

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

MINUTES

Wednesday, May 11, 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
Lance Roush

MEMBERS ABSENT:

Joe Velleman

ALSO PRESENT:

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

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, 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: 0:02:52.5)

DJ Tavernier: Petition number one has been tabled.

- 2. The petition of ROUHSELAND PAUL JR & SMIERKA SAMANTHA ANN JTWROS seeking the following variance(s): 154.107 (C) to allow a 25' front setback when 35' is required to allow a garage addition on the south side of the existing primary structure, property located at 13625 ESTHER AVE, Penn Township. Zoned R: Single Family District (County).**

(Audio Position: 0:03:00.5)

DJ Tavernier: I have to recuse myself from this petition.

DJ left at 1:33 p.m.

Kylie Abrams: This area is just northeast of Jefferson Blvd. and Capital Ave. of 13625 Esther Ave. The proposed project is to convert the existing 24x24 foot attached garage into a living space. And build an attached 24x30 foot garage on the southside of the existing structure.

Here is the elevation and plan as you can see, they are adding the garage to southside of the structure. Here is the site plan (referring to the slide show).

This will not be injurious to public health and safety, morals, or general welfare of the community. It is not a public threat to public safety by having a structure setback of 25' from the right-of-way compared to 35' as you can see in this driveway. There will be no changes to the width of the driveway only the setback.

This is looking east on Esther Ave as you can see the width of the road will not be changed or affected. Looking at this house to the west the proposed addition will be roughly in line with the house to the west and will not affect neighborhood character. There are other homes that do not meet the setback standards and therefore this can not be considered a threat to the neighborhood character.

The strict application of the terms of this chapter would result in practical difficulties of the use of this property. Because as you can see from this aerial view there are no other viable locations given the width of the house and the location of the driveway and lack of rear access.

Staff recommends approval of this variance. We found that at 25' front setback as mentioned will not be inconsistent with other residential structures in the immediate area, and there are no other practical garage locations on the property. The 25' setback is found not to be a threat to public safety.

PETITIONER

(Audio position: 0:07:33.7)

Paul Rouhseland, 13625 Esther Ave, Mishawaka, IN 46545 and Samantha Smierka, 13625 Esther Ave., Mishawaka, IN: We are in agreement with the Staff that this is consistent construction to be planned with the neighborhood similar materials, elevation no additional height, no visual obstructions to traffic or danger to traffic. There was no other position of option for the garage structure to combine the living spaces in the home currently. All the building codes and permits will be followed and filed appropriately. It is not a through street, so we didn't think there was any additional hazard to public safety.

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 5-0, a petition by ROUHSELAND PAUL JR & SMIERKA SAMANTHA ANN JTWROS seeking the following variances: to allow a 25' front setback when 35' is required to allow a garage addition on the south side of the existing primary structure was approved as presented, and will issue written Findings of Fact.

Robert Hawley – Yes
Joe Velleman – Absent
DJ Tavernier – Abstain
Lance Roush - Yes

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

DJ Tavernier: Returns to the stand at 3:40 p.m.

Lance Roush: Shelley, I need to recuse myself from item petition number three. Lance leaves at 3:41 p.m.

3. The petition of FUCHS BOBBIE G & BETTY J TRUSTEES OF THE FUCHS FAMILY TRUST W/A LIFE ESTATE seeking a Special Use to allow per Section 514.091(B)(19) a shooting range, property located at 66700 KENILWORTH RD (northeast of US 31 and Quinn Rd), Union Township. Zoned A: Agricultural District (County).

(Audio Position: 0:11:46.9)

Ryan Fellows: The subject property is divided into a part east of US-31 and a part west of US-31. This application and site plan, as well as the staff comments, only concern the part of the property east of US-31, located north of Quinn Rd, with no frontage on Kenilworth Rd. Despite the address.

Due to the nearby presence of Town of Lakeville sanitary sewage lagoons (immediately to the northeast), planning staff shared this petition with Town of Lake officials. Town officials have not responded with any concerns. That would preclude the use of this site.

Due to concerns regarding the floodplain and other issues, planning staff held a Project Advisory Team meeting on April 21, 2022, including the Building Commissioner/Floodplain Administrator, County Surveyor, County Health Department, County Engineering, and Planning staff, with the petitioner's representative, Terry Lang. The discussion included the importance of keeping the firing range and any associated site improvements out of the flood way and fringe limits.

