

September 8, 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, September 8, 2020, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Mark Wickizer, Jeff Kutch, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes of the August 11th meeting were presented and Mr. Berger made the motion to approve the minutes and seconded by Mr. Wickizer. Motion carried by acclamation.

The second item of business was 20-BZA-44 MONTGOMERY, Calvin & Brenda - A request for a Variance of Developmental Standard to allow a 6' chain link fence from the right of way to 1' from the water's edge; located at 15271 12th Rd., West Twsp., Zoned L-1. Cal & Brenda Montgomery were present to represent their request. Mr. Adley presented the findings of fact.

Based on the information as submitted, the applicant is seeking to exceed the front and rear yard-fencing requirements. The applicant is seeking to install a 6' tall chain link fence on their western property line in the front, side and rear yards. The ordinance permits fences to be up to 6' within the side yard, but when the fence moves to the front and rear yards, it exceeds the 3.5' height limitations. There was no explanation as to why the variance is necessary submitted.

There has been animosity between neighbors. The Montgomery's daughter who resides at this residence has a dog and has already jumped a 3 ½' fence. They would like the proposed fence to keep their own animals on their own property as well as there to be a barrier to keep the neighbor on their own property. The proposed fence will start behind the right of way post and will run down to the lake. The fence will not run across the water. The opposite adjoining property is all wooded and they don't see a need to fence that side. When asked how they will keep the animals on their own property with just one side yard fence the applicant stated that he doesn't think it will be a problem.

The Montgomery's have surveyed the property and plan to put the fence up approximately a foot away from the property line.

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

1. Stacy Prather & Rudy - 15323 12th Rd. – After a confrontation the Montgomery's who

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don't live their decided they were going to put up a chain link fence the length of the property. Putting up a fence isn't a problem, but they want to put in a chain link fence. They feel it will be hideous and decrease their property values. There are no other properties around the lake that have 6' fences. A couple of homes have 3 ½ foot fences and some that have wood slat fences that are actually eye appealing. No one has 6' chain link fences. They also have put up no trespassing signs facing their houses. Ms. Prather said that she has never went over to their property uninvited. Questioned if the fence is for their dog what is going to keep it from going around the fence. When they started to put up the fence they were concerned why a permit hadn't been obtained first. They believe what is going on should fall under the spite fence law.

Mr. Gustafson asked if fence permits were required. Mr. Adley explained that fence permits are required in all zonings except agricultural. As far as civil disputes between neighbors our office does not get involved.

2. Charles Kozark – 15351 12th Rd. - Received a letter stated that to his knowledge nobody has a fence on Myers Lake. Feels a 6' chain link fence will devalue his lake property. Why do you want to put up a chain link fence? Mr. Adley stated they are 3 houses away from the Montgomery's.

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

Mr. Montgomery stated that they had contacted 3 different fence companies and was told they didn't need a permit. When they started construction and received notification, they were in violation they immediately came in to get a permit.

The board explained the rule for fencing was put in place for a reason. If they make an exception once everyone will be in asking for an exception.

Mr. Kutch stated that the reason for the fence was to keep the dog on the property, but wondered if they have pursued other options to keep the dog on the property like underground fencing.

Mr. Kutch made a motion to deny the request 20-BZA-44 MONTGOMERY, Calvin & Brenda - A request for a Variance of Developmental Standard to allow a 6' chain link fence from the right of way to 1' from the water's edge; located at 15271 12th Rd., West Twsp., Zoned L-1, seconded by Mr. Berger. Motion carried to deny with a voice vote 4-0 for the reasons of general welfare, adjacent property and practical difficulty.

Mr. Adley explained that they can put up a fence, but it will have to meet county guidelines. When asked why they were denied the board explained that there are guidelines in place for a reason and they cannot see a hardship to rule in favor of the request.

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The third item of business was 20-BZA-45 MILLER, Steven & Diane - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 15' to 5 for a pre-existing horse shed; located at 6475 Elm Rd., Bremen, IN 46506 German Twsp., Zoned A-1. Steve & Diane Miller were present to represent their request. Mr. Adley presented the findings of fact.

The applicant had recently purchased the property and was made aware that the structure had not been previously permitted nor received the appropriate approval for setback reduction. The permit has since been applied for and is currently under variance review. The structure is a 75'x15' horse shelter that was construct 5' from the side property line while the minimum setback is 15'.

