January 12, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, January 12, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Jeff Kutch, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the December 8, 2020, meeting was submitted to the board. Mr. Miller made a motion to approve the minutes as presented, Mr. Kutch seconded the motion. Motion carried by acclamation.

Election of Officers

Mr. Gustafson moved to open elections for the Board of Zoning Appeals for Marshall County.

Mr. Kutch made a motion to nominate Mr. Gustafson as President of the Marshall County Board of Zoning Appeals, seconded by Mr. Miller. Motion carried by acclamation.

Mr. Miller made a motion to nominate Mr. Berger as the Vice President of the Marshall County Board of Zoning Appeals, seconded by Mr. Kutch. Motion carried by acclamation.

Mr. Berger made a motion to nominate Mr. Miller as the Secretary of the Marshall County Board of Zoning Appeals, seconded by Mr. Kutch. Motion carried by acclamation.

The first item of business was 21-BZA-01 BARNES, Eric & Stephanie - A request for a Variance of Use to allow a temporary second residence to care for an elderly parent; located at: 15941 14th Rd., Plymouth, IN Union Twsp., Zoned A-1. Eric & Stephanie Barnes was present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to locate a secondary residence (mobile home) with its own septic system and well on the property for an aging family member. The ordinance currently does not allow second residences on the property or temporary residences.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

1. Robert Busam – 16081 14th Rd. – Shares an easement with the applicant and wanted to know how they were going to get back to their property and maintenance of the

easement with the extra traffic. Mr. Busam has maintained the driveway for ten years and believes something needs to be done with this easement.

2. Frances Buckner MacLain – 16081 14th Rd. – Uses the same entrance and has a concern about how the dwelling will be set up and not destroy the lane that is shared or blocked from getting to her own property. Also has a concern about property values.

Mr. Barnes stated that they purchased the property in September of 2020 and haven't received any paperwork or had discussion about the easement and maintenance. Their understanding was Mr. Busam did most of the maintenance on the easement.

Mr. Barnes stated that once arrangements are made to purchase the unit contact would be made to get approval from the other owners on the easement. This would include Barnes laying fresh gravel and spreading it the entire part of the easement to allow for the mobile home to be brought in. The plan is to put it on piers and will have a deck put on it.

Due to the concern of the easement Mr. Adley stated that they have the option to put in a condition of the permit that an agreement be made between the parties that use the easement.

Mr. Kutch made a motion to approve 21-BZA-01 BARNES, Eric & Stephanie - A request for a Variance of Use to allow a temporary second residence to care for an elderly parent; located at: 15941 14th Rd., Plymouth, IN Union Twsp., Zoned A-1 with the following conditions:

1. Frank & Judy Owen occupants and once they no longer need it the property owners have one (1) year to have it removed.
2. Signed maintenance agreement with the drive
3. Approved well and septic

Seconded by Mr. Miller. Motion carried with a voice vote 4-0.

The second item of business was 21-BZA-02 HENSLEY, Chad & Joy - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 15' to 5' in order to split off the house and one acre from the barn and acreage to be added to neighboring property owner's acreage; located at: 6 Sycamore Rd., Walkerton, IN Polk Twsp., Zoned A-1. Chad and Joy Hensley were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to subdivide their property and in order to meet the minimum lot size requirements, the proposed lot line is then located 5' from an old barn. The barn and adjacent farm ground are being sold to an adjacent property owner. The minimum side yard setback for the property is 15' and the applicant is seeking to reduce that to 5'.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Kutch seconded the motion to close the public hearing. Motion carried by acclamation.

During discussion Mr. Hensley stated that the building is in disrepair. There is currently hay in the building for storage. The plan is to tear it down and farm all the ground.

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Mr. Kutch made a motion to approve 21-BZA-02 HENSLEY, Chad & Joy - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 15' to 5' in order to split off the house and one acre from the barn and acreage to be added to neighboring property owner's acreage; located at: 6 Sycamore Rd., Walkerton, IN Polk Twsp., Zoned A-1, seconded by Mr. Miller. Motion carried with a voice vote 4-0.

The third item of business was 21-BZA-03 YODER, Katie - A request for a Variance of Developmental Standard to allow a reduction in the standard 1:3 width to depth ratio of 3 proposed lots: Lot 5 239'x1244', Lot 6A 405.97'x1954' and Lot 8A 332'x1971' located on parcels 50-44-09-000-005-000-005, 50-44-09-000-006-000-005, 50-44-09-000-010-000-005, German Twsp., Zoned A-1. Unable to hear applicants' names. Mr. Adley presented the findings of fact.

The applicant is creating a major subdivision and 3 lots (5, 6A, and 8A) don't meet the width to depth ratio. Lot 5 is proposed to be 239'x1244', Lot 6A is proposed to be 405.97x1954' and Lot 8A is proposed to be 332x1971.

All the of the parcels to be split will be retained by family except the three small parcels of 5 acres each on the western most portion of the property.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

1. Harley Yoder – 2881 E. County Line Rd. Nappanee, - Sibling in favor of the request.
2. Curry Yoder (?) – 1997 2 B Rd., Bremen, IN – Sibling in favor of the request.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

Mr. Kutch commented that with such a large area felt that the request in not meeting the 1:3 width to depth is self-imposed.

Mr. Berger made a motion to approve 21-BZA-03 YODER, Katie - A request for a Variance of Developmental Standard to allow a reduction in the standard 1:3 width to depth ratio of 3 proposed lots: Lot 5 239'x1244', Lot 6A 405.97'x1954' and Lot 8A 332'x1971' located on parcels 50-44-09-000-005-000-005, 50-44-09-000-006-000-005, 50-44-09-000-010-000-005, German Twsp., Zoned A-1, seconded by Mr. Miller. Motion carried with a voice vote 4-0.

There being no further business, a motion was made to adjourn and seconded. The Motion was passed by a voice vote.

Respectfully submitted

Matt Miller

February 9, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, February 9, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, David Hostetler, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the January 12, 2021, meeting was submitted to the board. Mr. Miller made a motion to approve the minutes as presented, Mr. Kutch seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-04 TRIEZENBERG, Megan - A request for a Variance of Developmental Standard to allow a 4' fence on a portion of the northern and southern property lines to maintain dog on the property; located at: 4486 Plum Lane, Bremen, IN German Twsp., Zoned L-1. Ms Megan Triezenberg of 4486 Plum Lane, Bremen was present to represent her request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a fence within the side and rear yards of the property for their dog. The fence proposed is to be 4' in height.

Ms. Triezenberg is proposing to build a fence partially wood and aluminum.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Jacob & Sherri Triezenberg – 4476 Plum Lane, Bremen - No problem with the request. The fence is to help keep her two dogs maintained on her own property.
2. Greg Cooley – Does not have a problem with the request as long as the applicant gets a survey and keeps the fence on her property.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

Ms. Triezenberg prefers not to get a survey. The opposite adjacent neighbor has survey pins and Ms. Triezenberg plans to measure from those points. After discussion the board agreed that it wasn't necessary to get a survey, but made clear that the fence must be on the applicant's own property.

Mr. Hostetler made a motion to approve21-BZA-04 TRIEZENBERG, Megan - A request for a

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Variance of Developmental Standard to allow a 4' fence on a portion of the northern and southern property lines to maintain dog on the property; located at: 4486 Plum Lane, Bremen, IN German Twsp., Zoned L-1, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The second item of business was 21-BZA-05 COFFEL, Caleb - A request for a Variance of Development Standard to allow two chicken barns that do not meet the distance requirements of 1,320' from a residence; located at: 3560 Grape Rd., Bremen, German Twsp., Zoned A-1. Mr Caleb Coffel of 3560 Grape Rd., Bremen was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct two 60'x600' chicken barns in the North East corner of the property. The two barns are seeking to be within the 1,320' setback with the closest structure being 860' to the south. There are two properties that are within the setback at just above 1,000'. Each barn will have 45,000 chickens. AFO to CFO threshold is 30,000 where as CAFO is 125,000.

Mr. Coffel explained a little about the buildings heating and cooling as well as the turning of the manure. There will be a 40x60' manure holding facility until it is spread throughout the year. The states requirements for setbacks of a property line is 100'. Mr. Coffell received an agreement to the north for a setback of 50' from the side yard.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Andy with Miller Poultry – 30210 Wakarusa – Mr. Coffel has their approval to build the barns. The manure is re-used recycled and composted in the barn. It is a dry manure not a liquid manure. They provide tunnel ventilation with 52" fans at the back that provide a wind tunnel to cool the birds which would face the east. The odor is minimal. Melissa Lehman submitted an odor plan documenting that 95% of the odor does not go past 400'. There is ammonia control in the building through ventilation and manure management. Also uses poultry litter treatment which reduces ammonia as well as strict animal welfare guidelines at their company to keep ammonia under 20 parts per million.
2. David Rader – 6540 Elm Rd. Bremen – Neighboring property owner to the west has no problem with the request.
3. Trend Weldy – Bremen Town Manager – Property is adjacent to Bremen's jurisdiction and the Town is not in favor due to the smell it puts off being that close to the town.
4. Joseph Stoller 3708 Grape Rd., Bremen – Concerned mostly about drainage. It is a very wet area. The area to the east is a flood plain. Wants to make sure there is a drainage plan before anything happens. The property he owns he doesn't live there it's just used as an office.
5. Anthony Wagner – 5413 3rd Rd. Bremen – Sent a letter stating his family lives about 4,300' from the northeast corner of the Coffel parcel. Isn't against the use, but concerned about the odor of the operation will be addressed. Seems like the wind is mostly out of the southwest side of the property and will be in the direct path of the odors escaping the facility. The southwest portion of the town is heavily residential and is concerned.
6. Letter (no name) Lives on 4th Rd.– Concern for smell, sanitary concerns and is not in

favor of the request.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion carried by acclamation.

The greatest interest the board is voting on is the issue on the 1,320' requirement from residences.

This parcel is Mr. Coffel's only piece of land. He has visited other similar properties and didn't notice a smell. With him living on this parcel it's of great importance to him as well to keep the smell at a minimum. As far as the drainage he will meet all the requirements of IDEM as well as the county.

Mr. Berger made a motion to approve 21-BZA-05 COFFEL, Caleb - A request for a Variance of Development Standard to allow two chicken barns that do not meet the distance requirements of 1,320' from a residence; located at: 3560 Grape Rd., Bremen, German Twsp., Zoned A-1, seconded by Mr. Hostetler. Motion carried with a voice vote 3-1 with Mr. Miller voting against.

The third item of business was 21-BZA-06 CARMAN FARMS - A request for a Variance of Use to allow a game reserve; located at: 16641 2B Rd., Walkerton, IN Polk Twsp., Zoned A-1. The applicant is seeking to operate a pay to hunt licensed large game preserve on the property under IC 14-22-31. The property will be primarily be an alfalfa field. The property will be fenced and for aesthetic purposes, will be surrounded by trees. The Shooting preserve license covers items such as animals for hunting, season (September through April), records requirements, and licensing requirements. Mr. Dan Falk was present to represent his request. Mr. Adley presented the findings of fact.

There are approximately 130 acres on the parcel. The type of animals being hunted is regulated by the Animal Board of Health which includes white tail deer, sheep, goats etc. When asked if for instance pheasants were included and Mr. Falk said that he thought that would be a separate license.

Mr. Falk is currently wanting to get approval to put up a fence. In the future he may come back for a request to add cabins to the property. At this time of the meeting Mr. Falk didn't have a site plan. The weapons to be used is whatever is allowed by Indiana law.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Steven & Cheryl Linback – 17015 2B Rd., Walkerton – Lives 25' from where Mr. Falk has started to install poles that looks like he will then add huge cables that will go off of it. Has grandchildren and small animals and has a concern for their safety. The noise is also a factor as well. Doesn't like the thought of gun shots going off from September through April. Is this every day? Who will be shooting? Also concerned about additional traffic and the decrease of property values.
2. Ellen Hummel – 16374 2B Rd., Walkerton – Lived on her 20 acres there for over 40 years. Some of the ground is farmable and some is wetlands that are spring fed. There

are mallard ducks and Canadian geese. Would never want to see any hunting of birds because of the Mallards. Not sure if she is for or against. Doesn't see anything in the ordinance for a game reserve. Came to find out the applicants plans. Has a concern if they are pinning up animals to be hunted. Isn't in favor of all of the gun shots. Is this going to be going on every day? Is there shooting aloud near the roads? Believes there needs to be more of a plan at a minimum.

3. Corey Hawkins – 17091 2B Rd., Walkerton – If Indiana Code is wide open for this and the whole place is going to be operated as a range, he doesn't want bullets flying his way. Where is down and up range going to be? Where is there a safe spot? Have they taken into consideration that neighboring properties have hunters on them? Will they be in tree stands? Are they going to be hunting out of ground blinds? Where is stuff flying? What licensing requirements are going to be had for people coming to hunt? Moved out away from the city to not have to deal with stuff like this. Wants to know more than just approve something and have to deal with it. Is there going to be liability insurance or by the individual hunter if anything happens to their properties. Hoping the board would table the request to get more information.
4. Caroline & Jim Monroe - 2986 N. Redwood Rd. Has a concern about safety and devaluation of his property values. If he wants to go hunting himself fine. But trapping, caging them, feeding them, and killing them could be right in his back yard. If they are going to be hunting from September through April, they will lose their freedom to be out safely in their own yards. This is for the enjoyment of not someone who lives in the area and has invested in keeping it a nice community.
5. Jim Duff – 2482 N. Redwood Rd. – Farm butts up to this property. Wants to see their gravel road fixed before they approve something like this. This is a very wet area. There are coyotes and poachers from archery season on in this area. Is not for or against this request.
6. Donald & Jeanette Allison Trust – 3250 Redwood Rd. – The property is zoned A-1 and needs to stay that way. The area is too small for a game reserve. Too many houses close by and would be affected. There is 3 tile lines for there property to my ditch that has to be maintained is a county ditch. His fence line that borders the property is in bad shape and will only get worse. Full against the changing the zoning.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Hostetler.

Mr. Falk agrees he's found poachers in the area as well, but that doesn't really have anything to do with the request.

Mr. Falk answered the following questions:

1. The people shooting on the reserve will have to pay or they will be friends/clients.
2. The fence is currently being installed.
3. In the spring there will be 4,300 trees delivered
4. The parcel is due to be logged. Believes that is how you get other trees to grow.
5. Water/Fowl hunting – There is a season for it and Mr. Falk is a duck and goose hunter and if it's a good spot to hunt duck and geese then he and friends will hunt them. Mr. Gustafson commented that there is a difference between you are your friends hunting on the property and you charging someone to hunt.

6. Safety is always a concern. Carrying insurance is just something he will have to do to have people come and hunt.
7. The Beagle Club is a fenced in hunting area. Haven't heard complaints of that.
8. There is a deer preserve 1 ½ miles to the south. Guessing he does around 40 hunts a year.
9. Most people just go out and do what they want. Mr. Falk's intention is to be upfront and spell out his intentions.
10. Has a friend in South Whitley that does the same thing on 80 acres and has around 80 people a year.
11. Understands peoples concerns and respects their opinions. But he loves guns while using them safely.
12. The Plan is to have a guide with every hunter whether it be himself or someone that works for him.
13. Would like to run his business-like Lee that is 1 ½ miles to the south.

Mr. Miller explained he felt the concern of the neighbors is not what you and your friends do on your personal property, but having a business of a hunting preserve. Appreciates some of the answers addressed; however, would be more comfortable with a business plan being provided.

Mr. Gustafson expressed that he appreciated him being up front and coming before the board. In addition to that when there was a request to sell firearms the proper procedures were followed and haven't had any complaints.

Mr. Falk addressed that the shooting of wild animals is cleared up by the DNR beforehand and is not an issue.

The board was in agreement that safety with this is a huge concern along with concerns stated by the public. Because of all the unknows the board felt that a detailed written business plan would assist them in making a proper decision. By tabling this request it would give the applicant time to comply with the request.

Mr. Hostelter made a motion to table this request 21-BZA-06 CARMAN FARMS - A request for a Variance of Use to allow a game reserve; located at: 16641 2B Rd., Walkerton, IN Polk Twsp., Zoned A-1, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The board asked Mr. Falk to come up with a plan showing where you are going to shoot, how you are going to shoot, how many people, season/dates, how many people, which direction you are going to be shooting from, are they all going to be guided, are there specific trails used, tree stands or shooting from the ground including other questions asked by the public.

The fourth item of business was 21-BZA-07 GEHRKE, Roderick - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 10'/10% to 0' to allow for a 12' extension of the existing home for a 12'x17' home addition; located at: 305 Thayer St., Lapaz, IN North Twsp., Zoned T-1. Mr. Roderick Gehrke of 305 Thayer St. Lapaz was present to represent this request. Mr. Adley presented the findings of fact.

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The applicant is seeking to put a 12' addition onto their home, but are needing to reduce their side yard setback from 10'/10% (4') to 0'. The property is made up of 3 parcels or lots from the Thayers Addition; 19, 20 and 21.

Mr. Gehrke restated that with the proposed addition he is not extending past the existing house and not going any closer to the property line.

When asked why he's choosing for a variance over combining the property he said its about the timing and his current health problems.

The length of time it takes to survey, create a replat and record can vary depending on the surveyor and how busy they are.

The board discussed possible options and setting deadlines to have properties combined.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Regina Jones 11219 1st Rd. – Is a family friend and knows his health is a big issue. Her father in law is the neighbor to the south of Mr. Gehrke and has no problem it. Mr. Gehrke's house was in really bad shape and he has fixed it up. The house is very small and they really need an additional bathroom.
2. Marjorie Holderman 208 South St. – Doesn't think they should be allowed to build closer to the property line as it could set a precedence. The standard setback requirement of 10' should be withheld.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

Mr. Miller made a motion to approve 21-BZA-07 GEHRKE, Roderick - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 10'/10% to 0' to allow for a 12' extension of the existing home for a 12'x17' home addition; located at: 305 Thayer St., Lapaz, IN North Twsp., Zoned T-1; with the following condition:

1. By August 31st, 2021 all three parcels need to be officially combined into one.

Seconded by Mr. Hostetler. Motion carried with a voice vote 4-0.

The fifth item of business was 21-BZA-08 MILLER, Scott & Christine - A request for a Special Use to allow a 14'x50' single wide mobile in a town residential zoning; located at: 4947 French St., Plymouth, IN Polk Twsp., Zoned T-1. Mr. Scott Miller of 4947 French St. was present to represent his request. Mr. Adley presented the findings of fact.

Mr. Hostetler stated to the board and public that he personally knows Mr. Miller and his property adjoins to Mr. Miller and will abstain from voting.

Mr. Gustafson stated to the board and public that Mr. Miller hired him to do the demolition work as they've been friends for over 30 years. Mr. Gustafson asked the board and public if they have any problems with him voting on this specific case to speak. Nobody commented yah

or nay.

In November the Miller's home burnt. Due to the cost and them wanting to travel they would like to downsize and thought that a single wide would fit their needs.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Clarence & Shirley Shively – 18115 5th Rd. Plymouth – Has no problem with what they are planning. They've seen pictures and are sincerely trying to do the best they can trying to get back in a home. Impressed with the quality of what they are proposing. Good neighbors and want to keep them.
2. David & Betty Hostetler – Supports them and their request.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

Mr. Berger made a motion to approve 21-BZA-08 MILLER, Scott & Christine - A request for a Special Use to allow a 14'x50' single wide mobile in a town residential zoning; located at: 4947 French St., Plymouth, IN Polk Twsp., Zoned T-1, seconded by Mr. Miller. Motion carried with a voice vote 3-0-1 with Mr. Hostetler abstaining.

The sixth item of business was 21-BZA-09 DEMIS, Robert - A request for a shipping container to be occupied as a saleable business; located at: 20993 8th Rd., Plymouth, West Twsp., Zoned A-1. Mr. Robert Demis of 20993 8th Rd. was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to allow the use of a shipping container on the property in order to start a business that he intends to sell. It is staff's interpretation under the Zoning Ordinance that a shipping container falls in line with a semi-trailer and their origin in the transportation industry. Under Article 3 section 110 Unlisted and Questionable Uses dictates "Any use not listed as a permitted use or a special exception is considered not permitted unless the Planning Director makes a determination otherwise. The Planning Director may determine into which category any questionable use be placed if it is not specifically listed but similar to another use that is a permitted use or special exception. This determination may be appealed to the Board of Zoning Appeals." The applicant had previously been heard in late 2019 under case 19-BZA-57 where the case was presented, but they would like to have the case reheard. For additional context as a recent Ordinance amendment proposal, the Plan Commission recommended to clarify and included the verbiage within the Ordinance to make the regulation obvious and apparent, but the Commissioners do not wish to address the subject at this time and would currently rather the Plan Commission/Board of Zoning Appeals address them on a case by case basis which ultimately runs as a violation until the use is approved, which is why the applicant is before the BZA. In a brief synopsis of the previous meetings minutes, the applicant is an inventor with a vision to bring one of his ideas to market. He had run out of room in the existing garage and worked outside his garage for about a year. The applicant looked into portable buildings and found that was suitable for his size and shape, which was a cargo container. Assumed that since the cargo container was temporary to finish the project it would be okay.

The applicant understood it was too close to the property line, but thought if someone complained about it, he would deal with it then. Went to a business on Highway 30 at the Marshall Starke County Line. The inspectors that came out to the property seemed to be mostly concerned that it was a storage container and is not made to be a habitable workshop. Mr. Demis was an industrial maintenance contractor. That container seemed to him a space that would work for him. The inside has conduit all throughout. There is an electrical panel with different circuits and receptacles on the walls with lighting down the center of the ceiling. Planned on putting in a service door at each end of the container for safety. At the time, the applicant indicated that he hoped to be ready to load up his product and take it to south Florida in a couple months (early to mid 2020). There were two individuals that voiced their support of the applicant to be able to have the shipping container.

