

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

MINUTES

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

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

MEMBERS PRESENT:

Donny Ritsema
Sidney Shafer
DJ Tavernier
Joe Velleman

MEMBERS ABSENT:

Robert Hawley
James D. Moffitt

ALSO PRESENT:

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

PUBLIC HEARINGS:

- 1. The petition of 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, 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: 0:2:48.9)***

Abby Wiles: Shelley, the first petition was tabled prior to the meeting at the request of the petitioner. We will start with petition number two.

- 2. The petition of SR 23 REALTY LLC seeking the following variance(s): 1) From Section 154.378(E)(2) to allow a pole sign with a 0' setback where 25' is required, property located at 23607 STATE ROAD 23 HWY, Greene Township. Zoned C: Commercial District (subject to a final site development plan) (County). *(Audio Position: 0:3:52.4)***

Ryan Fellows: This property is west of Mayflower Road next to Hollywood Boulevard. A semi-truck hit the sign in the fall. The former sign was where this temporary marquee sign is now, in line with the utility pole. The Zoning Ordinance would require a replacement pole sign to be setback 15' from the right-of-way, placing it in the parking lot's lane of travel, disrupting vehicle circulation. The replacement sign will be 20' from the road.

Per state law, approval of this variance cannot be injurious to the public health, safety, morals, and general welfare of the community. The subject property features a continuous curb cut along

the SR 23 and Hollywood Blvd frontages. A monument-style sign could interfere with clear sight area requirements, impeding vision for drivers.

The use and value of the area adjacent to the property included in the variance cannot be affected in a substantially adverse manner, as the sign was existing.

And the strict application of the terms of this chapter would result in practical difficulties in the use of the property. The petitioner is proposing to replace a sign that was destroyed by a semi-truck, using the existing sign cabinet, with new poles that will be the same height as the previous sign, in a nearly identical location as what was there previously.

Based on the criteria in state law, staff recommends approval of this variance.

PETITIONER

Mark Cygirt, CEO of SR 23 Realty, LLC, 23607 SR 23, South Bend, IN 46614: November 01, 2021, we had a semi that took down the sign at the shop. The shop has been operating since 1940 and I have been there about 19 years. We recabinet the sign, maintenance the property as well as we can. Requesting to be able to fix the sign by reusing the cabinet and existing parts and pieces. The poles were damaged. So we are not going to change the footprint or the backdrop it will be the same since the shop has been around.

The way we have the light situation, I pay for two AEP dusk-to-dawns on either side of the building, one on Hollywood and one on SR23 closer to the building to illuminate the parking lot. Without the sign and the lighting at night the cars are dropped off and left there in the evening and there is not a lot of lighting that you can see. There is a criminal element that is letting them come by and do what they want to a customer's car while it is there in the evening. I request for both safety and the fact that it has been there for so long, have not had any problems with any neighbors with the sign. I am afraid if we run a tombstone or something smaller it will cause an issue where people are pulling out Hollywood. A lot of times a customer will pop in their car and just drive straight out and there would be a sign in their way and that could cause an accident at highway speeds. I request that we be able to replace the poles, put the cabinet back up and basically have what we had the last several years.

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.

Glen Brown: Coast to Coast Logistics, LLC: I am good with what the guy said who owns the shop there I happen to know him personally. I just came to the neighborhood, but I do to plan on moving in that property and my only concern is I hope it is not too bright...

DJ Tavernier: Sir.

Glen Brown: Yes.

DJ Tavernier: We have already heard and closed the public discussion.

Glen Brown: So, I don't count? I am not against it but I own a property right there and you sent me a letter so I can state my opinion.

DJ Tavernier: Unfortunately, we have already closed the public discussion.

Brandie Ecker: The Chairperson called for the public input, and no one indicated that they were interested. The public hearing was closed.

Glen Brown: I don't have a problem with it anyway I like the guy. I just hope the light doesn't affect my property where it will be too bright, I don't think that it will.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Sidney Shafer and unanimously carried, a petition by SR 23 REALTY LLC seeking the following variances: 1) From Section 154.378(E)(2) to allow a pole sign with a 0' setback where 25' is required was approved as presented, and will issue written Findings of Fact.

