

July 11, 2023
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 11, 2023, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, Trent Bennett, David Hostetler, Matt Miller, and Jim Kephart. Also present was Ty Adley Plan Director, Lori Lowry and interested parties.

Mr. Hostetler made a motion to approve the minutes from the June 13, 2023, Board of Zoning Appeals meeting as corrected, seconded by Mr. Bennett. Motion carried by acclamation.

The first item of business 23-BZA-11 JORDAN, Jack – A tabled request by Hope Jordan for a Variance of Use to allow an existing barn to be used for periodic artisan/seasonal markets; located at: 10329 3rd Rd. Bremen German Twsp., Zoned A-1. Mrs. Hope Jordan of 3127 Sea Lane, Bremen was present to represent her request. Mr. Adley presented the findings of fact.

In response to the concerns raised the applicant provided the following information. The lot for parking is approximately 62,300 sqft. and when dividing that by 300 sqft for stall and space, there is enough square footage for 207 parking spaces. The space for the event will add up to approximately 26,700 sqft and when dividing that by 100sqft. plus half area for aisles, there is enough space for 133 vendors, but would assume 30-50 vendors. They would also have 2-4 port-o-potty's to service attendee's. The address has been changed and is now known as 10329 3rd Road. The applicant indicates that there will be a sign for the business/property. Some of the other concerns include; trash, wrong direction of travel, and road condition per the applicant are out of their control.

At the last meeting the board had some concerns. Since the last meeting the applicant was able to get the address changed, created a new site plan, and met with the Marshall County Highway Department. The highway department stated that the best location for the entrance for parking was on the corner.

When asked a few questions by the board about parking the applicant responded saying if they run out of parking, they will have a sign that will say "lot is full". No parking signs can be put up roadside to make sure there is no parking along the roadway. When asked if she was willing to have a limited approval of 4 events a year the applicant said yes. Ms. Jordan is confident that people coming to the event will know the location of the event by the signs.

Being this is a new venue and event. The plan would be to run it on Friday for a couple hours, Saturday all day and possibly Saturday for a few hours.

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

1. Wayne & Becky Mishler 2690 Kenilworth Rd. Does not believe the current road conditions warrant the extra additional traffic. Information was given comparing another artisan market that was on 40 acres. If this is only on 2 acres how will there be enough parking. Many vendors pull trailers taking up more attendee parking. Has a concern where all the people are going to park. Wayne has a concern about the safety of the parking entrance. There is a hill to the west and believes it's an accident waiting to happen.
2. Kim Mishler 2560 Kenilworth Rd. Presented a map to the board pointing out each neighbor that has a concern and present at the meeting. Believes it negatively impacts the general welfare of the community. There isn't a plan other than a sketch drawing, a marketing strategy or a managerial plan. Mr. Mishler has a concern about the safety of the entrance and the buffer that you cannot have parking within 30' from the road which will reduce even more parking spaces.
3. Ben & Courtney Hepler 9879 3rd Rd. Read the description of A-1 zoning and its intention to conserve and protect open land uses ... and prevent urban and agricultural land use conflicts. Questions the specifics of the request as it seems to have changed. Would like to make sure that specifics are spelled out to know what will possibly be allowed and what won't so there's no confusion. They've spoken with the police department and will try to patrol the area. There are hundred of acres represented that have a concern about the safety and peace being taken away due to this request. Ben doesn't want the board to be naïve and think that people won't litter and try to park in no parking areas.
4. Rick & Donna Ulery 10328 3rd Rd. They've owned that property for years. When it is wet outside this property and the property adjacent is a wetland and water is going across the road. Also concerned about safety with traffic.
5. Catara Murphy & Cody Bartella 10328 3rd Rd. They live in the house across the street from the proposed event. Their house is 25' from the road and there is no dividing fence which will negatively impact their property. They have a concern about people coming to their property and parking there. Is there going to be security and who will clean up or fix anything that could get damaged. A country community is not meant for retail business. The road is already busy and isn't built for additional traffic. Has a concern about safety in getting in and out of the parking area. The unnecessary hardship would fall heavy on them as they live so close and believe their property would depreciate in value. Safety of her children is also a concern.
6. Stan Murphy 11019 3B Rd. Lives on the road south of proposal. Took care of the property when the Ullery's owned it. Believes you can post all the signs you want people aren't going to pay attention. The embankment along the road is steep and people will get stuck. The road is not made for retail traffic. There is flooding that goes across 3rd and King spring and fall. This will greatly limit the amount of parking available. Believes there is no good or safe entrance to the property for parking. The entrance to the barn could possibly be a good entrance.
7. David & Lisa Knepp 10990 5 B Rd. Showed pictures to the board showing standing water even when were in a drought. Their property receives all the water from the Jordan the property. Questioned if there is going to be anything done to the

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parking area. Doesn't believe there is enough room for this type of event. Shiloh church would have fish fry events and the police requested to know about it ahead of time. Recommended this happen to keep control of it.

