

May 11, 2021
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 11, 2021, in Room 203 of the Marshall County Building. Present were Commission Members Jeff Gustafson, James Berger, Michelle Mieras, and Matt Miller. Plan Director Ty Adley, Secretary Lori Lowry and interested parties.

The minutes from the April 13, 2021, meeting was submitted to the board. Mr. Berger made a motion to approve the minutes as presented, Mr. Miller seconded the motion. Motion carried by acclamation.

The first item of business was 21-BZA-19 CRABB/Mahler - A tabled request for a Variance of Developmental Standard to reduce the rear yard setback from the required 20' to .25' and a side yard setback from the required 15' to 1.6' in order to move property lines so they don't run through a garage; located at 16656 18B Rd., Culver, IN Union Twsp., Zoned A-1. Mr. Rich Zeigler, Territorial Engineering, and Mr. Alan Mahler were present to represent their request. Mr. Adley presented the findings of fact.

The main reasoning to adjust the property lines is coming from the subdivision from the property to the west from the agricultural ground behind it and in order to provide access, the driveway is being split between the two property owners. The adjustment of the western property line (side yard) is going to move it closer to the garage from an existing 8.6' to 1.6'. The northern property line (rear yard) is going to move from -12.6' to .25'.

To get clarity and additional information from the surveyor the board requested that the case be tabled till this month. In addition to some of the confusion with the abstract and their proposal Mr. Gustafson expressed to the applicants that this board doesn't like to approve setbacks any less than 5' and encouraged them to reconsider.

Mr. Zeigler explained to the board if they move the property line to meet their 5' rear property line request the existing fence will be an encroachment. The same thing with the west side if that property line is moved to 5' then the concrete pad will be an encroachment on one of the properties. In the survey world it is best not to have encroachments.

Mr. Gustafson continued to contend that 5' would be the least they would go. The board is trying to clean up a problem not create a another. Mr. Zeigler suggested that Mr. Mahler and Ms. Craab provide a maintenance easement of 5' that would go with both parties and would say that no fence or structures could be built within that easement.

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Mr. Gustafson responded that the fence and concrete pad could be moved. Mr. Zeigler was only trying to offer a less expensive option of doing a maintenance easement.

Ms. Mieras asked if the maintenance easement would be for both the north and west sides of the property. Mr. Ziegler agreed that it would be both.

When asked what the Board's options were Mr. Adley explained the board has the option to grant the request as is or allow a greater setback just not lower than requested.

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

Mr. Zeigler asked Mr. Gustafson he would be opposed to the maintenance agreement? Mr. Gustafson's response was, "wouldn't it be simpler to make the property line there at the 5'?"

There was a lengthy discussion between the proposal, 5-foot setbacks and maintenance agreement.

Mr. Miller made a motion to approve 21-BZA-19 CRABB/Mahler - A tabled request for a Variance of Developmental Standard to reduce the rear yard setback from the required 20' to 5' and a side yard setback from the required 15' to 5' in order to move property lines so they don't run through a garage; located at 16656 18B Rd., Culver, IN Union Twsp., Zoned A-1, seconded by Mr. Kutch. Motion carried with a voice vote 5-0.

The second item of business was 21-BZA-24 KUHNS, Homer - A request for a 16x20' cold storage building that will be used for the existing pre-approved kannery business; located at: 6838 6A Rd., Plymouth, IN German Twsp., Zoned A-1. Mr. Homer Kuhns of 6838 6A Rd. Plymouth was present to represent his request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 16x20' building to store cans and supplies for Kuhns Kannery. The business was originally approved in 2013. It has been customary to receive approval for expansions of approved business that are advancing past the original or most recently approved size.

Mr. Kuhns was asked about semi-truck traffic and said there is still no semi-truck traffic into his residence. Occasional personal deliveries only.

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

The board commented that everything has went as planned with no complaints.

Mr. Kutch made a motion to approve 21-BZA-24 KUHNS, Homer - A request for a 16x20' cold

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storage building that will be used for the existing pre-approved kannery business; located at: 6838 6A Rd., Plymouth, IN German Twsp., Zoned A-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The third item of business was 21-BZA-25 BOWERS, Andrew - A request for a Variance of Development Standard to reduce the right of way setback requirement of 75' to 39' to replace an existing garage with a 30x48 garage; located at 1988 Queen Rd., Walkerton, IN Polk Twsp., Zoned A-1.

The applicant is seeking to construct a 30x48' garage to replace a previous garage. They would like to reduce the setback of 75' to 39' from the edge of right-of-way. The frontage along US 6 requires the 75' setback. The existing house is approximately 40' from edge of road and 16' from edge of rightof-way. 39' would get to the approximate center of the house.

Mr. Miller made a motion to table the request till the end of the meeting as the applicant was not in attendance, seconded by Mr. Kutch. Motion carried by acclamation.

The fourth item of business was 21-BZA-26 SMITH, Cameron & Amy - A request for a Variance of Developmental Standard to allow a secondary structure prior to primary to allow them to build a 30'x40' pole barn; located at: 50-32-19-000-076-000-018 across the street from 14337 Lawrence Lake Dr., Plymouth, Center Twsp., Zoned L-1. Ms. Amy Pollock and Mr. Cameron Smith were present to represent their request.