Mr. Demis doesn't believe that the statute doesn't disclose that shipping containers are illegal in Marshall County. He is hoping that he isn't forced to remove it. This container isn't just a workshop, but part of the business itself. As soon as there is a buyer the shipping container will be sold and removed right along with the business.

He's been shut down for two years because he couldn't put in two 36" service doors to allow for ingress and egress, and understands it's not safe to hire a helper without these doors.

It's been put off because Mr. Demis felt that he was unfairly treated and singled out because his 2019 materials weren't brought to the meeting and felt that he had an unfair hearing. He's given up fighting to keep the container on the property. He just wants to finish the project without the County telling him he can't work inside of it.

The Plan Director explained that the majority of all violation cases are because a neighbor turns in a complaint. Not because we are out singling out specific people.

When asked why he didn't get a permit before he brought the container on the property, he said that he didn't think it was required because it was a portable building.

Mr. Demis is coming back before the board because one his year time frame is up to re hear in pause of the violation of the shipping container itself. At this time nothing is being pursued for the setback issue. If this is approved, he will have the opportunity to file for a variance tomorrow for the setbacks.

Because of the recent proposals and the Commissioner's rejection to deny all shipping containers Mr. Demis felt his container should be grandfathered.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Mr. & Mrs. Rzepczynski – 20993 8TH Rd. – Doesn't feel that Mr. Demis should be allowed to receive this request due to some issues of the container. If he were to build, he would have to follow building codes and setbacks. So should he. He is just inches away from their property line and believes this is a code violation.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion

carried by acclamation.

Mr. Demis stated that the fence that was put up he doesn't know if that is the property line.

The County Commissioners requested to deny the proposed amendment to the ordinance on shipping containers and requested to bring it back at a later date after doing additional research.

After additional discussion the length of time it will take to do additional research, and possibility of an extension of time allowed the board didn't want to approve to keep it there permanently, but possibly an extension of time.

Mr. Adley explained to the board that he originally started off as an inventor in his own shop to a home-based workshop which is a special use approval because it's a business at that point.

The board agreed that re-constructing this shipping container to allow doors isn't going to make the structure safe and meet requirements and is against allowing doors.

Mr. Miller made a motion to pause pursuing the violation for six (6) months of case 21-BZA-09 DEMIS, Robert - A request for a shipping container to be occupied as a saleable business; located at: 20993 8th Rd., Plymouth, West Twsp., Zoned A-1and give the Planning Commission and County Commissioners time to come up with a statute, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The seventh item of business was 21-BZA-10 YODER, Larry & Barbara - A request for a Special Use to allow a dog kennel for up to thirty (30) French bull dogs for breeding with pups kept on site until eight weeks of age; located at: 1420 Plymouth Goshen Tr., Bremen, German Twsp., Zoned A -1. Attorney, Charlie Zercher of Kindig and Sloat at 102 Heritage Parkway Nappanee and Mr. Larry Yoder of 1420 Plymouth Goshen Tr. were present to represent their request.

Recommendation: Based on the information provided staff would recommend denial due to the size of the kennel. Should the board seek approval then the conditions from the Technical Review Committee should be considered. TRC would recommend to table the proposal for the information pertaining to the following: 1. What is the phosphorous level of the property because the soils can only accept up a certain amount under the regulation of OISC. 2. Is there going to be a composting process and how will it be applied to the ground on a daily basis.

The applicant is seeking to operate a dog kennel for up to 30 French bulldogs for breeding with pups kept on site until 8 weeks of age. Please see the site plan for location of proposed kennel building. The nearest residence is to the northeast at approximately 400' from the proposed structure. The applicant shall meet all associated development standards except the following BZA application 21-BZA-11 for the reduction in setback. The proposal is for up to 30 mature dogs on site, 4 males and 26 females. The females will produce 1 to 2 litters per year. the petitioner intends to sell pups to retail customers through on-site pick-ups and ground and air shipping. The hours of operation would be 8a-4p Monday through Saturday. There will be no employees outside of Larry and wife Barbara (property owners). There are an estimated 2-4

customers per week. Per existing data and extrapolation, the cubic yard generated for 30 dogs is 5.421-6.31 cubic yards. This is below the threshold of 10 cubic yards for state regulation, but the Petitioner is willing to comply with the regulations in spreading any dog manure on his real estate/pasture. There will be a secondary perimeter fence surrounding the primary fencing of the dog runs. Septic system for the kennel will meet all associated Marshall County requirements.

Mr. Zercher understood from the Health Department that they didn't have any objections to the kennel. When asked if there were any additional requirements by the Health Department and the response was that they didn't have any additional requirements for that and wouldn't object to the kennel. He felt that was primarily due to the manure and the spreading of the manure. The 10 cubic yards of waste is the threshold that the state chemist oversees and regulates the application of manure. When they figured out what would be produced it came out to 5.421 of liquid waste per year and if it was dry it would be 6.31 cubic yards per year. Those thresholds fall under the requirements of the state guidelines.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Sandy Yoder – 1686 Plymouth Goshen Tr., - Has a concern with the noise level, decrease in property values, and that it will be a puppy mill to manufacture dogs. There is already a cited puppy mill two miles from her house. Doesn't believe this will be beneficial to anyone in the neighborhood.
2. Steve Hochstetler – 7108 1st Rd. – Has the adjoining property to the west. Has a concern about the drainage. Concerned that this property is illegally dumping waste in the woods. He has put tile and a catch basin in on his own property to take care of the water in the woods. He wants to know where this septic water will drain to. Is it going to be dumped in the woods?
3. Letter stating support for request by Loren Kuhns at 1342 Plymouth Goshen Tr., Joseph Kuhns 1319 Plymouth Goshen Tr., and Leanna Kuhns 1319 Plymouth Goshen Tr.
4. Marshall County Human Society – Sent a letter and does not agree to add another breeding facility in the area. They already have 1 male and 4 females onsite, that is an average of 32 puppies a year. In most cases French Bulldogs require the puppies to be delivered by cesarean section. If this kennel does pass, they would like to be involved in the process by inspecting at any time and would like to see all vet paperwork that they don't breed dogs that have issues that can be passed onto the offspring.
5. The Humane Society of the United States – Sent a letter requesting the Board to consider the concerns of local citizens to deny the request of this proposed puppy mill.

Mr. Hostetler made a motion to close the public hearing, motion seconded by Mr. Miller. Motion carried by acclamation.

Mr. Gustafson commented that he has a heavy concern that the Marshall County Humane Society is against this request. There have been others she has given favorable recommendation to and this isn't one.

Mr. Kercher said that the Marshall County Zoning Ordinance developmental standards require

that the kennel be open for inspection by the Zoning Administrator and/or the Humane Society. In the questions there didn't seem to be any questions or concerns about the health of the dogs or their conditions.

During discussion on the location it was brought up that it might help to put a barrier between them and the neighbors to the east. The applicant replied that he already has a row of trees on that eastern property line.

Mr. Miller made a motion to approve 21-BZA-10 YODER, Larry & Barbara - A request for a Special Use to allow a dog kennel for up to thirty (30) French bull dogs for breeding with pups kept on site until eight weeks of age; located at: 1420 Plymouth Goshen Tr., Bremen, German Twsp., Zoned A -1, seconded by Mr. Hostetler. Motion carried with a voice vote 3-1 with Mr. Gustafson voting against.

The eighth item of business was 21-BZA-11 YODER, Larry & Barbara - A request for a Variance of Developmental Standard to allow a dog kennel that is 400' from the nearest residence; located at: 1420 Plymouth Goshen Tr. Bremen, IN German Twps. Zoned A-1. Attorney, Charlie Zercher of Kindig and Sloat at 102 Heritage Parkway Nappanee and Mr. Larry Yoder of 1420 Plymouth Goshen Tr. were present to represent their request.

Recommendation:
Based on the information provided and the distance between the structures and available locations, staff would recommend denial of the proposal. TRC would recommend denial of the setback reduction.

The applicant is seeking to operate a dog kennel for up to 30 French bulldogs for breeding with pups kept on site until 8 weeks of age. Please see the site plan for location of proposed kennel building. The nearest residence is to the northeast at approximately 400' from the proposed structure. The minimum setback per article 6 is 600' for kennels.

Mr. Kercher reminded the board that the neighboring property owner did sign a paper authorizing his approval of the request.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Letter stating support for request by Loren Kuhns at 1342 Plymouth Goshen Tr., Joseph Kuhns 1319 Plymouth Goshen Tr., and Leanna Kuhns 1319 Plymouth Goshen Tr.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

Mr. Miller asked if there was any way they could move back the building to meet the 600'. Mr. Zercher stated that they possibly could, but they would like to line it up with the other building and it would be easier to access.

Mr. Hostetler made a motion to approve 21-BZA-11 YODER, Larry & Barbara - A request for a

Variance of Developmental Standard to allow a dog kennel that is 400' from the nearest residence; located at: 1420 Plymouth Goshen Tr. Bremen, IN German Twps. Zoned A-1, seconded by Mr. Berger. Motion denied 2-2 with Mr. Miller and Mr. Gustafson voting against.

During discussion about noise when asked what type of fencing would be used the applicant responded that it would be a chain link type fence. To limit the visibility and sound the applicant also agreed to put something up between the fencing.

Mr. Miller made a motion to approve 21-BZA-11 YODER, Larry & Barbara - A request for a Variance of Developmental Standard to allow a dog kennel that is 400' from the nearest residence; located at: 1420 Plymouth Goshen Tr. Bremen, IN German Twps. Zoned A-1, seconded by Mr. Hostetler. Motion carried with a voice vote 3-1 with Mr. Gustafson voting against.

The ninth item of business was 21-BZA-12 HOLLAND, Dennis & Linda - A request for a Variance of Developmental Standard to allow a 24'x30' garage 24' from the edge of the road; located at: 20831 N. Lake Dr., Walkerton, IN Polk Twsp., Zoned L-1. Mr. & Mrs. Dennis & Linda Holland of 20831 N. Lake Drive. Mr. Adley presented the findings of fact.

The applicant is wanting to build a garage (24x30') 24' from the edge of right of way. There are several structures nearby that also do not meet the minimum setback requirement.

Recommendation:
With the information provided, staff would recommend approval of the proposal. TRC would recommend approval of the proposal.

The side yard setback will be met, they just meet the requirement off the road.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

1. Deb Traversa – 20828 N. Lake Dr., Walkerton – With the property being L-1 and not A-1 as originally written it does make way for the view shed as well as the safety and traffic flow. She understands there are other structures that don't meet the requirements, but standards were developed for a reason. This isn't personal at all. This is a protection of their property. They live directly across the street and have for 18 years. Concerned about their property values along with safety as they are on a curve. Mr. Traversa commented that he would like for them to build what they want as long as they meet the requirements. But still has a concern about safety the blocking of view of the lake.

Mr. Gustafson explained that if they meet all the setbacks they would be allowed to build in that location.

Mrs. Traversa cited from the ordinance Chapter 2 010 E (f) Due to it's relatively high residential density, particular attention should be paid to protecting property line setbacks and view sheds to the lake. Mrs. Traversa also sent a letter for the file restating

the same.

Mr. Adley explained that the majority of the time that this is brought up when a side yard setback reduction is increased, adjacent to one another left or right around the lake, or building in front of or closer to the lake.

Mr. Berger made a motion to close the public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

Mr. Adley reminded the board that administratively he did have the option to do an average of setbacks of adjacent properties and this request would have passed. However, he felt this case should go in front of the board.

During discussion the board all agreed that if they met the setbacks, they would be able to build the building and the view would be affected either way.

Mr. Hostetler made a motion to approve 21-BZA-12 HOLLAND, Dennis & Linda - A request for a Variance of Developmental Standard to allow a 24'x30' garage 24' from the edge of the road; located at: 20831 N. Lake Dr., Walkerton, IN Polk Twsp., Zoned L-1, seconded by Mr. Miller. Motion carried with a voice vote 4-0.

There being no further business, a motion was made to adjourn and seconded. The Motion was passed by a voice vote.

Respectfully submitted

Matt Miller

March 9, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, March 9, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Jeff Kutch, Michelle Mieras, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the February 9, 2021, meeting was submitted to the board. Mr. Miller made a motion to approve the minutes as presented, Mr. Kutch seconded the motion. Motion carried by acclamation.

Mr. Adley read the oath stating that the Marshall County Council has appointed Michelle Mieras to the Marshall County Board of Zoning Appeals for the term of 4 years from February 8, 2021 – December 31, 2024.

The first item of business was 21-BZA-06 CARMAN FARMS - A tabled request for a Variance of Use to allow a game reserve; located at: 16641 2B Rd., Walkerton, IN Polk Twsp., Zoned A-1. Marlin Whetstone, Lonnie Whetstone, and David Whetstone were present to represent Carman Farms. Mr. Adley presented the findings of fact.

The applicant is seeking to operate a licensed game preserve on the property under IC 14-22-31. The property will be primarily be an alfalfa field. The property will be fenced and for aesthetic purposes, will be surrounded by trees. The Shooting preserve license covers items such as animals for hunting, season (September through April), records requirements, and licensing requirements.

- Original Recommendation:

Based on the information provided, staff would recommend tabling the proposal in order to get some questions addressed. Items that need addressed include a site plan for operation, establishment of meeting IC, what animals will be available, what types of guns will be permissible, how will safety of the consumers and adjoining properties be addressed, and hours/dates of operation. TRC would recommend to table and would like to know whether or not there will be rentals.

- Update

No additional information has been provided to the Plan Commission, there for staff and TRC would recommend the applicant pull their proposal or recommends the BZA deny the proposal for lack of sufficient information provided by the applicant.

The Whetstones were present to represent Dan Falk/Carman Farms. They were unsure as to what the variance was even for. Marlin and Lonnie Whetstone questioned the board how is Mr.

Falk's request any different than people leasing property to hunt. The board explained that this is very different it is a business.

The board requested additional information at the meeting in February as well as a site plan for the proposed operation. There was one months' time for Mr. Falk to call and ask questions and to provide this office with what the board requested. He didn't do that, nor did he inform you as his representatives of the proposed plans.

The Whetstone's offered the following information for the Carman Farms proposal: It's a fenced facility, there are currently 10 stands on the property and in the future, there are plans to put up a overnight facility, there will be trees around the perimeter, there has been no plan made up as to what direction they will be shooting, and there will be a guide with every hunter and it will be safe.

Mr. Gustafson explained to the Whetstones that Mr. Falk was asked to table and come back to this hearing for a purpose. There were a lot of questions and concerns by neighbors. They had hoped additional information would help to calm their fears of bullets flying and hunters in there constantly.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Jim & Carolyn Monroe 2986 Redwood Rd. Is a neighboring property owner. Major concern is safety. At least half of their property border's the Carman Farms property. Doesn't see how any fence will stop a bullet. There is also a concern for value of the neighborhood lifestyle value or property value.
2. Steve Murray 17851 2B Rd. Does not want to tell Carman Farms how to use their property, but doesn't want this properties use of A-1 to change.
3. Ellen Hummel 16374 2 B Rd. Agrees with the findings of fact that this proposal is injurious to the public health safety and general welfare. The value of adjacent property may be affected depending on the use. The existing ordinance does not have development standards or similar uses for this property. Also doesn't believe this request is a hardship. Wants to know who is governing these facilities. Is it the Board of Animal Health or is the state? How can you approve this without a plan?
4. James Easterday 119 W. Garro St. Attorney representing ?. Feels the frustration of the board in not receiving the documentation that was requested and is required. The Marshall County Zoning Ordinance requires a site plan with specifications, letter of intent to board describing details and meets all the findings of facts and Mr. Easterday believes the applicant doesn't meet any of the findings.
5. Corey Hawkins 17091 2B Rd. Feels everyone is being misled. At the last meet he said he would be do the guides and now these new representatives are saying they are doing the guides.
6. Shawn Vanderveldon 17375 2 B Rd. Lived in the area for 49 years. Believes the biggest thing that is upsetting the neighbors is the not knowing. Is opposed to the request.
7. Letter Steve Murray 17851 2 B Rd. Is concerned about the decrease in property value, safety and lack of knowing what their plans are.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

Mr. Whetstone understands the frustration. The knowledge they have on the proposal is as follows: There will be fencing around the property 35' off the road, 4500 trees will be delivered in the spring (there will be three rows of trees surrounding the entire property), it will be a few years before there are any planned hunts to let the ground mature, and it will be a peaceful natural habitat. He apologized that they didn't have what was requested, but would definitely do so. Some of the property will stay in agriculture and other areas will be in natural habitat for the wildlife. There will be three or four hunting locations. There will be deer born and bread there as well as some brought in. This is all regulated on behalf of the Animal Board of Health. He believes that the Animal Board of Health isn't going to permit this without it being a safe environment.

In the past years there have been up to ten hunting stands on this property. Just recently they have been asked to remove their stands.

Mr. Kutch made a motion to deny 21-BZA-06 CARMAN FARMS - A tabled request for a Variance of Use to allow a game reserve; located at: 16641 2B Rd., Walkerton, IN Polk Twsp., Zoned A-1, seconded by Mr. Miller. Motion carried with a voice vote 5-0 to deny.

The second item of business was 21-BZA-13 BERG, Timothy & Barbara - A request for a Variance of Developmental Standard to allow a 7'x22' deck 37' from the shoreline; located at 16999 12th Rd., West Twsp., Zoned L-1. Timothy and Barbara Berg were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is located within a L-1 zoning district where the setback requirement in the rear of the property is 45' from Base Flood Elevation. Per the attached drawing the applicant is seeking to construct a 7x22' deck that is adjacent to a camper that will be located 37' from the lake. In early 2019 Mr. Berg was approved for a variance of use "to allow an existing campground which is named Lakeside Campground; located at 16999 12th Rd., Plymouth" with conditions. One of the conditions that was imposed included new structure requiring permits including decks and that setbacks were to be met.

The Berg's are requesting a 7' variance to allow a 7'x22' movable deck to assist in the ingress and egress from the trailer.

As a reminder this campground has been in existence for 50 some years. It was owned by Mr. Berg's family, then a family friend and then Tim and Barb Berg.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Lori Hoshaw 16945 12th Rd. Neighboring property owner to the east. Believes that the trailer in question still doesn't meet the requirement of 45'. Since the last BZA meeting another trailer has been moved in. Ms. Hoshaw also doesn't believe they have complied with the Indiana Department of Health or DNR. Doesn't believe the

board should approve this request because past requirement haven't been met.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

In relationship with those two trailers they could stay in their existing location, but anything else that were to be added to the property would have to meet the setbacks. Due to the topography and layout with all the snow we were unable to take pictures to compare locations of structures.

The TRC and staff recommended denial because of the previous case requiring all structures forward to meet the setbacks.

Mr. Berg stated that the two trailers brought up have not been changed or moved, but once they are moved, they will not be replaced. The trailer that they are asking for a deck setback reduction does meet all the setbacks. When asked by the board if the Berg's could move the trailer to make the deck meet setbacks, he said no that he couldn't or the trailer wouldn't meet setbacks. Currently the owner's only use the front set of steps and for safety they really need a deck to get in and out of both entrances. The proposed deck is movable and sit on post pads.

The Berg's updated the board that the Stones Excavating are working with them and the State of Indiana to resolve their septic issues.

Mr. Kutch made a motion to approve 21-BZA-13 BERG, Timothy & Barbara - A request for a Variance of Developmental Standard to allow a 7'x22' deck 37' from the shoreline; located at 16999 12th Rd., West Twsp., Zoned L-1 with the following stipulations:

1. The proposed deck is not a permanent structure
2. The deck will go with the trailer when it is removed.

Seconded by Mr. Miller. Motion carried with a voice vote 4-1 with Mr. Gustafson voting against.

The third item of business was 21-BZA-14 KEPHART, Leslie & Kathleen - A request for a Variance of Developmental Standard to allow the extension of a parcel to be 300'x1002' that doesn't meet the 1 to 3 width to depth ratio; located at: 10060 7th Rd., Plymouth, IN Center Twsp., Zoned A-1. Mr. Les Kephart was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to buy a portion of property behind their existing ground and are wanting to combine it together, but it will not meet the minimum lot size requirement. They are wanting to purchase a lot of approximately 300x276 which will put them about 102' over the dimensional requirements.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Kutch seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Miller made a motion to approve 21-BZA-14 KEPHART, Leslie & Kathleen - A request for a Variance of Developmental Standard to allow the extension of a parcel to be 300'x1002' that doesn't meet the 1 to 3 width to depth ratio; located at: 10060 7th Rd., Plymouth, IN Center

Twsp., Zoned A-1, seconded by Mr. Kutch. Motion carried with a voice vote 5-0.

The fourth item of business was 21-BZA-16 BORKHOLDER Eli & Clara - A request for a Special Use to allow two (CFO) broiler barns that does not meet the 1,320 ft residential setback for six residences; located at: 1800 5th Rd., Bremen, IN Zoned A-1. Eli Borkholder and Nelson Borkholder were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to put up two 29,990 chicken barns on their property. One of the barns would be classified as an AFO(Animal Feeding Operation), the construction of the second is what pushes the operation from an AFO to a CFO (Confined Feeding Operation). A CFO for permitting approval requires an IDEM permit and to be setback 1,320' from residences not on the subject property.

