

**AREA BOARD OF ZONING APPEALS
ST. JOSEPH COUNTY, INDIANA**

MINUTES

Wednesday, February 9, 2022
1:30 p.m.

4th Floor, Council Chambers
County-City Building, South Bend, IN

MEMBERS PRESENT:

Robert Hawley
James D. Moffitt
Donny Ritsema
Sidney Shafer
DJ Tavernier

MEMBERS ABSENT:

Joe Velleman

ALSO PRESENT:

Abby Wiles
Ryan D. Fellows
Shawn Klein
Brandie Ecker, Counsel
Shelley Marker

PUBLIC HEARINGS:

- 1. The petition of LITTLE FLOWER VENTURES LLC seeking the following variance(s): 1) From Section 154.107(B) to allow a lot width of 53' where 60' is required for lots with public water and sewer and 2) From Section 154.107(C)(2) to allow a side yard setback of 5' where 6' is required for lots having an area of less than 12,000 square feet, property located at 18325 Bailey Ave (also known as 54196 Burdette St – Lots 263, 264, & 265 Heplers Morningside Addition; and unaddressed abutting property to the east – Lot 266 Heplers Morningside Addition), Clay Township. Zoned R: Single Family District (County).**

(Audio Position: 0:05:49.2)

Ryan Fellows: What I have described...

PETITIONER

James A. Masters, attorney for Nemeth Feeney Masters & Campiti, P.C., 350 Columbia St, SB, IN: Speaking on behalf of the petitioner., given the absence of a member of your board the petitioner would like to table the matter until next month.

Brandie Ecker: They can do that, have it tabled to next month since the member is not here.

Robert Hawley: Do we need a motion to do that?

Brandie Ecker: Technically he should have approached the secretary before the petition was read.

James A. Masters: We just found out five minutes ago.

D.J. Tavernier: It was disclosed in the statement, that is why we did it first.

James A. Masters: I didn't want to get up in the middle of your presentation and walk across the room and interrupt what you were saying.

DJ Tavernier: If there anybody that wants the motion to be heard by all seven board members, six members if we don't have seventh, please go talk to Shelley now.

Brandie Ecker: Since he requested it of the Board instead of going to the secretary there needs to be a vote on it.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

After careful consideration, the following action was taken:

Upon a motion by Robert Hawley, being seconded by Donny Ritsema and unanimously carried, a petition by LITTLE FLOWER VENTURES LLC seeking the following variances: 1) From Section 154.107(B) to allow a lot width of 53' where 60' is required for lots with public water and sewer and 2) From Section 154.107(C)(2) to allow a side yard setback of 5' where 6' is required for lots having an area of less than 12,000 square feet for a proposed 6-lot subdivision was tabled as presented.

Robert Hawley – Yes
Joe Velleman -Absent
DJ Tavernier – Yes

Sidney Shafer - Yes
Donny Ritsema -Yes
James D. Moffitt - Yes

- 2. The petition of DSCO LLC, ALEECOST LCC, and S, B Mall LLC As Tenants-In-Common with 1/3 Interest seeking the following variance(s): 1) from Section 154.378, to allow a freestanding multi-tenant sign with a height of 32' where the maximum height is 25' to allow an existing sign to be placed at a new location on the parcel on which it is currently located, and 2) from Section 154.378 (E) (2) to allow a front setback of 13' from the east and south property lines where 25' is required to allow an existing pole sign to be placed at a new location, property located at 52991 STATE ROAD 933 HWY, Clay Township. Zoned C: Commercial District (County).**

(Audio Position: 0:09:32.3)

Shawn Klein: This petition concerns an existing sign along SR933 just north of Cleveland Road. It is the sign seen here. Due to the INDOT right-a-way taking along 933, the sign will need to be relocated. Since it is legal conforming with regard to the height and the front setback, they will now need these variances for that relocation. It might seem familiar because it came before this very Board in April, and unfortunately due to some delays in the INDOT taking they were not able to start work on relocating the sign. It was granted by the Board at that time, but the six months has lapsed so it will need new variances in order to relocate the sign.

Staff recommends approval of the variances. When we turn to the state law criteria, we find that approval will not be injurious to the public safety because the sign will still meet the clear sight triangle at the intersection of 933 and Cleveland. We likewise find that it will not be injurious to public health, morals and general welfare as it is just a relocation of an existing sign.

