

November 14, 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, November 14, 2023, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, Trent Bennett, David Hostetler, Jim Kephart, and Matt Miller. Also present was Ty Adley Plan Director, Lori Lowry and interested parties.

Mr. Hostetler made a motion to approve the minutes from the October 10, 2023, Board of Zoning Appeals meeting as presented, seconded by Mr. Miller. Motion carried by acclamation.

The first item of business was 23-BZA-36 BORKHOLDER, Eddie Ray - A request for a Variance of Developmental Standard to reduce the rear yard setback from the required 45' from BFE to 60' from the lake in order to build a new house; located at: E. Shore Dr. Bremen (50-43-07-000-281-000-005), Zoned L-1. Mr. Eddie Ray Borkholder of 1439 E. 3rd Rd. Bremen was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is interested in constructing a new house on the lake and due to natural features, the rear property line protrudes substantially into the property. The applicant is seeking to reduce the rear yard setback from the required 45' from base flood elevation to 50' from the lake. There is a swale that runs perpendicular to the shoreline approximately 120' into the property. The property is 1.09 acres in size, but the property is also bisected by the sewer line that services lake of the woods that runs along Lakeshore Drive. Due to the lack of alignment of the road, the sewer line runs at an angle taking up even more property which is forcing the property to be developed further west.

The total square footage of the property allows for the property to be subdivided. When asked if that's the reason for the variance Mr. Borkholder stated, "he wants to stay away from the sewage and the plan for that would be to build closer to the lake."

While comparing adjacent neighbors' setbacks off the water; the plan director explained that a portion of the properties to the north are set back further off the water to almost 100' east due to Frank Washnocks private park that runs adjacent to the lake. The properties to the south are built closer to the water.

The site plan was discussed in addition to the man-made ditch on the property. Mr. Borkholder plans are to run tile from that ditch down to the lake. There is also a pipe under the road that will also be ran to that ditch. Mr. Borkholder has no intention of building another house on the property. However, for investment reasons Mr. Borkholder doesn't want to ruin it for that purpose.

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

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1. Mike Jones 3969 Lakeshore Lives two houses north of the proposed.
Advised that there is a man hole in the middle of the woods. Has a concern about location of the house and how close the house will be to the lake. The president stated that it will be 60' from the water. Mr. Jones doesn't have a problem with a house being built on the property, but they are concerned about the loss of view to the lake.

Mr. Miller moved, and Mr. Bennett seconded the motion to close the public hearing. Motion carried by acclamation.

Without having accurate mapping of the sewer lines available for the board along with required setbacks from the sewer the board felt it was difficult to make a decision.

Mr. Kephart made a motion to table the request to allow the applicant time to bring back to the board a revised site plan that notates where the sewer line is along with the required setbacks, seconded by Mr. Hostetler. Motion carried with a voice vote 5-0 to table.

Mr. Borkholder requested that the board go out to the property and do a site visit.

The second item of business was 23-BZA-37 HARTER, Roy - A request for a Special Use to allow a small home-based business of part-time small engine repair; located at: 14553 3rd Rd., Plymouth, IN Zoned A-1. Mr. Roy Harter of 14553 3rd Rd. was present to represent his request. Mr. Adley presented the findings of fact.

The applicant has been operating a small engine shop from his residence and is seeking approval now to do so. The applicant indicates that he tinkers on them with no set hours and does it on an as needed basis. He is willing to put up a fence to shield the projects from the public or the road and has reduced the amount of material that is on the property. He will also be meeting all associated home-based business development standards for Storage, Employees, Customers, Signs and Parking.

Due to a zoning violation the Plan Commission requested a fence be put up and Mr. Harter will have it up and completed before the end of the week.

Mr. Harter has a health condition that has caused him to be disabled and unable to work full time so he does small jobs (small engine repair) to help him financially. There is no signage on the property. People bring items to be fixed or he buys items to re-sell. There are no employees. From here forward he will do a better job at keeping things picked up.

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

Mr. Kephart made a motion to approve 23-BZA-37 HARTER, Roy - A request for a Special Use to allow a small home-based business of part-time small engine repair; located at: 14553 3rd Rd., Plymouth, IN Zoned A-1, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

