**Minutes**

**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting to be held in the Commissioners Meeting Room,

Third Floor, Historic Courthouse,

Boonville, Indiana

December 27, 2022 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE:**

**MEMBERS PRESENT:** Terry Dayvolt, Chairman, Paul Keller, Doris Horn, Mike Moesner, Jeff Willis, Mike Winge, and Jeff Valiant.

**MEMBERS ABSENT:** None

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, and Kim Kaiser, staff.

**MINUTES:** Upon a motion made by Mike Moesner and seconded by Doris Horn, the Minutes of the last regular meeting held November 28, 2022 were approved as circulated.

# SPECIAL USES

**SPECIAL USE:** BZA-SU-22-31

**APPLICANT:** Rustic Hills Solar LLC, by Jason Ellsworth, CEO of Clenera Holdings, LLC, Managing Member

**OWNERS:** Cornell Excavating, LLC by Guy Cornell III, President; Guy & Shirley Cornell by Guy Cornell III, Personal Representative; Guy III & Karen Cornell, Owners; Volkman Family Farm LLC by Brian F. Volkman, Mbr. And Joe F. Volkman, Mbr.; Ruth Norine Keller, Owner; Leonard Keller Trust, by Leonard Keller, Trustee; Theodore & Joyce Keller Trust by Joyce Keller, Trustee; William Wendell Kroeger, Owner

**PREMISES AFFECTED:** Property located on the East side of SR 61 lying south of Addington Road, north of Kaiser Road and West of Yankeetown Road. Sections 28-6-8 & 27-6-8 Boon Township. *Complete legal on file*.

 **NATURE OF THE CASE:** Applicant requests a Special Use, SU 29, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a 709 acre Commercial Solar Energy System (CSES) in an “A” Agriculture Zoning District. *Advertised in The Standard on November 17, 2022 (Tabled from November 28, 2022 meeting)*

**APPLICANT:** Rustic Hills Solar II, LLC by Jason Ellsworth CEO of Clenera Holdings LLC, Managing Mbr.

**OWNER:** Cornell Excavating, LLC by Guy Cornell III, President; Volkman Family Farm LLC by Brian F. Volkman, Mbr. And Joe F. Volkman, Mbr.; Ruth Norine Keller, Owner; Leonard Keller Trust, by Leonard Keller, Trustee; Theodore & Joyce Keller Trust by Joyce Keller, Trustee

**PREMISES AFFECTED:** Property located along SR 61 lying south of Roeder Road and west of Yankeetown Road. Sections 20,21,22,27,28,29-T6S-R8W Boon & Ohio Twp. *Complete legal on file.*

**NATURE OF THE CASE:** Applicant requests a special use from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: approximately 750 acre to be used for Commercial Solar Energy System (CSES) all in an “A” Agricultural Zoning District. *Advertised in The Standard on November 17, 2022 (Tabled from the November 28, 2022 meeting)*

Chairman Dayvolt asked for a staff report.

Mrs. Barnhill stated they have sent requests signed by Tom Fitzgerald, the Director of Development for Clenera, and signed by Guy Cornell III, President of Cornell Excavating, and he would be the majority owner of the property, they are requesting a one month continuance to the scheduled December 27, 2022 Board of Zoning Appeals hearing, so that full representation by the Applicant can be in attendance. She stated they said they are having some trouble getting here and this arrived the end of last week.

Chairman Dayvolt asked is that the same for both.

Mrs. Barnhill replied both of them.

Chairman Dayvolt asked both of them.

Mrs. Barnhill replied yes.

Chairman Dayvolt responded okay. He said alright, so they want a continuance on this. He asked do I have a motion.

Jeff Valiant stated I make a motion that we continue this until January.

Attorney Doll asked is there anyone in the audience.

Chairman Dayvolt said pardon.

Attorney Doll stated I was just wondering if there was anyone in the audience on this matter.

Chairman Dayvolt stated it doesn’t look like it.

Attorney Doll replied okay.

The motion was seconded by Mike Winge and carried unanimously.

Attorney Doll asked so that is continued until January 23, 2022.

Mrs. Barnhill replied yes. She asked should we get a separate motion for each application.

Attorney Doll stated Terry and I talked about that before and I think it is fine.

Mrs. Barnhill responded okay.

Attorney Doll stated they were called together, so the motion is fine.

Mrs. Barnhill responded okay.