8. Mark Seltenright 10876 3 B Rd. Has a CDL and understands safety, traffic and roads. With the location of the proposed entrance/exit and the hill on the road he doesn't believe where you enter is safe. The highest and best place to enter would be the entrance at the barn.
9. Kathleen Sheely 10995 3B Rd. Back in early 2000 Stan Murphy was denied for a rezoning of his property because of decreased property values. Is the board considering these events lowering neighboring property values? Has been to other artisan markets in a rural setting that was a parking disaster. This event will be bringing in more traffic on roads that are already deteriorated from back when new 31 came in. Will the bathroom facilities be removed after each event or will they stay the whole time?
10. Todd Stuckman No address Sent a letter offering support of farmers and budding entrepreneurs to coexist.
11. Bill Davis No address Sent a letter and believes the proposed will be a positive addition to German Township. Also sees this as an opportunity to embrace small business start ups.
12. Samantha Martinez No address Sent an email. Is a small business owner and would like the board to consider approving this event.

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

During the discussion about the entrance for the events they chose that location by the recommendation of the Marshall County Highway Department. Plus they wanted to choose an entrance that was the least impactful to the neighbor. However, if the board wants it across from the neighbor they can make that work. As far as keeping the sheriff's department apprised of the event Mrs. Jordan will notify the sheriff's department ahead of the event.

During discussions Mrs. Jordan asked that the board given her a chance for one year and have four (2) day events a year. The board continued discussions with the possibility of doing one event to see how it all goes.

Mr. Kephart made a motion to approve 23-BZA-11 JORDAN, Jack – A tabled request by Hope Jordan for a Variance of Use to allow an existing barn to be used for periodic artisan/seasonal markets; located at: 10329 3rd Rd. Bremen German Twsp., Zoned A-1 with the following stipulations:

- 1. One event for Saturday and Sunday and allow Friday as a set up day;**
- 2. Parking entrance to be at the barn and not at the corner;**

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

The second item of business 23-BZA-16 BAIRD, Laura - A Special Use request by ViaSat to construct a satellite node facility for high speed internet; located at: 9 B Rd. (50-33-06-000-041-000-018), Plymouth, In Center Twsp., Zoned A-1. Mr. Randy Jones of Via Sat Englewood, CO was present to represent his request. Mr. Adley presented the findings of fact.

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The applicant is seeking to construct a satellite node facility for high-speed internet. The node site consists of a fenced area (approx. 28x25') that will have 2 6-8' diameter dishes along with support equipment. The specific use is not identified within the Zoning Ordinance but is similar to that of a Tower so is being requested to go through the same variance procedure. The approx. 700 sqft leased area will be located over 300' from 9B Road.

Viasat is a satellite broadband company. This is a satellite with two antennas that talk to the satellite. They chose this property because there is a fiber splice point just down the road, power to the site, willing landlord, and work within that jurisdiction's zoning code. This will provide services to those who normally don't have service to fiber or cable. It is 345' back off the road and only sits 8' in height. The plan is to splice into wind stream for access. There is no signal this service only talks to the satellite. Another reason for this specific location on the site is where the landowner requested. Since this unit works with fiber there is no sound.

This site is projected to be built at the end of this year and operational the first quarter of next year.

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

1. Pat Langfeldt 9870 Iris Rd. Presently has viasat. She wanted to know why this area was chosen and if this proposal will speed up what's currently there.
2. Mark Hestons 8264 9 B Rd. Currently has RTC Fiber. He doesn't see the advantage of the proposal. Questions whether the property is being sold or leased.
3. Eileen Burgess 8398 9B Rd. Questioned the lifespan of the satellites and after that what happens to them. Has done a lot of research and has a concern with radio frequency and electro magnetic hypersensitivity. Currently she doesn't have a problem streaming and doesn't see a need for this proposal.
4. Robert Bachtel 8138 9B Rd. Thought it was a tower at first. Lives directly next to the property and is only 61' from his property. Thinks it is an eyesore and would like possibly trees put up around it.
5. Susan Pasley 8264 9B Rd. Doesn't want to look out in her back yard and see the proposed satellite. Doesn't want any lighting coming from it. She has good satellite service already and doesn't see the need. Doesn't know if there is a risk of the public's health and safety and would like more time to research it before a decision is made.
6. Robert Demis 20993 8th Rd. Do the trees around the proposed site need to be trimmed so it doesn't interfere with satellite directional site. If the facility is going to have chain link fence could it have camouflage strips to make it more appealing?
7. Lee & Connie Motz 8880 Hawthorn Rd. Against the request. There is already another high-speed fiber available in the area. The proposed will not be aesthetically pleasing.
8. Tyler & Allison Motz 8925 Hawthorn Rd. Against the request as it won't be aesthetically please, already has TRC high speed fiber, possible long term health issues, and satellite is less reliable in their area due to intermittent weather which causes more interference and connectivity issues. Not in favor of a satellite tower in the backyard.