Recommendation:
Based on the information provided, staff would recommend denial based on the number of individuals that occupy the 1,320' setback requirement. Should approval be considered, residents within that distance should be strongly considered. TRC would recommend approval with the condition that no neighbors within the 1,320' distance object to the proposal.

Mr. Borkholder stated that all but one neighbor signed the statement stating that they are in favor of the request. He talked to the one neighbor and he had lost the paper. He said he had no problem with the proposal, but asked if he would plant trees as a border.

The board asked about notification for cases such as this and Mr. Adley explained to everyone that we follow the states requirements that everyone within 300' or two property owners over get notified of this hearing by mail and is legally published in the paper.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

1. Andy (Miller Poultry)- 30210 CR 40 Wakarusa Miller Poultry supports Mr. Borkholders proposed barns. They prepared letters to have the applicant go to the neighbors to receive their support and they did.
2. The following letters were received by neighbors to support the request: Kenneth & Brenda Miller, Galen & Emily Lehman, Chester & Tina Borkholder, Nelson & Ruby Borkholder, and Craig & Rhonda Riffey.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

Mr. Miller made a motion to approve 21-BZA-16 BORKHOLDER Eli & Clara - A request for a Special Use to allow two (CFO) broiler barns that does not meet the 1,320 ft residential setback for six residences; located at: 1800 5th Rd., Bremen, IN Zoned A-1 with the following conditions: receive letters from neighboring property owners and plan a row of trees where the neighbor planted the arborvitaes along with a site plan where there are to go, seconded by Mr. Kutch. Motion carried with a voice 5-0.

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The fifth item of business was 21-BZA-17 MILLER, Earl & Edna - A request for a Variance of Developmental Standard to allow a front yard setback reduction from the required 50' to 40' in order to rebuild a house after a fire; located at 841 10th B Rd., Bourbon, IN Bourbon Twsp., Zoned A-1. Mr. Earl Miller was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to rebuild after a house fire. The previous house was located approximately 25' from the ROW, and with the rebuild they are looking to move the structure back to 40', but they won't be meeting the 50' minimum.

Mr. Miller explained to the board when he figured the measurements for this request he measured from the foundation and forgot to consider the eaves. With the eaves it will probably be somewhere around 38'.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

1. Dennis Lemler 10285 S. Beech Rd. Approves their request to allow them to build on their existing foundation.
2. Tom & Jane Watkins Supports Earl & Edna's request to rebuild their home after this devastating fire.

Ms. Mieras made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

The request is for 40' from the right of way. The plan for the house is to be at grade level, using part of the existing foundation and there will not be any additional extensions past the house. The plan for the eaves is to extend out around 16".

Mr. Adley reminded the board that they cannot approve an amount less than what was advertised. This will require Mr. Borkholder to change the size of the eaves, move the house back or come back next month. The board discussed all of these options with Mr. Borkhoder.

Mr. Kutch made a motion to approve 21-BZA-17 MILLER, Earl & Edna - A request for a Variance of Developmental Standard to allow a front yard setback reduction from the required 50' to 40' in order to rebuild a house after a fire; located at 841 10th B Rd., Bourbon, IN Bourbon Twsp., Zoned A-1, seconded by Mr. Miller. Motion carried with voice vote 5-0.

There being no further business, a motion was made to adjourn and seconded. The Motion was passed by a voice vote.

Respectfully submitted

Matt Miller

April 13, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, April 13, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, David Hostetler, and Bob Yoder. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the March 9, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as presented, Mr. Hostetler seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-19 CRABB/Mahler - A request for a Variance of Developmental Standard to reduce the rear yard setback from the required 20' to .25' and a side yard setback from the required 15' to 1.6' in order to move property lines so they don't run through a garage; located at 16656 18B Rd., Culver, IN Union Twsp., Zoned A-1. Mr. Alan Mahler and Susa Craab were present to represent their request. Mr. Adley presented the findings of fact.

The main reasoning to adjust the property lines is coming from the subdivision from the property to the west from the agricultural ground behind it and in order to provide access, the driveway is being split between the two property owners. The adjustment of the western property line (side yard) is going to move it closer to the garage from an existing 8.6' to 1.6'. The northern property line (rear yard) is going to move from -12.6' to .25'.

Alan Mahler and Susan Crabb applicants brought a copy of their abstract and were very confused about the process, the surveyed map and why this was not already done because they believe the abstract already shows the property line adjustment done in 1964.

Mr. Gustafson expressed that he does not like the thought of taking a non-compliant parcel and allowing it to stay non-compliant when there is a way for it to meet requirements.

Mr. Mahler's desire is to have usage of the driveway to access to the ground behind when he sells the farmhouse and Ms. Crabb's desire isn't necessarily to have use of the driveway but have ownership of the property where the garage is.

With all the questions of the current abstract and proposed setbacks the board had many concerns. The board suggested that they go back to surveyor discuss their concerns and reconsider the proposed setbacks.

Mr. Hostetler made a motion to table the request until May, seconded by Mr. Berger. Motion carried by acclamation.

The second item of business was 21-BZA-20 BORKHOLDER, Floyd & Linda - A Variance of Developmental Standard to allow a reduction in easement requirement from 50' to 49'; located at 6427 Elm Rd., Bremen, IN German Twsp., Zoned A-1 that includes parcels 50-43-23-000-027-000-005, 50-43-23-000-026-000-005 and 50-43-23-000-027-001-005. Floyd & Linda Borkholder of 6720 Elm Rd. Bremen, was present to represent their request. Mr. Adley presented the findings of fact.

The applicant has recently established that they have been accessing the property from the wrong side of a rural school, as well as the school has developed a baseball diamond in a portion of the legal access for the rear property. The applicant and adjacent property owner are land swapping the entrance. In the swap, there is an existing structure on the school property, which does not have enough space to accommodate a side yard setback and minimum lot frontage.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Yoder Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler moved and Mr. Berger seconded the motion to close the public hearing

Mr. Hostetler made a motion to approve 21-BZA-20 BORKHOLDER, Floyd & Linda - A Variance of Developmental Standard to allow a reduction in easement requirement from 50' to 49'; located at 6427 Elm Rd., Bremen, IN German Twsp., Zoned A-1 that includes parcels 50-43-23-000-027-000-005, 50-43-23-000-026-000-005 and 50-43-23-000-027-001-005, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The third item of business was 21-BZA-21 KLINEDINST, Darrick & Jill - A request for a Variance of Developmental standard to reduce the right of way setback from 50' to 25' to allow for an addition to an existing pole barn to store their travel trailer; located at 17823 W. 4th Rd., Walkerton, IN Polk Twsp., Zoned A-1. Darrick & Jill Klinedinst of 17823 W. 4th Rd., Walkerton, IN were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to add onto their existing pole barn in order to store their travel trailer indoors. The applicant indicates that they are unable to put the addition onto the east side of the existing structure due to slope and ability to access and store trailer. The minimum setback requirement is 50' and the proposal is 25'.

Mr. Gustafson shared that he owns a property near the Klinedinst's and sees it regularly and notices it's kept immaculately. When the applicant's purchased the property all that was on the property was the house.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Yoder. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler moved and Mr. Berger seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Yoder made a motion to approve 21-BZA-21 KLINEDINST, Darrick & Jill - A request for a Variance of Developmental standard to reduce the right of way setback from 50' to 25' to allow for an addition to an existing pole barn to store their travel trailer; located at 17823 W. 4th Rd., Walkerton, IN Polk Twsp., Zoned A-1, seconded by Mr. Hostetler. Motion carried with a voice vote 4-0.

The fourth item of business was 21-BZA-22 HURFORD, Rob & Jennifer - A request for a Variance of Development Standard to allow a hog barn that does not meet the distance requirement of 1,320' from a residence; located at: 7150 12B Rd., Argos, IN Center Twsp., Zoned A-1. Mr. Rob Hurford of 15955 Gumwood Rd. Argos Chris Kenyon of 58052 Crystal Springs Drive of Goshen, IN was present to represent his request.

The applicant is seeking to construct a CFO for hogs. The CFO threshold requires an IDEM permit and a setback of 1,320' residences not on the subject property. There are 4 residences within the setback ranging from 710' to 1,074'.

The Plans are to put in a 2000 head hog barn wean to finish. Mr. Hurford has three letters from neighbors that support the request and knows there is one neighbor present that has questions.

When asked about the smell of a hog barn facility Mr. Kenyon responded with the following:

- Feed ingredient changes.
- Ventilation changes in buildings. (This is a tunnel ventilated barn with ventilation through the deep pit.) These fans run 24/7 they are a minimum/variable speed fan.
- This facility is located near a woods where the winds come from the southwest and these woods will be used as a true bio-filter.

Works at Co-Alliance and is planning to sign a contract with the Hurford's if there is an approval. This is an opportunity for their family to stay in livestock without taking all the necessary risk of ownership of livestock.

This type of operation has two batches a year. He would get them at the age of two weeks and keep them until they are 6 months. Once the building is emptied it is washed and disinfected before the next group is brought in. The truck traffic is primarily twice a year. During that time there are usually 15 semi's in and out during those three weeks. Feed deliveries are averaged at 1 truck a week.

When asked about manure disposition Mr. Kenyon explained that IDEM sets the standards on construction size of the pit. This is an 8' pit that has allows for storage of 360 days. The whole building has a pit underneath it. This pit has 42" above ground and there is backfill brought up to it. With regard to spreading everything in the State of Indiana must be knifed in or incorporated within 24 hours. Mr. Hurford has already received calls on wanting to have the manure. Manure management permits are handled through IDEM. This application is a CFO not a CAFO. Mr. Hurford has no plans to turn this into a CAFO. As soon as you reach 600 head you must obtain a IDEM permit. Then above 2400 head you must obtain a CAFO permit. Mr. Yoder commented with the raise in fertilizer costs more farmers need a source of nutrients for the ground. From an animal science perspective manure is a good fertilizer because it provides more

than just nitrogen.

This size of operation is the smallest operations in the hog word. Laidig's farms have 2 8,000 count barns and another barn within 4 miles.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

1. Steve Lemler – 12843 Hickory Rd. – Owns two properties that are next to this request. Both properties are on the east side of Hickory along with one that is owned by the daughter of Mr Lemler. The major concern is water contamination. In the Spring the water level is at 4' and above. With concrete there is no way to keep it from cracking. After conversation with the applicant and how it will be built Mr. Lemler feels from his experience that it will leak from underneath. Once it leaks it will contaminate the ground. His well is only 50' in the ground. For years, the well was 8' and never went dry. There is a huge concern of water contamination. Hears also from the neighbors their concern of water contamination, a decrease in property values, and a worry that request is just the beginning with more to come. Has experienced contamination in the past and neither him nor his daughter is for this. He would like assurances that there will be no water contamination. Also wanted a guarantee that there will be no more houses.

   Mr. Gustafson asked the applicants what the plans were to keep from having leakage. There is a continuous slab pour. When the walls are poured there is a 4" rubber water stop that those join together on. IDEM will do a soil boring where the building sits to make sure they are above the season water table. On top of that there is a perimeter tile around the base of the pit that goes to a sump that has a pump that is pumped out onto a rock wash. This will be monitored for all discharge. Mr. Hurford stated that slab goes over the top of the footer so there is no flat butt joint it will be a S shaped joint where the slab is poured over the footer abutted to the wall.

2. Form letters received in support of the proposal by: Andrew Slabaugh, Carl Barnhart, and Michael Weissert.

Mr. Hostetler moved and Mr. Berger seconded the motion to close the public hearing. Motion carried by acclamation.

In response to the concern of lowering property values. Mr. Hurford stated that he purchased the property 3 to 4 years ago and the house was caving in on itself and the county had it listed as no value. He rebuilt and remodeled the house and now appraises at $300,000. In addition to that if this is approved there will be a $600,000 barn there as well. Doesn't believe this is a detriment to property values.

Mr. Yoder commented that he would like to have the information on the seasonal water table to make a more informed decision. During the meeting NRCS was pulled up and reviewed. From this website it is showing the seasonal water would tend to be high. The only way though to get an accurate reading is to pull soil borings.

IDEM oversees the construction of the manure storage structure and the surface rock wash. IDEM also monitors the application of the manure very thoroughly. When asked about the state setback requirements the applied replied that IDEM has a 100' property line setback requirement for a CFO and 200' for a CAFO.

Looking at all the properties owned by Mr. Hurford and taking everything into consideration, this property seemed to be the best fit. No matter which property they picked none would meet the 1320' from a residence.

The applicants reminded the board that this step in the process is the very first of many. If the soil borings do not pass, they are done. IDEM will not allow this building to be built without good borings.

As a point of clarification if the numbers of hogs increase to over the CAFO limit the requirements to have a facility like that will drastically increase.

The field to the north of this property was tiled last year. As far as county tiles there are none.

Part of the approval process will also be a drainage plan. The applicant will have an engineer draw up a drainage plan and it will be reviewed by the County Surveyor as well as the Plan Director.

Mr. David Hostetler made a motion to approve 21-BZA-22 HURFORD, Rob & Jennifer - A request for a Variance of Development Standard to allow a hog barn that does not meet the distance requirement of 1,320' from a residence; located at: 7150 12B Rd., Argos, IN Center Twsp., zoned A-1 with the following condition: a row of evergreens to screen the property on the east side of Hickory Rd.; seconded by Mr. Yoder. Motion approved 3-1 with Mr. Berger voting against.

The fifth item of business was 21-BZA-23 MILLER, Earl & Edna - A request for a Variance of Developmental Standard to reduce the right of way setback from the required 50' from ROW to 36' from ROW in order to rebuild home after fire; located at: 841 10B Rd., Bourbon, IN Bourbon Twsp., Zoned A-1. Mr. Earl Miller of 841 10B Rd. was present to represent his request. Mr. Adley presented the findings of fact.

The applicant had previously come in under 21-BZA-17 to reduce the front yard setback from 50' to 40'. The problem though was that the measurement was going to be from the foundation rather than from the eave. They have since applied for this subject variance to accommodate the full structure within the indicated setback of 36'.

Mr. Yoder made a motion to open for public hearing, seconded by Mr. Berger. Motion caried by acclamation.

1. Dennis Lemler – 1285 South Beech Rd. Bourbon – Gives permission for the applicant to build their home.

Mr. Berger made a motion to close the public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

Mr. Hostetler made a motion to approve 21-BZA-23 MILLER, Earl & Edna - A request for a Variance of Developmental Standard to reduce the right of way setback from the required 50' from ROW to 36' from ROW to rebuild their home after fire; located at: 841 10B Rd., Bourbon, IN Bourbon Twsp., Zoned A-1, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

2020 Annual Report

Mr. Adley presented high points of the 2020 Plan Commission & Building Department Annual Report. Showing an increase in permit count as well as valuation. In addition to permits BZA and Planning Commission also had an increase in cases heard.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

May 11, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, May 11, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Michelle Mieras, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the April 13, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as presented, Mr. Miller seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-19 CRABB/Mahler - A tabled request for a Variance of Developmental Standard to reduce the rear yard setback from the required 20' to .25' and a side yard setback from the required 15' to 1.6' in order to move property lines so they don't run through a garage; located at 16656 18B Rd., Culver, IN Union Twsp., Zoned A-1. Mr. Rich Zeigler, Territorial Engineering, and Mr. Alan Mahler were present to represent their request. Mr. Adley presented the findings of fact.

The main reasoning to adjust the property lines is coming from the subdivision from the property to the west from the agricultural ground behind it and in order to provide access, the driveway is being split between the two property owners. The adjustment of the western property line (side yard) is going to move it closer to the garage from an existing 8.6' to 1.6'. The northern property line (rear yard) is going to move from -12.6' to .25'.

To get clarity and additional information from the surveyor the board requested that the case be tabled till this month. In addition to some of the confusion with the abstract and their proposal Mr. Gustafson expressed to the applicants that this board doesn't like to approve setbacks any less than 5' and encouraged them to reconsider.

Mr. Zeigler explained to the board if they move the property line to meet their 5' rear property line request the existing fence will be an encroachment. The same thing with the west side if that property line is moved to 5' then the concrete pad will be an encroachment on one of the properties. In the survey world it is best not to have encroachments.

Mr. Gustafson continued to contend that 5' would be the least they would go. The board is trying to clean up a problem not create a another. Mr. Zeigler suggested that Mr. Mahler and Ms. Craab provide a maintenance easement of 5' that would go with both parties and would say that no fence or structures could be built within that easement.

Mr. Gustafson responded that the fence and concrete pad could be moved. Mr. Zeigler was only trying to offer a less expensive option of doing a maintenance easement.

Ms. Mieras asked if the maintenance easement would be for both the north and west sides of the property. Mr. Ziegler agreed that it would be both.

When asked what the Board's options were Mr. Adley explained the board has the option to grant the request as is or allow a greater setback just not lower than requested.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

Mr. Zeigler asked Mr. Gustafson he would be opposed to the maintenance agreement? Mr. Gustafson's response was, "wouldn't it be simpler to make the property line there at the 5'?"

There was a lengthy discussion between the proposal, 5-foot setbacks and maintenance agreement.

Mr. Miller made a motion to approve 21-BZA-19 CRABB/Mahler - A tabled request for a Variance of Developmental Standard to reduce the rear yard setback from the required 20' to 5' and a side yard setback from the required 15' to 5' in order to move property lines so they don't run through a garage; located at 16656 18B Rd., Culver, IN Union Twsp., Zoned A-1, seconded by Mr. Kutch. Motion carried with a voice vote 5-0.

The second item of business was 21-BZA-24 KUHNS, Homer - A request for a 16x20' cold storage building that will be used for the existing pre-approved kannery business; located at: 6838 6A Rd., Plymouth, IN German Twsp., Zoned A-1. Mr. Homer Kuhns of 6838 6A Rd. Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 16x20' building to store cans and supplies for Kuhns Kannery. The business was originally approved in 2013. It has been customary to receive approval for expansions of approved business that are advancing past the original or most recently approved size.

Mr. Kuhns was asked about semi-truck traffic and said there is still no semi-truck traffic into his residence. Occasional personal deliveries only.

Ms. Mieras made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Berger seconded the motion to close the public hearing. Motion carried by acclamation.

The board commented that everything has went as planned with no complaints.

Mr. Kutch made a motion to approve 21-BZA-24 KUHNS, Homer - A request for a 16x20' cold

storage building that will be used for the existing pre-approved kannery business; located at: 6838 6A Rd., Plymouth, IN German Twsp., Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The third item of business was 21-BZA-25 BOWERS, Andrew - A request for a Variance of Development Standard to reduce the right of way setback requirement of 75' to 39' to replace an existing garage with a 30x48 garage; located at 1988 Queen Rd., Walkerton, IN Polk Twsp., Zoned A-1.

The applicant is seeking to construct a 30x48' garage to replace a previous garage. They would like to reduce the setback of 75' to 39' from the edge of right-of-way. The frontage along US 6 requires the 75' setback. The existing house is approximately 40' from edge of road and 16' from edge of rightof-way. 39' would get to the approximate center of the house.

Mr. Miller made a motion to table the request till the end of the meeting as the applicant was not in attendance, seconded by Mr. Kutch. Motion carried by acclamation.

The fourth item of business was 21-BZA-26 SMITH, Cameron & Amy - A request for a Variance of Developmental Standard to allow a secondary structure prior to primary to allow them to build a 30'x40' pole barn; located at: 50-32-19-000-076-000-018 across the street from 14337 Lawrence Lake Dr., Plymouth, Center Twsp., Zoned L-1. Ms. Amy Pollock and Mr. Cameron Smith were present to represent their request.

The applicant owns 2 lots, one lakeside and one adjacent across the street. The lot across the street is the lot in question and the property owner is seeking to construct a 30x40' accessory building. The ordinance would typically require a primary (residence) before an accessory structure would be permitted, but the board has historically look favorably upon those applications where the applicant lived across the street. There are multiple none residential structures around lakes that have received approval or predate these zoning requirements.

Mr. Kutch questioned the applicants if they considered possible resale value when placing the building so close to the road that might limit buyers wanting to buy to put in a house. Ms. Pollock stated since there is no parking available at their residence lakeside, they can't imagine anyone buying their house without sufficient parking available which is across the street. Splitting up the properties would not make any sense at all.

The buildings on either side of the proposed structure are garages as well.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Kutch. Motion caried by acclamation. There being nobody to speak for or against Mr. Miller moved and Ms. Mieras seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Berger made a motion to approve 21-BZA-26 SMITH, Cameron & Amy - A request for a Variance of Developmental Standard to allow a secondary structure prior to primary to allow them to build a 30'x40' pole barn; located at: 50-32-19-000-076-000-018 across the street from

14337 Lawrence Lake Dr., Plymouth, Center Twsp., Zoned L-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The fifth item of business was 21-BZA-27 VERMILLION, Jeremy - A request for Variance of Developmental Standard to reduce the front yard setback from the required 30' from ROW to 20' and the side yard setback from the required 10'/10% to 0'; located at: 8426 Dart St., Bremen, IN German Twsp., Zoned L-1 Off Water. Ms. Jody Kenaga and Jeremy Vermillion were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 10x20' covered porch addition onto the front of their home. The existing building line on the North side of Dart street currently averages at about 30', where the existing face of the residence is located.

The applicant was originally unaware that what he owned was two separate parcels as he only had one tax bill. There did not seem to be a problem with combining the parcels in the future but would like to keep it as is for now. They would like to have a little curb appeal to the property and bring more value to the house as well as the surrounding properties by putting up a front porch on top of the existing concrete slab.

The board explained that they would like to see the properties combined.

Mr. Vermillion explained that the proposal will not impede on anybody's view. It will be a roof inside the existing gable that will not extend past the house and be on four posts.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Kutch. Motion caried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Kutch seconded the motion to close the public hearing.