**BZA-SU-22-40**

**APPLICANT & OWNER:** Yellow Banks Lake, LLC by Charlie Peabody, Managing Member

**PREMISIS AFFECTED:** Property located on the west side of Yellowbanks Trail approximately 0 feet south of the intersection formed by Yellowbanks Trail and Vincennes Road. Pigeon Twp. 31-3-6 *12733 Yellowbanks Trail (Complete legal on file)*

**NATURE OF THE CASE:** Applicant requests a Special Use, SU-1, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: a 73.20 acre commercial recreation area; including but not limited to: primitive camping, recreational vehicle camping, cabin rentals, shower house, concessions, beach access, restaurants, and camp store all in an “A” Agricultural Zoning District. *Advertised in The Standard December 15, 2022*

Chairman Dayvolt stated if you two would like to sign in and state your names for us.

Jim Morley Jr, Project Engineer, and Charlie Peabody, Owner were present.

Chairman Dayvolt called for a staff report.

Mrs. Barnhill stated on the return receipts we have all of the green cards except for 38. She said there were quite a few notices to send but we do have the white pay receipts and they were mailed correctly. She said the existing land use is currently being as a recreational area and is non-conforming pre-existing at this time. She stated the surrounding zoning and land use to the north, south, and east are all zoned “A” Agricultural Zoning with single-family dwellings, some wooded areas, and some farm ground. She said to the west is either recreation area or wooded. She stated there is no floodplain. She stated they will be required to have a commercial driveway onto Yellowbanks Trail and they have an existing access point there. She said their statement says *The proposed uses of the site are camping sites, restrooms, recreational amenities, lake amenities, beaches, cabins, amphitheater, boat rental, restaurants, and amenities.* She stated in 1993 the Planning Commission ruled the Yellow Banks area to be non-conforming. She said they were to be allowed a couple more permits for the cabins up front and then that was it. She said now we have a new owner and we took it to the Planning Commission Board and they have approved going forth with this plan. She stated they are going to get pieces of it back into compliance, so that is the history on it. She said instead of a site plan, which you would typically see, they have asked to submit the list, which I have read to you and included it in here. She stated then prior to any construction a commercial site review would be required and they would have to come to a commercial review. She said but that would be up to the Board to decide since it has never been done like that before.

Jim Morley Jr. stated I have passed out to you guys and the first one is kind of a where in the world are we…

Chairman Dayvolt said Mr. Morley

Jim Morley Jr. replied yes.

Chairman Dayvolt stated before we get started into this you have 20 minutes to present your case and any remonstrators for or against will have the same amount of time, and if you have something to say please don’t reiterate what someone else has said. He said state your facts and we will go from there okay. He said thank you, Mr. Morley.

Jim Morley Jr. replied sorry about that. He stated I passed out an exhibit and the first part just shows where in the world we are in Warrick County. He said we are kind of in the northeast portion of Warrick County and then on the backside is a blowup of the area that we are talking about. He stated the area in pink is the area that we are asking for a special use on. He said you can see it includes the lake, the existing beach, where the existing cabins are, and this farm field up here. He stated that is the area we are seeking a special use on. He said that is not all of the property that they own but it is the part that we can deal with first to try to get the project up, get its legs underneath it, and get some income coming in to help fund the rest of the project as we go. He stated this is also where the existing beach is, the existing cabins are over in here, and that kind of thing. He said Mr. Peabody bought this property earlier this year, a couple of months ago, and they are wanting to invest in the property, add some new features, restore some existing features that are out there but they can’t do that because it is legal non…they can make repairs to existing but they can’t add new features or anything like that without bringing it into compliance. He stated we are here tonight to bring it into compliance, to allow them to continue to invest in the property, and improve the property and offer more recreational amenities. He said there is a demand for that.

Chairman Dayvolt asked is there anything else to add.

Mrs. Barnhill asked who is here to represent the owner.

Charlie Peabody stated myself, Charlie Peabody.

Mrs. Barnhill replied okay, thank you.

Attorney Doll asked why don’t we have a plat.

Jim Morley Jr. stated we don’t have a plat because we are not doing a subdivision.

Attorney Doll replied right.

Jim Morley Jr. stated we don’t have a master plan because not all of the layout has been determined. He said any campground will end up going through the State Department of Health and so we will have to file that through the Department of Health. He stated when we went to our early coordination meeting and site review we discussed exactly what that might look like and it was agreed that we could come forward to this meeting with the concept of getting these amenities approved that they could be on the property but the location would be set when we have to go through site review. He said anytime we do a project we add a new camping area we have to go to site review, if we add a new camp store we have to go to site review, if we add a new beach amenity we have to go to site review and so we felt like it was better to go to site review each time with a detailed set of plans. He stated obviously, the lake portions obviously would be along the lake and this farm field up here would most likely be if there was camping added I mean…so to a certain extent it kind of lays itself out but the direction hasn’t been finalized as to just how many camping spots or exactly what that camp store would look like or that kind of thing.

