

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

Mr. Hostetler made a motion to approve the minutes from the March 14, 2023, Board of Zoning Appeals meeting, seconded by Mr. Kline. Motion carried by acclamation.

The fourth item of business was 23-BZA-07 BORKHOLDER, Vonda - A tabled request for a Variance of Developmental Standard to allow a layer barn confined feeding operation that doesn't meet the 1,320' residential setback on five residences; located at: Beech Rd. 50-54-21-000-016-000-005, Nappanee, German Twsp., Zoned A-1. Dwight and Kevin Borkholder of 781 Plymouth Goshen Tr. Nappanee, IN were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a CFO (Confined Feeding Operation) double layer barn for poultry within the prescribed 1,320' from the nearest adjacent residence. The proposed structure is too close to 5 residences which have separations of 504', 568', 692', 890', and 1,077'. The structure is also separated an estimated 1,800' from a schoolhouse at the intersection of Plymouth-Goshen Trail and Beech Road. The Double Layer Barn is proposed to be 53x548' with pasture on the North and South sides of the building. Manure storage would be located off the rear of the building nearest the low ground at the east end of the property. The 5 residential neighbors (Keith and Mary Borkholder (668 Beech Road), David and Doris Hochstetler (703 Beech Road), Willis and Freida Borkholder (634 Beech Road), Jerry and Alma Helmuth (570 Beech Road), and Jonathan and Sharon Helmuth 536 Beech Road)) have signed in support of the project.

After talking with the closest neighbors, the applicants moved the building 50' to the south and east 55' to accommodate their requests.

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

1. Arlin Mullett 6859 W. 1300 N. Nappanee, IN Believes the odor of the chicken barn will lower the value of his property. Thinks they should build the barn

Marshall County Board of Zoning Appeals

4/11/2023

There will also be ceiling and exhaust/ventilation fans. There will be 14 inside houses with runs that are 5.5' x 16'. The houses will be large enough for 2 adult large breed dogs so that they will not have to be alone. The kennel will be built to USDA specs will be inspected and certified by the USDA. The applicant will also be certified by Canine Care Certified which is a program developed by Purdue University to ensure the health and overall well-being of the adults as well as the puppies. The applicant is also a member of ICAW (Indiana Counsel of Animal Welfare). The dogs will have inside and outside access at all times and will be exercised in a large play yard on a daily basis. The kennel will be dry and spot cleaned daily. It will also be sanitized "by-weekly". The waste from the dogs will be composted with the horse manure and applied to the applicant's fields. The applicant will be working close with Dr. Weldy's Associates to develop a vaccination/deworming schedule and he will be doing his own genetic testing with Paw Prints Genetics to ensure that he is breeding dogs without genetic diseases. The puppies will all be socialized with standards developed by Canine Care Certified/Purdue University and will be sold to brokers at 8 weeks of age.

Mr. Hochstetler provided the board with a letter of consent for the kennel by area neighbors. In addition to what's been presented Mr. Hochstetler will be adding outdoor playground equipment for the dogs.

As far as distance from neighboring property owners Mr. Hochstetler meets all requirements.

Canine Care is a voluntary program. To get their certification it will require the Hochstetler's to build the proposed building. One of their requirements is that you re-home your dogs at 6 years of age. Another requirement they have is if a placed dog isn't working out the applicant is required to take back the dog to rehome it.

Mr. Hochstetler didn't receive a violation notice for the kennel. He started the kennel as a hobby and wasn't aware at that time he needed permission. Prior to building the new building he came in to apply for a permit and found out he needed the board's permission for a kennel. His desire is to be compliant and get all permissions required.

The TRC's recommendation was to propose 9 dogs since it's already in operation with 9 while they get their certifications and get their kennel into compliance. Once that is done then come back to the board for further approval.

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

1. Ernest Bontrager 10031 W. 900 N. Etna Green Has raised dogs for about 23 years. Believes he has a good plan and supports his request. In Kosciusko you have to go through the same approvals.
2. David Slabaugh 420 5 B Rd. Bremen Has an approved kennel that has all the same certifications that Mr. Hochstetler will be getting. A lot of money is spent to have a good facility and he supports the proposed facility. He doesn't support bad breeders.
3. Nancy Cox 14210 Nataka Tr. Plymouth Is in charge of the Humane Society. Is very against selling the puppies through brokers. Currently the humane society is overcrowded. Having 150-200 puppies a year to place is a lot. She has not met the applicant and hasn't been out to his facility. Ms. Cox believes it would be best if they start with 9 and comply with regulations and get inspected with the proposed new

Marshall County Board of Zoning Appeals

4/11/2023

structure. But, not with the facility as it is now. Is willing to go out once the new facility is done and inspect and make a recommendation at that time.