We find that the use and value of the area adjacent to the property will not be affected in a substantially adverse manner. Mainly because this corridor of 933 is full of numerous other signs that are legal non-conforming with regard to height and setbacks. It is not out of character with the neighborhood in any way.

We also find that with the strict application of the terms of this chapter would result in practical difficulties because in this case the property owner is being compelled to move a sign that could otherwise persist indefinitely at its present location. But due to the taking of the right-a-way, they need to move it elsewhere on the site.

PETITIONER

Charlie Schalliol, Sight Enhancement Services, 6001 Nimtz Parkway, SB, IN: As staff has previously stated, and been great to work with, this is a reup on a previous approved variance. It is obviously not what we wanted to do but due to construction and modifications and improvements we are before you today. The state found that the additional turn lane or additional drive lane would be beneficial in this corridor I don't disagree at all being a resident. Moving the sign to the corner will get it out of the area of the taking and it will allow the positioning of this sign at the intersection. We are going to be 15'8" back on the nearest point of the sign. But 16' to the corner so it has plenty of setback from the intersection itself. It is not the optimum location, but again, just based on the new configuration it is the place on the property we have left to put the sign. Thank you to you and the staff working on this project.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

After careful consideration, the following action was taken:

Upon a motion by Robert Hawley, being seconded by Donny Ritsema and unanimously carried, a petition by DSCO LLC, ALECOST LCC, and S, B Mall LLC As Tenants-In-Common with 1/3 Interest seeking the following variances: 1) from Section 154.378, to allow a freestanding multi-tenant sign with a height of 32' where the maximum height is 25' is allowed and 2) from Section 154.378 (E)(2) to allow a front setback of 13' from the east and south property lines where 25' is required to allow an existing pole sign to be placed at a new location on the parcel on which it is currently located was approved as presented, and will issue written Findings of Fact.

Robert Hawley – Yes
Joe Velleman -Absent
DJ Tavernier – Yes

Sidney Shafer - Yes
Donny Ritsema -Yes
James D. Moffitt - Yes

- 3. The petition of SOBECKI KIRK A & DEANNA S seeking the following variance(s):
1) From Section 154.092(A) to allow a lot area of 12.5 acres where a minimum of 20 acres is required, property located at 14000 PATTERSON RD, Madison Township. Zoned A: Agricultural District (County).**

(Audio Position: 0:15:09.3)

Ryan Fellows: The requested variance is to allow an existing single family home in an existing wooded area to be subdivided out from the surrounding cultivated land. There is an adjacent farmer who desires to purchase the cultivated land shown as proposed Outlot A and Outlot B, cultivated land will remain in production, and the single family home and wooded area would remain as shown.

Reviewing the three criteria in state law. Staff recommends approval of this variance.

PETITIONER

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, SB, IN: What we are doing is taking the property, the owners have about 85 acres on Patterson Road. There is an adjacent farmer that would like to purchase the existing farm ground. He would like to keep the homesite as you see there. This particular one where the house and the wooded area actually bisect all the farm ground. So what you are seeing is the proposal that we would create two out lots which would be unbuildable one on the westside about 20 acres. The one on the eastside is about 52 acres. The existing homestead we would create as the staff had mentioned about 12.5 acres, they would like to be able to keep that. Assuming the Board grants us the variance for the reduction

in the acreage for lot one. Then we would go through the subdivision process and actually create the two outlots that you see and the one legal lot of record for this.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

After careful consideration, the following action was taken:

Upon a motion by Donny Ritsema, being seconded by Robert Hawley and unanimously carried, a petition by SOBECKI KIRK A & DEANNA S seeking the following variances: 1) From Section 154.092(A) to allow a lot area of 12.5 acres where a minimum of 20 acres is required was approved as presented, and will issue written Findings of Fact.

Robert Hawley – Yes
Donny Ritsema-Yes
DJ Tavernier – Yes

James D. Moffitt - Yes
Sidney A. Shafer -Yes
Joe Velleman - Absent

- 4. The petition of HANCHAR GAIL M seeking the following variance(s): 1) From Section 154.070(C)(1)(a)1 to allow 1,222 square feet of detached accessory buildings where a maximum of 960 square feet is allowed, property located at 51306 LILY RD, Clay Township. Zoned R: Single Family District (County).**

(Audio Position: 0:20:35.2)

Abby Wiles: As shown on the site plan, improvements on this property include a 768 square foot single family home and three detached accessory structures. The 640 square foot barn, 342 square foot garage, and 240 square foot shed. For properties that are less than one acre, a maximum of 1x of the ground floor of the primary structure or 960 square feet is permitted, whichever is greater, so 960 square feet here. The subject property is less than one acre so 960 square feet is the maximum.