Attorney Doll asked is this going to deprive any of the existing homes from lake access.

Charlie Peabody responded no, sir. He said we will be developing where you see the pink area all of that is on the other side of the residences as far as the lake is concerned.

Someone in the audience asked is that the same as 6A (he is looking at a plat book page).

Chairman Dayvolt said sir, you will get your chance.

Person in the audience stated I’m sorry.

Chairman Dayvolt stated that’s okay.

Jim Morley Jr. stated the pink area that you see there.

Attorney Doll replied right.

Jim Morley Jr. said that isn’t all of the ground that they own. He said I’m not sure who all is in the crowd but the homes you see kind of just outside the pink area that pink area is basically the property line, so there is a lot of houses up there that are on… they own their property in fee so our pink boundary basically works around the existing property lines.

Attorney Doll asked is any of that Jim in dispute.

Jim Morley Jr. stated no, not that I am aware of.

Attorney Doll replied okay. He said I just didn’t want what this really would be is a property line determination.

Jim Morley Jr. stated no, we had a survey done of the special use area and then we also went to the Planning Commission two weeks ago or earlier this month…

Attorney Doll replied right.

Jim Morley Jr. said to talk about the parcelization and so if the special use is approved tonight then our next step would be to file a parcelization plat that would create this parcel as a separate parcel but the special use covers this exact parcel.

Mrs. Barnhill asked are there any plans to gate the entrance. She said I am thinking about the people that live back beyond this and we have had a few phone calls with some concerns about that type of thing.

Charlie Peabody stated at some point there will be a system in place as far as checking reservations for the RV pads for example or anything like that but there won’t be any kind of gated barring access to the community.

Chairman Dayvolt asked is there an easement through here for that.

Attorney Doll asked for the road or for the access.

Jim Morley Jr. stated the way it is now and Morrie, you may weigh in on this, for lack of better terms they exist by prescriptive easement. He said those roads have been there forever and it is kind of the way it has always worked but there are no written easements that I am aware of but there is also no intention of preventing access or anything like that either. He stated we are just trying to bring it into compliance as a recreational area like it has always been but they can’t invest money in it without this process.

Chairman Dayvolt stated good intentions are good but they aren’t down on paper.

Chris Wischer stated I am the attorney working with these folks and I have worked with the prior owners as well. He said just on that issue I would advise them and the prior owner, and I was involved with the Pigeon Township sewer when the sewers were put in there, which are on the roads too but those roads were created when the Marshall’s owned Yellow Banks and they sold individual lots. He said those roads were in existence and they have been used by all of those owners for all of this time. He stated so implied in that those conveyances is a right to get to those. He said our position has been that those… although they are not maintained by the County, they are not County roads they are public in the sense that those folks have the right to come back there and ambulances, fire trucks, and everything else have the right to come back there. He stated now that is something we will address more directly as we go back through to bring that whole area into compliance. He said it is a challenge, I mean so much has happened over the years but all that this really is the special use approving the use of this front area. He stated it is not going to change anything in respect to the roadways as they have existed or how they will exist in the future if that helps.

Doris Horn stated you can actually go up there cause you can go up there with those backroads and you can get back to those homes in about ten different ways. She said I mean they are just County roads and they have been there forever. She stated you don’t even have to go into the front area to get to them if you know the area correctly.

Mrs. Barnhill stated if this goes through, it was kind of my understanding that this is sort of phase one to get some revenue and re-invest it back into this property and improve the roads.

Charlie Peabody responded exactly. He stated our goal is as we mentioned is getting the area into compliance but also as a business perspective just an overall improvement and restoration of the property so as we mentioned re-vamping the camp store, finding ways with RV’s and the short term rentals with the cabins just to generate more revenue that we can re-invest back in and no intention what-so-ever to disrupt the lives of the residents and restrict access or anything along those lines just really… phase one allowing us to generate the revenue to continually deal with the zoning and all of the other issues as far as the property is concerned.

Chairman Dayvolt asked so all of the owners of the property around the lake is what or what has been sold then as Yellow Banks will still have free access to the lake.

Charlie Peabody replied absolutely yes.

Chairman Dayvolt asked any questions by the Board.

Mike Winge stated looking at this I just have a suggestion to you. He said if you are looking on your drawing there I think that to the north of these entrances right here.

Charlie Peabody replied uh-huh.

Mike Winge stated if you ever did want a gate this could be connected right here and then you would be totally separate they would have their own access right in there and you wouldn’t have a problem and that seems to me would be a good short term or long term solution to your problem. He stated if you want to have a gated area.

Charlie Peabody replied right, absolutely. He said any type of gate or entrance check that would purely be on the business side of like making sure the people have rented the camping lot and things along those lines. He stated there wouldn’t be any barriers as far as the residents accessing their property.