Here is a view of the property looking southeasterly from the service road (referring to the slides). You can see at the top left is where the sewage lagoons are located. Here it is looking southeasterly looking along the service road. Here is the overall site plan and zoomed in for this view.

Staff recommends approval of the Special Use subject to written commitments requiring the shooting range site, including the impact berm, to remain outside wetlands and any Special Flood Hazard Areas.

We do have a letter from Everett Garrett a neighbor that was shared with the board members and he is in support of the Special Use. Mr. Garrett's address is 19761 Quinn Road, Bremen, IN.

PETITIONER

(Audio position: 0:15:18.0)

Terry Lang, Lang, Feeney the Wightman Team: The petition before you is for a private shooting range. Dan Burch is the contingent purchaser and if you have any questions about his training that he does he is here to answer them.

We met with the Project Advisory Team and answered all their questions that they had. Submitted an amended plan keeping all the improved areas that will be for the shooting range as well as the mound that will be with it out of the flood fringe area and also the ditch area that the Drainage Board was concerned with. We have complied with all of the items that the Advisory Board had asked for. The site is very uniquely located; please put the aerial view back up on the screen.

You'll see the ponds for the Town of Lakeville there. US31 separates that and it is heavily wooded screening the property to the south and also wooded on the east side of the ditch. It is the most desirable location that you can possibly want for this type. It is not a public range so, you just can't come out and go shooting. It will all be specific firearms training and will let Dan speak with regards to the type of training he does. Site plan questions I'd be happy to answer.

Dan Burch, 67101 Ironwood Road, Bremen, IN 46506: I have a side business that is called Hoosier State Training. I teach all things self-defense one would be firearm training. I've been conducting this business since 2016 and looking to purchase this property which is about a 1 ¼ mile from my house. Where I can conduct my classes.

As Terry had stated, I have no intentions of having a public shooting range. I would suggest considering it more of a training location for my company where it is very structured and controlled and my use only for my classes. My business is part-time, primarily a couple Friday afternoons and couple Saturday's a month limited use.

Robert Hawley: I've never shot a gun with ammunition, but I wanted to learn how to do it. What is the process and how are you going to teach me to handle this gun?

Dan Burch: I vet every customer that I work with, so I know who they are and when they show up for training. In your example that you gave if it was a person that was brand new who would

not be ready for a group class (which I try and keep around eight people). I would highly recommend that they start with individual training with me. I can start teaching them basic firearm handling from a safety perspective. Once they are confident with the firearm for safe handling then I would allow them to take the basic handgun class. That would be a four class that teaches how to use a handgun in a self-defense perspective and all fundamentals. From there I have additional classes that people can progress through all the way to advance level classes all from a self-defense perspective.

Robert Hawley: Can you shoot any type of gun at your facility?

Dan Burch: Can you provide more clarification on that?

Robert Hawley: Maybe it's a pistol, a rifle or an automatic. You hear about these terrible automatic weapons that they have.

Dan Burch: So, 90% of my business is teaching people how to use a handgun for self-defense purposes. The majority of the classes are going to be ordained towards a handgun. Other than that I do a few maybe about one class a year that would involve a long gun like a shotgun or a rifle. No automatic weapons.

Robert Hawley: The state passed a law that says you are permissible to carry a gun without a permit. Is that true?

(Audio position: 0:22:00.0)

Dan Burch: Yes sir, that law takes effect July 1, and it is called constitutional carry and allows people who are not "prohibited persons". A prohibited person who is a person that is barred by law who from possessing a firearm at all. They can carry a handgun without a Indiana handgun possession permit.

Robert Hawley: If I walked into this building and I had a gun hooked to my belt I can walk in this building with it?

Dan Burch: In this particular building no sir. This is a regulated building because there is a courthouse in it so no firearms are allowed.

Robert Hawley: So let's say I walk into Wendy's, I can walk in there with a gun?

Dan Burch: If the property owner being Wendy's for this example asked them to leave then they would be required to leave. If they don't then it is a criminal trespass issue which is a misdemeanor.

DJ Tavernier: The reclamation here what is your plan on the clean up? How are you planning on cleaning up all of your lead and ammunition besides all your brass that will be spent.

Dan Burch: Is your question directed towards the lead?

DJ Tavernier: Yes.