The applicant owns 2 lots, one lakeside and one adjacent across the street. The lot across the street is the lot in question and the property owner is seeking to construct a 30x40' accessory building. The ordinance would typically require a primary (residence) before an accessory structure would be permitted, but the board has historically look favorably upon those applications where the applicant lived across the street. There are multiple none residential structures around lakes that have received approval or predate these zoning requirements.

Mr. Kutch questioned the applicants if they considered possible resale value when placing the building so close to the road that might limit buyers wanting to buy to put in a house. Ms. Pollock stated since there is no parking available at their residence lakeside, they can't imagine anyone buying their house without sufficient parking available which is across the street. Splitting up the properties would not make any sense at all.

The buildings on either side of the proposed structure are garages as well.

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

Mr. Berger made a motion to approve 21-BZA-26 SMITH, Cameron & Amy - A request for a Variance of Developmental Standard to allow a secondary structure prior to primary to allow them to build a 30'x40' pole barn; located at: 50-32-19-000-076-000-018 across the street from

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14337 Lawrence Lake Dr., Plymouth, Center Twsp., Zoned L-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The fifth item of business was 21-BZA-27 VERMILLION, Jeremy - A request for Variance of Developmental Standard to reduce the front yard setback from the required 30' from ROW to 20' and the side yard setback from the required 10'/10% to 0'; located at: 8426 Dart St., Bremen, IN German Twsp., Zoned L-1 Off Water. Ms. Jody Kenaga and Jeremy Vermillion were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a 10x20' covered porch addition onto the front of their home. The existing building line on the North side of Dart street currently averages at about 30', where the existing face of the residence is located.

The applicant was originally unaware that what he owned was two separate parcels as he only had one tax bill. There did not seem to be a problem with combining the parcels in the future but would like to keep it as is for now. They would like to have a little curb appeal to the property and bring more value to the house as well as the surrounding properties by putting up a front porch on top of the existing concrete slab.

The board explained that they would like to see the properties combined.

Mr. Vermillion explained that the proposal will not impede on anybody's view. It will be a roof inside the existing gable that will not extend past the house and be on four posts.

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

The applicant questioned if his side yard is already zero setback, and he is not extending past that why is it not okay? Mr. Gustafson replied, "We cannot make you move the house, but we can keep you from building more."

Mr. Adley explained to the applicants that they would have to see a surveyor and have them prepare a re-plat of his lots to combine them. Then bring this re-plat to the Plan Commission office and have the plan director sign it administratively and record it.

Mr. Kutch made a motion to approve 21-BZA-27 VERMILLION, Jeremy - A request for Variance of Developmental Standard to reduce the front yard setback from the required 30' from ROW to 20' and deny the side yard setback from the required 10'/10% to 0'; located at: 8426 Dart St., Bremen, IN German Twsp., Zoned L-1 Off Water, seconded by Mr. Miller. Motion carried with a voice vote 5-0.

The sixth item of business was 21-BZA-28 MILLER, Pamela - A request for a Variance of Developmental Standard to allow a shipping container for storage; located at: 2049 Roy St., Walkerton, IN Polk Twsp., Zoned A-1. Ms. Pamela Miller and Mr. Ken Miller of 2049 Roy St. Walkerton were present to represent their request. Mr. Adley presented the findings of fact.

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The applicant had a previous conversation with Building Commissioner Steve Howard about the permissibility of shipping containers on the property to store their snowmobiles, golf cart and lawn mower. The Plan Commission Office was notified of a shipping container on the subject property which prompted a violation notice to go out to remove the container from the property because they are not seen as permissible accessory structures under the ordinance. In mediation of the Building Commissioner and Mrs. Smith, I (the Plan Director) came up with this (variance) as an option as there has been a desire from the County Commissioners/Plan Commission to come up with regulations to potentially permit shipping containers within Marshall County.

Ms. Miller said that she talked with her neighbors regarding the existing shipping container, and all were in favor of her request except one. Her plan is to paint it like the color of the roof and make it look nice to help it blend in.

Ms. Miller referenced a letter that was written to explain all the details and conversations about her purchasing a shipping container and setting it on her property.

The 40' shipping container was purchased in Knox from a gentleman by the name of Ron Bailey for \$2,500. It was a much cheaper alternative to building a garage. The rear yard is a site for the septic system.

The board discussed their thoughts on shipping containers. While some have been made to look good and blend in, with the surplus of containers they are affordable, but not all locations are suitable for a shipping container.

The board seemed to be at a consensus that they would like to wait until the County Commissioner's make a ruling on shipping containers. Mr. Adley felt like he could have a presentation available to the commission in approximately three months.

Mr. Kutch asked if Ms. Miller would meet the side setback requirements. Mr. Adley said if the zoning is T-1 the requirement is 10'. Ms. Miller responded that she believes it is 11' off the property line.