Chairman Dayvolt asked are there any more questions by the Board. He said seeing none are there any remonstrators here for or against.

Person in the audience stated I have a question.

Chairman Dayvolt said please, step to the podium, sign in, and state your name sir.

Alan Sprinkle stated my name is Alan Sprinkle and I own the property between the cemetery and the dam of the lake. He said I can show you right here (he has a plat book page he wants to show).

Several Board members said just turn it around and show us. They said oh, be careful (Alan Sprinkle tripped on the step) watch your step.

Jeff Willis stated that was why we were trying to keep you from coming up.

Mike Winge stated that is why that rope is up there.

Chairman Dayvolt stated if you give it to us it is ours.

Alan Sprinkle stated oh, keep me up with the rules.

Chairman Dayvolt said okay, if you hand that over to us we keep it.

Alan Sprinkle stated no, I am just going to point. He said this is my property. He stated I am not here to raise anybody any stink or any problems what-so-ever.

Mike Winge asked so located on here that is….

Chairman Dayvolt stated it is down here.

Mike Winge replied alright.

Alan Sprinkle stated the reason I got the letter for this is that this would be affected a little bit and this would be affected a little bit (point at plat book page).

Mike Winge said why don’t you go back around there and then ask your questions…

Several Board members said watch your step going back down.

Chairman Dayvolt stated it is right here guys (holding up the handout from Jim Morley Jr.).

Alan Sprinkle stated we use the dam right now to come in to the place that I showed you…the area and I turn off to the left to go up that side where you see that one place. He asked I wanted to know if that would be restricted or would you still drive on top of the dam for access to those houses.

Charlie Peabody replied still on the dam to access, yeah. He stated the road, that will stay.

Alan Sprinkle said because there is two houses that go more over onto the Marshall’s ground. He asked do you know where those two houses are.

Charlie Peabody stated I think I know where you are talking about.

Alan Sprinkle stated and right in there it goes into my land.

Charlie Peabody replied right.

Alan Sprinkle stated and that is where we are talking about.

Charlie Peabody responded yeah.

Alan Sprinkle said right here.

Charlie Sprinkle stated yeah, it is like across the dam and then down.

Alan Sprinkle stated right there, right there. He said that is my only access in over there and then the cemetery over here is the other way. He stated I don’t know, if my 40 acres gets shut off I’m in deep doodoo.

Charlie Peabody stated no, there is definitely no restriction to access that road across the dam stays.

Alan Sprinkle stated I’m not here to cause any trouble but I just…

Charlie Peabody stated no, that is a good question.

Alan Sprinkle stated we have had that since before Jim Marshall owned it and we don’t want to mess that up.

Attorney Doll said okay.

Chairman Dayvolt said thank you.

Alan Sprinkle stated thank you. He said sorry I don’t have….

Mrs. Barnhill said alright.

Rollin Proctor asked what kind of restrictions are you planning on putting on the permanent residents that have the property up there.

Charlie Peabody said uh-humm.

Jeff Valiant stated you ask the questions to the Board and then…

Rollin Proctor stated well, I’m worried about what kind of fees and what kind of restrictions, because when we own our property to ourselves we don’t want somebody else coming in and saying you can’t do this. He said I mean I am watching something on YouTube where up in Muncie they’ve got a big lake and they are trying to make it a recreational center and running people out and stuff. He stated I just want to know what kind of restrictions are they going to be able to imply on us people that own our properties.

Attorney Doll asked what is your address.

Rollin Proctor stated uhh, 1697 or 1127 lot 102S. He said I am right there on the opposite end of the dam as he is (pointing at Alan Sprinkle). He stated I am right there at the boat ramp.

Attorney Doll responded thank you. He asked so you want to know about restrictions.

Rollin Proctor replied yeah, what kind of restrictions is going to be going on and I mean this is just usually a way to get more money and put more restrictions on people on what they can’t have. He said they can’t have four dogs and I have twelve dogs for hunting. He stated I am just kind of curious of what kind of restrictions are going to go on there.

Charlie Peabody asked do I address questions one at a time or…

Several Board members responded no we’ll let them…

Chairman Dayvolt asked anyone else.

Paula Kochvar stated I live on the first house on the north side, which is lot 2 north. She asked is there going to be a barrier between the residents and the commercial stuff that comes in particularly from the camping area.

Attorney Doll asked do you mean a physical barrier.

Paula Kochvar replied correct, because it is not unusual in busy times to have golf carts, 4-wheelers, and whatever running up and down and kids, people with not having any concern about the traffic and the residents there and we would really like that to be totally separate.