Robert Hawley – Absent

Joe Velleman -Yes

DJ Tavernier – Yes

Sidney Shafer - Yes

Donny Ritsema -Yes

James D. Moffitt - Absent

- 3. The petition of CADEN REAL ESTATE LLC seeking the following variance(s): 1) From Section 154.182(D)(1)(b) to allow the front yard (south) to include a parking area 10' from the right-of-way instead of the minimum 15' setback; 2) From Section 154.182 from the required side yard setback (east) of 20' to 10'; 3) From Section 154.332(A) from the required 2 deciduous shade trees or 3 deciduous ornamental trees in the front yard (south) to none; 4) From Section 154.332(B) from the required side yard (east) Type 2 (full screening) landscaping to a 6-foot high privacy fence; 5) From Section 154.334 from two required interior landscape islands in the off-street parking area to none; 6) From Section 154.335 from the front, side, and rear yard requiring screening**

of a compact row of 24-inch high shrubs for an off-street parking area to a 6-foot high privacy fence; 7) From Section 154.419(A)(1) from the required 24-foot aisles for perpendicular spaces for an off-street parking areas to 20-foot aisles; 8) From Section 154.419(A)(3) from the required painted lines, raised curbs or other means to indicated individual spaces to identify parking spaces in an off-street parking area to nothing and 9) From Section 154.422 from the required 4 minimum ADA parking spaces to none, property located at 50792 SR 933 & 19689 Palisade Ave, Clay Township. Zoned C: Commercial District (County).

(Audio Position: 0:14:02.7)

Ryan Fellows: Looking at this slide located at 50792 SR 933 is S&H Auto Group sales lot. The property Zoned C: Commercial with the vacant lot recently purchased by the auto seller to expand their auto sale lot to the east. The next property to the east is a single-family home, shown here on the right. And a picture of the vacant lot looking west from Palisade Avenue and then the existing auto sales lot. Looking northeast along Palisade Avenue and the next picture was included to show the existing auto sales lot does not have striping to indicate where the parking is.

Since the packet went out the site plan has changed. We have met with the petitioner and discussed several of the items and received a revised site plan and it went out via email. There were two revisions, variances one and two are unchanged.

Variance one is to allow the front yard (south side) to include a parking area 10' from the right of-way instead of the minimum 15' setback. Variance two is from the required side yard setback (east side) of 20' to 10', and staff recommends denial of these variances.

Approval of the variances would be injurious to the public health, safety, morals, or welfare. As noted in the Zoning Ordinance, C: Commercial District, Section 154.180 INTENT: Special attention should be paid to buffering whenever this district is located adjacent to any residential district or residential uses. Diminished buffering is contrary to the general welfare of the community.

Second criteria: the use and value of the area adjacent to the property included in the variance(s) would be affected in a substantially adverse manner. Diminished buffering would affect the use and value of the area adjacent to the property in a substantially adverse manner.

The strict application of the terms of this Chapter would not result in practical difficulties in the use of the property. This property is able to be used equally well as other properties in similar circumstances in the County.

Variances 3, 4, and 5 have been withdrawn by the petitioner, and the revised site plan shows compliance with the Zoning Ordinance requirements. That does include what we call type two landscaping along the eastern side which is shown by the green row. Type two landscaping is

evergreens, a double row of staggered evergreens, they have to be at least 6' high. A row of three ornamental trees and two landscape islands for trees as well in the parking lot.

Petitioner wishes to revise Variance 6 to just request variance from the side (east) yard requiring screening of a compact row of 24-inch-high shrubs for an off-street parking area to a 6-foot-high privacy fence. Petitioner will comply with the front (south) yard requirement, and the rear (north) yard does not require this screening. Staff recommends denial of revised Variance 6 so that the compact row of shrubs will still be required in addition to the other landscape screening on the eastern side to help add additional landscape buffering.

Approval of the revised variance would be injurious to the public health, safety, morals, or general welfare. Per Section 154.330 "Intent" in the Landscaping Regulations of the Zoning Ordinance, landscaping is an essential element of the site design process and is an important feature in promoting the public health, safety, comfort, convenience, and general welfare of St. Joseph County.