4. Cheryl Rager 9398 3rd Rd. Bremen Is not in favor of this proposal.
5. Letter submitted by Mr. Hochstetler of neighbors who are in favor of the proposed dog kennel: Signed by Lynn Yoder, Adrin Jimenez, Rick Keck, Lamar Reichert, Marilyn Miller and Joas Miller.

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

Mr. Gustafson said to get his vote there are 5 things you need to get his approval:

1. Humane Society approval
2. 24 hr/day 365 days a year clearance to visit the kennel with no advance notice
3. Have a good plan for the adult dogs
4. Provide what the vet does
5. Agree not to take any adult dogs to the vet

The board commended Mr. Hochstetler in that he wants to make his kennel better, but would have liked to had the Humane Society's view on this existing kennel.

The Canine Care's approval could possibility take more than the 6 months and he cannot get their approval with the existing facility.

The applicants intention is to start with 15 dogs and possibly going up in the future.

As far as the non-compliance Mr. Adley said that can be put on hold during the tabling till the next hearing. Compliance for the existing kennel would be our current regulations as well as the 6 month time frame to complete.

Mr. Hostetler asked if his current facility would meet the requirements with the current 9 dogs? Mr. Adley stated that he would have to go back out and through the regulations.

Mr. Hochstetler requested to table this meeting until the May hearing.

Mr. Kline made a motion table the request, seconded by Mr. Hostetler. Motion carried by acclamation.

The third item of business was 23-BZA-09 NELLANS, Kirk & Kathleen - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 15' to 8' in order to build an accessory structure; located at: 11087 20B Rd., Argos, IN Zoned A-1. Mr. Kirk Nellans of 11087 20B Rd. Argos and Ms. Dorothy Nellans of 0737 Linden Rd., Argos were present to represent their request. Mr. Adley presented the findings of fact.

The applicant is seeking to construct a pole building for storage on the property. The property was cut off from the farm in 2021 and a residence built later that year. They are no pursuing the

Marshall County Board of Zoning Appeals

4/11/2023

construction of a pole building, but are need to reduce the setback from 15' to 8' due to the spacing of house, lp tank and electrical service with the driveway.

Moving the proposed building location to meet the setback will entail additional expense and complication with the electrical service to the building. Additionally, it's his opinion that having the building too close to the LP and electric wouldn't be safe. The only land that is impacted by it is the family farm that's been in the farming business since 1856.

His objective is for it to be the most aesthetic and cost effective as possible. Mrs. Nellans the owner of the adjacent property doesn't have a problem with the request.

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

Mr. Hostetler made a motion to approve 23-BZA-09 NELLANS, Kirk & Kathleen - A request for a Variance of Developmental Standard to reduce the side yard setback from the required 15' to 8' in order to build an accessory structure; located at: 11087 20B Rd., Argos, IN Zoned A-1, seconded by Mr. Kline. Motion tabled due to a 2-2 vote with Mr. Hostetler and Mr. Gustafson voting against.

The fourth item of business was 23-BZA-10 CRIPE, Dennis & Angela - A request for a Variance of Developmental Standard to allow a secondary before a primary for a 30x36' garage on a vacant lot across from his residence; located at: Tahoe Tr. (Lot 55), Plymouth, IN Zoned L-1. Mr. Dennis Cripe of 18139 Tahoe Tr., Culver was present to represent his request. Mr. Adley presented the findings of fact.

Technical Review Committee Recommendation: Based on the information provided and review by the Technical Review Committee, staff and TRC would recommend approval with the condition that the Lake Latonka Property Owner's Association provide a letter of approval prior to approval of a building permit. The letter shall only be required should the restrictions being referenced are recorded and legally binding.

The applicant owns the lot across the street from the subject parcel which is his primary residence built in 2019. The subject parcel has been cleared in preparation to construct a detached garage on the property that is 30x36'. This construction requires a variance to construct a secondary prior to a primary structure.

Mr. Cripes' home on lot 71 was originally 3 parcels that have since been combined. They are currently landlocked. Since they've had the opportunity to purchase lot 55 across the street. The objective was to clear the overgrown lot and build a custom garage that matches his house. In the future if there is a sale of the house the secondary lot will be sold with the primary lot. There is no plan for living quarters or a bathroom. It is their plan to use it for storage of lake life items that cannot be stored outside.

Last year on lot 65 of Lake Latonka the association approved a 30x40 garage as a secondary before a primary no different than what he is doing.

Marshall County Board of Zoning Appeals

4/11/2023

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

Respectfully submitted,

David Hostetler