Nick Brunes stated I live at lot 2 south. He said I am surrounded by… go across the dam… there is the first lot and I am right on the point. He stated three sides of me is water… red roof with white trim if that is a satellite image. He asked do you see it. He said my question was on the easement problem possibly, I don’t know what they intend on doing and if we make that a recreational area if that is going to affect…I understand get the front going first and all of that but I am thinking on down the road it is the last property that we’ve owned and I got nowhere else to live. He stated if they zoned that recreational is that going to force me to like only live there for a couple of months out of the year and not have a permanent address there any longer or…. He said that was my question on it but that would probably be down the road do you know what I mean. He stated at first I can understand what they are doing trying to get the front going to make money and that’s cool, that doesn’t bother me really but my question was more on later on as they get things rolling other changes that might come up like further zoning and all of that. He stated that was just one of my concerns.

Mrs. Barnhill asked do you own your lot.

Nick Brunes replied yes, ma’am I do.

Mrs. Barnhill stated legally they couldn’t change anything on your lot zoning or anything.

Jeff Willis stated pre-existing.

Nick Brunes asked so, it will remain like agricultural zoned.

Mrs. Barnhill stated your lot will always be whatever it is now…

Nick Brunes asked so, everybody’s all up through there cause it is hit and miss they have leases, a lot of people own, and …

Mrs. Barnhill stated yes, they can’t change somebody else’s property. She said you would have to be a signature on that ….

Nick Brunes asked and they would still have to have an easement for access to that property, correct. He asked so they couldn’t force me out. He stated that is what…if you re-zone something recreational that can’t be a permanent address and you can’t live there for x number of days out of the year. He asked do you understand what I am….

Attorney Doll stated we don’t have limitation of time.

Mrs. Barnhill stated no.

Nick Brunes said it was just a question that I am concerned with.

Mrs. Barnhill stated we don’t have a limitation.

Mike Winge asked can’t that just be in the approval that the right-of-way has to be left open.

Attorney Doll stated our district Recreation and Conservancy the “CON” district does not have a part-time time limitation.

Nick Brunes asked it doesn’t. He said I thought maybe…

Attorney Doll stated on residences. He said it just says one-family dwelling now that is a zoning category and obviously Agriculture does not have a part-time time limitation.

Mrs. Barnhill stated no.

Attorney Doll stated so, it is not a limitation.

Nick Brunes responded ok, alright, thank you very much. He said I need to sign in don’t I.

Attorney Doll replied yes, sir. He asked why hasn’t this been re-zoned. He said it is Agricultural now, right.

Mrs. Barnhill stated yes, a Special Use is a zoning.

Attorney Doll asked I am just curious why they didn’t make it a “CON” district. He stated they could get a “PUD” and they could do all kinds of things.

Mrs. Barnhill stated if they wanted to do a plat but they just want to do a recreational area so it fits. She asked I mean, why wouldn’t it. She said it fits perfectly right there in SU-1.

Attorney Doll said golf courses, country clubs…

Mrs. Barnhill replied um-hum.

Chairman Dayvolt asked is there anyone else for or against.

Alan Sprinkle said while I am here can I ask one more question.

Chairman Dayvolt said state your name again, please.

Alan Sprinkle stated oh, my name is Alan Sprinkle the ground between the cemetery and …

Chairman Dayvolt replied yes.

Alan Sprinkle stated it is right now certified forest. He asked will any of this affect my certification and I hope it is that way for the next 40 years to tell you the truth. He said I am not planning on selling it.

Chairman Dayvolt stated it shouldn’t affect that at all.

Larry Powell stated my name is Larry Powell and I live on Vincennes Road. He said 6711 Vincennes Road. He stated on my side of the access that would be on the north side of Vincennes Road 6711. He stated on that side of the road I live on there are probably permanent residents probably 5 or 6 people that this doesn’t really have any bearing on anything. He said all of them have got driveways that goes into Vincennes Road they don’t have lot numbers most of them have got mailbox addresses. He said so, anything on…and there is no…as far as restricting anybody there is really no restriction to it because they have their own driveways you know like I do. He stated I have two of them matter-of-fact. He said I mean it’s not no big deal but I mean I think it is great.

Chairman Dayvolt replied okay.

Larry Powell stated I will write my name down there. He said I know all of these people and they are all excited.

Chairman Dayvolt asked anyone else…seeing none you may answer their questions.

Jim Morley Jr. stated I think the majority of the questions were how would this affect their pieces of property and to clarify we can’t do anything that changes their property. He said they are not signature to this petition. He stated this petition only affects what Charlie owns, which is what you all see in pink. He said it doesn’t make it so that they can’t live there for any certain amount of time, it doesn’t change their zoning, and it doesn’t change anything like that. He stated this only affects this piece of property and so for anybody in the room besides Charlie it doesn’t affect their property it only affects our property.