The applicant questioned if his side yard is already zero setback, and he is not extending past that why is it not okay? Mr. Gustafson replied, "We cannot make you move the house, but we can keep you from building more."

Mr. Adley explained to the applicants that they would have to see a surveyor and have them prepare a re-plat of his lots to combine them. Then bring this re-plat to the Plan Commission office and have the plan director sign it administratively and record it.

Mr. Kutch made a motion to approve 21-BZA-27 VERMILLION, Jeremy - A request for Variance of Developmental Standard to reduce the front yard setback from the required 30' from ROW to 20' and deny the side yard setback from the required 10'/10% to 0'; located at: 8426 Dart St., Bremen, IN German Twsp., Zoned L-1 Off Water, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

The sixth item of business was 21-BZA-28 MILLER, Pamela - A request for a Variance of Developmental Standard to allow a shipping container for storage; located at: 2049 Roy St., Walkerton, IN Polk Twsp., Zoned A-1. Ms. Pamela Miller and Mr. Ken Miller of 2049 Roy St. Walkerton were present to represent their request. Mr. Adley presented the findings of fact.

The applicant had a previous conversation with Building Commissioner Steve Howard about the permissibility of shipping containers on the property to store their snowmobiles, golf cart and lawn mower. The Plan Commission Office was notified of a shipping container on the subject property which prompted a violation notice to go out to remove the container from the property because they are not seen as permittable accessory structures under the ordinance. In mediation of the Building Commissioner and Mrs. Smith, I (the Plan Director) came up with this (variance) as an option as there has been a desire from the County Commissioners/Plan Commission to come up with regulations to potentially permit shipping containers within Marshall County.

Ms. Miller said that she talked with her neighbors regarding the existing shipping container, and all were in favor of her request except one. Her plan is to paint it like the color of the roof and make it look nice to help it blend in.

Ms. Miller referenced a letter that was written to explain all the details and conversations about her purchasing a shipping container and setting it on her property.

The 40' shipping container was purchased in Knox from a gentleman by the name of Ron Bailey for $2,500. It was a much cheaper alternative to building a garage. The rear yard is a site for the septic system.

The board discussed their thoughts on shipping containers. While some have been made to look good and blend in, with the surplus of containers they are affordable, but not all locations are suitable for a shipping container.

The board seemed to be at a consensus that they would like to wait until the County Commissioner's make a ruling on shipping containers. Mr. Adley felt like he could have a presentation available to the commission in approximately three months.

Mr. Kutch asked if Ms. Miller would meet the side setback requirements. Mr. Adley said if the zoning is T-1 the requirement is 10'. Ms. Miller responded that she believes it is 11' off the property line.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Stan Klotz – 1322 W. Grant St. Bremen, IN - The Commissioner's looked at this a couple of months ago and had no interest in putting restrictions on shipping containers. When Mr. Howard talked to Ms. Miller and told her that he did not see any restrictions in the zoning as long as she was using it for personal use, a dwelling, or a commercial basis that it was okay. Mr. Klotz stated that he does not feel there are any grounds to restrict this. The commissioners do not want these to be an eyesore and that's the direction the commissioner's wanted to go. If they then became an eyesore it would go through the violation procedure. He is not here to speak for or against this request. Just hoped this applicant gets a "fair shake."

Mr. Adley said that there are restrictions in the Zoning Ordinance under Article 3.

We have not come up with developmental standards (size of ground/locations/etc) for shipping container as of right now.

2. Jenise Press – 2103 Roy St., Walkerton, IN - Lives next door to the person that filed a complaint. She believes the shipping container blends well with the house. It is not an eyesore; however, there is an eyesore at the end of the block. She has no objections.
3. Robert Demis – 20993 8th Rd. Plymouth, IN - Has had a container on his property since 2019. According to Mr. Demis' memory there was a 6-month delay for him to have to get rid of the storage container. Since December 10th, 2019 he is being fined $50 per day and is probably up to $30-40,000 by now on this fine. He is in favor of the County setting rules and guidelines. But until then how can you ban them when all they are is a glorified storage shed. Does not see anything wrong them. In his opinion they are much more secure than a OSB and 2x4 building and more weather resistant. Believes in this case it fits in with the neighborhood.

Mr. Gustafson commented to Mr. Demis that there is a big difference between this request over his situation.

4. Lisa Ogle – letter (no address given) Is in favor of the request.

Mr. Berger made a motion to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

The proposal to the Plan Commission would have a relationship to mimicking side or style around it in relationship to house, barn etc, putting a roof over the structure and possibly the size in relationship to the size of the parcel.

Mr. Kutch asked Mr. Adley if the board gave the applicants one year to remove the shipping container and in the meantime the ordinance changes how would that process look like.

During a lengthy discussion, the consensus of the board was to give the applicants an extension to allow the Plan Commission and County Commissioner's time to possibly come up with an ordinance on shipping containers. At the expiration date of the extension at that point the applicant would either need to remove the shipping container or comply with the ordinance at that time.

Mr. Kutch made a motion to approve 21-BZA-28 MILLER, Pamela - A request for a Variance of Developmental Standard to allow a shipping container for storage; located at: 2049 Roy St., Walkerton, IN Polk Twsp., Zoned A-1 with the stipulation this be temporarily allowed until 5/11/2022 and at that time the shipping container would need to be removed or come into compliance with the regulation at that time, seconded by Mr. Miller. Motion carried with a voice vote 4-1 with Ms. Mieras voting against because she felt that the applicant went through the proper channels to get the container on the property.

The seventh item of business was 21-BZA-29 VERKAIK, William & Carole- A request for a Variance of Development Standard to allow a secondary 36'x48' accessory structure before a primary residence; located at: 50-43-06-000-269-000-005 across the street from 3579 Lake Shore Dr. Bremen, German Twsp., Zoned L-1. Mr. William Verkaik of 18747 Walter St. Lansing IL was present to represent his request. Mr. Adley presented the findings of fact.

The applicant owns two parcels, one on the lake and the subject parcel; they are seeking to replace several smaller accessory structures on the property with one larger one. They are wanting to build a 36x48' building for storage. The ordinance would typically require a primary (residence) before an accessory structure would be permitted, but the board has historically look favorably upon those applications where the applicant lived across the street. There are multiple none residential structures around lakes that have received approval or predate these zoning requirements.

This property located across the street from the residence has always been sold with the lakeside property. There is only one parking space at the residence. He does not foresee these two properties ever being sold separately.

Mr. Berger made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Kutch seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Kutch made a motion to approve 21-BZA-29 VERKAIK, William & Carole- A request for a Variance of Development Standard to allow a secondary 36'x48' accessory structure before a primary residence; located at: 50-43-06-000-269-000-005 across the street from 3579 Lake Shore Dr. Bremen, German Twsp., Zoned L-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The eighth item of business was 21-BZA-30 DE LA TORRE, Oscar - A request for a Special Use prior to property purchase to allow a home-based business (offsite concrete); located at 6021 Plymouth Laporte Tr., Polk Twsp., Zoned A-1.

This request was pulled by the applicant Mr. Oscar De La Torre prior to the hearing.

The third item of business was 21-BZA-25 BOWERS, Andrew - A request for a Variance of Development Standard to reduce the right of way setback requirement of 75' to 39' to replace an existing garage with a 30x48 garage; located at 1988 Queen Rd., Walkerton, IN Polk Twsp., Zoned A-1.

The applicant was not in attendance. Mr. Miller made a motion to table the request to table this request until June 8th, seconded by Mr. Berger. Motion carried by acclamation.

Other Business

Mr. Gustafson brought before the board that he has recognized two small businesses that had been approved by the board has now increased in size and has moved to commercial zoned properties.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

June 8, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, June 8, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Jeff Kutch, Michelle Mieras, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the May 11, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as presented, Mr. Miller seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-31 DE LA TORRE, Oscar - A request for a Special Use to allow a small home-based business; located at: (Yoon, Jae O) Spruce Tr. Plymouth (50-41-16-000-008-001-011), Polk Twsp., Zoned A-1. Mr. Oscar De La Torre and Italia Gordillo, 11133 ShadylaneDr. Plymouth, were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is looking to purchase vacant ground in interest of moving to the property and relocating his business with him. The applicant is a concrete contractor with a self-identified medium sized business, four employees, four truck and four trailers. The plan is to build a 30x40' building to store the equipment within.

The applicant would like to purchase all adjacent 24 acres. The area on the southern most portion of the properties is where they would like to build their house and building. The plan is to build the house first. Then he plans to build the barn later in the rear of the property and plant arborvitae to screen the building. Once the barn is built, he plans to keep all the vehicles inside. Mr. Del La Torre said at his age he has no plans to increase the size of his business or start up a concrete plant. His plan to purchase the ground was to have something to give his family someday.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Steve Engle 5285 Spruce Tr. His property is directly south of the proposed. Does not believe this is a good idea because he has not seen a business plan, what is he doing with all the 24 acres, and believes it will be a detriment to his property values. He asked, “Why does this have to be right next to me when he will have to look at it nine months.” Believes his business is going to expand and is opposed to the request.
2. Iaan (?) Dunfee 5019 Spruce Tr. Speaking on behalf of his father who

is the hospital. With the lender requiring this to be a commercial project and for it to be required to be approved by the board this leaves a great concern. The following are of concern to Mr. Dunfee: growth potential, no business plan, if there is a violation how will that be handled, impact of environmental concerns, loss of property value, added traffic and wear & tear of the roads. Objects to the request.

3. Sara Sarber 5242 Sage Rd. In person and read a letter that she is against them applying for a Special Use Permit on a property that they do not own. Three points she wanted the board to consider: Mr. De La Torre's standing to make this request, the impact his type of business will have on the roads in the area and, lack of a current residence at the property to permit the board to grant a "Home Based" special use permit. Opposes the request because he does not own it.
4. Dooley Spitznagle 5119 Sage Rd. Has same concerns as others plus: Questioned the time frame to build the house, roads, if there will be a future concrete plant, are there going to be hazardous materials stored on the property, noise, smoke, odors, explosives stored on property, water pollutants, restroom facilities in the barn and where will there be parking for the business. Prefers a much more in depth business plan. Opposes the request.
5. Clarence Shively 18115 5th Rd. Has a beautiful view of nature and doesn't want the area to be commercialized. Concerned with the setback so close to the neighbors and thinks there should be a tree line to hide the property. Is against the request.
6. Wade Salyer 5378 Sage Rd. Would not have a problem with the request if the applicant owned the property. Opposes it while he doesn't own the property.

Mr. Miller made a motion to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

Mr. De La Torre's business plan stated that he has a medium sized concrete business, four trucks, 4 trailers, 4 employees plus one office person, a 30'x40' building and that his hours are from 7am – 5pm.

The following is additional business information was discussed:

- Their job consists of tearing out existing concrete at people's homes and replace it.
- When concrete is removed from a worksite it is taken to Alligator Aggregate and they crush it at their site. There are other sites as well that take concrete and crush it.
- Near the new proposed barn there will be concrete blocks stacked to hold gravel, topsoil and fill dirt.
- No sign. Advertisement has been by word of mouth.
- There will be different kinds of trees planted around the building so the building is not visible.
- Purchasing land to be able to give to his kids someday.
- All the forms will be stored in the barn.
- Barn will have bathroom and small office for secretary.
- There will be a septic system for the house and when they build the barn there will be a septic system for the barn as well.

- Has had office space for the past year and nobody has come to the office. All meetings are done at the jobsite.
- Has been in business for seven years. Works around Lake Latonka, Pretty Lake, Lake Maxinkuckee and for the City of Plymouth.
- Do additions, driveway's, sidewalks, patios, and concrete stamping.
- At his age he does not have a desire to see the business grow. At this point children have not shown a desire to be a part of the business.
- Daughter is secretary.
- The proposed building will be 30'x40' with 3 overhead doors.
- The house will have 4 bedrooms.
- The proposed side yard setback will be approximately 30.'
- There will be noise when building the house and barn, but not for the business.
- Hours of business 7am to 5pm.
- There are no chemicals. Everything is done at the jobsite.
- Might be one delivery a month.
- Dump truck is a 750 truck.

In response to a question the Plan Director explained that if Mr. De La Torre ever wishes to increase the business the applicant would have to come back before the board.

Mr. De La Torre plans to screen the barn with trees on the south and north.

Mr. Kutch made a motion to approve 21-BZA-31 DE LA TORRE, Oscar - A request for a Special Use to allow a small home-based business; located at: Spruce Tr. Plymouth (50-41-16-000-008-001-011), Polk Twsp., Zoned A-1 with the following conditions:

1. No storage of waste materials (tore out concrete from jobs) on the property,
2. Variance is contingent on Mr. De La Torre owning the property,
3. Screening the building,
4. Limit size of business to 5 employees, vehicles, and size of building
5. Storage inside building,
6. Additional variance if any changes are made,
7. If there is a property ownership change this approval is void,
8. Work parking will need to be behind the screened area by the barn,

Seconded by Ms. Mieras. Motion carried with a voice vote 4-0-1 with Mr. Gustafson abstaining.

The second item of business was 21-BZA-32 RAMER, Harley - A request for a Variance of Developmental Standard to allow a hog barn that does not meet the distance requirement of 1,320 from a residence; located at: 20702 Michigan Rd. Argos, IN Walnut Twsp., Zoned A-1. Harley & Treva Ramer of 20639 Michigan Rd., Argos were present to represent their request. Mr. Adley presented the findings of fact.

The applicant currently operates an 850 head hog operation on the property and are seeking to add 1,400 to total an estimated 2,200. The threshold from and Animal Feeding Operation (AFO) to a Confined Feeding Operation (CFO) for hogs is 600. The threshold from CFO to a Concentrated

Animal Feeding Operation (CAFO) is 2,500 swine above 55 pounds and 10,000 swine below 55 pounds. The CFO regulations require that there be 1,320' from any residence not on the subject property. There is an existing CFO approval for the property, but due to the proposed additional building, a variance is required. There is a drain that goes through the middle of the parcel.

This has been a hog farm since 1976. Since the lower building was approved for 600 head, they are looking to keep the hogs in there temporarily until the new building is built.

The size of building is based on the plan to go organic in a couple of years. This waste allows it to be composted outside in a three-sided building.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Janet Johnson 20410 S. Michigan Rd. Argos Does not understand the address and why she can't look up the address on Beacon. Is this one barn being put up or two? Has a concern about where the waste will be going. Saw online that there is a violation and that needs to be checked into. The board explained that IDEM controls waste and encouraged her to go to the IDEM hearings. This meeting is only for the setbacks.
2. Eugene Hensley 20290 Michigan Rd. Argos Is against the request as it will degrade his property values.
3. Shelton Hensley 20270 Michigan Rd. Argos Does not want more smell. Has a concern about the decrease in property values. Does not know how they will get rid of all the waste. Is opposed to the project in addition to the steel wheels on our roads.
4. Joyce & LB Robinson ? Does not want this in their area due to the smell it will create. In addition to that there is a concern about run off in the ditch and eventually the river.
5. Brian & Janet Johnson 20410 Michigan Rd. Argos Has many questions about their request.
    - How many hogs they intend to have?
    - How large will the barn be?
    - How large is the property, and will they add to it in the future?
    - How they intend to remove the waste?
    - Where will the waste go?
    - How will it affect our well water?
    - They have found young calves dumped within 15' of their property into the woods behind their home. Is this what they will plan on doing?
    - Hog remains have been found near their property as well.
6. Harley & Treva Ramer, Timothy & Lori Overmyer, and Earl & Sarah Zimmerman all signed waivers in support of the Ramer's request.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Kutch.

Mr. Miller asked how many barns he plans to put up. Mr. Ramer said one. Once the new building is built the temporary barn will be emptied as they must comply with numbers. Dairy calves will

not be allowed in that building per IDEM regulations.

With the organic/gap program all the hogs will be kept inside. The hog business plans to be for Harley Ramer's son.

Mr. Miller made a motion to approve 21-BZA-32 RAMER, Harley - A request for a Variance of Developmental Standard to allow a hog barn that does not meet the distance requirement of 1,320 from a residence; located at: 20702 Michigan Rd. Argos, IN Walnut Twsp., Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The third item of business was 21-BZA-33 JENNEY, James & Cindy - A request for a Variance of Developmental Standard to allow a rear yard setback reduction from the required 20' to 10' for a greenhouse; located at: 14832 Maple Rd., Argos, IN Zoned A-1. Mr. James Jenney of 14832 Maple Rd., Argos was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a greenhouse in the rear of the property and after discussions with the neighboring farmer, they came to an agreement to adjust the location of the structure, but the location is partially within the required setbacks. The proposal is to reduce the rear yard setback from 20' to 10'.

Mr. Jenny purchased his property from his neighbor. The neighbor would like to retain the view to his child's property on the other side of the property. Which is the reason it needs to be closer to the parcel line.

Mr. Miller made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Berger seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Kutch made a motion to approve 21-BZA-33 JENNEY, James & Cindy - A request for a Variance of Developmental Standard to allow a rear yard setback reduction from the required 20' to 10' for a greenhouse; located at: 14832 Maple Rd., Argos, IN Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The fourth item of business was 21-BZA-34 BORKHOLDER, John & Esther - A request for a Variance of Use to allow an aggregate stock yard for limestone and dirt along with concrete removal and recycling for repurpose intermittently; located at: 476 Plymouth Goshen Tr. Nappanee, IN (50-54-21-000-011-000-005), German Twsp., Zoned A-1. John Borkholder 476 Plymouth Goshen Rd Nappanee, IN and Doug Geissinger 10399 Shively Rd. Nappanee, IN were present to represent their request. Mr. Adley presented the findings of fact.

The applicant has been operating an aggregate stock yard for limestone and dirt. They do recycle concrete from time to time with a crusher. Indicates that the yard has been in existence for 30+ years and was unaware of any approval required.

This request came before the board due to a complaint. While researching this property there were no approvals to run such a business. To get this approved we needed to get this request

before the board.

This business was originally started by John Borkholder's grandfather over 30 years ago. At that time there was no crushing. Crushing only started about 5 years ago.

Mr. Geissinger stated that he believes rerouting traffic between Beech Rd. and US 6 and Plymouth Goshen Tr. will cause more issues going out and around when more than 50% of the traffic drive south after being at the location.

Crushing is not done all the time. It is usually not even a month-long process. They only come to the property when there is 5,000 ton to be crushed. The crushing would be the loudest operation done at the facility. It is not nearly as loud as it used to be as the crushing company has different equipment that is not as loud. The crushing times are no earlier than 6am to 6pm.

Beech Road is a county road and Plymouth Goshen is a collector road which is built to withstand heavier traffic. Loads that leave the facility are weighed and run usually between 21-22 ton.

Mr. Miller expressed that he does not feel the Board of Zoning Appeals has the right to require them to drive on specific roads that is the responsibility of the Highway Department.

This Variance of Use is to decide whether they can run a stockyard from this site.

Mr. Berger made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

1. Marvin & Cathy Hochstetler – 675 & 681 1st Rd., Nappanee, IN – The crushing operation that is 500' from their house is disturbing. It is early in the morning and late at night. There are back-up beepers, banging of tailgates and concrete being dumped that is extremely loud and annoying. There is also a lot of truck traffic. The view of huge mountains of dirt and piles of concrete are unsightly. They do not believe this business is in the best interest of the neighborhood.
2. Douglas Scott – 1421 Beech Rd. Napanee, IN - When they moved to this location in 1977 it was a dumping ground that later turned into a gravel pit. At that time, they called the Plan Commission Office and explained their concern. Over the last three years hauling has increased. It will be 4-5 trucks hauling 8 loads each back and forth all day. They do not believe their road was made for this traffic. There have been large pieces of concrete that fall out of the trucks. The road also has potholes and ruts from buggies. Believes these sorts of businesses and others that are approved have a direct affect on the people that live their and their quality of life. Opposes this variance request.

Mr. Miller moved to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

Mr. Kutch expressed that he didn't have a concern with the original business but had questions regarding the crushing portion of the business that started 5 years ago. Mr. Geissinger talked to Mr. Borkholder about 6 or so years ago about the burying of limestone and proposed crushing it

instead as a better alternative.

When planting trees were mentioned, the applicants stated that the Hochstetler's already have trees that would be a screening.

Mr. Miller made a motion to approve 21-BZA-34 BORKHOLDER, John & Esther - A request for a Variance of Use to allow an aggregate stock yard for limestone and dirt along with concrete removal and recycling for repurpose intermittently; located at: 476 Plymouth Goshen Tr. Nappanee, IN (50-54-21-000-011-000-005), German Twsp., Zoned A-1, with the following regulations:

1. Hours of business 7am-5pm

Seconded by Mr. Kutch. Motion carried with a voice vote 4-1 with Ms. Mieras voting against.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

July 13, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, July 13, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Jeff Kutch, Michelle Mieras, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the June 8, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as presented, Mr. Miller seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-35 SHIDLER, Brian & Norva - A request for a Variance of Developmental Standard from the density rule to allow two parcels to be split into three lots with one lot being building; located at 16636 & 16680 Quince Rd., Culver, IN Zoned A-1. Mr. Brian Shidler of 16636 Quince Rd. Culver was present to represent his request. Mr. Adley presented the findings of fact.

Unapproved Minutes

The applicant owns 5.31 acres just off Quince Road. The applicant wants to split off another parcel to have a relative build another home. The area is zoned A-1 Agricultural, which allows only one (1) buildable parcel per every five (5) acres. Since this parcel is less than ten (10) acres. This needs the BZA's approval to create this new parcel. To the north is the Little Lake Minor Subdivision. One (1) lot was created in September 1996 to create one (1) lot since the applicant had exceeded the number of splits under the old subdivision ordinance. In April 2009, a replat of Little Lake Minor Subdivision created another parcel. The applicant's family owns a small pond. One solution would have been to expand that parcel to include the new building site. The family chose to keep the pond as an individual parcel for the enjoyment of the family.

