

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: Mark Frantz, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Meeting Minutes of Tuesday, February 6, 2024

(Rescheduled from January 23, 2024 due to weather conditions)

Roll call was taken with the following present:

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

Staff: Mark Frantz, Board Attorney; Brian Campbell, Plan Director; Amanda Lyons, Administrative Assistant

Absent: Jerry Younce

Others present: Cathy Cruz, Bill Burnsworth, Nicky Burnsworth, Kristina Lynn, David Terflinger. Speaking but not signed in: Marcus Niccum, Krystal Niccum, Ken Combs.

The Wabash County Board of Zoning Appeals met on Tuesday, February 6, 2024, 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 December 27, 2023 meeting. There being none, Mr. Vogel asked for a motion to approve minutes as written. Motion by Mr. Milam, second by Ms. Lengel. Board proceeded to roll call vote; motion carried 3-0-1, with Mr. Dale abstaining because he was not in attendance at the December meeting.

Mr. Vogel opened nominations for officers. Mr. Dale nominated Mr. Vogel for chair; Mr. Vogel declined the nomination. Ms. Lengel nominated Mr. Milam for Board Chair, second by Mr. Dale. There being no further nominations, members proceeded to vote. Mr. Milam was approved as Board Chair. Mr. Milam nominated Ms. Lengel as Vice Chair, second by Mr. Dale. There being no further nominations, members proceeded to vote. Ms. Lengel was approved as Vice Chair. Ms. Lengel nominated Ms. Lyons as Secretary, second by Mr. Milam. There being no further nominations, members proceeded to vote. Ms. Lyons was approved as Secretary.

Mr. Milam stated Special Exception #1, Cory Brainard, for a pond in Noble Township was next on the agenda. Mr. Campbell informed the board Mr. Brainard's application had received a favorable recommendation from the Plan Commission; however, it was determined he would also require a variance because his plans indicate he will be out letting into the side ditch, which is not allowed per the ordinance. Wabash County Highway and the Drainage Board have reviewed the plans and have no issues, but as it is not accepted by the ordinance, he will require a variance. Mr. Campbell has made Mr. Brainard aware and is requesting a continuation to the February 27, 2024 meeting to hear the special exception and the variance. Mr. Milam asked if there anyone present had questions or concerns about the proposed pond; there being none he asked for a motion. Motion to continue to February 27th was made by Mr. Vogel, second by Ms. Lengel. Board proceeded to roll call vote; motion passed unanimously.

Mr. Milam stated next on the agenda would be Variance #1, Robert & Kristina Lynn, requesting a variance from the development standards for side setbacks and aggregate distance in Paw-Paw Township. Mr. Campbell stated the property is at 139 E. Pike Street, Roann. Mr. Campbell explained to the board the existing home, at its closest point is approximately 7 feet from the existing south property line. The homeowner has requested permits for two home additions, these would be in line with the existing walls and would not encroach into the side yard

setback any more than it already does. Mr. Campbell reviewed the property on GIS with the board, noting that the existing southwest corner of the garage on the applicant's property is approximately 20 feet from the existing northeast corner of the south adjoiners garage. Per the ordinance the aggregate distance between accessory structures in an R1 zone is 26 feet. If allowed to build the addition onto the home as requested, it would be approximately 12 feet from the adjoiners garage and further within the aggregate distance setback. Mr. Campbell added that given the proximity of the homes in this area it will be very difficult for anyone to do any upgrades or additions onto any home or accessory structure without being within these required setbacks per the ordinance. After receiving notice of the application, Mr. Lawrence Allison, westerly adjoiner on the other side of the alley, and requested information about the plans. After reviewing the plans with Mr. Allison, he had no concerns. Brianna Niccum, the south property owner came to this meeting early and addressed Mr. Campbell about the content of the letter she had received as an adjoining property owner within 250 feet and Mr. Campbell explained the details of the requested variance and the Mrs. Niccum said she was fine with what they planned and did not want to stay for the meeting. Mr. Milam asked Ms. Lynn to share more about the addition plans. She explained one addition would be to add a walk-in closet for the master bedroom; the other addition would eventually be used for a laundry room. Mr. Milam asked if there were any further questions from board members or others in attendance. There being none, he asked for a motion. Mr. Vogel made a motion to approve Variance #1 as presented for the side setbacks; second by Mr. Dale. Roll call vote was taken; motion passed unanimously. Mr. Dale made a motion to approve Variance #1 as presented for the variance from the aggregate distance; second by Ms. Lengel. Roll call vote was taken; motion passed unanimously. Mr. Campbell reminded Ms. Lynn that she would need to get the permit from the office for the addition.

Mr. Milam stated next on the agenda would be Variance #2, Marcus and Krystal Niccum, requesting a variance from the development standards for the roadway setbacks. Mr. Campbell informed the board the property is located at 1359 W. 800 N. He stated he was made aware of an addition by the Assessor's Office because they were unable to find record of a permit. Mr. Campbell reviewed the site and verified that a permit had not been issued. He stated he sent the property owner a letter on November 21st, 2023 detailing the issue, explaining the need for the variance and a building permit. The property owners contacted the Plan Commission Office promptly to get the needed applications in process. Mr. Campbell reviewed the property on GIS with board members, explaining that the home addition would not be any closer to the road than the existing structure, adding that 800 N is classified a primary road with a setback of 95 feet. Mr. Milam asked if there were any questions from board members or those in attendance. There being none, he asked for a motion. Mr. Vogel made a motion to approve Variance #2 as presented for the roadway setback, second by Ms. Lengel. Roll call vote was taken; motion passed unanimously.