Chairman Dayvolt asked so, it doesn’t change any of the how many dogs you can have or anything like that.

Jim Morley Jr responded no.

Chairman Dayvolt replied okay.

Jim Morley Jr. stated and just so you all know the only way that would ever be possible would be if you guys would have had to sign something saying that you were okay with changing how many dogs you could have. He said so if you guys didn’t sign anything, which you all didn’t, then this has no effect on what you can do with your property, how long you can live on your property, or any of that stuff.

Charlie Peabody stated and we won’t be sending anything out for a signature.

Jim Morley Jr. responded no, but I just meant to say that you would have had to have had to sign something saying that I am a part of this petition to put your property in the petition and because that did not occur you are not a part of the petition.

Someone in the seating asked can I get a copy of that area you were talking about.

Jim Morley Jr. replied yeah, I will grab you one.

Chairman Dayvolt asked anyone else.

Mrs. Barnhill stated there was a barrier between the residences and the camping.

Charlie Peabody stated we have no plans on a barrier but also as we understand it Yellow Banks has been a part of the community for several decades. He said our goal is to restore it and be a part of that community so if this is something where the residents do want some kind of barrier in place we are open to that conversation if it is something where it is expressly not the wish of the community then that is what we would follow as well. He stated our goal is again within the pink area, purely our land, absolutely not interfering with anyone else’s ownership, to develop that, produce income, and hopefully, actually improve the overall community and improve everyone’s, you know, their land and everything right along with it. He said so, that is definitely our goal and no change outside of what we have discussed on the commercial side, on the camping side, and any part of the plan. He stated and anything going forward, as we understand it, phase 2 would be some type of zoning conversation within the community but that would be in concert with them just to make sure that things are in order it wouldn’t be any kind of fundamental change.

Jeff Willis stated one of the questions was are you going to increase existing fees or fees on existing residents there.

Charlie Peabody replied there will be no increase in fees. He stated we will make sure that we approach…if things need to be done maintenance wise that will be something where the community is all a part of that so we will be a part of that community as well but to our understanding there is no way that we can mandatorily enforce a fee of any kind so, we certainly have no intention of it.

Chairman Dayvolt asked any more questions by the Board. He asked is there anything else you have to say.

Charlie Peabody replied no, sir not if there aren’t any other questions.

Chairman Dayvolt called for a motion.

I, Doris Horn, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to a Commercial Driveway Permit.
2. Subject to the property being in compliance at all times with the applicable zoning

 Ordinances of Warrick County.

1. Subject to all public utility easements and facilities in place.
2. Subject to any required Improvement Location Permit.
3. Subject to any required Building Permit.
4. Subject to any required permits from the State.

Chairman Dayvolt asked do you want to second that.

Jeff Willis asked do we need to put anything in there about getting permission from the site plan before they get permits.

Mrs. Barnhill asked subject to a commercial site review prior to obtaining any further permits.

Doris Horn replied yes.

Mrs. Barnhill asked do you want to add that.

Doris Horn responded sure.

Attorney Doll asked does that amendment work.

Jeff Willis stated I just want to make sure we have…they said they were going to do that and I want to make sure that it was in there.

Mrs. Barnhill replied sure.

Attorney Doll asked does your second accept that amendment.

Mike Winge responded yes.

After ascertaining there were no more questions by the Board and no more remonstrators for or against the project the motion was approved unanimously.

Charlie Peabody said thank you all very much for your time.

Jim Morley Jr. said thank you, we appreciate it.

Attorney Wischer said thank you all.

Chairman Dayvolt asked if you would please step outside and talk.

**VARIANCES:**

**BZA-V-22-39**

**APPLICANT & OWNER:** Five Blessings, LLC by Renee Jiminez, Member

**PREMISES AFFECTED:** Property located on the south side of Rose Hill Dr. approximately 150 feet east of the intersection formed by Rose Hill Drive and Old SR 261, Ohio Twp. 34-6-9 *8133 Rose Hill Drive (Complete legal on file)*

**NATURE OF THE CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for: an 8’x8’ pole sign within the 5’ property setback line on the north and west lines. All in a “C-4” General Commercial Zoning District. *Advertised in The Standard December 15, 2022*

Scott Buedel, with Cash Waggner and Associates, and Renee Jiminez, owner, were present.

Chairman Dayvolt asked are you the owner of the property.

Renee Jiminez replied yes.

Chairman Dayvolt responded okay. He asked for a staff report.

