

May 14, 2020
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 14, 2020, in Room 203 of the Marshall County Building. Present were: Commission Members Jeff Gustafson, James Berger, Matt Miller, Mark Wickizer and Jeff Kutch (via zoom), Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The first item of business was 20-BZA-12 SWANSON, Patricia - An Administrative Appeal to allow an extension to grandfather time or public vacation way to allow a rebuild of a garage on an existing foundation that crosses property lines and an alley; located at 18686 SR 331, Tippecanoe, IN Zoned T-1. Ms. Patricia Swanson was present to represent her request. Mr. Adley presented the findings of fact.

TRC recommendation was that they affirm staff's decision.

Ms. Swanson stated that she didn't know she only had one year to rebuild after the fire. If she would have known that she would have pursued building it sooner. In addition, due to finances it has taken awhile to save the money up to re-build. Would also like to rebuild on the existing foundation to save money.

Mr. Adley explained that the structure was built over an alley and over property lines. Assuming it was grandfathered and/or built to regulations at that time. Based on the Marshall County Ordinance the staff interprets that you have a year to reconstruct whatever had been grandfathered due to flood, fire, etc. Once it goes past that time the staff believes it needs to come into conformance with today's regulations. If she were to build it today, she will need to fit it on one of the 9 lots that the applicant owns or she would be able to combine the 9 lots and vacate the alleyway. In the past you could build across a lot line if you signed a Contiguous Lot Form and record it. The definition of a lot has been amended and you cannot build over a property line anymore.

Ms. Swanson wanted to grandfather this so she didn't have to pay for a surveyor. With the fire and divorce it was a lot all at once.

Mr. Wickizer stated, "So you've missed your yearly window or it would have been approved."

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

Mr. Gustafson believes there is a way to do this, but it's through vacating the alleyway and combining the properties.

Mr. Wickizer made a motion to approve the request for Administrative Appeal 20-BZA-12 SWANSON, Patricia - An Administrative Appeal to allow an extension to grandfather time or public vacation way to allow a rebuild of a garage on an existing foundation that crosses property lines and an alley; located at 18686 SR 331, Tippecanoe, IN Zoned T-1, seconded by Mr. Miller. Motion carried with a voice vote 4-1 with Mr. Gustafson voting against.

The second item of business was 20-BZA-13 WHITE, Timothy - A request for a Special Use to run a home-based business with a secured fenced in storage lot behind the residence for towed vehicles to be impounded; located at: 20339 7th Rd., Plymouth, IN West Twsp., Zoned A-1. Mr. Timothy White was present to represent his request. Mr. Adley presented the findings of fact. Mr. Timothy White was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to approve a towing business that had recently started and is wanting to create a 50'x50' storage lot for various towed vehicles.

The plan to prevent fluid from getting to the ground is to lay down black plastic under the gravel along with a chain link fence with black tarp so people can't see in along with 2 strands of barbed wire on the top. Financial institutions are requiring this type of a secured lot to impound their cars. There is no plan to keep cars outside the fenced area. There will be no long term parking at this site. A couple days at the most. He anticipates 5 to 6 cars per week.

When discussing the size Mr. White believes that 20 cars will fit in this size of lot. If additional lot storage is needed, he would look into a more commercial setting.

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

1. Lyle Samuelson - 7009 Queen Rd., - Owns property surrounding his tract and believes he does a good job and is conscientious. As far as the septic his current system is outside the lot area proposed.
2. Michael Samuelson - 20294 7th Rd. - Neighbor and is in favor of the request.
3. Phillip Doolittle – 613-2 N. 70 E Valparaiso - Owns property near and is in favor of the request. Encouraged by young people starting businesses.
4. Stacy White – 20339 7th Rd., - This is his dream and has been doing very even through the current situation of COVID. Questioned the board if 50'x50' was not enough. They explained that they would need to come back before the board.
5. Thomas Feece – 7509 Union Rd. - Not in favor of the request as there is a concern for traffic and safety.

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

When asked what department would know the requirements of the containment of fluids Mr. Adley responded saying that the Marshall County Health Department and IDEM.

Mr. White confirmed to the board that all vehicles will be stored inside the fence. The only vehicles outside the fenced areas will be personal vehicles.