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The third item of business was 23-BZA-38 MULLET, Marlin - A request for a Special Use to allow the addition of a new 150'x125' building to his home workshop for warehouse and shipping room; located at: 4463 Beech Rd., Bremen, IN Zoned A-1. Mr. Marlin Mullett Mr. Bernie Feeney of Plymouth Land Survey and Mr. Charlie Zercher Attorney were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 150x125' building to house the warehouse and shipping room behind the existing facilities. The new facility is desired to keep goods out of the weather. The applicant has received approval for the existing workshop over a number of phases in: 2019 (100x200' and 60x82') 2013 (48x72'), 2004 (60x100'). The development over time has had the following conditions; 1. Commercial Design Release 2. Combination of new tract with parcel 50-44-08-000-018-001-005 3. No new linear footage in access (restricting it to 250') 4. Meeting State Department of Health's requirements 5. Meet development standards of the A-1 zone 6. Hours of operation 5am to 3pm Monday thru Friday 7. 55 employees 8. A drainage plan The Development standards for the ordinance include: A. Definition A Home Workshop is an accessory use to a residential property carried out for gain by one or more residents of the property, which is clearly incidental and secondary to the use of the property for residential purposes. Home Workshop uses may include light fabricating, light manufacturing or processing activities, or related storage facilities. B. Area Requirements Home Workshop uses shall not occupy an area in excess of four thousand (4,000) square feet of gross area. C. Outside Storage Outside storage of goods and equipment is permitted subject to Board of Zoning Appeals conditions and approval. The Board of Zoning Appeals may pay particular attention to use, enjoyment, and value of adjacent properties. D. Employees not residing on the property are permitted subject to Board of Zoning Appeals conditions and approval. The Board of Zoning Appeals may pay particular attention to available on-site parking and the condition and traffic on local roads. E. Signs The size of on-site signs are limited to an aggregate area of eight (8) square feet. Onsite signs may only advertise goods or products sold on the property. Off-site advertising signs must conform to all provisions of Article 6-200, Signs of this Ordinance. F. Parking Sufficient off-street parking shall be provided on the property to prevent customers from parking in County rights-of-way. There is concern of the act of loading and unloading on the road, overall size of the operation over the maximum 4,000 sqft () and the impervious coverage of the property.

Recommendation: Based on the information provided and review by the Technical Review Committee, Staff and TRC recommend denial until such time that loading and unloading and impervious coverage can be addressed:

Update from Site Meeting: A loading and unloading diagram has been provided and was observed in use while on site during week of November 6th, 2023. Impervious Coverage is being addressed through expansion of property (50-44-08-000-018-001-005) by adding additional acreage from neighboring parcel (50-44-08-000-018-003-005). Previous estimate on 7.07 acres (100,000/307,969 sq ft 32.5%)

The proposal is to add a 150'x125' onto the back of the existing building. There is no plan to increase employees or production. It is solely for the storage of products of materials and loading/unloading. Where products had been stored outside during the day and then put back inside the building at night; now with the new building all products will be kept inside. In addition to all the loading and unloading it will all be done off road. The few incidents that happened will no longer happen due to the new loading and unloading docks in the new building.

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The issue with impervious coverage not being met the plan will be to add additional acreage from surrounding ground to total 10 acres.

A list of area property owners signed a petition in favor of the request and passed it around the board.

The drainage plan was developed based on the 2004 approval for Mr. Mullet's last expansion. At that time the tile was re-routed and moved to the west of the proposed building construction. That tile is now in the way and Mr. Mullet was earlier at the drainage board meeting a couple of months ago and got approval again from them to move the tile once again at his expense. The plans have now been re-submitted to the Marshall County Surveyor to be approved once this plan with the Board of Zoning Appeals is approved. The retention area has been expanded considerably in order to accommodate the additional roof area. The roof drains will be directed to the retention basin and the basin will not continually hold water, but will have a small drain that will allow the water out of the bottom of the basin and into the tile as soon as the tile is capable of accepting it. The soil conservation service approval for the erosion control plan has been approved as well. There is a 4" tile coming into the inlet in the basin, but a 12" tile that will tie into the county drain tile. This basin is designed to hold a 100 year storm which is over 6" of rain in a 24 hour time frame. That basin will hold all of the water that comes off the ground and roof area.

There are currently 52 employees. Mr. Miller stated that he drives by in regularly and said that he keeps it neat and clean. The business makes doors and trim.

The board discussed the size of Mr. Mullet's growing business and how our ordinance encourages small businesses and believes that his business is quickly approaching not being a small business. The board asked Mr. Mullet if he had any intention of increasing the size of his business anymore after this proposal. Mr. Mullet stated that he doesn't have any intention of adding on anymore after this expansion.

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

1. Letter in support of the Marlin Mullet expansion includes signatures from: Enos Kuhns, Melvin Lemler, David Garl, John Kuhns, Lavern Miller, Nelson Borkholder, Lisle Slabaugh, Jeffrey Schmucker, Ferne Mullet and Carol Thomas.