Mrs. Barnhill stated on the notice to the adjacent property owners we have all but one of the green cards but they were mailed correctly and on time. She said the existing land use is a commercial building. She stated all directions are zoned “C-4” General Commercial with commercial businesses and there is no floodplain. She said there is an existing drive onto Rose Hill Road. She said their statement says *they are using the existing sign structures that have been in place for years and would not affect the use of the subject property or the adjoining properties.* She stated if you see their site plan… She asked what did this use to be.

Renee Jiminez replied Rose Hill Café.

Mrs. Barnhill replied okay.

Chairman Dayvolt stated right there behind the Marathon station.

Mrs. Barnhill stated an older building and they are wanting to put a new restaurant in there, update the signage, and use the existing pole and it is too close to the lot line so we couldn’t give them a permit for it.

Mike Moesner asked basically you are replacing the sign with a new sign.

Scott Buedel replied yes, and I think you have an exhibit from Custom Sign that they have put together a rendering of what the sign would look like utilizing the existing pole structure that is there.

Mrs. Barnhill stated the Newburger.

Scott Buedel replied yes, that will be the name of ….

Chairman Dayvolt stated catchy, I like it. He asked do you have anything to add to what has been said.

Scott Buedel replied no, I don’t think so.

Chairman Dayvolt asked any questions from the Board.

Doris Horn asked there was a sign there before and it…

Scott Buedel responded there is a sign there now, yes.

Doris Horn replied okay.

Scott Buedel stated just wanting to repurpose it.

Jeff Willis asked using the same poles.

Scott Buedel replied yes.

Jeff Willis asked they aren’t going to take up any more space side by side or up and down.

Scott Buedel replied no.

After ascertaining there were no questions from the Board and no remonstrators for or against, Chairman Dayvolt called for a motion.

I, Mike Moesner­, make a motion to approve the Variance Application based upon and including the following findings of fact:

* 1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
	2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
	3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is limited space.

Mike Moesner stated that is what we talked about. He asked isn’t that it limited area that you can put it in.

Mrs. Barnhill stated utilizing existing structures. She asked what do you think Morrie.

Attorney Doll stated we need to make just a little bit of record. He asked there is no other area to put this sign is that accurate.

Scott Buedel replied right. He stated there is going to be an addition on the front of the building that is going to extend out closer to the road than that is there now.

Attorney Doll replied okay.

Scott Buedel stated so, there is some, if you drive by it today and you see excessive….

Attorney Doll asked but when you finish the construction.

Scott Buedel stated it is going to be pushed out closer to the road so it is going to be even further congested if you pull the sign back…

Attorney Doll replied okay. He asked and the sign that is there now has been long standing.

Scott Buedel replied correct.

Attorney Doll asked decades.

Scott Buedel replied yes.

* 1. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
	2. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
	3. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
	4. That the hardship to the applicant’s use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
	5. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
	6. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
	7. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
1. Subject to an Improvement Location Permit being obtained.
2. Subject to a Building Permit being obtained.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
4. Subject to all utility easement and facilities in place.

The motion was seconded by Doris Horn and unanimously carried.

Scott Buedel said thank you.

Doris Horn stated good luck.

Renee Jiminez replied thank you.

**BZA-V-22-41**

**APPLICANT:** Brandi Holder

**OWNER:** Brock M. Holder & Tracy M. Forbey

**PREMISES AFFECTED:** Property located on the east side of Owensboro Road approximately 2100 feet south of the intersection formed by Owensboro Road and Maple Grove Road. Boon Twp.1-6-8 *400 Owensboro Road (Complete legal on file)*

**NATURE OF THE CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: a Parcelization with 2 proposed lots not meeting the 50’ minimum frontage on a dedicated and maintained roadway in an “A” Agricultural Zoning District. *Advertised in The Standard December 15, 2022*

Tracy Holder, owner, and Brandi Holder are present.

Chairman Dayvolt asked are you the owners of the property.

Tracy Holder replied I am.

Chairman Dayvolt asked both, well you are wanting to parcelize.

Brandi Holder replied yeah.

Chairman Dayvolt asked for a staff report.

Mrs. Barnhill stated there is an exhibit, I am sorry we have one large exhibit.

Brandi Holder asked Molly, do you want this other one. She said she got out.

Mrs. Barnhill asked oh, you changed it.

Brandi Holder stated well you told us to bring it today if she would get out.

Mrs. Barnhill replied yes, sure. She stated we are going to keep it if you bring it up here.

Brandi Holder replied okay.

Chairman Dayvolt stated just watch your step when you come up.