Mr. Wickizer made a motion to approve 20-BZA-13 WHITE, Timothy - A request for a Special Use to run a home-based business with a secured fenced in storage lot behind the residence for towed vehicles to be impounded; located at: 20339 7th Rd., Plymouth, IN West Twsp., Zoned A-1:

1. Vehicles inside the fence
2. Fluids contained as per local and state regulations
3. Proper fence

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

The third item of business was 20-BZA-14 CZAJKOWSKI, Michael & Brandi - A Special Use requesting to build a 112x64 building to store dump trucks trailers and excavating equipment as well as some personal property such as boat, camper etc. for personal business; located at: 6984 Filbert Rd., Bremen, IN Zoned A-1, German Twsp. Mr. Michael Czajkowski was present to represent his request. Mr. Adley was present to represent his request.

The applicant is seeking to construct a 112'x64' shop for their excavation business and some personal storage. The business only has 2 employees year-round.

The equipment and truck and trailer that will enter the building will enter from the overhead doors on the west side of the structure. In order to make this turn to back them in there is actually a pre-existing culvert that is towards the north of the parcel to be built on. That would be the area that would require a right hand turn to align up and back into the building. The 5' would make that adequate as well as to keep the from encroaching on the right of way of the road. There will be no parking outside of the building. All equipment and storage will be inside only. Going from 20' to 15' should allow for adequate maintenance of the building as well as maintenance of piping and water run-off.

There is an approved drainage plan that will route the storm water form the rear (west) side of the building along the south side and will have a small retention space towards the road where it will eventually filter into the roadside ditch heading southbound and then east.

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

1. Glenn Woodward – 6984 Filbert Rd. - Would ask that there be adequate drainage that would release the water slower so that a field tile can handle the water and prevent

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flooding of the farm field. In recent years there has been several buildings built that have caused flooding and erosion or crop damage by excessive amounts of water coming from the roofs of these buildings during heavy rainfall.

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

There will be gutters and downspouts that will be routed to the west side of the property. Property owner spoke with Mr. Woodward prior to even applying. Responded saying he didn't have any problems just not to flood the field. Then spoke of some other similar issues. Mr. Czajkowski assured him he would be a good neighbor as they share some of the same drainage tile through other properties and would honor to not flood his fields.

Mr. Berger made a motion to approve 20-BZA-14 CZAJKOWSKI, Michael & Brandi - A Special Use requesting to build a 112x64 building to store dump trucks trailers and excavating equipment as well as some personal property such as boat, camper etc. for personal business; located at: 6984 Filbert Rd., Bremen, IN Zoned A-1, German Twsp, seconded by Mr. Wickizer. Motion carried with a voice vote 5-0.

The fourth item of business was 20-BZA-15 CZAJKOWSKI, Michael & Brandi - A request for a Variance of Developmental Standard to reduce the rear yard setback from the required 20' to 15' to build a pole barn to house personal and business equipment that needs adequate space for maneuvering and backing up of trailers; located at: 6984 Filbert Rd., Bremen, German Twsp., Zoned A-1. Mr. Michael Czajkowski was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 112'x64' pole barn for their business and are seeking to reduce the rear yard setback from 20' to 15'.

The equipment and truck and trailer that will enter the building will enter from the overhead doors on the west side of the structure. In order to make this turn to back them in there is actually a pre-existing culvert that is towards the north of the parcel to be built on. That would be the area that would require a right hand turn to align up and back into the building. The 5' would make that adequate as well as to keep them from encroaching on the right of way of the road. There will be no parking outside of the building. All equipment and storage will be inside only. Going from 20' to 15' should allow for adequate maintenance of the building as well as maintenance of piping and water run-off.

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

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2. Glenn Woodward – 6984 Filbert Rd. - Would ask that there be adequate drainage that would release the water slower so that a field tile can handle the water and prevent flooding of the farm field. In recent years there has been several buildings built that have caused flooding and erosion or crop damage by excessive amounts of water coming from the roofs of these buildings during heavy rainfall.

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

There will be gutters and downspouts that will be routed to the west side of the property. Property owner spoke with Mr. Woodward prior to even applying. Responded saying he didn't have any problems just not to flood the field. Then spoke of some other similar issues. Mr. Czajkowski assured him he would be a good neighbor as they share some of the same drainage tile through other properties and would honor to not flood his fields.

Mr. Berger made a motion to approve 20-BZA-15 CZAJKOWSKI, Michael & Brandi - A request for a Variance of Developmental Standard to reduce the rear yard setback from the required 20' to 15' to build a pole barn to house personal and business equipment that needs adequate space for maneuvering and backing up of trailers; located at: 6984 Filbert Rd., Bremen, German Twsp., Zoned A-1, seconded by Mr. Wickizer. Motion carried with a voice vote 5-0.

