

Minutes of the September 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals
Second Floor Commissioner's Meeting Room, #203
Marshall County Building
112 West Jefferson Street
Plymouth, IN 46563

MINUTES

Chairman Foster Davenport called to order the September 14, 2004, meeting of the Marshall County Board of Zoning Appeals at 7:30 p.m. Present were Board Members Foster Davenport, Robert Flora, Harold Van Vactor, Zoning Administrator, Troy Kiefer, Planning Assistant, David Rockaway, and interested parties. Absent were members Don Ecker, Sr., and Wayne Neidlinger.

The first item of business was review of the minutes of the August 10, 2004 meeting. Mr. Flora moved and Mr. Van Vactor seconded a motion to approve the minutes as written. The motion passed by acclamation.

The second item of business, case 04-BZA-25, Eugene Thornberg, A request for a Special Exception to permit a Bait Store on property located at 11819 Queen Road in an A-1, Agricultural District, Section 14 of West Township. Mrs. Thornberg was present to represent the request. Mr. Kiefer gave the details for the request and presented the Findings of Fact. He stated that the Plan Commission forwarded the request with a favorable recommendation. Mr. Kiefer stated that there would be plenty of parking at the site. He stated that Mr. Thornberg had presented a petition with a significant number of names in favor of the request.

Mrs. Thornberg stated that since Mr. Thornbergs death, she has had to shut down the Bait shop, but several of the family members had expressed interest in keeping it going. She stated that she would like to get approval so that they could reopen at a later date.

Minutes of the September 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals

Mr. Flora asked if they would like to keep the same hours of operation. Mrs. Thornberg stated that she did.

Mr. Flora moved and Mr. Van Vactor seconded a motion to open the public hearing. The motion passed by acclamation. There was no one to speak either for or against the request. Mr. Van Vactor and Mr. Flora seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Davenport moved and Mr. Van Vactor seconded a motion to approve the request. The motion passed with a unanimous vote of approval.

The third item of business, case 04-BZA-27, Charles Snyder, A request for a Special Exception to permit a Bait Store on property located at 15027 12th Road, in an A-1, Agricultural District, Section 24 of West Township. Ms. Darlene Best, 15237 12th Road, neighbor was present to represent the request. Mr. Kiefer gave the details of the request and presented the Findings of Fact. He stated that the Plan Commission forwarded the request with a favorable recommendation. He stated that the property offered plenty of parking.

Ms. Best stated that the hours of operation would be Mon – Fri 4:00 p.m. – 6:00 p.m. and Sat & Sun 7:00 a.m. to 5:00 p.m.

Mr. Flora asked if cars could back out within the parking lot as opposed to backing into the road to turn around? Ms. Best stated that they would not have to back into the road, there would be room within the parking area.

Mr. Davenport moved and Mr. Flora seconded a motion to open the public hearing. The motion passed by acclamation. There was no one to speak for or against the request. Mr. Van Vactor moved and Mr. Davenport seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Flora moved and Mr. Van Vactor seconded a motion to approve the request. The motion passed by a unanimous vote of approval.

The fourth item was case, 04-BZA-28, David Thorne, A request for a Variance of Development Standard to reduce the East side yard setback from seven feet (7') to five feet (5') and to reduce the West side yard setback from seven feet (7') to five feet (5') in order to construct a new home on property located at Lot 27 of Chippewa Forest, Lake Latonka, in an L-1, Lake Residential District, Section 21 of West Township. Mr.

Minutes of the September 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals

Thorne was present to represent the request. Mr. Kiefer gave the details of the request and presented the Findings of Fact. He stated that the property is $\frac{1}{4}$ acre in size, 75' in width. He stated that the applicant states that the variance is necessary to accommodate the septic system. He stated that there would be two front yard setbacks as the property is sandwiched between two roads front and back. Mr. Kiefer stated that it would appear to him that the applicant should not have any hardship meeting the setbacks even with the septic system.

Mr. Thorne stated that the septic system determined where the home would need to be built. He stated that he was required to move his home further on the property which is why he can not meet the setbacks. He stated that he is within Lake Latonka required setbacks which are five feet.

Mr. Davenport moved and Mr. Flora seconded a motion to open the public hearing. The motion passed by acclamation.

- Jerry Deturk, 294 E 350 W, Warsaw, spoke regarding the request. He stated that he wanted to be sure that the structure would not inhibit his lot from being buildable.
- Arlene Sabino, 12344 Chickasaw Trail spoke regarding the request. She stated that she was in favor of the request as representative of the Lake Latonka Board.

Discussion was held on the location of Mr. Thorne's septic and field.

There was no one else to speak either for or against the request. Mr. Flora moved and Mr. Davenport seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Kiefer read a letter in favor of the request from the Lake Latonka Board of Property Owners.

Mr. Flora asked Mr. Thorne if he was certain of his property lines? Mr. Thorne stated that he was. Mr. Davenport stated that the lot was small, only a $\frac{1}{4}$ acre in size.

Mr. Flora moved and Mr. Van Vactor seconded a motion to approve. The motion passed by a unanimous vote of approval.

Minutes of the September 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals

The fifth item was case, 04-BZA-30, David Turpin, A request for a Variance of Development Standard to reduce the East front yard setback from thirty feet (30') to twenty six feet (26') in order to construct an accessory structure on property located at 4783 West Shore Drive, Lake of the Woods, in an L-1, Lake District, Section 7 of German Township. Mr. Turpin was present to represent the request. Mr. Kiefer gave the details of the request and presented the Findings of Fact. He stated that Mr. Turpin proposed a 28' x 44' building. He stated that there is a large tree as well as topography which prohibit the applicant from being able to build within the required setback.

Mr. Flora asked if the placement of the building would cause any drainage problems. Mr. Turpin stated that there would not.