Second criteria the use and value of the area adjacent to the property included in the variance would be affected in a substantially adverse manner. Landscaping is intended to mitigate incompatibilities between adjacent land uses, reduce the negative impacts of higher intensity land uses on less intense adjacent land uses, provide a critical visual and noise buffering effect between higher intensity districts and less intense districts. lessen the impact of development on the environment by reducing glare and heat buildup, and break up large expanses of pavement so as to reduce impervious surface area, storm water run-off and the level of pollutants from non-point sources.

Third criteria the strict application of the terms of this Chapter would not result in practical difficulties in the use of the property. This property is able to be used equally well as other properties in similar circumstances in the County.

Variances 7 and 8 are unchanged. Staff recommends approval.

Variance 7 is from the required 24-foot aisles for perpendicular spaces for an off-street parking area to 20-foot aisles.

Variance 8 is from the required painted lines, raised curbs or other means to indicated individual spaces to identify parking spaces in an off-street parking area to nothing. By definition if you have no painted lines, you do not have aisles on the pavement.

Approval of the variances would likely not be injurious to the public health, safety, morals, or general welfare. The affected parking lines and aisles are not intended for use by the general public but are intended for use by motor vehicle sales staff with vehicles owned/controlled by the property owner. Therefore, the property owner's employees will be in an environment where

only vehicles owned by the property owner will be at risk of damage and exposed to more difficulty in maneuvering such vehicles.

The use and value of the area adjacent to the property included in the variance would likely not be affected in a substantially adverse manner. Parking lines and aisle widths should not affect neighboring properties.

The strict application of the terms of this Chapter would result in practical difficulties in the use of the property. A review of other motor vehicle sales lots in the area shows most of them either do not have parking lines/aisles, or lines indicating such are so worn away with age as to not be present sufficient to indicate parking spaces and aisles. Therefore, these variances would allow this property to be used as most other motor vehicle sales parking lots.

Petitioner wishes to revise Variance 9 to follow staff's recommendation to only require 1 ADA parking space instead of 4.

Approval of the variance to allow only one ADA parking space would not be injurious to the public health, safety, morals, or general welfare due to most parking spaces being used to store motor vehicle sales inventory, not for customer and employee use.

The use and value of the area adjacent to the property included in the variance would likely not be affected in a substantially adverse manner as ADA parking spaces should not affect the adjacent area.

The strict application of the terms of this Chapter would likely result in practical difficulties in the use of the property due to most parking spaces being used to store motor vehicle sales inventory, not for customer and employee use.

Joe Velleman: We are not worrying about the existing area of the location, only these three lots that are were bought and want to be a parking lot?

Ryan Fellows: The Zoning Ordinance treats this as one zoning lot and that is why the handicap parking space will end up being next to the building. But all of these variances other than that will just be for the new lot that is vacant right now that is set to be built upon.

PETITIONER

(Audio position: 0:24:26.7)

Debra Hughes, Project Civil Engineer, Surveying and Mapping, LLC, 3220 Southview Drive, Elkhart, IN and Dave Jamieson owner of the LLC and owner of the property: This is a successful used car lot and the owner would like to expand. They purchased the adjoining commercially zoned lot recently. The property is small. It is about 150' by 95', so not a lot of space. The goal is to provide additional space for the cars that are on sale in the facility. As Ryan said, we are

asking for some variances. We do think there are a few practical difficulties, which is why we are here.

The south setback we are providing 10' instead of 15' as the Zoning Ordinance requires. The current setback is about 2 ½', if, on the property that is currently developed and the existing curb (right here; pointing with a laser pointer) so we are providing four times what there is existing. It isn't 15', but its substantially more than the existing.

To have additional spaces would further decrease these aisle widths of 20' and 22' so we are asking for the variance to avoid doing that.

The side yard we are asking for 10' instead of 20' because of the narrow 95' width of the lot. Currently they have 27' in between an existing curb line and the proposed parking spaces. Which, it seems adequate, except you can see there are two light poles that they are going to be retaining with some curbing around them. Those will be hazards out in the middle of that 27' and keep that from being used from fully as it might appear. To gain another 10' would further narrow down this 25' aisle or this 27' aisle.