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

Mr. Hostetler made a motion to approve 23-BZA-38 MULLET, Marlin - A request for a Special Use to allow an addition of a new 150'x125' building to his home workshop for warehouse and shipping room; located at: 4463 Beech Rd., Bremen, IN Zoned A-1, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

The fourth item of business was 23-BZA-39 PITTMAN, Sally- A request for a Special Use to allow a home-based business of parking concrete equipment and vehicles on the property; located at: 3308 E. Shore Dr. Bremen, IN Zoned L-1. Mr. Tony Richard 410 N. Baltimore St. Bremen and Ms. Sally Pittman of 3385 East Shore Dr. Bremen was present to represent their request. Mr. Adley presented the findings of fact.

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Mr. Gustafson stated that he has done work for Tony and if there is anyone that has any concerns to state their concerns. Nobody came forward. Mr. Gustafson said that he can make an impartial decision.

The applicant is seeking to permit her sons concrete business on the property to park their equipment and the parking of employee vehicles while on jobsites elsewhere. He desires to build a house in the future and live there down the road. An accessory structure was recently approved for the property and will become the residence down the road. There is currently a house on the property, but is rented out to a third party that is neither the owner or business operator.

Recommendation: Based on the Information provided and review by the Technical Review Committee, Staff and TRC would recommend denial of the proposal.

The plan is to build a pole barn on the south side of the property to store the equipment for now and later to convert it to residential living space. The business has one form truck, two trailers and another truck. The existing house on the north side of the property is a rental house.

The board's reason for denial was because of the amount of material and equipment outside. When asked what his plans were for the building, he said everything will be kept inside except for the form truck. He will also not have any busted up concrete at this address. Eventually, the plan will be to have the business at another site and have the residence on this parcel after the parcel is split into two parcels.

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

1. Jack & Polly Manges 88885 Sycamore Dr. As an owner of several properties at Lake of the Woods they oppose allowing this property to be used for a home-based business for parking cement equipment at 3308 E. Shore Dr. This is residential and should stay that way. It has been an eyesore. This would lower the aesthetics of the community and bring down property values.
2. No name and no address There deed says that there will be no businesses on East Shore Drive. This is a residential area and would rather keep it so. Against this request.
3. Julie Reese no address There has been a business running from this property for over a year. They have several big trucks and trailers parked on the lot. They run the trucks with their headlights pointing into their house for 30 minutes or more every morning. Would like this residential area to stay residential. Is against the request.
4. Janelle Reese 8549 Addison St. Is against the proposal. The equipment and amount of vehicles they run out of that place I feel is dangerous to the lake residents and very disruptive. They have back up beeping that you hear in the morning and at night. The vehicles run for long periods of time in the morning. This is a residential area where people ride their bikes, walkers and people ride golf carts. Large equipment is not safe in this area. This business is too disruptive and doesn't belong in this area. If this is deemed for the best interest of the lake residents, please limit the amount of equipment and personal vehicles at the property at one time.

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

There was discussion with the applicant when he thinks he will be able to remove the business off the property and convert it too residential. Mr. Richard is hoping it will be in a couple years. Currently his business doesn't make enough money to afford another location.

The applicant has applied for a building permit for a pole barn and he's looking to start it within a month and should have it up within three months. At that time, he will be able to store everything inside the barn except the form truck and forms.

With the property being zoned lake residential the board had concerns with this type of business. There was discussion about a temporary one-year approval until the business could be moved to a better location.

The boom truck is not always at the property. Most of the time it is usually at the jobsite. As far as the vehicle lights on, the applicant stated that he would do his best to keep them off when loading and unloading on the property. There was talk about proposing a fence and Mr. Adley explained that there are restrictions on fences in a lake residential zone. Putting up a screening fence along the roadside would require a variance.

Mr. Hostetler made a motion to approve 23-BZA-39 PITTMAN, Sally- A request for a Special Use to allow a home-based business of parking concrete equipment and vehicles on the property; located at: 3308 E. Shore Dr. Bremen, IN Zoned L-1 with the stipulation that this approval be for a one year period and after that one year period the work equipment is to be removed off the property and during the one year store everything in the building except the trucks and trailer with forms and to keep the truck and trailer with forms behind the proposed building, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

The fifth item of business was 23-BZA-40 WALLACE, Vincent - A request for a Special Use to allow the installation of a 225' self support tower with antennas at 194' and 218'; located at: 1739 Lilac Rd. Plymouth, IN Zoned A-1.

The applicant withdrew his request.