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

The life span of these facilities is 25 years. After that time frame the lease agreement states that they have to remove it and put it back to the way they found it minus wear and tear. As far as lighting is concerned there will be none. The plan for this proposal is to provide a service to those who don't already have it. These specific locations are usually 40-50 miles apart. Again, this doesn't provide coverage it talks to the satellite. It gives people who don't have access to the providers. The applicant would be willing to put in trees or put up a vinyl fence.

Mr. Kephart made a motion to approve 23-BZA-16 BAIRD, Laura - A Special Use request by ViaSat to construct a satellite node facility for high-speed internet; located at: 9 B Rd. (50-33-06-000-041-000-018), Plymouth, In Center Twsp., Zoned A-1 with the following recommendation:

1. Vinyl fencing and trees around site

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

The third item of business was 23-BZA-17 MILLER, Nathan - A request for a Variance of Use to rebuild their house on a commercial zoned property; located at 2030 Beech Rd., Nappanee, IN German Twsp. Zoned C-2. Mr. Nathan Miller of 2030 Beech Rd. Nappanee was present to represent his request. Mr. Adley presented the findings of fact.

The applicant owns the property including a business and residence. He would like to demolish and build a new house on the property. The C-2 (Highway Commercial District) does not permit single family residences on the property. Per article 8.070 Repairs and Maintenance, b "If a structure becomes unsafe or unlawful due to physical condition and is razed, the structure shall be rebuilt in conformity with the district in which it is located." Since residences are not permitted, they are required to pursue a variance in order to permit the proposed residence.

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

Mr. Miller made a motion to approve 23-BZA-17 MILLER, Nathan - A request for a Variance of Use to rebuild their house on a commercial zoned property; located at 2030 Beech Rd., Nappanee, IN German Twsp. Zoned C-2, seconded by Mr. Bennett. Motion carried with a voice vote 5-0.

The third item of business was 23-BZA-18 MILLER, NATHAN - A request for a Variance of Developmental Standard to reduce the front yard setback from the required 70' to 60' from the property line to rebuild their home; located at: 2030 Beech Rd., Nappanee, IN German Twsp., Zoned C-2. Mr. Nathan Miller of 2030 Beech Rd. Nappanee was present to represent his request. Mr. Adley presented the findings of fact.

The applicant has proposed to build a new house replacing the existing but are requesting to reduce the front yard setback. This BZA case was accompanied by 23-BZA-17. Due to a stand of existing trees the building is desired to move forward towards the road. The proposal indicates property line which is traditionally in rural areas located in the middle of the road, but setback lines

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are taken from the road right of way. The full right of way is traditionally 40' and when added to the required setback distance of 50' you get a required setback of 70' from property line/ center of road. The applicant is then seeking to reduce the setback 10' (40' from ROW) or to 60' from property line/ center of road. The existing shop is 60' from center line and the applicant would like to match that. This would provide for a 40x80' house and have a 22' separation from the trees.

All required septic permits will be obtained prior to a permit.

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

Mr. Bennet made a motion to approve 23-BZA-18 MILLER, NATHAN - A request for a Variance of Developmental Standard to reduce the front yard setback from the required 70' to 60' from the property line to rebuild their home; located at: 2030 Beech Rd., Nappanee, IN German Twsp., Zoned C-2, seconded by Mr. Hostetler. Motion carried with a voice vote 5-0.

The fourth item of business was 23-BZA-20 HETTICH, Drew & Tara - A request for a Variance of Developmental Standard to reduce the rear yard setback from the required 30' to 2' for a 10x16' shed; located at: 18153 Latonka Tr. Culver, IN West Twsp. Zoned L-1. Mr. Drew Hettich of 18153 Latonka Tr. Culver was present to represented his request. Mr. Adley presented the findings of fact.

The applicant is seeking to place a new garden shed (10x16') at the rear of the property and would like to reduce the secondary front setback from 30' to 2' from the property line. The property is located within the Indian Hills Subdivision which is bound to the east by Sycamore Road. Sycamore Road is a roughly a 1 lane dirt road, but requires a 30' setback. Should the shed meet the ordinance setbacks, it will place the shed on the existing septic system.

The applicant stated that the best building location would be the northeast corner and the southern corner has a large drop off. The septic is located in the center to the northern side of the property which limits locating the shed further away from the property line. He could make a 5' setback work for the proposed portable building.

The board brought up that there are other sheds that don't meet the requirements.

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

1. Janice Holmes	?	Does not have any questions or concerns about the proposed.
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Mr. Bennett made a motion to close the public hearing, seconded by Mr. Kephart. Motion carried by acclamation.

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Mr. Hostetler made a motion to approve 23-BZA-20 HETTICH, Drew & Tara - A request for a Variance of Developmental Standard to reduce the rear yard setback from the required 30' to 5' for a 10x16' shed; located at: 18153 Latonka Tr. Culver, IN West Twsp. Zoned L-1, seconded by Mr. Kephart. Motion carried with a voice vote 4-1 with Mr. Gustafson voting against.

Other Business

With no further business to come before the board the meeting was adjourned. Motion carried.

Respectfully submitted,

David Hostetler