Mr. Shidler would like to split off his house and be able to retain ownership of the barn if they decide to sell the house.

Mr. Berger made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation. There being nobody to speak for or against Ms. Mieras made a motion to close the public hearing. Motion carried by acclamation.

In 2018 the concern for access was solved by the recorded easements.

Mr. Adley explained we have the plat in the folder to record and couldn't record because the variance lapsed after that year.

Mr. Berger made a motion to approve 21-BZA-35 SHIDLER, Brian & Norva - A request for a Variance of Developmental Standard from the density rule to allow two parcels to be split into three lots with one lot being building; located at 16636 & 16680 Quince Rd., Culver, IN Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The second item of business was 21-BZA-36 GEHRKE, David & Karen - A request for a Variance of Developmental Standard to allow a right of way setback reduction from the required 60' to 27' in order to build a 36x40' pole barn; located at: 17877 Lincoln Hwy Plymouth, West Twsp., Zoned A-1. Mr. & Mrs. David Gehrke of 10079 Carriage Dr. Plymouth were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is wanting to build a 36x40 pole barn for cold storage. The difficulty that he is running into is the setback requirement from Lincoln Highway (Collector Road) are restricting his ability to construct the new barn. The setback requirement is 60' from ROW and they are proposing 27' from ROW.

The plan is to have this enclosed area to keep all storage inside and the property be kept clean and neat. When they brought out material to start they were surprised to find out it need a variance because they weren't going any closer to the road than the existing building.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

1. Judith Skinner – 17877 Lincoln Hwy Has lived there for almost thirty years and the Gehrke's have maintained the property well. In favor of the request.

Mr. Miller made a motion to close the public hearing seconded by Ms. Mieras. Motion carried by acclamation.

Mr. Kutch made a motion to approve 21-BZA-36 GEHRKE, David & Karen - A request for a Variance of Developmental Standard to allow a right of way setback reduction from the required 60' to 27' in order to build a 36x40' pole barn; located at: 17877 Lincoln Hwy Plymouth, West Twsp., Zoned A-1, seconded by Mr. Berger. Motion carried with a voice vote 5-0.

The third item of business was 21-BZA-37 BORKHOLDER, Calvin - A request for a Special Use to allow a home based business for welding; located at: 5576 Fir Road, Bremen, IN German Twsp., Zoned A-1. Mr. Calvin Borkholder of 5576 Fir Rd. Bremen was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is looking to construct a 32x40' addition to an existing barn to start a home based workshop for a welding shop. The applicant will be fabricating and welding parts mostly for other factories and also some custom work. He intends to be the only employee with hours of operation from 5:00am to 2:00pm

Mr. Borkholder clarified that he is not planning on building a new building he is using the existing structure to conduct business out of. The barn that is 32x40' is the location of the proposed welding shop.

The primary business will be aluminum tig welding. Most of the work will be for factory work. There will be very little work with the public.

Currently there is no plan to grow the business. In the future he would like to have his kids help in the business with a maximum of two employees. If there is a need for additional help Mr. Borkholder agreed that he would need to come back before the board for that request.

Mr. Miller made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Berger seconded the motion to close the public hearing.

If there is a desire for a small business sign, please call the Planning Department to verify the size allowed and obtain a permit for a sign.

There will be some raw material coming in, but the majority of finished work will be delivered by someone else.

The proposed hours of operation will be from 5:00am to 2:00pm Monday through Friday and sometimes Saturday mornings.

Mr. Kutch made a motion to approve 21-BZA-37 BORKHOLDER, Calvin - A request for a Special Use to allow a home based business for welding; located at: 5576 Fir Road, Bremen, IN German Twsp., Zoned A-1 with the following conditions:

1. **2 employees or less**
2. **No specific hours required.**

Seconded by Mr. Miller. Motion carried with a voice vote 5-0.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

August 10, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, August 10, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Jeff Kutch, Michelle Mieras, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the July 13, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as presented, Mr. Voreis seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-38 YODER, Kevin - A request for a Special Use to allow a home based business of custom welding and repairs; located at: 6840 SR 331, Bremen, IN German Twsp., Zoned A-1. Kevin & Maria Yoder of 6840 SR 331 Bremen were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to operate Hoosier Welding which does a variety of custom welding and repair jobs. They would currently not have any employees, but would like to grow to as a large as 5-10 employees working 40 hour weeks beginning as early as 5:00am. Current deliveries consist of about 1 delivery truck per week and customer traffic is minimal.

Mr. Yoder would like to keep the hours of operation from 5:00 am to 2:30. His operation is for agriculture welding repairs, manufacturing of horse stalls, and general custom welding projects. All stock will be stored inside.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Voreis. Motion carried by acclamation. There being nobody to speak for or against Mr. Berger moved and Mr. Voreis seconded to close the public hearing. Motion carried by acclamation.

The Technical Review Committee recommended to place a maximum of 5 employees. With the building being of commercial nature the board explained to Mr. Yoder if there are employees and public in the building it is required to have a Construction Design Release approved by the State of Indiana. Mr. Yoder was informed that if there is going to be a sign there are sign standards and a permit is required.

With regard to outside storage Mr. Yoder agreed that any storage outside pertaining to the business would be between the new barn and existing barn or behind the barn.

Mr. Berger made a motion to approve 21-BZA-38 YODER, Kevin - A request for a Special Use to allow a home based business of custom welding and repairs; located at: 6840 SR 331, Bremen, IN German Twsp., Zoned A-1, with the following stipulations;

1. Hours of operation 5am to 2:30pm
2. Maximum of 5 employees
3. Signage to be approved and permitted by the Plan Commission
4. Construction Design Release per Building Department
5. Storage – Restriction of storage between the two buildings and behind the welding shop

Seconded by Mr. Voreis. Motion carried with a voice vote 3-0.

The second item of business was 21-BZA-39 CAROTHERS, William - A request for a Variance of Developmental Standard to reduce the front yard setback from the required 50' to 30' in order to build a home; located at: 14574 5th Rd., Plymouth, North Twsp., Zoned A-1.
The applicant has failed to appear. Mr. Voreis made a motion to table this request until September, seconded by Mr. Berger. Motion carried by acclamation.

The third item of business was 21-BZA-40 KUHNS, Enos & Mattie - A request for a Variance of Use to allow a 10x20' shed to be used as a periodic camping shelter; located at: 4279 Beech Rd., Nappanee, IN German Twsp., Zoned A-1. Mr. Enos Kuhns of 4279 Beech Rd., Nappanee was present to represent his request. Mr. Adley presented the findings of fact.

The applicant has several acres of woods at the rear corner of their property and they are seeking to place a camping shelter (10x20’ on skids) within the woods. The camping shelter would be used periodically by the owners of the property. A brief and incomplete discussion occurred with the Plan Commission in July regarding these types of structures and the initial consensus was that this would be acceptable provided that they for the use of the owner, and not commercialized for anyone off the property.

Mr. Voreis made a motion to open for public hearing, seconded by Mr. Berger. There being nobody to speak for or against Mr. Berger moved and Mr. Voreis seconded the motion to close the public hearing. Motion carried by acclamation.

A concern by the board was that a temporary building used for every now and then camping be turned into residential quarters. This has been a concern of the office as well. This site will have no running water no electric and no sewage system. The Plan Director reminded the board that they have the ability to ad conditions to the motion to limit the use as the board wishes.

Mr. Berger made a motion to approve 21-BZA-40 KUHNS, Enos & Mattie - A request for a Variance of Use to allow a 10x20' shed to be used as a periodic camping shelter; located at: 4279 Beech Rd., Nappanee, IN German Twsp., Zoned A-1, with the following stipulations:

1. No permanent residence
2. No commercial use

Seconded by Mr. Voreis. Motion carried with a voice vote 3-0.

The fourth item of business was 21-BZA-41 NOFTSGER, Pete- A request for a Variance of Developmental Standard to reduce the front yard setback from the required 30' to 8' and the rear yard setback from the required 15' to 0' in order to add on to an existing accessory structure; located at: 18637 SR 331, Tippecanoe, IN Zoned T-1. Mr. Pete Noftsger … was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to expand this existing low clearance shed and in order to do so they are seeking to reduce the front yard setback off of Illion Street from 30' to 8 'and also reduce the rear yard setback from 16' to 0'. The lot is relatively small, measuring approximately 40x120'. The lot is also a corner lot which has a significant impact on their ability to meet standard setbacks because secondary frontage (southside) and side yard setback (north side), significantly inhibit the ability the develop the parcel without having a variance of some nature. The Right of Way of Illion Street is 40' across, but approximately some nature. The Right of Way of Illion Street is 40' across, but approximately is 14' of the ROW on the North side of the road is the applicant's lawn and the improvement roadway is about 10' across.. The rear property line is adjacent to an alley that is used.

The applicant owns the property on the corner and his wife owns the adjacent property. The plan is to tear down his house on the corner and join the properties together as one and have his name included on the property after combined. In the meantime he would like to increase the size of the existing shed to store some of his belongings inside. When asked if he would like to tear down the house why doesn't he want to also tear down the shed and build new he said it was financial.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Voreis. Motion carried by acclamation. There being nobody to speak for or against Mr. Berger moved and Mr. Voreis seconded the motion to close the public hearing. Motion carried by acclamation.

The board expressed that they would have a better feeling of approving the request once the house is tore down and the properties be combined. The rear yard setback required is 15' and the roadside setback is 30'. The board explained if all this was done and he tears down the shed he would be able to build a new shed and not need the variance.

After discussion the applicant requested to table the request till September.

Mr. Berger made a motion to table the request until September, seconded by Mr. Berger. Motion carried by acclamation.

The fifth item of business was 21-BZA-42 HENDRICKS, Staci - A request for a Variance from the 1:3 width to depth ratio tallow for wooded property to be split off; located at: 6th Rd. Bremen Parcel #'s, 50-43-22-000-001-000-005, 50-43-21-000-021-000-005, German Twsp., Zoned A-1. Mr. Corky Hendricks was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to cut off an estimated 25 acres of property on the East side of the Yellow River for a new property owner to enjoy recreationally. The current property owner was made

aware of the significant floodplain area in which encompasses the subject property. The property would run from 6th road to the Southern edge of the property.

The property width at the road will be approximately 100' in width and when the property widens it will go out to about 210' in width. With the significant wet area there is little chance this property could be built on. The property would be best used recreationally.

Mr. Voreis made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation. There being nobody to speak for or against Mr. Berger moved and Mr. Voreis seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Berger made a motion to approve 21-BZA-42 HENDRICKS, Staci - A request for a Variance from the 1:3 width to depth ratio tallow for wooded property to be split off; located at: 6th Rd. Bremen Parcel #'s, 50-43-22-000-001-000-005, 50-43-21-000-021-000-005, German Twsp., Zoned A-1, seconded by Mr. Voreis. Motion carried with a voice vote 3-0.

The sixth item of business was 21-BZA-43 DOLAN, Kevin & Catherine - A request for a Variance of Developmental Standard from the required side yard setback east side required 4' to 2.9' and the west side required 4' to 3.5' in order to build an addition on the single family residence; located at: 10299 Pretty Lake Tr., Plymouth, West Twsp., Zoned L-1.

The applicants along with their attorney, James Easterday, they requested to table the request until September.

Mr. Voreis made a motion to table this request until September 14, 2021, seconded by Mr. Berger. Motion carried by acclamation.

The seventh item of business was 21-BZA-44 PETERSON, Thomas & Patricia - A request for a Variance of Development Standard to exceed a portion of the fence height requirement of 3 1/2' to 4'; located at: 12346 Chippewa Tr., Culver, IN West Twsp., Zoned L-1. Mr. Ross Holderbaum of 7869 Plymouth Goshen Tr. Plymouth was present to represent the applicants. Mr. Adley presented the findings of fact.

The applicant is seeking to put in a fence around the side and rear of the residence (lake side). The rear yard of the property only allows for a 3.5' fence, but the applicant is seeking to construct a 4' fence. The side yard allows for up to 6' of fence on the property.

Mr. Holderbaum stated that working in a lake residential area it can be difficult as all counties requirements are different. With the placement of the owners house on the lot it's making part of the proposed fence to not be compliant. The size of the dogs requires the higher fence and 42" would be an odd size to get aluminum fencing. The proposed fencing meets all other requirements. In addition this fence won't impede anyones view. The fence will be going along the corner of the deck to the shed and runs parallel with the house.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Voreis. Motion carried by acclamation. There being nobody to speak for or against Mr. Berger moved and Mr. Voreis

seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Voreis made a motion to approve 21-BZA-44 PETERSON, Thomas & Patricia - A request for a Variance of Development Standard to exceed a portion of the fence height requirement of 3 1/2' to 4'; located at: 12346 Chippewa Tr., Culver, IN West Twsp., Zoned L-1, seconded by Mr. Berger. Motion carried with a voice vote 3-0.

The second item of business was 21-BZA-39 CAROTHERS, William - A request for a Variance of Developmental Standard to reduce the front yard setback from the required 50' to 30' in order to build a home; located at: 14574 5th Rd., Plymouth, North Twsp., Zoned A-1.
The applicant has failed to appear. William Carothers and Randy Mathews of Rochester Homes was present to represent their request.

The applicant is seeking to construct a new home on the property, but due to the location of a high power gas line and its easement on the property, the developable ability is hindered.

The UG utility lines run southeast on the west corner of the property. From the line there is a 75’ easement one way and with that coming into the property it pushes the house south into the front yard setback.

The pipleline has been marked and the owner and Rochester Homes has been working off of those markings. The well is on the west front side of the pole barn and the septic is on the northeast side of the polebarn. With there being neighboring properties with houses closer to the road than the required 50’ they don’t see a reason why this can’t be approved.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Voreis. Motion carried by acclamation. There being nobody to speak for or against Mr. Berger moved and Mr. Voreis seconded the motion to close the public hearing. Motion carried by acclamation.

The best position of the home turned out to be east and west. The size of the home will be a smaller 1100 sq ft home.

Mr. Berger made a motion to approve 21-BZA-39 CAROTHERS, William - A request for a Variance of Developmental Standard to reduce the front yard setback from the required 50' to 30' in order to build a home; located at: 14574 5th Rd., Plymouth, North Twsp., Zoned A-1, seconded by Mr. Voreis. Motion carried with a voice vote 3-0.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

September 14, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, September 14, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Jeff Kutch, Michelle Mieras, and David Hostetler. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the August 14, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as corrected, Ms. Mieras seconded the motion. Motion carried by acclamation.

The second item of business was -BZA-41 NOFTSGER, Pete- A tabled request for a Variance of Developmental Standard to reduce the front yard setback from the required 30' to 8' and the rear yard setback from the required 15' to 0' in order to add on to an existing accessory structure; located at: 18637 SR 331, Tippecanoe, IN Zoned T-1. Mr. Peter Noftsger was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to expand his existing low clearance shed and in order to do so they are seeking to reduce the front yard setback off Illion Street from 30' to 8' and reduce the rear yard setback from 15' to 0'. The lot is relatively small, measuring approximately 40x120'. The lot is also a corner lot, which has a significant impact on their ability to meet standards setbacks because secondary frontage (South side) and side yard setback (North side), significantly inhibit the ability to develop the parcel without having a variance of some nature. The Right of Way of Illion Street is 40' across, but approximately 14' of the ROW on the North side of the road is the applicant's lawn and the improved roadway is about 10' across. The rear property line is adjacent to an alley that is used.

Mr. Noftsger believed he had completed the requests of the board from the business meeting. 1. Tear down the house on the corner 2. Combine both lots. During the meeting staff looked up the property on the GIS to confirm and the properties hadn't been combined either for tax purposes or by a replat.

The current request is for a south and west setback reduction only. If the building were to be tore down the applicant would need to reapply for an additional variance.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation. There being nobody to speak for or against Mr. Kutch made a motion

to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

Ms. Mieras made a motion to approve BZA-41 NOFTSGER, Pete- A tabled request for a Variance of Developmental Standard to reduce the front yard setback from the required 30' to 8' and the rear yard setback from the required 15' to 0' in order to add on to an existing accessory structure; located at: 18637 SR 331, Tippecanoe, IN Zoned T-1, with the following condition:

1. **Combine the two parcels into one by the process of a replat with no middle lot line.**

seconded by Mr. Berger. Motion carried with a voice vote 5-0.

The third item of business was 21-BZA-43 DOLAN, Kevin & Catherine - A tabled request for a Variance of Developmental Standard from the required side yard setback east side required 4' to 2.9' and the west side required 4' to 3.5' in order to build an addition on the single family residence; located at: 10299 Pretty Lake Tr., Plymouth, West Twsp., Zoned L-1. James Easterday, Attorney for the applicants, Kevin & Catherine Dolan 10299 Pretty Lake Tr Plymouth were present to represent their request. Mr. Adley presented the findings of fact.

The Applicant is seeking to construct a home addition on the lake side of the residence that will replace a screened in porch with a great room, new bedroom, and sunroom. The addition would widen the existing on both sides and would require reduction in setback from 4' to 2.9 feet on the East side of the property and 3.5' on the West side of the property. There is a concern that the property is currently served by septic system and should be clarified or rectified through the Marshall County Health Department.

The applicant will not be expanding further on the west side as it will be in line with the present structure. The east side they are trying to put in a 3’ entrance door and need that extra room. This property is part of the Pretty Lake Sewer Conservancy District. However, there is the old system still on the property. To keep the additions away from the septic and pushing it out closer to the lake this plan is the best option. There is an existing shed on the property will also come down.

To meet the setback requirements it would mean adjustment the measurements by 1’. By adjusting the measurement the applicants said that it would make the bedroom to skinny.

Due to the inconsistency in the drawings there was a difficulty in understanding the request. Mr. Adley felt that the applicant’s proposal was to increase the overall width of the structure by 4’. The east side; however, is just a little over one foot request in reduction. Mr. Easterday will go back to the architect and discuss a way to get the east setback to 4’. The applicant then agreed to a 4’ setback on the east if the board would allow the west setback of 3.5’.

Ms. Mieras made a motion to open for public hearing. Motion carried by acclamation.

1. Robert Kizer 10369 Pretty Lake Tr.
   Doesn’t have a problem with this request to be granted. Believes it will be done in a nice way. It’s been professionally designed and

will most definitely increase property values.

2. Jana Oliver — 10283 Pretty Lake Tr.,
   Owns the property to the west of the Dolan's and her residence is next to that one. The Dolans have cleaned up the property when they bought it. Is completely in favor of their request and doesn't believe it will affect their view of the lake. Mrs. Oliver also submitted a letter of the same and it was read as well.
3. Jeff Long — 10327 Pretty Lake Tr.
   Letter saying he approves of the request.

Mr. Berger made a motion to close the public hearing, seconded by Ms. Mieras.

Mr. Kutch made a motion to approve21-BZA-43 DOLAN, Kevin & Catherine - A tabled request for a Variance of Developmental Standard for the west side required 4' to 3.5' and no reduction in setback approved for the east side yard in order to build an addition on the single family residence; located at: 10299 Pretty Lake Tr., Plymouth, West Twsp., Zoned L-1. Motion carried with a voice vote 5-0.

The fourth item of business was 21-BZA-45 KREFT, Larrie - A request for a Variance of Development Standard to allow a setback reduction from the road right of way from the required 50' to 10' and the side yard from the required 25' to 10'; located at: 18140 SR 331, Tippecanoe, IN Tippecanoe Twsp. Zoned I-1. Mr. Larrie Kreft of 18140 SR 331 Tippecanoe was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a post frame building in the corner of their lot that will be approximately 77x138' 14' tall on the sidewalls. The structure is proposed to be 10' off of the western and southern side property lines. The property to the southwest is zoned T-1 Town Residential and the southern property is zoned Industrial. The Residential property requires there to be 50' setback when constructing on the Industrial zoned subject property. When Industrial abuts Industrial zoned properties the side setback is only 25'. The house that is on the Residential parcel will be less than 100' from the proposed new structure.

The applicant understands that there are other places he could put the building, but doesn't want to waste ground and also wants the doors to face the east. This location seemed to fit their needs the best.

Mr. Kutch made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Fred Jones — Is in favor of the request.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

The plan director encouraged the applicant to be good neighbors in respect to lighting. Mr. Kreft said that they plan to have minimal lighting with one light at each end of the building and will be

shut off when they leave work.

Drainage has already been discussed with Mr. Sellers and a proposal will be drawn up and submitted with the application.

Mr. Hostetler made a motion to approve 21-BZA-45 KREFT, Larrie - A request for a Variance of Development Standard to allow a setback reduction from the road right of way from the required 50' to 10' and the side yard from the required 25' to 10'; located at: 18140 SR 331, Tippecanoe, IN Tippecanoe Twsp. Zoned I-1, seconded by Mr. Berger. Motion carried with a voice vote 5-0.