The parking lot shrubs, we have added a row of compact shrubs along the south side where they will be visible to the residence and across the street neighbor. With this 10' side yard setback there really isn't room for they type two landscaping and the shrubs. The type two landscaping would be dense, it's tall plants, 6' high of planting and would provide a nice green buffer between the two lots. The shrubs at 24' isn't going to add anything substantial to that.

We appreciate Ryan's support on variance 7 and 8 with the fact of the sale lot doesn't need striping and aisle width a regular parking lot might need. We also appreciate the support, we have added one handicap parking space near the office. Standard parking lot would merit four spaces, if it was used by the general public, but this is for storage of cars, and one for employees should be adequate.

DJ Tavernier: I have a couple of questions for you. You are not wanting to stripe the parking lot because it is currently not striped now, correct? Theoretically you are not going to have any actual aisle that are going to be shortened or narrowed because they are not going to be there? There are no designated spaces?

Debra Hughes: Correct.

DJ Tavernier: What is the reasoning behind not wanting the 24" shrubs? Because you don't want the 2' or 3' that it will take up? Or is it because you are trying to maximize your space?

Debra Hughes: The 10' side setback (east setback) is going to be taking up almost completely by the type two landscaping row as Ryan said. It is double row of staggered large shrubs such as a spruce. Those would more than take up that 10' and there really isn't room for additional row

of low shrubs and those would not provide much of a buffer for the neighbor if they had the large 6' shrub, so that is the reason.

DJ Tavernier: On variance number six; we are requiring screening of compact row of 24-inch-high shrubs for an off-street parking area to a 6-foot-high privacy fence. Where is the privacy fence?

Debra Hughes: So the privacy fence was in the original petition. That's what we thought would be more desirable than the landscaping. The original petition had no landscaping on the east side just the privacy fence.

DJ Tavernier: Instead of the privacy fence, we are doing the 6-foot pine trees that are staggered.

Debra Hughes: Yes, that meets the ordinance. The fence is actually the variance in itself. We didn't want to have any more variances, so we just went with the type two landscaping to meet that requirement.

Ryan Fellows: I would like to double check with Brandie and Abby with this. The way we advertised this was for the replacement of the 24" high shrubs with a 6-foot-high privacy fence, so I don't think we can amend it to remove the 6-foot privacy fence all together. I'm sorry if in our conversations we didn't make that clear or not.

Brandie Ecker: I would agree with that interpretation. We can change things on the fly if it makes it more closely align with what the Zoning Ordinances would require. But in this case removing the fence would make it less close to what the Ordinances is requiring. You are essentially asking for nothing there instead. So, it would have to be readvertised for that one if that is what you really want.

Debra Hughes: The fence is a variance in itself, so to be closer to the Ordinances to not have the fence.

(Audio position: 0:31:13.0)

Ryan Fellows: There was wording in the other variance, where you are talking about, the original variance #4 was to remove the full screening type two landscaping to a 6-foot-high privacy fence, and in the conversation, we said, instead of not doing the type two landscaping you said, "yes we will do the type two landscaping", that kind of settled variance #4. But when the variance was written for #6, what was applied for and what made it into the advertisement was "instead of doing the 24 compact row of shrubs the replacement to that would be a 6-foot privacy fence". I think originally the thought process was you have one 6-foot privacy fence that is good for both full screening and the compact row. The way it was advertised it would only be able to be honored as a replacement of the 24" high shrubs, could only be replaced with a 6-foot

privacy fence, or it could be denied in which case it would be 24” high shrubs would be allowed, and the 6-foot privacy fence would not be required, or you can readvertise.

Abby Wiles: Can I just clarify what we are dealing with here? There are a lot of different variances. We have four different types of required landscaping in the Zoning Ordinance. Foundation, perimeter, parking lot landscaping and parking lot screening. They asked for variances originally for parking lot screening and then perimeter that would be the buffer yard. Debra came forward and said, “we don’t need a variance for the perimeter or the buffer yard landscaping we will meet the requirements there”. But for the parking lot screening, that would also be required adjacent to residential. Which is the Section 154.335, that off street parking screening area. Instead of doing the compact shrubs we will go ahead and put a fence. It is kind of like a double buffer for fence and type two landscaping.