Mr. Milam then asked Mr. Campbell for an update on complaints. Mr. Campbell stated:

- 50 Complaints have been worked in 2024
- 43 of those 50 were rolled over from 2023
- 7 new complaints have been received in 2024
- 3 complaints have been resolved in 2024

Several people were present with concerns on a property located at 32 N. Lakeview Drive. Mr. Campbell explained to the board that a complaint had been filed about chickens at the property. He has been in contact with the property owner, but at this time she has not filed any paperwork. Mr. Campbell stated the chickens, roosters, and ducks were recently removed, but there would still be a need for a variance for the structure(s) on the property, due to setbacks and being located forward of the front of the residence. After some discussion regarding what would legally be determined to be the front of the residence since it is on a corner lot, it was determined the front would be facing Lakeside Drive. There have also been complaints filed with Mr. Campbell and with the fire department regarding the burning of trash and manure on the property. The fire department provided the property owner with a copy of the state statute regarding open burning when they were dispatched to the property recently. Mr. David Terflinger, a neighbor, indicated he believes there is still burning happening on the property. Mr. Terflinger shared pictures of the property with board members. He explained that there are seven unauthorized structures, without permits, that are sinking in the mud. He added that the issues started in May of

2023, when the property owner started with a couple chickens. It quickly grew to 35 chickens, plus roosters and ducks. Mr. Terflinger stated that they are now having issues with large rats in the neighborhood, specifying that it had not been a problem prior. Mr. Terflinger stated he was aware there were procedures and policy in place to protect property owners, and felt those ordinances should apply to everyone; however, this property owner is ignoring all of them. At this point nothing has been cleaned up. He would like to know where the property is at in the procedures and policies to get the issues handled. Ms. Lengel asked if the burning was happening in a fire pit. Mr. Terflinger responded, it would not be an issue if it was clean wood being burnt in a fire pit; the issue is the trash and manure that are being burnt. Mr. Milam asked what the Sandy Beach covenants say about these issues. Mr. Ken Combs introduced himself as a board member on the Lake Association, but explained he is new to the board and has not researched all of it yet. He stated he will look into it further, as he has heard multiple complaints about the property as well – with residents from both sides of the lake complaining they could hear the roosters. Mr. Campbell added that previously Mr. Howard and Mr. Thrush had asked the Lake Association Board to handle issues and to bring before the Plan Commission when they needed help. He indicated the issue is not new, but with the number of complaints received it requires a lot of time to address them all. He informed the board and those present that he had given the property owner until Monday, February 12th to file the necessary paperwork or an unsafe premise order would be filed. Mr. Campbell asked Mr. Terflinger what would happen if the buildings received board approval; Mr. Terflinger replied, he would deal with it as he realizes it is up to the board. Mr. Terflinger asked how many deadlines the property owner could be given before action was taken, adding that two members of the Lake Association board stated they have not had any legal recourse without first coming to the Plan Commission or Board of Zoning Appeals. Mr. Frantz stated he thought the Lake Association should be able to get an injunction through the courts based on their covenants; however, it might also be difficult if the covenants had been abandoned for too long. Mr. Terflinger indicated the Lake Association would not have the finances to proceed to court and he was asking for help dealing with the property issues. Mr. Campbell informed him he thought the property owner would file the necessary paperwork and reminded those with concerns that some of the structures may be too small for permitting to be required.

Mr. Milam then asked if there was any other business to be brought before the board. Mr. Campbell asked for the board consideration on the following:

- Jared Cordes, 5226 W 700 N in Paw-Paw Township, requested a building permit for a grain bin and dryer. He owns three properties; his plan includes building over the property lines. Mr. Campbell asked the board if Mr. Cordes would need to follow setbacks when he owns multiple adjoining parcels. He reviewed the parcels with the board on GIS. Mr. Vogel explained what the process had been for purchasing these parcels as they were previously a part of the railroad. Mr. Frantz asked if the property owner was willing to combine the parcels. Mr. Vogel explained that the assessed value is typically much lower on the railroad parcels. Board members discussed options to have the parcels combined or to ask the property owner to apply for a variance to be compliant with the zoning ordinance. Mr. Milam stated it was an issue to handle carefully so as to not infringe on property rights, but to also protect those yet to come. Mr. Frantz advised board members he would recommend upholding the ordinance by asking the property owner to either combine the parcels or apply for a variance. Mr. Campbell stated he will inform Mr. Cordes of the options to proceed.
- A property owner from 201 W Kendall St in LaFontaine has requested a split of the lot. It is zoned General Business. They intend to split off a pole structure, that was previously used as a business structure, to be used now as a residence. Mr. Campbell is unsure what setback requirements for this would be. Page 5-42 and 5-43 of the zoning ordinance have conflicting information. After discussing the setbacks listed on these pages, Mr. Dale stated he sees no problem with allowing them to apply for a variance for the split since the buildings are existing structures, he noted that caution should be used in these situations because the setbacks need to allow access for emergency vehicles. Mr. Milam and Mr. Frantz reviewed the process to amend the ordinance going forward.
- Mr. Campbell also noted an issue with a split that was done in Wheatfield Estates in Roann. The property was split and deeds recorded even though a variance should have been required. The deeds were recorded in square feet, and when presented to the auditor's office they thought it was for the structures

only not the lots. Mr. Campbell asked if the board was willing to accept it or if they would want a variance filed after the fact. After discussion, board agreed to accept as it is.

Mr. Milam asked if there was any other business to come before the board. There being none, he asked for a motion to adjourn. Motion to adjourn was made by Mr. Vogel; second by Ms. Lengel. Vote taken; motion passed unanimously. Meeting adjourned at 8:48 p.m.

Amanda Lyons
Secretary, Board of Zoning Appeals

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