Mr. Miller just bought the property and found out it didn't meet the requirements and wanted to make it right by coming in.

The board questioned if the property had been split to cause the short setback distance. Mr. Miller didn't know. Mr. Miller doesn't live on the parcel as there is no residence.

Mr. Wickizer 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. Wickizer moved and Mr. Kutch seconded the motion to close the public hearing.

Mr. Wickizer made a motion to approve 20-BZA-45 MILLER, Steven & Diane - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 15' to 5 for a pre-existing horse shed; located at 6475 Elm Rd., Bremen, IN 46506 German Twsp., Zoned A-1, seconded by Mr. Berger. Motion carried with a voice vote 4-0.

The fourth item of business was 20-BZA-46 VANHOUTEN, Joshua - A request for a Variance of Development Standard to allow a secondary before a primary to build a 48'x60' pole barn/garage for personal storage and parking as they live lakeside; located at 16138 12B Rd., Plymouth, IN West Twsp., Zoned L-1. Mr. Josh Vanhouten was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 48x60' pole building across the street from his existing residence. The ordinance does not permit for a secondary structure to be constructed prior to a primary structure. The applicant indicates that it will be used for parking and storage.

Mr. Vanhouten bought the property with the intent to tear down the mobile home and build a storage building on the parcel as he lives across the street on the lake. With there not being a lot of room for storage they would like to build this building to store things inside to keep things looking neat. They would like to place it near the center of the property to keep the distance in line with adjacent structures.

Mr. Kutch asked what type of materials were going to be used to construct it. Mr. Vanhouten stated that it will have steel pole barn siding. They plan to have a concrete floor in and keep the property neat. There is a well already on the property. As far as bathroom facilities they haven't decided at this point.

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

1. Marilyn Emery – 15178 Happy Acres Tr. – Believes the property is clean and kept neatly.
2. Wendell Fetters – 16199 12 B Rd – No problem with the request. They maintain the property well and notice there are others that have storage buildings on their properties as well.
3. Margaret Bonen – 16187 12 B Rd – In favor of the intent to build a building across the street from his home. They are an asset to the neighborhood.

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

Mr. Wickizer made a motion to approve 20-BZA-46 VANHOUTEN, Joshua - A request for a Variance of Development Standard to allow a secondary before a primary to build a 48'x60' pole barn/garage for personal storage and parking as they live lakeside; located at 16138 12B Rd., Plymouth, IN West Twsp., Zoned L-1, seconded by Mr. Kutch. Motion carried with a voice vote 4-0.

The fifth item of business was 20-BZA-47 HEAD, Lisa - A request by contractor for a Variance of Developmental Standard to allow for a reduction in Right of Way to 61'3.5" from the edge of the road for an existing 40'x48' pole building; located at: 13947 4th Rd., Plymouth, IN North Twsp., Zoned A-1. Ms. Lisa Head and contractor, Robert Wallace was present to represent his request. Mr. Adley presented the findings of fact.

The applicant had started construction of a 40x48' pole building without permits and constructed within the required 50' front yard setback. Applicant did not obtain permit due to COVID.

Mr. Wallace stated that he's never been registered with the county. When he got the job, it was during covid and thought things were closed down and went ahead and built the building without a permit and without calling the office to ask questions.

When asked how far he was away from the right of way he stated to the front of the telephone pole he is 49.3'.

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

Mr. Wickizer made a motion to approve 20-BZA-47 HEAD, Lisa - A request by contractor for a Variance of Developmental Standard to allow for a reduction in Right of Way to 61'3.5" from the edge of the road for an existing 40'x48' pole building; located at: 13947 4th Rd., Plymouth, IN North Twsp., Zoned A-1, with the following stipulations:

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1. Applicable fines established by the Plan Commission for no permit and fines established by the Building Department for no inspections.
2. Meets Marshall County Building Codes.

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

The sixth item of business was 20-BZA-48 ABELS, Connie - A request by contractor for a Variance of Developmental Standard to reduce the ROW setback from 30' to 11' from the right of way and a reduction in east side yard setback from the required 6.2' to 1' to build a 20x28 unattached garage; located at: 15086 Happy Acres Tr., Plymouth, IN West Twsp., Zoned L-1. Ms. Connie Abels and contractor, Eric Scott were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 20x28' 2 story garage 11' from the ROW and 1' from the side property line. There would be a garage on the first floor and storage on the second floor.

The builder explained that the proposed location was chosen because the septic system is on the west side of the proposed garage.