The sixth item of business was 23-BZA-41 SCHMUCKER, Aaron & Margaret - A request for a dog kennel for breeding; located at: 4500 Grape Rd. Bremen, IN Zoned A-1. Mr. & Mrs. Aaron Schmucker of 4500 Grape Rd. Bremen were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to permit an existing kennel that has 12 females currently but is interested in expanding to 24 females. A kennel is required to receive approval from the Board of Zoning Appeals when either; 1. An establishment wherein any person engages in the business of boarding, breeding, buying, keeping, letting for hire, training for a fee, or selling three (3) or more dogs, cats, or other small domesticated pets; or 2. Any premises on which five (5) or more dogs, cats, and/or other small domesticated pets over four (4) months of age are kept. Kennels are required to meet the following development standards: C. Noise Setbacks Noise produced by the animals and/or operation of the Kennel shall not interfere with the use and enjoyment of neighboring properties.

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Kennels, including shelters and fenced areas, shall be set back six hundred (600) feet from the nearest residence in which the operator of the Kennel does not reside. D. Shelter Sufficient shelter shall be provided to protect the animals from extremes of moisture and hot and cold weather. Animals shall be housed in a noise suppressing shelter between the hours of 9:00 pm and 6:00 am. E. Fencing Sufficient fencing in and around the Kennel shall be provided to secure animals. Fencing shall: 1. Be secure enough to house the species and breed being kept; and 2. Be comprised of a primary enclosure for normal operations of the Kennel and a secondary enclosure to prevent total escape in the event of escape from the primary enclosure. F. Sanitary Waste Disposal Proper sanitary disposal of animal waste shall be provided in accordance with all Marshall County Health Department regulations G. Inspections Kennels shall be open to periodic inspection by Marshall County Zoning Administrator and/or the Marshall County Humane Society. The applicant has indicated that they should not be affecting others due to over 500' of separation from the road and other neighbors. They also indicate that they are willing to meet the development standards of the ordinance. Based on their business plan, they started up in 2013 with only one female and male and have slowly progressed to 12 today. The kennel is made of non porous materials that can be "disinfected and sanitized...regularly". The kennels are heated and cooled with outdoor runs as well as access to an outdoor fenced area that allows for exercise. The dogs are vaccinated through Bourbon Animal Clinic with Dr. Collins. There is though no mention of common standards/groups including: USDA, BOAH, Canine Cares.

Recommendation: Based on the information provided and review by the Technical Review Committee, Staff and TRC would recommend denial of the proposed kennel as submitted.

Mr. Schmucker stated that they are currently set up for twelve and they really don't have a desire to grow and would like to change the request to keep what they currently have.

This request was turned in through the violation process. After talking with the applicant, they willingly came in and applied for this approval process.

The kennel is part of the white pole barn, and the area is fully enclosed by a wooden fence that prevents anyone from seeing the dogs. The origination of the kennel started with one dog, and they continued to add dogs. They had no knowledge of needing approval for the kennel.

The dogs being bred are Pomski's, Pomeranians and Husky's.

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

1. Nancy Cox, Marshall County Humane Society 14210 Nataka Tr. Plymouth Nancy is the director at the Marshall County Humane Society. This was brought to her attention by a complaint from someone that tried to buy a puppy. When she looked at their website and saw the number of dogs for sale Nancy reached out to Ty Adley, the Plan Director. This year has been the worst year for the facility in the years she worked there. After reaching out to the vet Dr. Collins she commended this dog breeder. Out of all the breeders and talking with the vet they gave her a good report. She takes care of the dogs; they are appropriately vaccinated and does dental. Ms. Cox doesn't believe they need to be breeding 24 dogs. There's no need to get rid of any of the dogs they have, but don't allow them grow. If there

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- are 12 females how many males are there? She's not against approving this kennel as long as doesn't grow.
2. Maria Benedek Sent a letter explaining her interaction with the applicants in full detail.

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

The applicants are set up to have 12 females and 4 males for breeding.

With not having pictures or anybody seeing the interior of the kennel the board had a concern about moving forward. There was discussion about if Ms. Cox of the Humane Society could go out to this kennel and report back to the board of her findings as it would help the board make a more informed decision.

Mr. Kephart made a motion to table the request until Ms. Cox of the Humane Society has time to inspect the kennel. Motion died for a lack of a second.

Mr. Miller made a motion to approve 23-BZA-41 SCHMUCKER, Aaron & Margaret - A request for a dog kennel for breeding; located at: 4500 Grape Rd. Bremen, IN Zoned A-1 with the following stipulation:

1. Limit of 12 females

Seconded by Mr. Hostetler.

Before the vote the plan director explained to the applicants the voting process and if they don't get majority vote.

Mr. Schmucker asked that they table the request until the December meeting to allow the Humane Society to come out and see the kennel.

Mr. Miller rescinded the motion on the floor.

2024 Board of Zoning Appeals Meeting Calendar

After earlier discussion about changing meeting times from 7:30 to 7:00 it was said that since it was just an incremental change to move forward with the proposed calendar with the same meeting time of 7:30 and look at it again next year.

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

Respectfully submitted,

David Hostetler