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

1. Stan Klotz – 1322 W. Grant St. Bremen, IN - The Commissioner's looked at this a couple of months ago and had no interest in putting restrictions on shipping containers. When Mr. Howard talked to Ms. Miller and told her that he did not see any restrictions in the zoning as long as she was using it for personal use, a dwelling, or a commercial basis that it was okay. Mr. Klotz stated that he does not feel there are any grounds to restrict this. The commissioners do not want these to be an eyesore and that's the direction the commissioner's wanted to go. If they then became an eyesore it would go through the violation procedure. He is not here to speak for or against this request. Just hoped this applicant gets a "fair shake."

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Mr. Adley said that there are restrictions in the Zoning Ordinance under Article 3.

We have not come up with developmental standards (size of ground/locations/etc) for shipping container as of right now.

2. Jenise Press – 2103 Roy St., Walkerton, IN - Lives next door to the person that filed a complaint. She believes the shipping container blends well with the house. It is not an eyesore; however, there is an eyesore at the end of the block. She has no objections.
3. Robert Demis – 20993 8th Rd. Plymouth, IN - Has had a container on his property since 2019. According to Mr. Demis' memory there was a 6-month delay for him to have to get rid of the storage container. Since December 10th, 2019 he is being fined \$50 per day and is probably up to \$30-40,000 by now on this fine. He is in favor of the County setting rules and guidelines. But until then how can you ban them when all they are is a glorified storage shed. Does not see anything wrong them. In his opinion they are much more secure than a OSB and 2x4 building and more weather resistant. Believes in this case it fits in with the neighborhood.

Mr. Gustafson commented to Mr. Demis that there is a big difference between this request over his situation.

4. Lisa Ogle – letter (no address given) Is in favor of the request.

Mr. Berger made a motion to close the public hearing, seconded by Ms. Mieras. Motion carried by acclamation.

The proposal to the Plan Commission would have a relationship to mimicking side or style around it in relationship to house, barn etc, putting a roof over the structure and possibly the size in relationship to the size of the parcel.

Mr. Kutch asked Mr. Adley if the board gave the applicants one year to remove the shipping container and in the meantime the ordinance changes how would that process look like.

During a lengthy discussion, the consensus of the board was to give the applicants an extension to allow the Plan Commission and County Commissioner's time to possibly come up with an ordinance on shipping containers. At the expiration date of the extension at that point the applicant would either need to remove the shipping container or comply with the ordinance at that time.

Mr. Kutch made a motion to approve 21-BZA-28 MILLER, Pamela - A request for a Variance of Developmental Standard to allow a shipping container for storage; located at: 2049 Roy St., Walkerton, IN Polk Twsp., Zoned A-1 with the stipulation this be temporarily allowed until 5/11/2022 and at that time the shipping container would need to be removed or come into compliance with the regulation at that time, seconded by Mr. Miller. Motion carried with a voice vote 4-1 with Ms. Mieras voting against because she felt that the applicant went through the proper channels to get the container on the property.

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The seventh item of business was 21-BZA-29 VERKAIK, William & Carole- A request for a Variance of Development Standard to allow a secondary 36'x48' accessory structure before a primary residence; located at: 50-43-06-000-269-000-005 across the street from 3579 Lake Shore Dr. Bremen, German Twsp., Zoned L-1. Mr. William Verkaik of 18747 Walter St. Lansing IL was present to represent his request. Mr. Adley presented the findings of fact.

The applicant owns two parcels, one on the lake and the subject parcel; they are seeking to replace several smaller accessory structures on the property with one larger one. They are wanting to build a 36x48' building for storage. The ordinance would typically require a primary (residence) before an accessory structure would be permitted, but the board has historically look favorably upon those applications where the applicant lived across the street. There are multiple none residential structures around lakes that have received approval or predate these zoning requirements.

This property located across the street from the residence has always been sold with the lakeside property. There is only one parking space at the residence. He does not foresee these two properties ever being sold separately.

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

Mr. Kutch made a motion to approve 21-BZA-29 VERKAIK, William & Carole- A request for a Variance of Development Standard to allow a secondary 36'x48' accessory structure before a primary residence; located at: 50-43-06-000-269-000-005 across the street from 3579 Lake Shore Dr. Bremen, German Twsp., Zoned L-1, seconded by Ms. Mieras. Motion carried with a voice vote 5-0.

The eighth item of business was 21-BZA-30 DE LA TORRE, Oscar - A request for a Special Use prior to property purchase to allow a home-based business (offsite concrete); located at 6021 Plymouth Laporte Tr., Polk Twsp., Zoned A-1.

This request was pulled by the applicant Mr. Oscar De La Torre prior to the hearing.

The third item of business was 21-BZA-25 BOWERS, Andrew - A request for a Variance of Development Standard to reduce the right of way setback requirement of 75' to 39' to replace an existing garage with a 30x48 garage; located at 1988 Queen Rd., Walkerton, IN Polk Twsp., Zoned A-1.

The applicant was not in attendance. Mr. Miller made a motion to table the request to table this request until June 8th, seconded by Mr. Berger. Motion carried by acclamation.

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Mr. Gustafson brought before the board that he has recognized two small businesses that had been approved by the board has now increased in size and has moved to commercial zoned properties.

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

Respectfully submitted,

Matt Miller