When asked if the applicant could attach the garage to the house the applicant stated she would have to re-do the entire house as there has a staircase on that end of the house.

Since there is a steep slope on the east side of the property after talking with the neighbor he has no problem with the request and issued a letter stating his approval.

Ms. Ables has been living in Chicago and plans to re-locate full time to this residence. With the winters and needing extra storage she has tried to choose the best size of building that suits them and the only suitable location on the property.

The boards main concern was no building can be built or maintained one foot off of a property line. When asked what the existing house's nearest corner to the property line it was approximated at three feet.

The septic drawing that the home owner had was very simple with a small box as a notation of the location of the septic. The applicant didn't pursue to find out the exact location of the whole system. The applicant is estimated the current system to the proposed building is 12'-15'.

There was originally a trailer on the property. After it was removed the applicant had Chuck DeWitt build her a house. To her knowledge she believes they were able to use the existing septic system.

Mr. Kutch asked the applicant if there was enough room once they found the septic system if they would agree to a septic no closer to the property line than the existing house and the applicant said yes of course. As far as the right of way setback Mr. Kutch also believes that there could be some adjustments in the size of the building and distance between the garage and the house to

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get the proposal a little further off the road. Mr. Scott, the builder, agreed. The location of the well is lakeside.

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

1. Michael J. Lowry – Neighbor to the east – Has no objections to the request.
2. Allison & Jeff Cress – Has no problem with her request. Also will need variance when they want to build.

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

The applicant has no problem being further from the side yard as long as it doesn't interfere with the septic system requirements. The only reason they based the setback request of 1' is because of the location they thought the septic to be located.

The board explained to the applicant if they make a choice to deny the application they can't reapply for another year. If, however, they choose to table the request to do more factfinding that would give them more time to locate the septic system.

Per the request of the applicant to table Mr. Wickizer made a motion to approve the request to table and seconded by Mr. Miller. Motion carried by acclamation.

The seventh item of business was 20-BZA-49 HOCHSTETLER, Norman - A request for a Special Use to allow an increase of employees from 7 to 10 for their existing approved business; located at: 192 Plymouth Goshen Tr., Nappanee, IN German Twsp., Zoned A-1. Mr. Norman Hochstetler was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is proposing to expand the number of employees under their current special exception business from the approved 7 employees to 10 due to the success and orders that are occurring through their business.

Their business is primarily for the RV business and have had an increase in demand for products. They would like a few part time people to keep up with the demand and shipping late. Currently there are 6 full time people plus the owner with one part time person.

In 2019 there was a small expansion to the business. Other than that, there are no additional shifts just more labor-intensive parts.

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

Mr. Kutch made a motion to approve 20-BZA-49 HOCHSTETLER, Norman - A request for a Special

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Use to allow an increase of employees from 7 to 10 for their existing approved business; located at: 192 Plymouth Goshen Tr., Nappanee, IN German Twsp., Zoned A-1, seconded by Mr. Wickizer. Motion carried with a voice vote 5-0.

The eighth item of business was 20-BZA-50 GRAMM HOLDING CO - A request for a Variance of Development Standard to reduce the right of way setback from the required 50' to 42' in order to place a 12' overhang on the front of the building; located at: 12750 US 6, Plymouth, IN North Twsp., Zoned C-2. Mr. Gavin Skiles was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 12' overhang on the front of the building. The front yard setback is 50' from the edge of right of way in the C-2 district, and the applicant is seeking to reduce it down to 42'.

Their hope is to make the building look more appealing. They are taking the concrete out and replacing it with new and adding new shrubbery making it look more modern. Mr. Skiles owns Skiles Automotive and is in the process of purchasing the property.

Mr. Adley clarified that there is a double line owned by the state between the state right of way and the right of way acquisition process back when US 31 was relocated. So the requested 42' is from the actual right of way. The state hasn't commented about this request and normally they don't.

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

1. Wayne Lamberson – 1518 Lilac Rd. – Owns the adjacent properties and doesn't think it will affect anything. Is in favor of the request.

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

Mr. Wickizer made a motion to approve 20-BZA-50 GRAMM HOLDING CO - A request for a Variance of Development Standard to reduce the right of way setback from the required 50' to 42' in order to place a 12' overhang on the front of the building; located at: 12750 US 6, Plymouth, IN North Twsp., Zoned C-2, seconded by Mr. Berger. 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

Mark Wickizer