The fifth item of business was 20-BZA-16 MARTINDALE, Paul & Kristi - A request for a Variance of Developmental Standard to allow a 9'x10'x8' storage seating area 1' from the water and a 0' south side yard setback on the existing deck, located at: 10255 Pretty Lake Tr., West Twsp., Zoned L-1. Mr. Paul Martindale was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to reduce the rear and side yard setback in order to construct a 9x10 permanent/semi-permanent structure. The proposed structure would be used for seating and storage. The property lines appear to be off based on the GIS line and satellite imagery not quite aligning. The floodplain level also appears to step into the property if only by a foot or two. There is approximately a 12' grade change from the upper deck to the lower deck where the proposed 8' structure will be located.

Would like to have a small (8'x10') structure to store items and use as a little tiki building. The actual people that it would affect has no problems with the request.

When asked in comparison to the proposed building to the existing deck what is the height difference is, he said there's a difference of about 2'.

From the property line to where the proposed building will be it is probably about 2' from the side yard.

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

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1. Greg Payne – 10243 Pretty Lake Tr., - Is only speaking against because of the setback. Just built a property that the 45' from BFE was strictly enforced. Pretty Lake is very concerned with the setbacks because of the closeness of the properties. Also, speaking for in case he is approved for this that opens up and allows for others to have storage buildings. Everyone around the lake would love the availability to have storage closer to the lake than the required 45'. If this were approved would it be able to be used by other property owners as leverage for further variances.
2. Chris & Kathleen Flynn Fox – 1021 Pretty Lake Tr., - Wrote letter to oppose the request. Objection falls in 2 categories Ordinance – the ordinance does not provide for any exceptions for storage buildings, sheds, or seating areas within the 45' lakeside setback and Criteria for Approval – believes that practical difficulty has not been met. The other objection is that there is no need or hardship. Having a tiki bar to host is not considered a need or a hardship. Over the years, storage sheds and other structures have been built very close to the shoreline without building permits. They are now grandfathered in. Most are now in disrepair and are falling into the lake.
3. Brad Serf – Pretty Lake Property Owner's Association President – The Pretty lake Property Owner's board of directors opposes any variance of developmental standard in the absence of a practical difficulty in the use of the property as outlined in the ordinance. Believes that the ordinance should be strictly enforced to protect the natural environment of the lake, the shoreline views of neighbors and the overall appearance of the beautiful lake.
4. Tom & Audrey Heneghan – 10265 Pretty Lake Trl – Requests to oppose for the following reasons: structure does not meet the Marshall County Lake Residential Ordinances and the adjacent property value and shorelines views would be impacted.

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

Mr. Martindale understands and didn't want to cause any problems.

Mr. Miller made a motion to deny 20-BZA-16 MARTINDALE, Paul & Kristi - A request for a Variance of Developmental Standard to allow a 9'x10'x8' storage seating area 1' from the water and a 0' south side yard setback on the existing deck, located at: 10255 Pretty Lake Tr., West Twsp., Zoned L-1, seconded by Mr. Wickizer. Motion carried with a voice vote 5-0 to deny.

The sixth item of business was 20-BZA-17 SMITH, Cameron & Amy Pollock - A request for a Variance of Developmental Standard to reduce the lakeside setback from the required 45' from BFE to 20' from the shore in order to install an in ground pool and a retaining wall; located at: 14337 Lawrence Lake Dr., Plymouth, Center Twsp., Zoned L-1. Mr. Cameron Smith and Ms. Amy Pollock were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a in-ground pool behind a retaining wall. The structure is proposed to be 20' from the shore line and will be approximately 10' out of the base flood elevation.

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Believes the request isn't out of character for this lake. There are other pools and retaining walls around the lake. If there is a concern about pool chemicals, they will adhere to stopping chemical add in's at least 5 weeks prior to reducing water from the pool and will also make sure the water will be routed to the roadway.

When asked about start of construction Mr. Smith explained that he has a brick laying business and when COVID started he believed this was the safest solution plus it would keep at least half of his employees busy and being paid so he had them start laying bricks on his property.

When asked about the difference between a previous lake residential request and this request Mr. Adley stated that this is an in-ground structure whereas the other was a vertical structure that would go up as well as the reduction in setback was drastically different.