Debra Hughes: The fence is fine; the owner is willing to do that.

DJ Tavernier: We are doing the staggered row of pine trees and a 6-foot fence from the parking lot to the residential house?

Abby Wiles: Correct. The buffer landscaping as revised, is what meets the requirements of the Ordinance, and the fence that they are proposing would be in place of the parking area shrubs. Is that correct Deb?

Debra Hughes: Correct.

Abby Wiles: Ryan went ahead and said, meet the requirements of the Ordinance, that was his recommendation. But if you all saw fit that the fence and the type two buffer yard landscaping that is proposed is sufficient, then you can grant that.

Joe Velleman: For Variance 6?

Abby Wiles: Yes. Does that provide any more clarity?

Joe Velleman: Which way will it lay. Fence then shrubs, then trees and house or house...

Debra Hughes: The type two landscaping would be west of property line the fence ,would be west of property line and then house. So, car, type two landscaping, fence, and then house.

Donny Ritsema: The type two plant species, it said arborvitae in the site plan, but there are different varieties of arborvitae, so what specifically are you proposing to use as the plant material for that screening?

Ryan Fellows: I want to clarify that there was a revised site plan and amended site plan, and the arborvitae was on the first revision and the second revision replaced the word arborvitae with

type two landscaping. If there were going to be arborvitae, these Zoning Ordinance considers that a narrow form of evergreen which are treated as only being allowed for 10% coverage. It has to be three times as many, but the height is only four feet as compared to six feet required for regular evergreen trees.

Debra Hughes: The type two provides multiple options. So rather than being specific and get into difficulties with specific, we just said we would meet the type two landscaping with those rules.

DJ Tavernier: They all can't be just all one type of ...

Ryan Fellows: It could not just be arborvitae, it could only be up to 10% arborvitae.

Donny Ritsema: What is the rationale to do the fence first then the plant material? Why not do the landscaping material then the fence?

Debra Hughes: Usually a fence is put very close to the property line. To provide a designation of where it is. It doesn't have to be. It also makes it easier for the property owner to maintain the plants if they are on the car side, but it would be the other way if that was important.

DJ Tavernier: As far as the lighting is concerned, are we going to have directional lighting that will face straight down, or will it be flared out?

Debra Hughes: The site plan shows notes they are shielded LED fixtures. There are three new poles, LED, shielded LED fixtures, two existing poles that have additional head added with the same down cast fixture. The neighbor that lives to the east asked that the existing fixtures also be casted down and shielded. Which they are not, and the owner is willing to do that as well.

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.

Ryan Fellows: You did receive an email of remonstrance from Kyle Lindzy that included several pictures, and the issues were already discussed, particularly with light shining in, and the petitioner said they would already address it problem.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and unanimously carried, a petition by CADEN REAL ESTATE LLC seeking the following variances: 1) From Section 154.182(D)(1)(b) to allow the front yard (south) to include a parking area 10' from the right-of-way instead of the minimum 15' setback, 6) From Section 154.335 from the side (east) yard requiring screening of a compact row of 24-inch high shrubs for an off-street parking area to a 6-foot high privacy fence, 7) From Section 154.419(A)(1) from the required 24-foot aisles for perpendicular spaces for an off-street parking areas to 20-foot aisles, 8) From Section 154.419(A)(3) from the required painted lines, raised curbs or other means to indicated individual spaces to identify parking spaces in an off-street parking area to nothing, and 9) From Section 154.422 from the required 4 minimum ADA parking spaces to one were approved as presented. Variance 2) From Section 154.182 from the required side yard setback (east) of 20' to 10' was denied as presented. Variances 3) From Section 154.332(A) from the required 2 deciduous shade trees or 3 deciduous ornamental trees in the front yard (south) to none, 4) From Section 154.332(B) from the required side yard (east) Type 2 (full screening) landscaping to a 6-foot high privacy fence, and 5) From Section 154.334 from two required interior landscape islands in the off-street parking area to none were withdrawn as presented, and will issue written Findings of Fact.