Dan Burch: The Indiana Department of Environmental Management which I submitted that report. For small firing ranges that the lead is collected in the impact berm and for normal use it is not an issue as far as lead contamination and reclamation. It only becomes an issue if it were like a public shooting range or like the Indiana Law Enforcement Academy down in Plainville, Indiana where the range is used in excessive amount. Then at that point the impact berms need to be mind if you would of the lead. That is a managed process. For my purposes for the class it very limited in scale. It almost no different than if I had an impact berm on my own personal property where I was going my own shooting. It is very limited in scale.

DJ Tavernier: At what point in time does it become time to reclaim all of that lead?

Dan Burch: That is not set but according to the Indiana Department of Environmental Managements report, for my particular use it is specific to if there is a change in the use. If someone wanted to build a house where the impact berm was then the lead would have to be removed, but if no house is going to be built there which in this location this property is not suited for building a house. Then it is not an issue for my purposes.

Brandie Ecker: As a reminder since this is a Special Use it would be related to what your recommendation is to the County Council.

Robert Hawley: Are we voting on a favorable unfavorable recommendation?

Ryan Fellows: This is going to be a recommendation to the County Council and again Staff's recommendation is to have it be favorable recommendation to the County Council, subject to a written commitment requiring the shooting range site, including the impact berm, to remain outside wetlands and any Special Flood Hazard Areas.

Sidney Shafer: What are your specific hours for your training?

Dan Burch: My normal hours of operation would be 8:00 a.m. – 5:00 p.m.

Donny Ritsema: I have a question for Staff. Are there requirements in the Ordinance for additional screening material that needs to be provided or even mitigate noise?

Ryan Fellows: There is no additional information in the Ordinance requiring that.

Abby Wiles: The written commitment that would be recorded that Ryan has suggested came forward through the recommendations from the Plat, Floodplain Administrator, Drainage Board, and Health Department to keep any firing areas outside of that. However you send it, and it was sent favorable to include that commitment requiring the shooting range to be outside wetlands and Special Flood Hazard Areas.

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 carried 5-0, a petition by FUCHS BOBBIE G & BETTY J TRUSTEES OF THE FUCHS FAMILY TRUST W/A LIFE ESTATE seeking a Special Exception for per Section 514.091(B)(19) a shooting range for property located at 66700 KENILWORTH RD (northeast of US 31 and Quinn Rd), Town of Lakeville, subject to Special Use subject to written commitments requiring the shooting range site, including the impact berm, to remain outside wetlands and any Special Flood Hazard Areas, and will issue written Findings of Fact.

Robert Hawley – Yes
Joe Velleman – Absent
DJ Tavernier – Yes
Lance Roush - Abstain

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

Lance Roush: Returns to the stand at 2:00 p.m.

- 4. The petition of WHEELER GLEN L & FANNY R seeking a Special Use per Section 154.166 (B)(1) : Boat sales, rentals, storage and repair; sales and service of marine motors, boat parts and accessories and boat fuel sales to allow storage and parking related to the established marina use north of Vistula Road, and seeking the following variance(s): 1) From Section 154.166 (B)(1) to allow boat sales, rentals, storage and repair on a property without frontage on a waterway where 100’ of waterway frontage is required and 2) From Section 154.166 (B)(1) to allow a setback of 65’ from a residential district boundary where 200’ is required for a boat storage building and marina parking lot, property located at 56325 ASH RD, Penn Township. Zoned B: Business District (County).**

(Audio Position: 0:31:54.7)

Shawn Klein: The petitioner here is also the owner of the property north of Vistula that is a functioning marina. They would like to store equipment related this marina as well as provide parking for the marina on the parcel outlined here (referring to the slide). It is zoned B: Business which requires a Special Use for any marina related uses including boat storage, etc. They will need the Special Use in order to do this.

Along with the Special Use in B: Business there are also two specific development standards one being that the use being setback 200' from any residential district and 100' of frontage on the waterfront. In this case the parcel does not. The parcel immediately to the west is zoned R: Residential so the proposed building is only going to be 65' as opposed to 200'. Staff does support the Variances in this case because we find that they are not necessarily applicable to the property at hand.

Furthermore recommended that this Special Use be sent to the County Council with a favorable recommendation on the condition that type two screening be provided along the west property line for reasons I'll show you here.

Turning first to the criteria for the Special Use. We find that the proposed use will not be injurious to public health, safety, comfort, community moral standards, convenience, or general welfare. Because this use is still going to be subject to general development standards of the B: district including architectural standards, minimum setbacks, and screening. Therefore it will not be any more injurious than the broad array of business uses that are permitted by right.