The fifth item of business was 21-BZA-46 PHILLIPS, George - A request for a Variance of Developmental Standard to allow a reduction in setbacks of the front yard from 30' to 19', rear yard 45' to 33' and lot coverage from 45% to 55%; located at: 4530 Pleasant Point Lane, Bremen, IN Zoned L-1. Mr. George Phillips was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a new home and is seeking to reduce the front yard setback from 30' to 19', the rear yard setback from 45' to 33', and increase the impervious coverage from 45% to 55%. The buildings along Pleasant Point Lane are closer to the road and the channel of the lake. The front setback along Pleasant Point Lane averages to 9' over 9 structures which has a range of 25 to -2'. The front setback along W Shore Drive averages to 40' over 18 structures to the East and West of the subject parcel, ranging from 72' to 9 feet. The rear yard setback requirement is 45' from the Base Flood Elevation with an average of -3' (over 6 structures) from the BFE, with setbacks ranging from 41' to -32'. In late 2020 there was a BZA case for the lot to the South where there was "a motion to approve 20-BZA-61 SPETH, Christopher - A request by Brian Teal for a Variance of Developmental Standard to reduce the right of way setback on both Pleasant Point Ln and W. Shore Dr. from the required 30' to 18' and a rear yard setback from the required 45' to 24; located at: 5018 W. Shore Dr. Bremen, IN German Twsp., Zoned L-1 with the condition that the setback from West Shore Drive shall be no less than 28’ from the ROW."

Due to the floodplain they chose to push the house closer to the road that doesn’t meet the setback. The TRC liked the fact of the placement of the garage and the loading of the garage is from the side.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation.

1. Brian Teall — 313 S. Whitlock St. Bremen
   Is here to support Mr. Phillips for his request. If the board approves the 55% green space on this case he will most likely come back before the board for his property as well. They will have the same problem that they do when considering putting in a driveway. Likes the fact that their view won’t be obstructed. Asked about where there driveway will be located. The owner said that it will run along the south property line.

2. Rick Bollenbacher — 4460 Pleasant Point Ln Bremen
   Is against the granting of this request.
3. Diane Ralston — Bremen
   Is against the approval for the for the following reasons: The variance will obstruct her view of the lake which in return devalues her property; Residents live at the lake for more green space not less caused by oversized by new buildings; There is a 75' setback for the cleaning of the ditch which is u sed to control the lake level. The lake is the legal drain for the water shed including her property; there is a flood plain within the vicinity; the zoning rules were established to protect property owners; they should find another lot don't devalue her property.
4. Brian Teall — 313 S. Whitlock St. Bremen
   Doesn't believe that their stance in blocking a view shouldn't be considered as they don't have a residence on that property.

Mr. Berger made a motion to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

The board re-looked at the other structures up and down pleasant Point Lane and their proximity to the roadway.

Mr. Hostetler made a motion to approve 21-BZA-46 PHILLIPS, George - A request for a Variance of Developmental Standard to allow a reduction in setbacks of the front yard from 30' to 19', rear yard 45' to 33' and lot coverage from 45% to 55%; located at: 4530 Pleasant Point Lane, Bremen, IN Zoned L-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The sixth item of business was 21-BZA-47 SWIHART, Stephen - A request for a Variance of Developmental Standard to reduce the Right of Way setback required from 50' to 30' in order to build an attached garage; located at: 7651 Rose Rd., West Twsp., Zoned A-1. Steven H Swihart and Steven A Swihart were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is in the process of designing a new garage that will be 22' wide and 36' deep. The proposed addition is in need of the setback being reduced from 50' to 35'. The house is located on Rose Road just North of US 30 adjacent to Yogi Bear Campground. A unique topographic aspect of this property is that it is the first house just south of the hill on Rose Road, and the existing drive is approximately 700' from the crest of the hill. The intersection with Rose Road and US 30 is notorious for having drainage and silting issues due to sediment washing down the road and settling just North of the stop sign which is a safety concern.

Where the existing bump out is on the house it will be removed and the addition will fit from the adjacent corner and one foot from the lamp by the front door. The plan for the driveway will be to put in a chip and seal "U" shaped driveway which should eliminate any concerns for

safety and backing out. When questioned about drainage concerns the applicant stated that the silt and drainage stays on the other side of the road. The reason for the extra deep garage is to add a ramp to care for his parents.

Mr. Kutch understands the "U" turn they proposed with the safety issue there in addition to the extra deep garage space he doesn't see the need even with a ramp.

To make the garage wider it would require running new electrical on one side and changing out a door that was just replaced not long ago.

Mr. Berger made a motion to open for public hearing, seconded by Mr. Kutch. Motion carried by acclamation. There being nobody to speak for or against Mr. Berger moved and Mr. Hostetler seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Hostetler made a motion to approve 21-BZA-47 SWIHART, Stephen - A request for a Variance of Developmental Standard to reduce the Right of Way setback required from 50' to 30' in order to build an attached garage; located at: 7651 Rose Rd., West Twsp., Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 4-1 with Mr. Kutch voting against.

The seventh item of business was 21-BZA-48 MAST, Henry - A request for a Special Use to allow for construction of a 36x48' building with a 10' partially enclosed overhang for temporary housing to care for an elderly; located on parcels 418 and 474 3 B Rd., Nappanee, IN 46550, Zoned A-1. Mr. Levi Mast was present to represent Mr. Henry Mast. Mr. Adley presented the findings of fact.

The applicant currently owns the large parcel of ground, and his father owns the adjacent smaller property. The applicant would like to add approximately 1.3-1.5 acres to his father's parcel so that the applicant could build a pole barn with a living quarter in it. The reason that this is coming about is that the son of the applicant is interested in moving back to the farm and the applicant will take over the father's house once he passes, but for the time being living in a pole barn with living quarters would be of interest of the applicant.

One of Levi's sons are willing to take the farm on. To allow Henry to stay at the house until he passes they would like to add additional acreage onto his property and build a 36x48' building with a 10' partially enclosed overhang for temporary housing. When he passes this building will not be used for housing any longer and he would move the existing home.

There will be no new parcels only extending the current rear property line north. At that time all setbacks will need to be met before the split is approved.

Mr. Hostetler made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

1. Henry Mast — Letter submitted by Levi Mast giving his son permission to represent him.
2. Martin Miller — In favor of the request.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

Mr. Hostetler made a motion to approve 21-BZA-48 MAST, Henry - A request for a Special Use to allow for construction of a 36x48' building with a 10' partially enclosed overhang for temporary housing to care for an elderly; located on parcels 418 and 474 3 B Rd., Nappanee, IN 46550, Zoned A-1 with the following stipulations:

1. **When Henry Mast no longer resides in the residence the pole structure will no longer be used as a residence.**
2. **The additional property that is to be divided and combined with Henry Mast's property will need to be completed prior to a building permit being issued.**

Seconded by Mr. Kutch. Motion caried with a voice vote5-0.

The eighth 21-BZA-49 KEARBY, Shawn - A request for a Special Use to allow a home-based business of offsite demolition work; located at: 13725 5th Rd. Plymouth, IN North Twsp. Zoned A-1.

Due to the applicant not being present Mr. Kutch made a motion to table the request until October, seconded by Mr. Hostetler. Motion carried by acclamation.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

October 12, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, October 12, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, Dan Voreis, Jeff Kutch, David Hostetler, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the September 14, 2021, meeting was submitted to the board. Mr. Miller made a motion to approve the minutes as written, Mr. Hostetler seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-49 KEARBY, Shawn - A request for a Special Use to allow a home-based business of offsite demolition work; located at: 13725 5th Rd. Plymouth, IN North Twsp. Zoned A-1.

Due to the applicant not being present Mr. Hostetler made a motion to deny the request, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

The second item of business was 21-BZA-09 DEMIS, Robert - A request for a Variance of Use for a shipping container as he is trying to build a saleable business within a storage/shipping container; located at: 20993 8th Rd., Plymouth, West Twsp., Zoned A-1. Mr. Robert Demis of 20993 8th Rd. Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

There is a proposal to the Plan Commission at the end of the month. While discussing with the Technical Review Committee and other Marshall County Boards, the following drafted conditions, the early draft proposal would be to allow shipping containers within the A-1 zoning district with the conditions that the container be painted to match adjacent structures and must be kept in good repair (no rust, holes or worn paint). Therefore, if this proposal were to be approved and made into an ordinance, this would permit the use of Mr. Demis shipping container for storage only, and would need to meet setbacks on the property. In terms of the business, it would be acceptable to create and design his invention from either the residence or existing accessory structure.

Mr. Demis gave his view of the timeline from the onset of this case. It is his opinion that there is no statute saying shipping containers aren't allowed. Mr. Demis explained that his property corner's two roadways which requires two front yard setbacks. His property is .4 acres and when you add in the setbacks required from all four property lines 88.4% of his lot is setback only

19.16 % is usable space. The board reminded Mr. Demis that if he had talked to the Plan Commission prior to purchasing and placing the shipping container on his property all of this could have been eliminated. The board also expressed that it is the plan directors responsibility to administer and enforce the zoning and subdivision ordinances.

Mr. Demis believes his shipping container has the permanency of a roll off dumpster or a stalled car. It will be there until someone is called to come and drive away with it.

The board asked Mr. Demis if he would be willing to table this request until after the County Commissioner's make their ruling and Mr. Demis said "yes".

Mr. Miller made a motion to open for public hearing , seconded by Mr. Hostetler. Motion carried by acclamation.

1. Jim Demis 111 S. Jefferson St. Hamlet Is a brother to the applicant and is there to support him. He is a veteran who is trying to better himself and do the best he can to make a living. He believes his brother is being penalized for a statute that doesn't exist.
2. Steve Howard ? Letter stating he is in favor of allowing the use of a storage container.
3. Christopher & Margaret Rzepczynski 8054 W. Co. Line Rd. Sent a letter and is against the request. Doesn't believe Mr. Demis is within laws of using such a shipping container for a business. It doesn't meet the setbacks required. Believes the property is too small for all the laws and regulations for this business. Also has a concern about their property values.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

Mr. Miller made a motion to table the request and to extend the pause for violation another six (6) months for <u>21-BZA-09 DEMIS, Robert -</u> A request for a Variance of Use for a shipping container as he is trying to build a saleable business within a storage/shipping container; located at: 20993 8th Rd., Plymouth, West Twsp., Zoned A-1, seconded by Mr. Yoder. Motion carried with a voice vote 4-1 with Mr. Gustafson voting against.

The third item of business was <u>21-BZA-50 ALLEN, Charles -</u> A request for a Variance of Use to allow an existing unattached garage to be turned into an in-law suite; located at: 10501 12th Rd., Argos, Center Twsp., Zoned A-1. Mr. Charles Allen of 10501 12th Rd. Argos was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to turn a detached garage into an in-law suite (accessory dwelling unit or 2nd dwelling unit) in order to help care for grandkids. In a number of years from now, as occupant of the in-law suite gets older, the property owner will be able to in return take care of the aging parent. The ordinance currently does not allow for second residences on the property, but there is a growing need to take care of the older population and providing options to live closer to family can be ideal.

Due to the applicants need for additional space outside the home for assistance with a child with medical issues they felt the best option was to renovate the garage into living space to allow their mother to live or if anyone else got sick in the house they could stay their to keep their child safe from getting sick.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler moved and Mr. Miller seconded the motion to close the public hearing.

The board reminded the applicant that the building will have to meet all residential building codes and the septic system be approved by the Marshall County Health Department. In addition, once the mother no longer needs the space for living quarters the space will have to be changed back to non-residential space.

Mr. Hostetler made a motion to approve 21-BZA-50 ALLEN, Charles - A request for a Variance of Use to allow an existing unattached garage to be turned into an in-law suite; located at: 10501 12th Rd., Argos, Center Twsp., Zoned A-1 with the following stipulations:

1. **Meet residential building code and requirements from MC Health Department**
2. **Once mother no longer needs space for living quarters the space will have to be changed back to non-residential space.**

Seconded by Mr. Voreis. Motion carried with a voice vote 5-0.

The fourth item of business was 21-BZA-51 PETERSON, David & Leslie - A request for a Variance of Developmental Standard to reduce the lakeside setback from the required 45' to 20' in order to rebuild a home; located at: 20859 N. Lake Dr., Walkerton, IN Polk Twsp., Zoned L-1. Mr. & David Peterson of 20859 N. Lake Dr. Walkerton and Joseph Knizer, Contractor were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is in the process of tearing down an existing house to replace it with a new one. The proposal is to reduce the rear yard setback from 45' to 20' in order to stay more in line with the previous residence.

Mr. Gustafson explained to everyone that he does work for Mr. Knizner and if anyone has any issues and would like him to step down to speak. There were no concerns.

The Technical Review Committee recommended the house not extend past 75.28’ from the waters edge.

The applicant plans to get rid of the travel trailer and expand the size of the house to accommodate their growing family. Both adjoining neighbors have no problem with the proposed plans.

There is currently storage under the deck. Once the new house is built a storage area under the deck will not be necessary.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Blad, Allen & Tracey – 8 Maple Leaf Drive, Old Forge PA 18518 - Hs no objections to the placement of the house and/or deck.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion carried by acclamation.

Mr. Voreis made a motion to approve 21-BZA-51 PETERSON, David & Leslie - A request for a Variance of Developmental Standard to reduce the lakeside setback from the required 45' to 20' in order to rebuild a home; located at: 20859 N. Lake Dr., Walkerton, IN Polk Twsp., Zoned L-1 with the requirement that the house not extend past the 75.28' foundation stringline, seconded by Mr. Yoder. Motion carried with a voice vote 5-0.

The fifth item of business was 21-BZA-52 WENNERSTROM, Knight & Emma - A request for a Variance of Developmental Standard to allow a rear yard setback reduction from the required 20' to 3' and a south side yard reduction from the required 10' to 5' in order to add on to his existing building; located at: 5165 Michigan Rd., Plymouth, IN North Twsp., Zoned A-3. Mr. Knight Wennerstrom of 5165 Michigan St. Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is looking to construct two lean-to's onto an existing building as well as a 36x40' pole building addition to the south of the same building. With these additions they are looing to get some storage for trucks, wood shop and a working garage. The lean-to's would be on the North and West sides and the new addition would run from the eastern side of the existing barn to the western edge of the addition.

The addition on the north will be used to store the applicants plow truck. The west side he would like to use that area as a woodshop. The proposed building to the south will be used to store four of his eight antique cars. The neighbor to the west doesn't have a problem with his request as long as he stays four feet away from his property line.

The addition to the building can't go any further east due to the septic system. As far as the west property line after discussion Mr. Wennerstrom agreed to withdraw his west yard reduction request. With regards to the south the board agreed to the 5' setback as long as the measurements are accurate and to the true property line.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion carried by acclamation.

Mr. Adley stated that the applicant will also have to meet the impervious coverage requirement.

Mr. Miller made a motion to approve 21-BZA-52 WENNERSTROM, Knight & Emma - A request for a Variance of Developmental Standard to allow a south side yard reduction from the required 10' to 5' in order to add on to his existing building and the additions to not exceed past the west side of the existing building; located at: 5165 Michigan Rd., Plymouth, IN North

Twsp., Zoned A-3, seconded by Mr. Yoder. Motion carried with a voice vote 5-0.

The sixth item of business was 21-BZA-53 USMETALS - A request for a Variance of Use to allow a 60x80' building for business cold storage and office space; located at:(50-23-32-000-031-000-015) SR 110, Argos, IN Walnut Twsp., Zoned A-1. Mr. Jamey Green of 411 East Washington St. Culver was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is wanting to put up a 60x80' pole building for a small office and the rest to be used as cold storage for his business. The 10 acre property is currently completely wooded except for the area that has been cleared for the proposed building and is located along state road 110. The applicant is running out of room at their current location just north of Mentone and would like another office space that would provide an environment free of distractions.

The applicant said that he plans to store some trailers in the building from work in addition to his personal vehicles and personal property. There will also be an area that will be used as his personal office.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler moved and Mr. Miller seconded the motion to close the public hearing.

Mr. Hostetler made a motion to approve 21-BZA-53 USMETALS - A request for a Variance of Use to allow a 60x80' building for business cold storage and office space; located at:(50-23-32-000-031-000-015) SR 110, Argos, IN Walnut Twsp., Zoned A-1, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

The seventh item of business was 21-BZA-54 SAGE, Mark & Cathy - A request for a Special Use to allow a private airstrip for a small aircraft; located at: 19329 6B Rd., Plymouth, IN Polk Twsp. Zoned A-1. Mark Sage of 19329 6B Rd was present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to permit a private airstrip on the property for recreational purposes for small aircraft.

Mr. Yoder explained that there is what's called a "bowl affect" around an airstrip. This limits what a person can and can't do around an airstrip.

The applicant is considering a short take off and landing aircraft. It only takes 300' to take off and land. This aircraft is a light sport and low powered. The proposed strip is 1,020 feet by 80 feet in width. The aircraft weighs a max of 1320 pounds. The wings are 24' and are foldable.

Mr. Sage currently has approvals from FAA and Indiana Department of Transportation and is sufficiently insured.

The neighbor to the west has been contacted which is a pilot as well and has no problem with the request and has tried to contact the owner of the farm ground around him and is without

response.

There are approximately 17 other airstrips, but some are no longer working. In response to questions if his strip could be used for emergency he said yes.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation.

1. Diane Eskridge 6299 Plymouth Laporte Tr. Plymouth Researched airstrips and understands that they should be 6,000-8,000 feet in length for a smaller aircraft. Her concern is that an airstrip will drive their property value down. She owns two properties. When asked if it will bother her if it is kept small and not paved if she would be in favor. As long as the airstrip isn't near her property and it doesn't affect her property values she would be okay with it.
2. Allen Blad No address given Is against the request.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Voreis. Motion carried by acclamation.

This has been a dream as most of his family as flown. Now that he is retired, he would like to fly as well as build a plane. There is a freedom of having your airstrip and would be a savings of not having to pay for hanger rent.

Mr. Miller made a motion to approve 21-BZA-54 SAGE, Mark & Cathy - A request for a Special Use to allow a private airstrip for a small aircraft; located at: 19329 6B Rd., Plymouth, IN Polk Twsp. Zoned A-1 with the following stipulation:

1. **This approval is for the applicant Mark Sage ONLY.**

Seconded by Mr. Hostetler. Motion carried with a voice vote 5-0.

The eighth item of business was 21-BZA-55 MCMAHAN-OCONNOR CONSTR - A request for a Special Use to allow the expansion of asphalt plant hours of operation; located at: 11246 King Rd., Plymouth, Center Twsp., Zoned A-1. John Gaden 319 Juniper Lane Plymouth and Kip Chandler 2254 S. 50 W. Peru were present to represent E & B Paving. Mr. Adley presented the findings of fact.

The asphalt plant has been before the board previously in XXX to permit the use of testing trailers and at the same time were given hours of operation to stay within. The applicant is before the board today requesting the expansion/removal of the restrictive hours in order to meet the potential scheduling requirement of INDOT and the safety of the traveling public. Historically a case in 1993 was applied for 2 laboratory or testing trailers because all asphalt plant site for all state and federally funded contract. Referring to the analysis from the above mentioned case there was a comment from the Plan Director of the time that "The Neighbors to the south have phoned our office with complaints that E&B Paving has increased their hours of production. I inspected these complaints and found soot/ashes on lawn furniture, etc., on the neighboring property. I have no way of proving what their hours of operation were before the BZA recently allowed their expansion, but there does appear to be a problem with ashes from the asphalt plant." In 2001 there was an application for INDOT testing trailer due to safety considerations and new INDOT requirements for testing trailer locations at asphalt plants. Under the findings

of fact from this case, the Plan Director of this time (It had changed between the 90's case and early 00's case), that they had not seen evidence "that this request would adversely affect the neighboring properties. There were concerns at the 1993 hearing that there were obnoxious smells and ash from the plant. I do not believe such is the case now. The plant has been changed and the new plant is cleaner." Later in 2001 there would be a second case in attempt to extend the hours of operation from the set hours of 6:00am to 7:00pm. It is within this analysis by the Plan Director that they detailed the history of the applicant and their legal nonconformance with the code (being in existence prior to 1974). Then detailing the case in 1993 and the earlier case 2001. The second finding from 01-BZA-40 indicated "There has been evidence presented in the past that this use does pose a threat to the use and enjoyment of permitted uses in the area. There are noises of trucks and truck traffic, the noise of the plant, smells and dust all associated with the operation of the plant. IF these uses were undertake at night, there would be the added problem of light son the property. All of these things have the potential of reducing the use, enjoyment, and value of residential property in the area permitting the expansion of hours so that this use could take place at night would greatly increase impacts on the area." The case was ultimately denied for the expansion of the hours in 2001. It is with this historic information that the case needs to be set in place and establishment of what has transpired over the last twenty years of operation and whether or not the improvements warrant the ability to expand the hours. Per the application in an attempt to demonstrate commitment to the community and previous neighbor concerns they have done the following; 1. strict conformance with new trucking route that eliminates through trucks on King Road North of 11th road, 2. the previously required tree planting has full matured helping with noise, emissions and aesthetics, 3. RAP processing is limited to approximately 2x per year limiting the noise emissions at the plant, 4. noise reducing policies that include; a. limited stockpile times 7a-4p, b. no tailgate banging, and c. reverse lights in leu of backup alarms - non daylight hours (dawn to dusk), 5. paved entrance and exit reducing the amount of material tracked onto the public roads. Daily maintenance and cleaning, 6. daylight savings time requires a need to shift starting and stopping times, 7. improved emissions standards and rigorous testing and compliance with INDOT and IDEM, 8. Warm Mix package reducing the amount of energy consumptions and helping compaction efforts, 9. by performance this operation in this way, we can reduce overall noise levels, 10. all plant components meet the previously required setbacks, 11. increased sponsorships, outreach participation in the area. We have many employees in the area and we continue to be proud of our community and company.

The applicants have been looking at trying to make the loader quieter by using light or white noise alarms rather than the beeping. This won't be an immediate thing.

There is a possibility of some corridor projects coming up within eighteen months and some of these might require them to open earlier and stay open later for traveler safety reasons. They believe they have planted trees and did what the board has asked them to do. While looking at the photos the board noticed some trees missing and the plan director said filling that area in would be ideal as it is where the closest neighbors are.