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

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

- 4. The petition of MUSIAL BRIAN & JORJA D and STEPHENS, CHRIS C seeking the following variance(s): 1) From Section 4.01 (K) to allow a lot width of 25' where 100' is required to allow the adjustment of a property line for a parcel containing an existing house, property located at 1505 ROGERS ST and the unaddressed abutting parcel to the north, Penn Township. Zoned R1 Single Family District (Osceola).**

(Audio Position: 0:44:54.7)

Shawn Klein: The residents of the home seen here, based on a mortgage survey they received 30 years ago, believed they owned the entire property that contained their house. They recently found out, unfortunately, that this was not true. A portion of the home site falls on adjacent property which is owned by the co-petitioner Chris Stephens. The two property owners got together to resolve the issue, and Chris will transfer property to get the house all on one lot that then will be owned by the Musial's. In order to shift this property line, it will require a subdivision, which is why we need this lot width variance. Really the lot is effectively getting wider and larger in area. The reason we need the variance, because the lot width is based on frontage and there is limited frontage in that it is just in the half right-of-way of Rogers. Because Rogers effectively dead ends into the lot. Staff recommends approval of the variance.

When we turn to the state law criteria; we find that the approval will not be injurious to the public health, safety, morals, and general welfare of the community. There are many justifications for requiring a minimum lot width. But none are really at play here. The house is already readily visible from the right-of-way for emergency vehicles. Since the lot is actually becoming wider there is plenty of space in the future for septic if needed.

When you turn to the value and use of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.; it's already a preexisting residential use and it will increase the use and value of the house itself. It will be on one parcel that can be owned by one entity in the future.

We find that the strict application of the terms of this chapter would result in practical difficulties in the use of the property. It would deny a land transfer which allows the homeowners to actually own the property that encloses their home site. It would also deny a subdivision wherein everything else related to the lot is actually becoming more in conformance with Subdivision and Zoning Ordinances of Osceola. Just in respect with the frontage that it will not comply.

Joe Velleman: When you talk about the lot lines. The house is not on the lot they bought.

Shawn Klein: Basically. I'm not sure if that line between the lots is really accurate. I think it cuts through the lot but I believe they own the southern lot there and Mike can verify.

Joe Velleman: I didn't know if it was extending north or south.

PETITIONER

Mike Danch, Danch, Harner and Associates, 1643 Commerce Drive, South Bend, IN: What had happened was over 30 years ago when they purchased this property, when they closed, all they received was a mortgage survey. Mortgage survey is not a boundary survey, so it is not actually specifying what you are purchasing. Someone did a mortgage survey, might have found one iron and based on that said "yes, this is what you are actually purchasing". Come forward in time 30 years, what we actually find out is the house encroaches onto the neighbor's property to the south. The garage is on the property to the south. When we went out to do the survey this will clean it up everything. We went back to the section corner, and we can see where the properties are. One of the petitioners, Mr. Stephens, is willing to work with our petitioner, the people that actually own the house. To go ahead and transfer property back and forth, so we are able to do a minor subdivision, create a legal lot of record for the existing house. What you saw on the site plan was the piece of property to the south and what that legal would be which would still be owned by Mr. Stephens. That will be created as an outlot. He owns all the property to the south all the way down to Lincolnway. That will not be any issue causing land lock, he will still be that owner. What this will also do is to make that parcel larger. It was not large enough for the County Standards when this probably done 30-40 years ago. We would meet the half acre

standards for the size of lots for the County and the Town of Osceola for a house that is on well and septic.

We are trying to clean up everything. The unusual part here is there was a subdivision done several decades ago to the east. That is how Rogers Street was created and the lot that you see along that you see along that side. There is also a seven-foot alley that no one probably knows even exists. This is outside of that subdivision. The only frontage that we have is that portion of Rogers Street. That is the request we are asking for the variance for the frontage.

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 Sidney Shafer and unanimously carried, a petition by MUSIAL BRIAN & JORJA D and STEPHENS, CHRIS C seeking the following variances: 1) From Section 4.01 (K) to allow a lot width of 25' where 100' is required to allow the adjustment of a property line for a parcel containing an existing house was approved as presented, and will issue written Findings of Fact.