Mr. Davenport moved and Mr. Van Vactor seconded a motion to open the public hearing. The motion passed by acclamation.

- Casimer Chrzan, Jr. neighbor spoke in favor of the request. He stated that he would recommend approving the request.

There was no one else to speak either for or against the request. Mr. Flora moved and Mr. Davenport seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Van Vactor moved and Mr. Davenport seconded a motion to approve the request. The motion passed by a unanimous vote of approval.

The sixth item was case, 04-BZA-31, Michael Flynn, A request for a Variance of Development Standard to reduce the East side yard setback from five feet (5') to four feet (4') and to reduce the Lake side setbacks from forty five feet (45') to forty feet (40') and to reduce the North front yard setback from thirty feet (30') to twelve feet (12') in order to construct two new dwellings on property located at 10221 & 10211 Pretty Lake Trail, in an L-1, Lake District, Section 11 of West Township. Mr. Flynn was present to represent the request. Mr. Kiefer gave the details of the request and presented the Findings of Fact. Mr. Kiefer stated that after reviewing the request, he determined that there would be an existing building line at the North front yard setback and a variance would not be required. He stated that the remaining requests would require approval. He stated that there are currently two homes on the property. He stated that the applicant would like to replace the homes on the property.

Minutes of the September 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals

Mr. Flynn stated that if the four foot side variance were granted there would be seven feet between the new home and the neighbors home. Mr. Davenport stated that the new home would be further from the South property line then it is currently. Mr. Flynn stated that was correct.

Mr. Davenport moved and Mr. Flora seconded a motion to open the public hearing. The motion passed by acclamation.

- Jim Wenino, 10227 Pretty Lake Trail, spoke in opposition of the request. He stated that Mr. Flynn replatted and he was aware of the setbacks at that time. He stated that Mr. Flynn has used the property as a rental and it has not been desirable.

Mr. Kiefer read a letter from Mr. Wenino and trust owners in opposition of the request.

There was no one else to speak either for or against the request. Mr. Davenport moved and Mr. Flora seconded a motion to close the public hearing. The motion passed by acclamation.

Mr. Flynn stated that he had contacted neighbors and submitted pages with their signatures in favor. He stated that it was recommended that they save a forty two inch oak tree, he stated that is why he has requested the four foot setback.

Mr. Davenport asked if Mr. Flynn's current deck was in violation. Mr. Flynn stated that he was not aware that it was. He stated that his contractor built the deck fifteen or more years ago.

Mr. Van Vactor asked Mr. Flynn why after receiving approval to combine the lots, why would he now be requesting a variance. Mr. Flynn stated that he had changed the layout of the homes to accommodate a common drive.

Mr. Flora stated that Mr. Flynn is trying to pack too much into two small lots. He stated that the only way to accomplish that without encroaching upon the neighbors would be to build his two houses closer together. He stated that with four feet from the property line, it makes it difficult to maintain the home.

Minutes of the September 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals

Mr. Flora asked Mr. Wenino if Mr. Flynn shortened his deck to six feet, would that be acceptable. Mrs. Wenino made a complaint against Mr. Flynn's practice of renting the property by the week. Mr. Davenport asked if Mr. Flynn was planning to continue to rent the property. Mr. Flynn stated that one of the homes would be his main residence and the other would be for sale.

Mr. Flora moved to approve the request with the understanding that Mr. Flynn build a twenty eight foot deck as opposed to a thirty four foot deck across the lake side of the house. Mr. Flynn asked if that meant that he would not encroach upon the forty five foot water mark? Discussion was held.

Mr. Flora stated that he could not see that the setback being changed from five feet to four feet making much of a difference in the tree.

Mr. Davenport moved and Mr. Flora seconded a motion to deny the request. The request was denied by a unanimous vote.

The last item of business was the Violation Report. Mr. Kiefer presented the report. Mr. Davenport stated that some of the board members felt that they were encroaching upon the Kerkove's and possibly the Cotton's. He stated that the Kerkove's hauled away 68 tons of scrap and Mr. Cotton cleaned his property as well. He stated that progress was made. Mr. Kiefer stated that a certain amount of scrap is allowable on a farm, but he felt that it could be agreed that a junk yard is not reasonable.

Mr. Kiefer stated that he received a message through the County Attorney, Mr. Lukenbill, that Mr. Kerkove was requesting to know who made the complaint against them. Mr. Kiefer stated that it has been the practice in the past to honor that persons privacy. He stated that he wandered with the open door laws if that is an okay practice. Ms. Anders stated that she reports people to the welfare department daily and they do not report who has tipped them off. Mr. Flora stated that he does not favor giving out that information. Mr. Kiefer stated that Mr. Lukenbill is checking it out and he will update there at a later date.

Discussion was held regarding an on going problem at Koontz Lake. Mr. Kiefer stated that he gave written permission for Mr. Bryan Miller to construct a carport on his property within the right-of-way. He stated that these structures have been permitted in the past without a building permit. He stated that he wrote a letter to Mr. Miller granting permission for the carport to be constructed and what the definition of

Minutes of the September 14, 2004
Regular Meeting of the
Marshall County Board of Zoning Appeals

a carport would consist of. He stated that he had received a phone call from the neighbors complaining about what Mr. Miller had constructed. Mr. Kiefer presented a photo of what Mr. Miller constructed for input. Mr. Flora stated that he did not feel that what Mr. Miller constructed would meet the definition of what Mr. Kiefer stipulated would be okay. He stated that it is not moveable, the posts are metal, it is not a prefab building, nor are the posts set with concrete. Discussion was held. Mr. Flora suggested Mr. Kiefer read the Zoning Ordinance to see if regulation could be made by the Board of Zoning Appeals.

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

Respectfully submitted,

Harold Van Vactor
Secretary