Likewise we find that the proposed use will not injure or adversely affect the use of the adjacent area or property values they are in. We find this to be true if type two screening is provided along the west property line. The reason being if you look at the aerial on the western edge there is an undeveloped street right-of-way. What this means for the Zoning Ordinance is we have to treat this as front yard opposed to a side yard. Even though this is a business use to residential since there is that street right-of-way separating there it would only require type one landscaping. Which is one shade tree for every 40' of lot line. Staff feels this is an adequate to protect the residential district therefore we would like to condition this on type landscape screening which is the staggered row of evergreens. Really does function as a side property line to abutting residential district. The right-of-way is undeveloped and only 20' wide not a lot of separation there.

We find that the proposed use will be consistent with the character of the district in which it is located. It will have to comply with development standards of the B: Business district including no outdoor storage or operations or architectural standards.

The proposed use is not compatible with the recommendations of the St. Joseph County Comprehensive Plan. It doesn't imply any specific future land use for this area.

We recommend that the Special Use be sent to the County Council with a favorable recommendation on the condition that type two landscaping be provided on the west property line.

The standards for the Variances we find that granting the variances would not be injurious to the public health, safety, morals, or general welfare. The first variance is to allow the Special Use without waterfront frontage. In this case just having the ancillary marina uses across the street really doesn't have any further impact on the public in any way. Allowing the uses closer to the residential district than the 200' that is regularly required will not be injurious to the public because it is not actually on the water and all the uses have to be inside you will not see boats coming and going on this property, outdoor repair or fueling.

The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Provided that we can get that type two landscape screening to the west.

Strict application of the terms of this chapter would result in practical difficulties in the use of the property. In this case it would prevent the property owner from expanding some marina uses that are not really disturbed to neighboring properties to a property that is across the street. Whereas if that public street were not there then this variance would not be required. The 200' setback from residential would result in practical difficulty. There is a limited amount of properties along the river that are not zoned residential. It is incredible difficult setback for a marina to ever be in St. Joseph County.

We do support the variances as well and recommend that variances be granted on the condition that type two landscaping be provided to the west.

(Audio position: 0:38:07.2)

DJ Tavernier: We are voting on sending with favorable or unfavorable recommendation to the County Council. But we are voting on ...

Shawn Klein: The two variances. I would suggest you make those variances subject to the Special Use going through as well.

Donny Ritsema: The church that is on the property is that still active and meeting?

Shawn Klein: I don't believe so and from my understanding it will be removed at some point. The petitioner can speak to that.

Robert Hawley: Do you happen to know of the present owner how long he has owned that marina?

Shawn Klein: It received a Special Use back in 1961 that was the previous owner I know. I'm not sure how many owners it has gone through since then. It has been established.

PETITIONER

Terry Lang, Lang, Feeney the Wightman Team, 715 S. Michigan Street, South Bend: The Wheeler's have owned this for over 20 years. To give you a little background please switch back to the site plan.

The existing buildings right here at the corner (referring to the slide show) use to be a bait shop. A car ran through that intersection caught fire and person died and torn down the bait shop. The building immediately to the adjacent to that was a storage building in good shape a pole building. In the process of last year we came before Area Plan Commission and rezoned the property for a restaurant. This portion you see right here (referring to slide show) is going to be a restaurant located on the river. The pole building is being moved from right here to that location right there. The same building we are moving it to that location. That building housed the mowing equipment, snow plowing equipment that was used around the marina. It was a storage facility for the equipment there.

The restaurant is going to be in this facility the marina operation is going to be in the building to the west of it. The storage building was moved to the south side of the road. That storage building location originally next to the restaurant that will be the handicap access into the restaurant. If you pull off of Vistula the grade goes down about 30' to the river which makes it difficult it find a reasonable level access location for handicap into the building. That building foundation floor is flat and provides the handicap needs. It is not going to be used for repairing of motors it is storage for the equipment that they use to maintain the facility with.

With regards to the church I think they moved to another location as with COVID a lot of small churches went out of business. It is currently vacant he is debating on keeping or tear it down. At the moment it is not being used could be used if they wanted to but at this point in time, I think the plan in the future would be to tear it down.

We have no objection to the screening request on the site plan and the aerial there. That whole area is wooded, and you can see the trees and barley see the house. Will work with the planning department with the position of trees because of all of the trees there now. An evergreen location that they are recommending would provide year around type screening from the house to the west. The street to the west of the site was a dedicated street but was never improved and full of trees basically.