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

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

5. **The petition of BORYSIK IRENE seeking the following variance(s): 1) The petition of BORYSIK IRENE seeking the following variance(s): 1) From Section 154.070(A)(3) to allow an accessory structure on a lot without a primary structure, property located at 50902 KENILWORTH RD, Clay Township. Zoned R: Single Family District (County).**

(Audio Position: 0:52:57.8)

Abby Wiles: This property contains the remnants of a single-family home detached garage and detached pole building. The single-family home was condemned by the Building Department in September 2021 after being destroyed by a fire. The petitioner came to the Building Department to pull a demo permit for the property in January and was advised by Staff that a variance would be required for an accessory structure without a primary structure. The petitioner does plan on constructing a new single family home and consulting with the Building Commissioner, Staff's opinion would be approval of a variance. With a condition that the petitioner pull a building

permit to construct a new single-family home within one year or demolish the accessory structures. A side note, Council and Commissioners had asked Staff to look at a number of condemned properties in the County, to move forward with demolition hearings on them. We have about 20 we are working on, and this was one of them. It is obviously more ideal for the petitioner to pull a demo permit and do it themselves rather than have the County go through the long legal expensive process to get a demolition order approved, do it ourselves, and lean the property.

Looking at the state code criteria for granting of a variance; approval will not be injurious to the public health, safety, morals, and general welfare of the community, because allowing a condemned property to remain in place would be injurious, and demolition and removal of the home would improve the public safety.

The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The petitioner has indicated he plans to construct a single family home on the property.

In strict application of the terms of this chapter would resulting practical difficulties in the use of the property; the timing of the project creates a practical difficulty in that the petitioner wishes to demolish and remove the existing single family home prior to beginning construction on the new single family home.

Joe Velleman: The house was in a fire and there still are accessory structures and in order to move forward they need a variance beforehand before moving forward. Usually when this happens they are asking for forgiveness when they have done something wrong to begin with and come back to ask for permission to do it right. In this case something wrong happened to them.

Staff's recommendation was to grant the variance requested with the condition that they build a house within a year?

Abby Wiles: Or demolish the accessory structures. Not that they build it that they pull a building permit. If they pull a building permit to construct the home within one year that would give them an additional two years. Building permits are valid for two years. They could wait until March 2023, pull the building permit and still have another two years to get the construction completed.

Joe Velleman: In the meantime they would be able to demolish the structure that had the fire?

Abby Wiles: Yes. That would bring the property into compliance.

Joe Velleman: The goal is to tear the place down what had the fire, but they can't get a permit to do that until they get a variance to allow the existing structures that are not damaged to stay?

Abby Wiles: In terms of timing the petitioner is here, and I think can speak to that.

PETITIONER

Mr. Borysiak, 50754 Galaxy Drive, Granger, IN 46530: I am wanting to tear down the existing structure that is there and build a single family residence. There is a pole barn and a detached two car garage that was already there. I want to keep those and demolish the house that is there now.

DJ Tavernier: Were you living there when it burned down?

Mr. Borysiak: No. I live in Granger. It is a property that I bought from somebody.

Abby Wiles: Could you advise a little bit on the timeline moving forward?

Mr. Borysiak: I would like to get it demolished at least by this year and hopefully start construction this year or early next year. I know you don't want to have that property sitting there as it is now. I would be glad to demolish 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.

Joe Velleman: With the conditions as stated in the guidelines from the Staff recommendations of pulling a permit within one year or demolishing the other accessory structures within one years' time.

After careful consideration, the following action was taken:

Upon a motion by Joe Velleman, being seconded by Sidney Shafer and unanimously carried, a petition by BORYSIK IRENE seeking the following variances: 1) The petition of BORYSIK IRENE seeking the following variance(s): 1) From Section 154.070(A)(3) to allow an accessory structure on a lot without a primary structure was approved as presented, with the condition that a building permit for a single family home be pulled within one year from the variance approval date, and will issue written Findings of Fact.