Access to the property was discussed. Travel on King Road must be from the south not north due to a county ordinance.

With regard to concern of ash the applicants didn't understand as they don't burn anything.

The nearest plants they have are Peru, Huntington and Fort Wayne.

The applicants stated that if this request isn't approved to change the hours they will lose out on those jobs.

As far as lighting there may be residual indirect light coming from the business, but the lighting isn't facing the neighbors. The current lighting is for security. For nighttime production the plan would be to bring in portable temporary lights to illuminate only the area that is needed. When asked what percentage of work could be after hours they said as a guess it might be two in the next eighteen months. One of which would be between Plymouth and Warsaw.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Voreis. Motion carried by acclamation.

1. Jon VanVactor 11108 12th Rd. Argos Also owns a property at 11410 King Rd. where his son lives and is approximately 600' south of the applicants property line. They purchased that property in 1985. They understand it was at one time an asphalt operation, but at the time they bought it was not in operation at that time and continued that way for several years while they lived there. Originally it was in the name of McMahahn O'Connor, but later sold to E&B Paving. They as a homeowner believe they should have some consideration for their quality of life. In 1994 the BZA set the hours of operation from 6 am to 7 pm. In 2001 the BZA denied the request to expand the hours of operation to 24 hours a day 7 days a week in recognition of the concerned neighbors. The petitioner refers to finding 5 that the variance approval does not interfere substantially with the comprehensive plan. The current property is non conforming that was grandfathered into the plan. Within the zoning district the plan states every industrial use should be heavily buffered from adjacent uses and in general should be separated substantially from residential uses. Also read findings of fact and explained that they can't have the windows open with the plant running. He doesn't believe there has been a hardship for the petitioner. Cited a letter from the petitioner that the area has a mixed use footprint and theirs is the only one that has operating restrictions. What the petitioner was referring to was all properties within the City of Plymouth's 2 mile zone of residential 1, residential 2 or commercial 3 and are all allowed as they are grandfathered as long the use is not expanded/changed or they receive a variance of use. He asks the board deny the request and continue with the hours of operation from 6am to 7pm.
2. Ruth VanVactor 11108 12th Rd. Argos Re-stated the hours of operation at the asphalt plant are 6am – 7pm 13 hours a day. Believes this change could change the quality of life negatively to the surrounding residences with noise and emissions of fumes. There is traffic from 12th road on King Road to the plant. Shared photos of the emissions. Along with the pictures it was a representation that the trees don't stop the noise, lighting and emissions from coming through. Daylight savings time has been in existence since 1918 and shouldn't be used as a reason to shift their starting or stopping time. When said that they haven't had any complaints Mrs. VanVactor informed the board that she has informed the business as well as the Planning Department of the disregard of the

hours of operation. The decision the board will make will affect over one hundred residences. At the very least she hopes the board will stand behind the original ruling of hours from 6am to 7pm. If they still want to expand hours of operation then propose they move to an industrial area.

When asked what noises they hear it's the blast furnace, banging of tail gates and traffic coming and going from the plant. In addition to that it's the diesel smell as well.

3. Lonnie & Connie Nichols 10685 Oriole Ln. Ply Understands the concern of noise as they live in the subdivision next to the gravel pit. Every morning they hear the loader winding up. Each year they take about 25 pounds of sand out of their gutters. They wish there was more restrictions on all the plants. Also can smell the asphalt. Since they bought their property the gravel pit was small and the asphalt plant wasn't running. If they want to increase their hours they believe they should seek out an industrial area.
4. Julia Stockman 10870 12th Rd. Ply Letter against the request as the wildlife needs quiet time as God intended.
5. Jeff Molar Letter in favor of the request as he works for E & B Paving will have a good affect on him and his family.
6. Rick Powell Letter against as there is a high volume of truck traffic on 11th presently between 7:30am-7:00pm everyday except Sunday which takes away their time for quiet time and enjoyment outside. The asphalt smell is an issue as well. Feels that increased hours will also increase the amount of traffic and be a detriment to the county roads.
7. MC REMC Letter in favor stating there is no negative impact to Marshall County REMC or their property.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Yoder. Motion carried by acclamation.

When asked about the burner the explained that it doesn't run non-stop. It works as they are preparing a batch and it has time in between to cool down.

In response to the statement of emissions/smoke they wanted to clarify that it is not smoke. That has been through the bagging process for dust which is steam that people see.

The board asked if it would be cost prohibitive to put up sound retention walls up and they said that it would be.

The board understands that we need these types of businesses and wondered if there was some type of short term approval process. The applicants explained that once they receive a bid they have 21 days which doesn't give them enough time to apply and go to the board. If the board turns down the request E & B Paving will just not be able to bid out certain jobs.

An example was given for the projected US 30 project and they could need between 50-70,000 tons and they can run 2,000 tons a shift and not all of those would be done at night.

Right now you can't even get your equipment up and running and warmed up until the starting

time which limits the amount of actual work hours. Additional work hours would help on some of the jobs, but not on some of these jobs that require night paving.

The plan is not to run double shifts. All E & B Paving is wanting is to be able to accommodate the requirement that comes to them from the bid. The team that creates the plan/bid has a reason for such requests such as late-night work and it is mainly for safety reasons. A typical day they like to run the business from 10-12 hour days. That would not change. It is just the business hours that could possibly change.

The board had a lengthy discussion of their options. They understand the needs from the applicant, but also understand the neighbors' concerns. With regard to the screening E & B also agreed to fill in the areas that are lacking.

Mr. Yoder made a motion to table this request to allow the board time for research and go out to the site to see and hear the operation running, seconded by Mr. Miller. Motion carried by acclamation.

The ninth item of business was 21-BZA-56 THOMAS, Bryan & Brad- A request for a Special Use to allow the splitting of land on parcels 50-44-09-000-007-000-005,50-44-16-000-003-000-005, 50-44-16-000-014-000-005, 50-44-16-000-005-000-005 that do not meet the 1 to 3 width to depth ratio; located on 4B Rd., German Twsp., Zoned A-1. Mr. Charlie Zercher of Kingdig & Sloat at 102 Heritage Pkw Nappanee was present to represent the Thomas'. Mr. Adley presented the findings of fact.

The applicant is splitting property with a family member and the proposal would leave the one brother with a parcel that has 650' of frontage and a depth of 2,640'. The ordinance would have only permitted the parcel to be 1,950' in depth if it were to meet the 1 to 3 width to depth ratio. The total area of the parcel if approved would be 42.97 acres.

Mr. Voreis made a motion to open for public hearing, seconded by Mr. Voreis. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion carried by acclamation.

Mr. Yoder made a motion to approve 21-BZA-56 THOMAS, Bryan & Brad- A request for a Special Use to allow the splitting of land on parcels 50-44-09-000-007-000-005,50-44-16-000-003-000-005, 50-44-16-000-014-000-005, 50-44-16-000-005-000-005 that do not meet the 1 to 3 width to depth ratio; located on 4B Rd., German Twsp., Zoned A-1, seconded by Mr. Voreis. Motion carried with a voice vote 5-0.

The tenth item of business was 21-BZA-57 DRAGANI, Robert & Leeanne - A request for a Variance of Developmental Standard to allow the following: 1. Front Yard setback reduction from the required 30' to 28' 2. Side yard setback from the required 7.24' to 5.7' 3. To allow a secondary structure (garage) to be built on the lot across the street without a primary structure on the lot; located at: 16168 Dogwood Lane, Plymouth, West Twsp., Zoned L-1.(50-31-11-000-277-000-017 and 50-31-11-000-307-000-017). Robert & Leeanne Dragani and Bernie Feenie of Plymouth Land Survey was present to represent the Dragani's. Mr. Adley presented the findings of fact.

The applicant is in the process of designing a new home on the lake lot and a garage across the street. In order to fit the desired house on the property, the front yard setback is needing to be reduced from 30' to 28' and the side yard setback is needing to be reduced from 7.24' to 5.7'. The garage across the street is proposed to, but would need a variance to allow a secondary structure before primary.

A picture was shown where the original house line is as well as a line where the new house will be placed. The east property line to the proposed bay window will be the closest portion of the house to a property line and it will be 5'9".

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved an Mr. Hostetler seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Miller made a motion to approve 21-BZA-57 DRAGANI, Robert & Leeanne - A request for a Variance of Developmental Standard to allow the following: 1. Front Yard setback reduction from the required 30' to 28' 2. Side yard setback from the required 7.24' to 5.7' 3. To allow a secondary structure (garage) to be built on the lot across the street without a primary structure on the lot; located at: 16168 Dogwood Lane, Plymouth, West Twsp., Zoned L-1.(50-31-11-000-277-000-017 and 50-31-11-000-307-000-017), seconded by Mr. Voreis. Motion carried with a voice vote 5-0.

The eleventh item of business was 21-BZA-58 STILES, Thomas & Rebecca - A request for a Variance of Developmental Standard to allow a reduction in base flood elevation from 45' to the existing 806 contour line; located at: 4670 W. Shore Dr., Bremen, IN German Twsp., Zoned L-1. Burke Richeson, 436 Crimsone Lane, Plymouth representing the Stiles' and CMD to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a new home on a vacant lot, but has run into a unique floodplain on the property. The floodplain follows the contour line 806 which for approximately 80% of the property runs parallel with the shoreline, but the last 20% makes a 90 degree turn to run perpendicular into the property before eventually meandering south parallel with the coastline once again. It is this southern section of the floodline that causes difficulty and in part makes the development of the parcel unique. The request is to continue the floodline setback of 45' for the remaining 20% of the property as it is shown for the northern portion of the property. Thus resulting in a uniform line straight across the property to draw setbacks off of.

Mr. Richeson stated that they have placed the proposed structure at the most level location on the property. If the location were to be moved closer to the road it would result in extensive amounts of retaining walls and other issues. The bottom of the house will be above the 806 mark. (The 806 mark is what was determined by DNR as the base flood elevation) If they tried to move that line the hardship would be that there is no guarantee that FEMA would do. The proposed house is not the exact same footprint, but is very close to the same location as previous.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried

by acclamation.

1. Mark & Heather Craft 4674 Crimson Ln. Bremen They live to the said of applicants parcel. Due to the lay of the land they already have flooding out by the water. They believe with the building of the house in that location it will only exacerbate the problem. Plus they have a concern about losing their view of the lake. The Crafts also submitted a letter and it was read into record.
2. Kathleen Benke & Others 4678 W. Shore Dr. Bremen Request denial of the proposal and they believe their will be a negative impact to the area. There will be a increase in water runoff and accelerated erosion.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion carried by acclamation.

Mr. Richeson stated if they would be able to build in the proposed location they don't want to have to bring fill in near to the lake.

During the discussion on line of sight Mr. Richeson said that is not a requirement at Lake of the Woods but if it were you would practically have to be built right next to the roadway or possibly even make the lot unbuildable.

Due to the 806 line not running parallel with the water and taking a 90 degree turn into the property that is what is limiting the property owner If that 806 line didn't turn in the applicant would be able to build exactly where they are proposing.

The Crafts would like to have some sort of a compromise in possibly moving the home closer back towards the road. Mr. Richeson stated that he didn't have the authority to compromise that it would have to be the governing body to make that decision. However, it was restated that Lake of the Woods does not have a line of site requirement.

Mr. Miller makes a motion to approve the request 21-BZA-58 STILES, Thomas & Rebecca - A request for a Variance of Developmental Standard to allow a reduction in base flood elevation to now be 45' from the hook (see attached for reference); located at: 4670 W. Shore Dr., Bremen, IN German Twsp., Zoned L-1, seconded by Mr. Hostetler. Motion carried with a voice vote 5-0.

The twelfth item of business was 21-BZA-59 ALBER, Mitchel & Kaley - A request for a Variance of Developmental Standard to reduce the road setback from the required 60' to 20' in order to build a pole barn; located at: 12964 Muckshaw Rd., Plymouth Center Twsp., Zoned A-1. Mr. Mitchel Alber of 12964 Muckshaw Rd. Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to reduce the setback from 60' from right of way to 20' from edge of road in order to construct a 42x60' or 52x60' pole building for storage. The building is placed on top of a large hill that drops 30-40 per the applicant.

There has been a lot of dirt moved on the property and are requesting this location to keep the cost down. His house is 60' from the edge of the road and should actually be 60' from the right of way. The building permit stated that it would be 75'.

The board had a discussion and were in agreement that they don't believe it's the best decision to have a building that close to the road in addition to that in the future there could be a widening of that road as it is a heavily trafficked road. The board would like to see the building moved back to no closer to the road than their house.

After the discussion the applicant asked to compromise and allow a 30' from the edge of road setback which is the same location as the building to the north.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler made a motion to close the hearing, seconded by Mr. Miller. Motion carried by acclamation.

When asked if he would be required to put it 50' off the edge of the road how wide would his building have to be and he responded with 20'. The doors to the building will be placed on the south side of the building. The south half will be used for a shop and the north would be used for storage. They would put a door on the west side to allow for easy access to pull the boat in and out.

The consensus of the board was the proposed distance is too close for safety of people pulling in and out. There would barely be one car length room from the edge of the road to the edge of the building.

Without seeing the site since there has been so much ground moved the board felt they should table the decision until next month to allow them time to see the site.

Mr. Yoder made a motion to table the request to November, seconded by Mr. Hostetler. Motion carried with a voice vote 5-0.

The thirteenth item of business was 21-BZA-60 ALBERT, David – A request by Culver Sand Hill Farm to allow multifamily residential as a permitted use for said parcel, located on Parcel # 50-52-95-402-413-000-010 South Michigan St. Lapaz, North Twsp., Zoned C-2. Mr. Kevin Berger of 8876 SR 17, Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

In accordance with the Stellar Initiative, the Quality of Life(QoL) Plan set out a Housing Development in the Town of Lapaz. The proposal is to create a 6 townhomes, 2 flats and a communit from Low Income Housing Tax Credits, per the plan. The original proposed site plan had a future commercial building built up to the road and two townhome style structures in the middle of the property with a community building and 20-24 apartments. The drainage would be going to the eastern portion of the property. The proposal has amended slightly in design from the QoL Plan, but the intentions are still the same.

This request is a re-approval that was done in the beginning of 2020.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler moved and Mr. Miller seconded the motion to close the public hearing. Motion caried by acclamation.

Mr. Yoder made a motion to approve 21-BZA-60 ALBERT, David – A request by Culver Sand Hill Farm to allow multifamily residential as a permitted use for said parcel, located on Parcel # 50-52-95-402-413-000-010 South Michigan St. Lapaz, North Twsp., Zoned C-2, seconded by Mr. Hostetler. Motion carried with a voice vote 5-0.

The fourteenth item of business was 21-BZA-61 ALBERT, David - A request by Culver Sand Hill Farm to reduce the front yard setback from the required 50' to 20' to allow for a multifamily residential structure, located on Parcel # 50-52-95-402-413-000-010 on S. Michigan St., Lapaz, North Twsp., Zoned C-2. Mr. Kevin Berger of 8876 SR 17 Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

In accordance with the Stellar Initiative, the Quality of Life(QoL) Plan set out a Housing Development in the Town of Lapaz. The proposal is to create a 6 townhomes, 2 flats and a communit from Low Income Housing Tax Credits, per the plan. The original proposed site plan had a future commercial building built up to the road and two townhome style structures in the middle of the property with a community building and 20-24 apartments. The drainage would be going to the eastern portion of the property. The proposal has amended slightly in design from the QoL Plan, but the intentions are still the same.

This request is a re-approval that was done in the beginning of 2020.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler moved and Mr. Miller seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Hostetler moved to approve 21-BZA-61 ALBERT, David - A request by Culver Sand Hill Farm to reduce the front yard setback from the required 50' to 20' to allow for a multifamily residential structure, located on Parcel # 50-52-95-402-413-000-010 on S. Michigan St., Lapaz, North Twsp., Zoned C-2, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

November 9, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, November 9, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, Dan Voreis, David Hostetler, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.
Member absent was Mr. Kutch.

The minutes from the October 12, 2021, meeting was submitted to the board. Mr. Hostetler made a motion to approve the minutes as written, Mr. Miller seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-65 MCMAHAN-OCONNOR CONSTR - A tabled request for a Special Use to allow the expansion of asphalt plant hours of operation; located at: 11246 King Rd., Plymouth, Center Twsp., Zoned A-1. John Gaden 319 Juniper Lane Plymouth and Kip Chandler 2254 S. 50 W. Peru were present to represent E & B Paving. Mr. Adley presented the findings of fact.

During the time since the last tabled meeting the plan director visited the site and used a decibel meter to check the sound levels during business hours.

- The average decibels was 50-52 decibels
- The part that drops the material into the truck which is usually the loudest part of the operation read 49-52 decibels
- Walking on gravel on the shoulder of the road read 42-53 decibels
- While getting closer to the plant on the northern portion of the subdivision which is south of the plant it read 66-68 decibels pre-muffler post muffler was 63-66 decibels.
- The southern edge of the plant read 72-77 decibels
- Within 50' of where the silos were 82-85 decibels post muffler, pre muffler was 83-95 decibels
- The northern property line pre decibel was 55-58 decibels which is where the asphalt milling pile is located as well as a buffer of trees.
- The northern intersection reading was 50-54 decibels
- Decibel comparisons – A quiet office would be about 40 decibels, a dishwasher runs about 50 decibels, conversation is about 60 decibels, and a vacuum cleaner is about 70 decibels and a hair dryer is about 80 decibels.

E & B Paving submitted a letter listing some of the changes that are important between 1994-2021

1. Strict conformance with new trucking route that eliminates through trucks on King Road north of 11th road.
2. The previously required tree planting has fully matured helping with noise, emissions and aesthetics.
3. RAP processing is limited to approximately 2x per year limiting the noise emissions at the plant.
4. Noise reducing policies that include:
    a. Limited stockpile times 7am -4pm
    b. No tailgate banging
    c. Reverse lights in lieu of backup alarms. Non daylight hours (dawn to dusk)
5. Paved entrance and exit reducing the amount of material tracked onto the public roads. Daily maintenance and cleaning is required.
6. Daylight savings time requires a need to shift starting and stopping times.
7. Improved emissions standards and rigorous testing and compliance with INDOT and IDEM.
8. Warm Mix package reducing the amount of energy consumptions and helping compaction effort.
9. By performing this operation in this way, we can reduce overall noise levels.
10. All plant components meet the previously required setbacks.
11. Increased sponsorships, outreach participation in the area. We have many employees in the area and we continue to be proud of our community and company.

The asphalt plant has been before the board previously in 1993 and 2001 to permit the use of testing trailers and at the same time were given hours of operation to stay within. The applicant is before the board today requesting the expansion/removal of the restrictive hours in order to meet the potential scheduling requirement of INDOT and the safety of the traveling public. Historically a case in 1993 was applied for 2 laboratory or testing trailers because all asphalt plant site for all state and federally funded contract. Referring to the analysis from the above mentioned case there was a comment from the Plan Director of the time that "The Neighbors to the south have phoned our office with complaints that E&B Paving has increased their hours of production. I inspected these complaints and found soot/ashes on lawn furniture, etc., on the neighboring property. I have no way of proving what their hours of operation were before the BZA recently allowed their expansion, but there does appear to be a problem with ashes from the asphalt plant." In 2001 there was an application for INDOT testing trailer due to safety considerations and new INDOT requirements for testing trailer locations at asphalt plants. Under the findings of fact from this case, the Plan Director of this time (It had changed between the 90's case and early 00's case), that they had not seen evidence "that this request would adversely affect the neighboring properties. There were concerns at the 1993 hearing that there were obnoxious smells and ash from the plant. I do not believe such is the case now. The plant has been changed and the new plant is cleaner." Later in 2001 there would be a second case in attempt to extend the hours of operation from the set hours of 6:00am to 7:00pm. It is within this analysis by the Plan Director that they detailed the history of the applicant and their legal nonconformance with the code (being in existence prior to 1974). Then detailing the case in 1993 and the earlier case 2001. The second finding from 01-BZA-40 indicated "There has been evidence presented in the past that this use does pose a threat to the use and enjoyment of permitted uses in the area. There are noises of trucks and truck traffic, the noise of the plant,

smells and dust all associated with the operation of the plant. IF these uses were undertake at night, there would be the added problem of light son the property. All of these things have the potential of reducing the use, enjoyment, and value of residential property in the area permitting the expansion of hours so that this use could take place at night would greatly increase impacts on the area." The case was ultimately denied for the expansion of the hours in 2001. It is with this historic information that the case needs to be set in place and establishment of what has transpired over the last twenty years of operation and whether or not the improvements warrant the ability to expand the hours. Per the application in an attempt to demonstrate commitment to the community and previous neighbor concerns they have done the following; 1. strict conformance with new trucking route that eliminates through trucks on King Road North of 11th road, 2. the previously required tree planting has full matured helping with noise, emissions and aesthetics, 3. RAP processing is limited to approximately 2x per year limiting the noise emissions at the plant, 4. noise reducing policies that include; a. limited stockpile times 7a-4p, b. no tailgate banging, and c. reverse lights in leu of backup alarms - non daylight hours (dawn to dusk), 5. paved entrance and exit reducing the amount of material tracked onto the public roads. Daily maintenance and cleaning, 6. daylight savings time requires a need to shift starting and stopping times, 7. improved emissions standards and rigorous testing and compliance with INDOT and IDEM, 8. Warm Mix package reducing the amount of energy consumptions and helping compaction efforts, 9. by performance this operation in this way, we can reduce overall noise levels, 10. all plant components meet the previously required setbacks, 11. increased sponsorships, outreach participation in the area. We have many employees in the area and we continue to be proud of our community and company.