Mrs. Barnhill stated on the return receipts we have all of the green cards except for two. She said one from the Boonville City Fraternal of Police and Timothy and Cheryl Hart but we have the white pay receipts and they were mailed correctly. She stated the existing land use is a single-family dwelling. She said to the north, south, and east is zoned “CON” Recreation and Conservancy with a single-family dwelling or wooded area and to the west is “A” Agricultural with a single-family dwelling or farm ground. She stated there is no floodplain. She said they have access onto Owensboro Road and it is actually 100 feet wide at the road. She said the applicant statement says *Brandi Holder requests a variance from the requirements as set forth in the ordinance to construct a single-family dwelling not meeting the minimal yard frontal requirement of 50 feet.* She stated they would like…they have a larger parcel that they would like to cut out 2 ½ acres so their daughter can build and it is 100 feet at the road but it squeezes to about 75 feet so they still have a lot of room but not the 100 feet all the way back to get two 50 foot strips.

Jeff Valiant asked do you not just have to have 50 feet of road frontage.

Mrs. Barnhill stated it has to be 50 feet of continuous.

Jeff Valiant asked continuous.

Mrs. Barnhill replied yes, in the past they have had them okay we will do 50 feet at the road and then it gets like 10 feet and snakes around and goes on back and that was not the intent so they changed the ordinance and it is 50 feet of continuous.

Jeff Valiant responded okay.

Chairman Dayvolt asked do you have anything to add.

Tracy Holder stated we had a mobile home that sat there before and when the tornado hit it we had it removed probably about five years ago.

Brandi Holder stated where we are putting the new…

Tracy Holder said double wide.

Brandi Holder said yes, double wide there was already one….

Tracy Holder stated yeah, it is the same place.

Brandi Holder stated it is going in the same spot.

Tracy Holder stated there is already a septic and everything and it has been approved.

Chairman Dayvolt asked is there already a house and outbuildings and all back on parcel 2.

Tracy Holder replied yes.

Chairman Dayvolt responded okay.

Tracy Holder stated and there is also a shed there on the side where the double wide will be.

Chairman Dayvolt asked do you guys want to see this.

Mike Winge stated Morrie and them might want to look at it.

Mrs. Barnhill stated we did go ahead and prepare a hold harmless in case you guys want to make that part of your motion.

Chairman Dayvolt asked has everybody seen the lay of the land. He asked are there any questions by the Board. He asked anyone here for or against this.

Amy Samples stated I live at 444 we are south of the property. She said my question is strictly for my own personal use and our future use, we do have 200 feet of road frontage, which future use for us personally we can divide our property as rules currently outline one time so if we would want to divide our property in the future because we have two kids so if we were to want three parcels on ours we would be seeking the same thing but at that or if we were to do this tomorrow or ask for this variance tomorrow would us parceling us into three affect what you are asking for in any way. She stated because that side of the property is where we would have to have a driveway based on our layout because we have our home and a barn existing structure so we wouldn’t be able to have a drive on the other side if we were to parcel ours or ask for a variance to parcel ours three ways in the future we would have to have a drive on their side of the property where our property lines adjoin to access.

Mike Winge asked you are saying your drive would just abut to their property, it would be one shared drive.

Amy Samples replied yes, would it affect what they are wanting to do in any way.

Mrs. Barnhill stated your intent to maybe doing something in the future.

Amy Samples replied if we were to start this process tomorrow…

Mrs. Barnhill responded oh.

Amy Samples stated as the rules…

Mrs. Barnhill stated it shouldn’t affect anything tonight. She said our office is downstairs and we are here from 8-4 so when you get closer to thinking about that bring your deed in and we can go over it with you and give you some ideas of how to proceed.

Amy Samples replied okay.

Mike Winge stated she just wants to know if their decision would affect hers in the future.

Jeff Valiant stated they can abut driveways and it isn’t going to bother anything. He said it is on their own property.

Attorney Doll stated yeah, that is fine.

Amy Samples responded okay, thanks.

After ascertaining there were no more questions from the Board and no remonstrators for or against the project, Chairman Dayvolt called for a motion.

I, Jeff Valiant, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the right-of-way narrows at the rear and isn’t perpendicular.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant’s use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
11. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
12. Subject to all utility easement and facilities in place.
13. Subject to Hold Harmless being recorded and cross referenced to the subdivision plat.

The motion was seconded by Mike Winge and was unanimously approved.

Brandi Holder said thank you.

Chairman Dayvolt asked any Attorney Business.

Attorney Doll replied none.

Chairman Dayvolt asked any Executive Director business

Mrs. Barnhill replied nothing.

Mike Winge made a motion to adjourn at 7:00 p.m. Jeff Valiant seconded the motion and it carried unanimously.

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 Terry Dayvolt, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held December 27, 2022.

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Molly Barnhill, Executive Director