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

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

6. **The petition of HOREIN DONALD D & RICKMAN HOREIN EILEEN & HOREIN ROGER A & RHODES HOREIN ANITA F seeking the following variance(s): 1) From Section 154.092 (A) to allow a lot area of 10 acres where a minimum of 20 acres is required and 2) From Section 154.092 (D) to allow a front yard setback of 9' where a minimum of 35' is required for an existing house on Lot 1 of a proposed 1 lot and 2 outlet subdivision, property located at 17204 Madison Road, Madison Township. Zoned A: Agricultural District (County).**

(Audio Position: 1:00:49.2)

Shawn Klein: The petitioner here would like to sell the square 40-acre portion there to the southwest to an adjacent farmer. The entire property that is outlined there together is one legal lot of record. If they split this off, it would lose that legal status, so we had to require a subdivision for this split to occur. Consequently, we need to also require a lot area variance, and the setback variance is for the existing house. It is already non-conformant with regard to the setback to the center of the road. It will heighten the non-conformance slightly with the dedication that is required as part of the subdivision.

Staff recommends approval of the variances. There will be two outlots that are being split off of the tillable acreage 40 acres to the southwest and a little over 8 to the east. There will not be any more creation of buildable lots beyond what is already there with the existing house.

When we turn to the state law criteria, we find that the approval will not be injurious to the public health, safety, morals, and general welfare of the community, because it will not result in the opportunity for a new residential use in the Agricultural District.

We find the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Essentially, for the same reasons, it will not allow for residential use beyond the existing residential use.

The strict application of the terms of this chapter would result in practical difficulties in the use of the property, as they would prevent transfer of tillable acreage to a farmer which could potentially enhance the viability of this agriculturally productive land.

PETITIONER

Bernard Feeney, Plymouth Land Surveying, 1405 N Michigan, Plymouth, IN: I am here on behalf of Alice Horein. Roger Horein her son is the who engage our firm. We began conversation with Area Plan Commission some time ago about this piece of property. This

discussion seemed to be fairly straightforward, I thought. To be able to sell the 40-acres to the adjoining property owner. However because of deep peculiarities it required a submittal to the Board of Zoning Appeals. At the same time as that occurred the heirs wanted to place the home or farmstead on a 10-acre lot occupying the west side of the front parcel of land, create an outlot on the east side of that same track. The third outlot, the 40-acre piece, will be sold to the Laidigs, the farm entity to the west and next-door. This Board of Zoning Appeals, if approved, will accomplish all that and put the family farmhouse on a legal track of land. At this point, particular point in time, the plat has been submitted on March 03, 2022, went through technical review, and is scheduled for hearing soon.

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 Joe Velleman, being seconded by Donny Ritsema and unanimously carried, a petition by HOREIN DONALD D & RICKMAN HOREIN EILEEN & HOREIN ROGER A & RHODES HOREIN ANITA F seeking the following variances: 1) From Section 154.092 (A) to allow a lot area of 10 acres where a minimum of 20 acres is required and 2) From Section 154.092 (D) to allow a front yard setback of 9' where a minimum of 35' is required for an existing house on Lot 1 of a proposed 1 lot was approved as presented, and will issue written Findings of Fact.

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

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

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact

A. Approval of Finding of Fact for February 09, 2022

(Audio Position: 1:07.49)

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and unanimously carried 4-0, the Findings of Fact from the February 09, 2022, ABZA meeting were approved.

2. Minutes

A. Approval of January 12, 2022 minutes

(Audio Position: 1:07:00)

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and unanimously carried 4-0, the Minutes from the January 12, 2022, ABZA meeting were approved.

B. Approval of February 09, 2022 minutes

(Audio Position: 1:08:12.2)

Upon a motion by DJ Tavernier, being seconded by Donny Ritsema and unanimously carried 4-0, the Minutes from the February 09, 2022, ABZA meeting were approved.

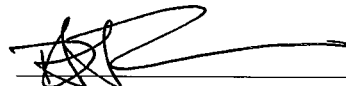
3. Other Business

No other business.

4. Adjournment

Upon a motion by Joe Velleman, being seconded by Donny Ritsema and unanimously carried 4-0, the March 09, 2022, ABZA meeting adjourned at 2:47 p.m.

RESPECTFULLY SUBMITTED,



DJ TAVERNIER,
Chairman of the Board

ATTEST:



ABBY WILES,
Secretary of the Board