In 2018, Building Department records indicate there was a fire that caused significant damage to the single-family home. In 2019, the Building Department red tagged the 640 square foot barn that was placed on the property without a permit shown on the screen. Records indicate that this was put on the property to serve as storage for household contents while repairs to the primary structure were being made. So used as storage space. The Building Department records for the property indicate that a temporary improvement location permit was granted for one year to allow the structure to remain in place. This is noted on the site plan for the barn that states 11-

18-2019 a note from Chuck Bulot, former Building Commissioner, that states for temporary storage unit one year.

The Building Department made the petitioner aware that the structure was not permitted because in total the accessory area exceeds what would be allowed in the Zoning Ordinances and a variance would be needed in order for the structure to remain in place permanently.

Staff is recommending denial of the variance based on the state code criteria that approval could be injurious to the public health, safety, morals and welfare. Because all accessory structures combined on the property are not subordinate and incidental to the primary structure. As you can see here, we have a shed, a barn, and the garage. In summary, in total they exceed what is allowed for the Zoning Ordinance.

The use and value adjacent would be affected in a substantially adverse manner because multiple accessory structures in excess what would be allowed by the Ordinance is not consistent with aesthetics of the surrounding neighborhood.

The strict application to the terms of the Chapter does not result in practical difficulty. There is nothing unique about this property that warrants the accessory area in excess of what is allowed for the Ordinance.

PETITIONER

Alexander Hanchar, 51306 Lily Road: As Abby mentioned, the original house there had extreme damage from a house fire that had happened. That is the reason why we approached Zoning for the barn itself. We were originally told yes when we got the barn. We were upstairs also the same time period when we talked to Chuck. For that year, and after that we were supposed to be able to get a permanent permit for the barn. Since then, the house has been under repair and the building in question is still being used for storage and work area to work on the house that was burned. We have been back and forth, yes we are allowed to have it, and now we are not allowed to have it. In the past two years we have been through Zoning several times, and this was the first time it was ever brought up that it was actually a problem. We had, several times we were told that it was no big deal, and when I go to get a permit it's a big deal.

I don't understand the denial seeing that the house is still under construction. You can see that is probably the nicest thing I have on the property. We are still working on the house and using the barn for storage. So, moving said barn will actually cost me an expensive amount of money to get it moved to a new property and it would take time.

Joe Velleman: You are still under construction?

Alexander Hanchar: Yes. I didn't have insurance when the house fire happened because I am in the process of taking ownership of the house from my mom to be my own. So that time period when the fire happened, I didn't have insurance to help me get the house taken care of. We went

immediately into like “oh, I have to take care of things” that is why the barn was purchased and put on the property.

Donny Ritsema: You had a one-year agreement with Chuck.

Alexander Hanchar: When Chuck was done, we were supposed to go into a permanent permit.

Donny Ritsema: What happen in 2020?

Alexander Hanchar: With COVID we never met again to discuss the issue and now that Chuck is no longer part of the Building Department. It was me going up to Zoning and speaking with Crystal at the Building Department going back and forth on this. A couple of months ago Ryan had settled this issue and there wasn't supposed to have any more issues. When I went to get the permanent permit that's when the square footage became an issue.

Abby Wiles: For a matter of clarification, everything that Alex has said is correct. Temporary structure placed then a meeting or discussion with the former Building Commissioner. One-year temporary permit it lapsed, there was COVID, the Building Department brought on two new staff members last year. One is Crystal Thompson, the inspector that Alex referenced. She was given a back log of properties that needed follow-up on and that is how this property came to our attention. I believe she might have red-tagged it.

Alexander Hanchar: She did red-tag it and we immediately jumped onto it and asked what is going on. According to our original agreement with Chuck, things were not supposed to go this way. We were supposed to be able to get a permanent permit for the property.

Abby Wiles: I don't know if this answers any of your questions how it resurrected and how we became aware of it. When the Building Department was able to bring on additional staff to work through some properties that were on the back log he was sent to Planning and Zoning after it was red-tagged, and the Building Department identified that a variance was needed. And calculating the accessory area I confirmed that with Alex, yes, a variance would be needed in order for all three structures to remain in place.

