asked for a motion on the special exception for the earthen structure. Motion to approve special exception #6 for an earthen structure as presented was made by Ms. Lengel; second by Mr. Younce. Roll call vote was taken, motion passed unanimously. Mr. Vogel reminded Mr. Blocher to communicate about screening with Mr. Campbell.

Mr. Vogel then asked for a Complaints Update

Mr. Campbell shared with the board:

- 9 Complaints were rolled over from 2022, 61 new complaints have been received in 2023. Total worked year to date is 70. 27 complaints have been resolved.
- Unsafe Premise Order was filed on Linda Trent property located at 1106 E. 800 S., Lafontaine. Property has since gone through tax sale. Mr. Campbell has checked the property since the tax sale and stated it has been cleaned up considerably, but he is not sure who is doing it.
- Myron Dill, property located at 231 E Wall St, Liberty Mills, was to appear in court in September, but did not show up. Contempt charges will be handled by Mr. Thrush.
- An Unsafe Premise Order has been issued to 320 Washington Street Land Trust for the property located at 320 Washington St., Lagro. The certified mailers have been delivered, but no contact has been made by the property owner as of today. Per the Unsafe Premise Order, the owner is to appear before Plan Commission on November 2, 2023.
- An Unsafe Premise Order has been issued to Ada Ebert for property located at 11465 S State Road 15, LaFontaine in Liberty Township. The home burnt in 2022. Currently there are holes in the roof, windows missing, and considerable foundation damage on one side. A contractor has contacted the office, the structure is being razed. Ms. Ebert was also scheduled to appear before Plan Commission on November 2, 2023; however, contractor feels they should be able to complete the demolition prior to that date.
- The Leo and Rosalie Elshire property (located at 10643 S. 550 W., Amboy in Waltz Township) that has been split contradictory to the deed restrictions previously placed by the Board, no further contact has been made. Mr. Campbell will continue to try to schedule a time to meet with the owners.

Mr. Vogel asked if there was any other business from Board Members or the public. There being no further business, Mr. Vogel asked for a motion to adjourn. Motion made by Mr. Younce, second by Mr. Milam. Motion passed 4-0. Meeting adjourned at 8:06 p.m.

Amanda Lyons

Secretary, Wabash Co. Board of Zoning Appeals

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