The pump, filtering system and chemicals will be housed inside a concrete room next to the pool with a stairway above it. The pool will be covered in the winter and the water dropped down 6-8 inches as per suggestions from the installer.

The septic system is directly behind the home and has met all the requirements of the Health Department. A second location for an alternate system is a empty lot across the street.

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

1. Dr. John Bernero – 14403 Lawrence Lake Dr., Plymouth – Dr. Bernero spoke and gave a letter of his opposition to the request. Referenced the Marshall County Comprehensive Plan Chapter 3 of the importance that the lakes be protected from overdevelopment and contamination. Concerned about impervious coverage, water quality of the lake, alterations to the shore line can alter the habitat and water quality. Nine people signed the petition.
2. Mitch Lawrence – 14096 Lawrence Lake Dr., Plymouth – Lives in the area and based on his professional and personal experience with Mr. Smith and his masonry improvements he makes to his property will look very professional and could only improve his and his neighbor's property values. In favor of the request.
3. Cameron Smith – Presented a list of names in favor of their request with 21 different names.
4. Patricia Harness – 12667 Nataka Tr., Plymouth – In favor of the request as they see they are increasing their own property values which will in turn increase their property values.
5. Rod & Nancy Kubley – 14365 Lawrence Lake Dr., Plymouth – No objection to the building project of their neighbors. Their intention is to enhance their property, and we feel their addition is not detrimental to the value of our property in any way.
6. John & Barbara Huffman – 14329 Lawrence Lake Dr., Plymouth – In favor of the request. Knows Mr. Smith's quality work. The project will improve the quality and value of their property so they approve it.

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

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carried by acclamation.

Mr. Gustafson stated that he felt Mr. Smith as a business owner should have known to have a approved permit before starting construction.

Mr. Adley explained that the retaining wall isn't what is being applied for approval it's only the pool. The retaining wall is a topographical element. It's not a structure. At this point in time the wall is just that a wall. If the pool is permitted it will be turned into a pool. If not permitted it will be a retaining wall. Retaining walls don't require a permit.

Mr. Smith has been talking with the Plan Commission office since March. During that time the applicant spoke with each neighbor about the proposed retaining wall and pool and neither of them had a problem with the request.

Security of the pool can be done through fencing or locked covers. The plan for this pool will be a locked cover.

Mr. Berger made a motion to approve 20-BZA-17 SMITH, Cameron & Amy Pollock - A request for a Variance of Developmental Standard to reduce the lakeside setback from the required 45' from BFE to 20' from the shore in order to install an in ground pool and a retaining wall; located at: 14337 Lawrence Lake Dr., Plymouth, Center Twsp., Zoned L-1, seconded by Mr. Wickizer. Motion carried with a voice vote 3-2.

Other business: Wanted clarification (permits must be applied for all associated structures or removed within given time frame established by BZA (See Item 2) 2. Required to get permit for new structures including decks (going forward). There was a new trailer moved near the water before the meeting. There is one interpretation that it should have been moved based on this motion. Staff's interpretation is that everything existing as of that night was approved as it sat and should anything from that date change it would have to fall into the requirements set forth by the TRC by these conditions. If it was outside those it wouldn't be permitted to come back. So, there would be nothing new essentially outside of permissible setbacks etc. Looking for the board's affirmation of the board's interpretation of this. Mr. Wickizer stated that he made the motion and agrees with staff's interpretation. The remaining board agrees with Mr. Wickizer's interpretation.

Mr. Wickizer made a motion to approve 19-BZA-05 BERG, Timothy & Barbara – A request for a Variance of Use to allow an existing campground which is named Lakeside Campground; located at 16999 12th Rd., Plymouth, IN Zoned L-1 West Twsp. with the following conditions:

- 1. Must meet TRC recommendations - Compliance and approval by state and local departments including but not limited to ISDH, IDNR, and MCHD. All new trailers including the most recent two meeting the setback requirements for the L-1 Lake District (30' from 10'/10% side, and 45' rear). One trailer is located on the lake side on the southwest corner of the property and the other is towards the center of the property. Permits must be applied for all associated structures or removed within given time frame established by BZA.(See Item 2)**
- 2. Required to get permit for new structures including decks (going forward)**
- 3. When existing trailers are moved, they need to meet current setback requirements**

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

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

Respectfully submitted

Mark Wickizer