Robert Hawley: Since that time going back there hasn't been any change in regulations or guidelines that would affect the property in any way?

Abby Wiles: No, not that I am aware of.

Ryan Fellows: To add a little clarification, back when I was first introduced to the issue was in November, and the question at the time was having an accessory without a primary or having which counted as a residential living space was at questioned. That is the question I worked to solve. There was communication of somehow the Building Department thought that the central barn, the one with the yellow arrow above it, might have been used as a living space. The

testimony I received from the property owner was it was not being used as living space. And due to that testimony, I talked with the Building Department, and it was cleared up. Apparently even though there had been a fire in the house, the house continued to be lived in and there was not a need for an accessory without a primary because of that fact.

Donny Ritsema: Was all this in writing, I am assuming?

Abby Wiles: When you say “all this in writing” the timeline we went over?

Donny Ritsema: Yes.

Abby Wiles: Yes. It was pulled based on the information from the Building Department records. The nature of the permit, the permit included a note that it was temporary, as did the site plan. You can see on the right-hand side it reads 11-18-19, ok for temp structure, limit 1 year.

Donny Ritsema: What I am having a hard time is, why has nothing been done after because of COVID, I don't know if that is a reason but...year and half after and we are just now seeing this?

Abby Wiles: So, it was approved as a temporary structure through the Building Department...

Donny Ritsema: For one year and it's been a little over a year now.

Abby Wiles: Correct, it could have been brought back by the petitioner, it could have been followed up by the Building Department. I will say they brought on additional staff last year that gave them the capacity to address properties that needed follow-up that couldn't previously. And after becoming aware of the fact that they needed a variance, we as staff cannot exempt them from going through the process.

Robert Hawley: Has anybody been living on the property?

Alexandar Hanchar: Yes, I currently live at 51306 Lily Road.

Robert Hawley: How long have you lived there?

Alexander Hanchar: The house has been in my family since they bought it, I physically lived there almost 30 years.

Robert Hawley: When the fire happen you could still live on the property?

Alexander Hanchar: At the time of the fire, no. There were things we had to do to get the main house livable again, to get up to code. We got to where it is livable again while having the accessory building as a workspace and storage.

Robert Hawley: Could you live in the barn?

Alexander Hanchar: No I have not lived in the tiny barn.

Robert Hawley: There are no facilities in there?

Alexander Hanchar: No facilities. It is broken down into space to work.

DJ Tavernier: No electric?

Alexander Hanchar: There is electric to it.

DJ Tavernier: No sewer, no water.

Alexander Hanchar: No sewer, no water, just electric. Like I said it is a workspace and storage.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

Helen Shreve, 52723 Hastings St, SB, IN: We own some property around this but I'm not sure how it affects our property? Why I got that letter?

Abby Wiles: Per state statute and our bylaws notices are sent to property owners within 660' of the property that the variance is requested.

Helen Shreve: I object to it.

(Audio position: 0:38:23.1)

Robert Hawley: For informational purposes; if we deny today, what would they have to do?

Ryan Fellows: First, I want to know if there is an opportunity for a rebuttal since there was the last comment.

DJ Tavernier: Sir, do you have anything else to say?

Alexander Hanchar: At this point, and it is denied, and I have to remove it. It is going to cost me a good chunk of money to have it A. removed from the property" and B. find another place for it. And that is going to take time. I don't have the necessities to just pop it off the property and put it someplace else.

Robert Hawley: Was that structure built on the property or bought and moved onto the property?

Alexander Hanchar: It was bought and moved to the property.

Robert Hawley: It is moveable?

Alexander Hanchar: Yes, it is moveable.

Ryan Fellows: Maybe I would like to clarify that the application for the variance is not necessarily specific to a particular structure. It would be possible to meet the Zoning Ordinance if the garage were removed instead of the barn. Just so you are aware of all the options that are available.

DJ Tavernier: Are all three of these structures full?

Alexander Hanchar: Yes. The garage use to be my father's workshop. He is disabled, and that is all his things in there still. I would have to clean it out to take care of that. That would be a lot of work, not work, but it's work. Cause going through his stuff is a lot. The other barn is still filled with my parent's stuff from previous, from when they lived at the property. That is why I bought the other barn to help when I took care of the house fire. Was to get everything out of the house fire that was salvageable put it in there, and a warm working space while working on the house. It has become a workshop in this time period because where I do all the work for the house.