Recommendation: Based on the review by the Technical Review Committee and previous analysis by staff, staff and TRC would recommend approval of the proposal with the following conditions.

1. Crushed asphalt and material drop off to the site is limited in hour of operation to 7am to 6pm.
2. Loader and other vehicles with back up alarms be equipped with osha approved alternatives a light was discussed as an option0 to reduce noise while operating.
3. Screening (trees) needs to be extended along the southern boarder of the facility including screening below the existing trees as they continue to shed their lower branches exposing the plant, a screening plan needs to be approved by the plan director including timeframes and the buffer in its entirety shall be maintained into the future should some of the trees die or need to be replaced for various reasons.
4. Shall be restricted from operation on major federal holidays (Memorial Day, Labor Day, Thanksgiving, Christmas, New Years, and July 4th).
5. If the plant is to run at night, written notice in advance of night operations shall be provided to the residences to the south of the plant property (as a measure of being a good neighbor) as well as the Plan Commission for record and should an emergency cause the plant to run longer or into the night due to unforeseen circumstances door hangers and letter explaining the situation should be sent to same neighbors and Plan Commission office for record.
6. Should the portable plant be removed from the property in the future, it must return within a year otherwise the facility must be reapproved and to make clear of when the date of removal is, the Plan Commission shall be notified, and the plant must receive

building permits to ensure safe erection and connection f the plant.

7. It is a note from staff that the adjacent neighbors should be taken into consideration as to any issues that have occurred over the last 2 decades of operation as these operational improvements have occurred or are planned to occur. If items remain to be addressed, tabling the request may be in the best interest in order for the applicant to present a plan on how to address said concerns.

After review of the recommendations the applicants feel that they can meet those requirements. It was also said that they would like to remind the board of all the updates the site has made over the years.

Mr. Gustafson went to the site and walked different areas from the residences to the south up to the intersection. He noticed where there were trees to buffer, it really seemed to make a big difference. The area where there were no trees which is in line with the loudest machine the blower seemed to be the loudest.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Ruth VanVactor 11410 King Rd. They are located at the second house south of the asphalt plant. She opposed this variance request asking for an expansion of hours at the asphalt plant. They did purchase their property knowing there was a temporary asphalt plant at that location which was later closed down. The applicants later requested to re-open the plant permanently and was granted their request. When they came back to the board to ask to run 24/7 they were forced to compromise with hours of 6am – 7pm. Each time the applicant proposes changes they are the ones having to compromise having to show why they feel their home, land, and quality of life is important. If they wish to be good neighbors, they wouldn't subject them to the type of hours they wish to run this plant. When the applicants stated they contacted neighbors in the past Mrs. VanVactor said that they have never been contacted by them. The existing trees are not a substantial buffer. Even if they plant more trees it will take a number of years for them to mature. The plant runs not only during the week but also on Saturday. It is disruptive while all they want is to enjoy their family time on their property. What if the board approves this request and they don't get the bid for these proposed projects…what then? While doing research on sound decibels Mrs. VanVactor stated she read that average decibel meters for a residential area recommendation was from 45-55 and is evident that all readings were above this level. They would like to trust that policies are put in place for a reason and wish that this board deny the request to expand the business hours of E & B Paving and retain the hours of 6am – 7pm.
2. Jon VanVactor 11410 King Rd. Is opposed to this request as it is a hardship on his family and the neighborhood with the proposal of a 24/7 plant. It will have a negative impact on the quality of life. Would like to ask the board a couple questions. 1. Has this plant been in continuous operation since it's been there. 2. If it hasn't been when was it removed? 3. When it was removed when did it come back and how did it come back? They understand that we need asphalt companies. What they are opposed to is increasing the plant that is already there. What they are asking the board is to

protect their quality of life by restricting them to the hours of operation that they currently have. Commended the board for coming out to see the operation. They don't object to the current hours of operation. They do object to the proposal. They have not come in asking it not to be in their backyard. All they are asking is to keep it so that they can maintain their quality of life. They don't want to put E & B out of business they just want to live out there. Please consider their view.

3. Wallace Lambie 10836 Cardinal Circle Lives in Southfield Subdivision. First questioned 300' notification. Is against the request due to all the traffic with the trucks and the safety of this kids.
4. Marshall County REMC 11299 12th Rd. The increase in hours of operation will have no negative impact on Marshall County REMC or their property. In fact, because Marshall County REMC provides the electric service for the asphalt plant that is asking for expansion of hours of operation, they are in favor of granting them approval.
5. Rick & Debra Powell 10856 Cardinal Circle They are a resident of Southfield Subdivision and are voting against the extension of hours for the asphalt plant. There is a high amount of truck traffic on 11th Road. Adding to the hours takes away their right to use and quiet enjoyment. The truck traffic if increased will certainly have an impact on the condition of the roads as well.
6. Jeff Molnar Sent a letter and is in favor of the request to extend hours. Believes the request can potentially have a good effect on his family and wages.
7. Julia Stockman 10870 12th Rd. Keep the hours as they are now. Crops, deer and turkey need some quiet time to grow and wander as God intended.
8. Jon & Ruth VanVactor 11108 12th Rd. Requested that they be notified when anyone from the board came to the site to visit as they would like to be present.
9. Ethan VanVactor 11410 King Rd. Is opposed to the expansion of hours of the asphalt plant located at 11246 King Road. There is already the noise of truck traffic and the furnace on the equipment that he must listen to and cannot enjoy being on the patio with the plant running due to the noise and smell. They cannot have their windows open for the same reason. This is a working-class neighborhood, hoping to get a good night's sleep to be ready for their jobs the next day. If this plant is allowed to run during the nighttime hours the noise will certainly affect their ability to have a good night's sleep. Please deny the request.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion carried by acclamation.

Brian of Summitville, IN E & B Paving came forward to assist with questions. He is not exactly sure of the date when the plant moved out, but knows it came back in the spring of 2016. The oldest records they could find from McMahon O'Conner was that it began in 1974. At that time it was a batch plant. This is a continuous drum plant that is continuously mixing. From 1974 to 1994 there were no restrictions on this plant. The restrictions came into play when they moved the testing trailer in to support the operation and it was too close to the right away and needed a variance. At that time the hours were set to the testing trailers themselves. In 2001 Mr. Booker wrote that if the hours of operation are not allowed the only recourse the BZA is to remove the testing trailer.

It seems as though the operation was not running from 1993 to 2001. During the vacancy timeframe there were silos, foundations, electric hook up and pile changes at the facility.

Mr. Crum asked if the board would consider taking the TRC's recommendation contingent on the Plan Director reviewing their proposal?

The board expressed their concern over the fact that the applicants haven't attempted to put up some sort of a sound barrier to reduce the decibels to the south. The consensus of the board was that they needed to apply some sort of a sound barrier before they make a decision.

The applicants requested to table. Mr. Hostetler made a motion to table the request, seconded by Mr. Miller. Motion carried with a voice vote 4-0.

Mr. VanVactor asked if his questions were going to be answered. Mr. Gustafson said that they would give the applicants time to make their changes and they would go back out to visit the site once the changes were made.

The second item of business was 21-BZA-59 ALBER, Mitchel & Kaley - A tabled request for a Variance of Developmental Standard to reduce the road setback from the required 60' to 20' in order to build a pole barn; located at: 12964 Muckshaw Rd., Plymouth Center Twsp., Zoned A-1. Mr. Mitchel Alber of 12964 Muckshaw Rd. Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to reduce the setback from 60' from right of way to 20' from edge of road in order to construct a 42x60' or 52x60' pole building for storage. The building is placed on top of a large hill that drops 30-40 per the applicant.

Recommendation: Based on the information provided and review by the Technical Review Committee, staff and TRC would recommend approval of a reduction to 50' from the edge of road with condition that no doors open towards the road.

The width of the existing house is 34' and is located 60' from the edge of the road. With the previous meeting being tabled it allowed board members to go out and look at the site. The consensus of the board was that there was enough room for the building to be moved back some with some additional excavating work.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation. There being Nobody to speak for or against Mr. Hostetler moved and Mr. Miller seconded the motion to close the public hearing.

The applicant measured off his neighbors building and said that it is 30' from the road and asked the board if his building could be the same.

Mr. Miller made a motion to approve 21-BZA-59 ALBER, Mitchel & Kaley - A tabled request for a Variance of Developmental Standard to reduce the road setback from the required 60' to 40'

from the edge of the road in order to build a pole barn; located at: 12964 Muckshaw Rd., Plymouth Center Twsp., Zoned A-1, seconded by Mr. Hostetler. Motion carried with a voice vote 4-0.

The third item of business was 21-BZA-62 RIFFEY, Craig & Rhonda - A request for Steve & Randall Miller for a Variance of Use to allow a finishing business for wood products including primarily kitchen cabinets and RV parts; located at: 1818 5th Rd., Bremen, IN German Twsp., Zoned A-1. Mr. Charlie Zercher of Kindig & Sloat 102 Hertiage Parkway, Nappanee and Lonnie Helmuth 6490 Chestnut Road, Bremen were present to represent this request. Mr. Adley presented the findings of fact.

The property is currently a secondhand retail store that was initially approved as a home workshop business that was subsequently subdivided by a previous lot owner. There is a purchase agreement in place with condition of receiving BZA approval. The future property owner is seeking to operate a finishing business for wood products namely kitchen cabinetry and RV products. The proposal is to go up to 8 employees but will initially start with less. The hours of operation would be from 5 a.m. to 2:00 p.m. Deliveries and pickups would average about 2-3 times per day. Deliveries and shipments are made by pickup and trailer, box truck and an occasional semi. There would be no outdoor storage and no retail sale sin connection with the proposed finishing business. All deliveries and pick ups would be complete off 5th Road.

A petition was presented to the board from area landowners showing their approval of the request which include:

1. Galen Lehman 1800 5th Rd.
2. Nelson Borkholder 1740 5th Rd.
3. John Kuhns 1860 5th Rd.
4. Ken Miller 1835 5th Rd.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Berger. Motion carried by acclamation.

1. Craig - Rhonda Riffey – 7247 SR 331 Bourbon, IN Operates the current store daily. They listed the property for sale and are in favor of this request. The store has been in business for approximately 5-6 years. If there has been a concern about smell, there is a duck barn not far away and cant believe the smell would be any worse than that.

Mr. Miller made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

The board had discussion about properties where there is a home based business and later businesses are split off from the residence.

Mr. Hostetler made a motion to approve21-BZA-62 RIFFEY, Craig & Rhonda - A request for Steve & Randall Miller for a Variance of Use to allow a finishing business for wood products including primarily kitchen cabinets and RV parts; located at: 1818 5th Rd., Bremen, IN German Twsp., Zoned A-1 as submitted, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The fourth item of business was 21-BZA-63 MILLER, Steven & Norma - A request for a Special Use to allow a home workshop for a woodworking business construction wood cabinetry and wood RV parts; located at: 7781 Elm Road, Bourbon, IN Bourbon Twsp., Zoned A-1. Mr. Charlie Zercher of Kindig & Sloat 102 Hertiage Parkway, Nappanee and Lonnie Helmuth 6490 Chestnut Road, Bremen were present to represent this request. Mr. Adley presented the findings of fact.

The applicant has been operating a woodworking business since 2003 from the property, initially starting part time and eventually going full time. Their supplemental documents indicate that they were unaware at the time that they were required to receive approval for the business. The business employs 3 family members with hours of operation from 5am – 5pm. Deliveries and pickup average about 1 per day and are picked up by pickup truck and trailer. When semi's deliver material they are able to pull off of Elm Rad completely. The total space used on the property is below 4,000 sq ft. There is also minimal outdoor storage behind an accessory structure.

When the buildings were built there was no floodplain at that time.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Hostetler. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Mr. Hostetler seconded the motion to close the public hearing.

Mr. Miller moved to approve 21-BZA-63 MILLER, Steven & Norma - A request for a Special Use to allow a home workshop for a woodworking business construction wood cabinetry and wood RV parts; located at: 7781 Elm Road, Bourbon, IN Bourbon Twsp., Zoned A-1 as proposed, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The fifth item of business was 21-BZA-64 MILLER, Philip & Sheila - A request for front yard setback reduction from the required 50' to 36' in order to add on a living room addition to the front of the house; located at: 18088 Douglas Rd., Tippecanoe, IN A-1. Mr. Josh Ramer, contractor, was present to represent the request. Mr. Adley presented the findings of fact.

The applicant is seeking to add onto the North side of their house. Due to the house location, the existing structure currently sits 36' from the right of way. The proposed addition is to add onto the living room and would remain flush with the existing house. The addition measures 18' across and 40' deep from the roadside.

Mr. Miller made a motion to open for public hearing, seconded by Mr. Hostetler. Motion carried by acclamation.

1. Fred R. Jones — As an owner of nearby property they have no objection to the request.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Miller. Motion carried by acclamation.

Mr. Hostetler made a motion to approve 21-BZA-64 MILLER, Philip & Sheila - A request for

front yard setback reduction from the required 50' to 36' in order to add on a living room addition to the front of the house; located at: 18088 Douglas Rd., Tippecanoe, IN A-1, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

2022 Proposed Board of Zoning Appeals Calendar

Mr. Miller made a motion to approve the proposed calendar, seconded by Mr. Berger. Motion carried by acclamation.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller

December 14, 2021
Regular Meeting of the
Marshall County Board of Zoning Appeals
112 W. Jefferson St. Room 203
Plymouth, IN 46563

MINUTES

President, Jeff Gustafson, called the Marshall County Board of Zoning Appeals meeting to order at 7:30 p.m. on Tuesday, December 14, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Michelle Mieras, David Hostetler, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the November 9, 2021, meeting was submitted to the board. Mr. Miller made a motion to approve the minutes as written, Mr. Hostetler seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-66 GUSTAFSON, Jeffrey - A request for a Variance of Developmental Standard to allow reduction in the density rule to 4.99 ac. and a reduction in two side yard setbacks from the required 15' to 5'; located at: 18500 5th Rd., Plymouth, IN Polk Twsp., Zoned A-1.

Mr. Miller made a motion to table to request to the end of the meeting, seconded by Mr. Berger. Motion carried by acclamation.

The second item of business was 21-BZA-67 WEAVER, Andrew - A request for a Variance of Developmental Standard to allow an extension of the 1:3 width ratio of 656.75x2628.99; located at: 5656 20th Rd., Argos, IN Walnut Twsp., Zoned A-1. Mr. John Shirk and Harry Weaver was present to represent the request. Mr. Adley presented the findings of fact.

Mr. Shirk is seeking to purchase property from Mr. Weaver and the agreed upon area of purchase is approximately 50 acres that measures 656.75' at the road by 2628.99' deep.

The proposal will be for ag use only said Mr. Shirk.

Mr. Hostetler made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation. There being nobody to speak for or against Mr. Miller moved and Ms. Mieras seconded the motion to close the public hearing. Motion carried by acclamation.

Mr. Hostetler made a motion to approve 21-BZA-67 WEAVER, Andrew - A request for a Variance of Developmental Standard to allow an extension of the 1:3 width ratio of 656.75x2628.99; located at: 5656 20th Rd., Argos, IN Walnut Twsp., Zoned A-1, seconded by Mr. Berger. Motion carried with a voice vote 5-0.

The third item of business was 21-BZA-68 MORRIS, Jordan - A request for a Variance of Developmental Standard to allow a reduction in setbacks, front yard setback from the required 30' to 24' from the road, lakeside from the required 45' to 30' and side yards from the required 10% (8') to 7' on both side yards; located at: Lot 7, Abbott St. Bremen, IN German Twsp., Zoned L-1. Mr. Andrew Morris 64460 SR 23, North Liberty IN and Mr. Randy Matthews of Rochester Homes 2461 Michigan Rd. Plymouth was present to represent their request. Mr. Adley presented the findings of fact.

The applicant is looking to construct a new home on the property and is wanting to reduce the setbacks on all sides of the property. The Rear yard setback from the channel is proposed to be reduced from 45' to 30'. The adjoining properties have a house setback 30' and a house 36' setback and 20' from the channel. The house front setback is required to be 30' from the ROW and the proposal is 24'. The adjacent residences are setback 20' and 12' respectfully. The side yard setbacks are associated with the width of the parcel which is 80' thus resulting in 8' setbacks from the east and western property lines. The proposal is to reduce the setback from 8' to 7'. The proposal would cover 39% of the property.

Ms. Mieras asked about the neighboring property and if there would be any loss of view. The applicants stated that the adjacent property is vacant, and the next property has a house closer to the lake and road than the proposed.

Mr. Hostetler made a motion to open for public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

1. Tom Evans 3281 Lakeshore Bremen Would like to keep an 8’ setback instead of the proposed 7’ on the west side. They would like to flip the garage to the other side due to the guide wire where the driveway would be and the dumping in and out of the driveway away from the intersection. Wants a clarification whether the road setback is from the road or the right of way. Believes on the west side of the property the measurement from the right away to the waters edge is 77’ not 80’ as the survey states. Wanted to make sure the requested 30’ is met on both ends of the property. The survey presented by the applicant shows 80’ on both sides. When asked the reason for the requested 8’ he said the owner to the west would like it when they sell the empty lot someday. Due to off street parking they would like to also make sure that they can park two cars in the driveway.
2. Jane Zarris 8686 Abbott St. Bremen Owns the empty lot to the west and lives in the house adjacent to the empty lot. They bought the property with the house already there and later got a variance to add on the garage. Her concern is the difference in depth on the east and west property line. Feels that not having a sea wall has allowed the ground to erode. Doesn’t have a problem with the house just wants to make sure the setback to the water is met. Feels it will benefit his family to have the house flipped and the garage to load and unload further away from intersection.

Mr. Miller asked the Plan Director if there are any ordinances related to driveways and intersections? Mr. Adley explained that will be reviewed during the permitting process at the TRC meeting. The only item before the board tonight is the setback reduction request.

Mr. Hostetler made a motion to close the public hearing, seconded by Mr. Berger. Motion carried by acclamation.

When the board opened discussion with the applicant Mr. Morris stated he heard that DNR doesn't like sea walls because they aren't healthy. As far as the guidewire concern the Morris' aren't planning on putting the driveway straight as they plan to have a curve in the driveway. This would alleviate both concerns.

Mr. Matthews asked if the adjacent properties are closer to the water than the 30' if the board will allow an average of the setback.

Mr. Morris bought the property with good faith that the survey stated both east and west property lines were 80'.

When asked for clarification the Plan Director stated that your property is your property whether its in the channel or not. Your property is in relationship to the set iron.

Mr. Miller made a motion to approve 21-BZA-68 MORRIS, Jordan - A request for a Variance of Developmental Standard to allow a reduction in setbacks, front yard setback from the required 30' to 24', lakeside from the required 45' to 30' and side yards from the required 10% (8') to 7' on both side yards; located at: Lot 7, Abbott St. Bremen, IN German Twsp., Zoned L-1, seconded by Mr. Berger. Motion carried with a voice vote 5-0.

The fourth item of business was 21-BZA-69 REICHARD, Kevin & Jennifer - A request for a Variance of Developmental Standard to allow a secondary structure before a primary to allow the owners to build a 30x40 garage on the vacant parcel adjacent to their residence; located at: 18213 Hiawatha Tr. (Lot 65), Culver, IN West Twsp., Zoned L-1.

The applicant requested prior to the hearing that this request be tabled until the next meeting in January.

The first item of business was 21-BZA-66 GUSTAFSON, Jeffrey - A request for a Variance of Developmental Standard to allow reduction in the density rule to 4.99 ac. and a reduction in two side yard setbacks from the required 15' to 5'; located at: 18500 5th Rd., Plymouth, IN Polk Twsp., Zoned A-1. Mr. Gustafson 18871 4 B Rd. Walkerton, IN recused himself from the board and went to the applicant table to present his request. Vice President James Berger ran the meeting. Mr. Adley presented the findings of fact.

The applicant has recently purchased the 9.98 acre parcel adjacent to his farm and has an interest in subdividing off the house for a family member. The parcel not being 10 acres would not meet the minimum density regulation of 5 acres per residential unit. The proposed lot lines would separate the house off from the remaining buildings and meet the minimum lot size. The second portion to the proposal would be setback reductions around an existing garage. The minimum setback adjacent to the garage is 15' side yard setback but is proposed to go down to 5'.

Mr. Gustafson lives down the road on 4B Rd. He bought 60 acres in 2001that surrounds this parcel. In the beginning the plan was to own the ground and his daughter buy a portion where the house sits. The original plan has changed somewhat, but wanted to continue the request in case the sale to his daughter does go through. Since the property is two hundredths of an acre too small to legally split that is why he is before the board asking permission for a variance in addition to the setbacks. If the split doesn't happen within a year this request is no longer valid.

Mr. Hostetler made a motion to open for public hearing, seconded by Mr. Miller. Motion carried by acclamation. There being nobody to speak for or against Mr. Hostetler made a motion to close the public hearing. Motion carried by acclamation.

Ms. Mieras made a motion to approve 21-BZA-66 GUSTAFSON, Jeffrey - A request for a Variance of Developmental Standard to allow reduction in the density rule to 4.99 ac. and a reduction in two side yard setbacks from the required 15' to 5'; located at: 18500 5th Rd., Plymouth, IN Polk Twsp., Zoned A-1, seconded by Mr. Hostetler. Motion carried with a voice vote 4-0 with Mr. Gustafson not voting.

There being no further business, a motion was made to adjourn and seconded. The motion was passed by a voice vote.

Respectfully submitted,

Matt Miller