Plans have been submitted to the State Health Department for the commercial septic system on the site to be located on the corner and you'll see stakes marking the location.

The history of property and why we are here. It was a perfectly good building to tear down and toss aside when he is going to need storage for the equipment to maintain the site.

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.

(Audio position: 0:45:12.1)

Brandie Ecker: There should be two separate motions dealing with the Special Use. One by itself and then if you want to handle the variances together you can do that or if you want to grant one and not the other you can do those separately, but at least two separate motions.

After careful consideration, the following action was taken:

Upon a motion by Donny Ritsema, being seconded by Robert Hawley and unanimously carried 6-0, a petition by WHEELER GLEN L & FANNY R seeking a Special Exception for Section 154.166 (B)(1): Boat sales, rentals, storage and repair; sales and service of marine motors, boat parts and accessories and boat fuel sales to allow storage and parking related to the established marina use north of Vistula Road. For property located at 56325 ASH RD, St. Joseph County, is sent to the County Council with a favorable recommendation under the condition that Type 2 landscaping be provided along the west property line, and will issue written Findings of Fact.

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

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

(Audio position: 0:46:40.5)

Brandie Ecker: The recommendation on the variances will be in addition to the landscaping condition. If you approve them it would be subject to the Special Use also being approved.

Upon a motion by Donny Ritsema, being seconded by Robert Hawley and unanimously carried 6-0, a petition by WHEELER GLEN L & FANNY R seeking the following variances: 1) From Section 154.166 (B)(1) to allow boat sales, rentals, storage and repair on a property without frontage on a waterway where 100' of waterway frontage is required and 2) From Section 154.166 (B)(1) to allow a setback of 65' from a residential district boundary where 200' is required for a boat storage building and marina parking lot was approved subject to the condition that Type 2 landscaping be provided along the western property line and subject to the approval of the special use, and will issue written Findings of Fact.

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

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

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact

(Audio position: 0:48:37.0)

A. Approval of Finding of Fact for April 13, 2022

Abby Wiles: Donny found an error in one of the Finding of Facts. Sidney, you had voted “yes” on something that we had shown you as “no” on. It was in regards to the pole barn on Pierce Street in Osceola.

Brandie Ecker: Shelley had reviewed the audio and Sidney you did vote yes on, but the Finding of Facts had you down as a no. Someone will need to make a motion to amend the Finding of Facts.

Upon a motion by Donny Ritsema to amend the Finding of Fact that was found in error and approve remaining Finding of Fact from April 13, 2022, being seconded by Robert Hawley and unanimously carried 6-0, ABZA meeting was approved.

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

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

2. Minutes

A. Approval of April 13, 2022 minutes

(Audio Position: 0:50:34.3)

Upon a motion by Donny Ritsema, being seconded by Robert Hawley and unanimously carried 6-0, the Minutes from the April 13, 2022, ABZA meeting were approved.

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

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

3. Other Business

(Audio Position: 0:50:57.6)

Brandie Ecker: Amendment to the Rules of Procedure that would officially add in the administrative tabling and the limitations that we discussed at the last meeting. The proposed amendment would add a new section §6.10 essentially give the petitioner the ability to do customarily do what you have allowed them to do and automatically table their petition to the secretary before the petition is read.

They would be allowed two times not just in a row just two times and then after that they would have to either ask you to table it again and decide to grant the tabling or not. Or they would have to go forward or withdrawal.

In the packet you have a copy that we proposed and since we introduced it at the last meeting, we would be asking you to approve it today. Affective April 13, 2022. A motion to approve the amended Rules of Procedures.

Upon a motion Donny Ritsema to approve the amendment to the Rules and Procedures adding in §6.10 as presented, being seconded by Robert Hawley and unanimously carried 6-0, the amended Rules of Procedures affected April 13, 2022, ABZA meeting were approved.

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

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

4. Adjournment

(Audio position: 0:53:18.1)

DJ Tavernier: Motion to adjourn.

Donny Ritsema: I make a motion to adjourn.

DJ Tavernier: All in favor say “aye”.

Unanimously carried 6-0 the ABZA meeting was adjourned at 2:23 p.m.

RESPECTFULLY SUBMITTED,



DJ TAVERNIER,
Chairman of the Board

ATTEST:



ABBY WILES,
Secretary of the Board