DJ Tavernier: The only one you'll be able to tear down would be the garage.

Alexander Hanchar: Right.

DJ Tavernier: Tearing down the garage isn't an option?

Alexander Hanchar: At this time I would say no. When the house is whole again, we would actually consider putting on an addition on the north side of the house that was supposed to be a garage in the first place. I had discontinued that work because of the house fire.

Sidney Shafer: Now does that count as part of the house if it is added on?

Abby Wiles: If it is attached.

Sidney Shafer: If it is attached then you'll be good to go if you make it over 300' roughly.

Abby Wiles: The max accessory area relates to detached structures.

Alexander Hanchar: Is it possible because it's already next to that other barn if we add it like an addition to the existing barn would that be a problem?

DJ Tavernier: No because it is still detached from the house. It has to be attached to the house.

Alexander Hanchar: So basically, I need to move it over to the house and attached it to the house.

DJ Tavernier: You can't take that shed and attach it to the house.

Alexander Hanchar: It would be hideous for one.

Donny Ritsema: You would have to demolish the garage and build onto the house.

DJ Tavernier: That's not true. He can add onto the house as a garage and file a permit if he wanted to, the garage would be torn down after the new one was built.

Robert Hawley: How long do you think before the house is habitable?

Alexander Hanchar: It is habitable the moment we got it back up to that portion of it. I am living in the house. But as far as finished that is a good question. I've not been able to 100% work on it myself because I do work almost 80 hours a week. When my time period spent on the house is limited.

Robert Hawley: Good to know you have a place there that you can actually live, sleep and eat. It is available to you so if you were going to add to the house you are right there, that is a good thing.

DJ Tavernier: In order to tear down the garage, you'll need what, how much time do you think you'll need to get rid of the garage? Obviously, you want the shed.

Alexander Hanchar: The garage needs work and the whole property needed work when I acquired it from my parents.

DJ Tavernier: What time frame are you thinking you might need?

Alexander Hanchar: That is hard to tell. Because I would have to handle things with my father and my father is not mentally always coherent.

(Inaudible conversation between Board members)

Abby Wiles: The house is 968 square feet. The Zoning Ordinance for the properties less than one acre in area allows the first floor of the primary structure or 960 square feet whichever is greater. It depends on how large the addition would be to the house. He still might be at that

960 threshold even with an addition we don't know until we see plans. If it were larger than 192 then he could get an additional accessory area.

(Inaudible conversation between Board members)

Abby Wiles: 576 square feet plus 768 square feet gets him at 1,344 square feet.

Sidney Shafer: (inaudible)

Abby Wiles: Please speak into the mic.

Ryan Fellows: Part of the conversation, if I understand it correctly, if it were denied, options exist including the possibility of adding onto the house or demolishing the garage would make it complaint. Either of those are two possibilities and so denial would result in options still being available?

DJ Tavernier: Correct.

After careful consideration, the following action was taken:

Upon a motion by Donny Ritsema, being seconded by Robert Hawley and unanimously carried, a petition by HANCHAR GAIL M seeking the following variances: 1) From Section 154.070(C)(1)(a)1. to allow 1,222 square feet of detached accessory buildings where a maximum of 960 square feet is allowed was denied as presented, and will issue written Findings of Fact.

Robert Hawley – Yes
Joe Velleman -Absent
DJ Tavernier – Yes

Sidney Shafer - Yes
Donny Ritsema -Yes
James D. Moffitt - Yes

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact

A. Approval for the Finding of Fact from the January 12, 2022, ABZA meeting.

Upon a motion by Robert Hawley, being seconded by Sidney Shafer and unanimously carried 5-0, the Findings of Fact from the January 12, 2022, ABZA meeting were approved.

2. Minutes

No minutes to approve at this meeting.

3. Other Business

No other business at this time.

4. Adjournment

Upon a motion by Sidney Shafer, being seconded by Robert Hawley and unanimously carried 5-0, the February 09, 2022, ABZA meeting adjourned at 2:20 p.m.

RESPECTFULLY SUBMITTED,



DJ TAVERNIER,
Chairman of the Board

ATTEST:



ABBY WILES,
Secretary of the Board