

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
March 28, 2022 at 6:00 P.M.

PLEDGE OF ALLEGIANCE:

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

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

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

Chairman Dayvolt explained the Rules of Procedure.

SPECIAL USES:

SPECIAL USE: BZA-SU-22-07

APPLICANT: Rob Maurer

OWNER: Frances Maurer

PREMISES AFFECTED: Property located on the W side of Magnolia Dr. approximately 0' S of the intersection formed by Magnolia Dr. and Ferstel Rd, Lot No. 19 in Cypress Acres No. 2 Subdivision. Ohio, TWP. 6011 Magnolia Dr.

NATURE OF CASE: Applicant requests a Special Use, SU 12, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a home occupation in "R-2" Multiple Family Zoning District. (*Advertised in The Standard on March 17, 2022*)

Chairman Dayvolt stated I have been informed... He asked Molly can I have a staff report.

Mrs. Barnhill stated the applicant and owner have requested to withdraw this application.

Chairman Dayvolt asked so, we need to take no action on this.

Attorney Doll responded yes, nothing.

Chairman Dayvolt asked so it is referred back to the...

Attorney Doll stated there is nothing to refer.

Chairman Dayvolt replied okay, alright. He stated next up on the agenda is Special Use BZA-... yes, sir.

Someone in the audience said I couldn't hear. He stated I live across the street...

Attorney Doll stated Magnolia Dr.

Chairman Dayvolt stated there will be no action taken on this.

From the audience someone asked so, they have withdrawn the application.

Attorney Doll and Chairman Dayvolt both replied yes.

From the seating if we have issues, further issues...

Attorney Doll stated they will have to re-notice.

From the seating stated we filed initially. He said that they were not complying...

Mrs. Barnhill asked do you want to come up to the podium. She stated we have to type the minutes.

Chairman Dayvolt asked please state your name.

Gary Gardner stated my name is Gary Gardner, I live at 6000 Magnolia Drive since 1986. He said 6011 is right across the street from me. He stated the reason that we filed is that December of about 2020 the woman that lived there, Fran, moved out, or seemed to have moved out, at first we weren't sure what happened to her and a couple of guys moved in or one guy moved in. He stated it was hard to tell but there were a couple of trucks and snow plows and a big container with salt on the back and then over the course of the next year that became five trucks with snow plows and parked in the yard. He said that is why we filed. He said so my question is if there are...they have seemed to have cleaned it up a little bit but we are a little skeptical that it is going to stay cleaned up. He asked if we have issues we are able to re-file...

Mrs. Barnhill stated what you filed is a zoning violation and that is a different Board. She stated that is the Area Plan Commission. She said so in an attempt to fix it he filed this Special Use but it doesn't really qualify.

Mr. Gardner responded okay.

Mrs. Barnhill stated so he has withdrawn it. She said it is still an open complaint.

Mr. Gardner responded okay.

Mrs. Barnhill stated it will go to the...

Mr. Gardner stated okay, so it will go the Area Plan Commission.

Mrs. Barnhill different Board on April 11, 2022.

Mr. Gardner stated okay, thank you, appreciate it.

Mrs. Barnhill replied okay, thanks.

SPECIAL USE: BZA-SU-22-08

APPLICANT: Custom Sign & Engineering, Inc. by John DeVries, Sales

OWNER: Living Word Christian Church of Newburgh by Steve Durbin, Church Elder

PREMISES AFFECTED: Property located on the E side of SR 261 approximately 0' SE of the intersection formed by Peachwood Dr. and SR 261 Lot 4 Warrick Place III Subdivision. Ohio TWP. 3888 SR 261

NATURE OF CASE: Applicant requests a Special Use, SU 8, 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 a 5' x 10' (50 sq.ft.) electronic message board in a "C-4" General Commercial Zoning District. (*Advertised in The Standard on March 17, 2022*)

Chairman Dayvolt asked is there anyone here with this application, if so please step forward and state your name.

John DeVries stated John DeVries with Custom Sign and Engineering.

Chairman Dayvolt stated there should be a sign in sheet.

Mrs. Barnhill asked do we have someone for the owner.

John DeVries replied yes.

Someone in the audience raised his hand.

Mrs. Barnhill asked are you Steve Durbin.

Gentleman from the seating replied yes, ma'am.

Mrs. Barnhill replied okay, thank you. She stated they sent notice to the adjacent property owners and we have all but one green card from that. She said we do have the white pay receipt showing they were mailed correctly. She stated existing land use is a church and all of the surrounding property is zoned "C-4", "C-3" with a small portion of "M-2" to the west. She said this is the old Buy Low building in Newburgh. She stated no flood plain. She said they have an existing drive on Peachwood Drive. She added their statement is *An Improvement Location Permit be issued for a 5' x 10' electronic message board in a "C-4" General Commercial Zoning District.*

Chairman Dayvolt asked do you have anything to add.

John DeVries responded no, the church is asking for an addition of a 5x10 electronic display to the new sign they have purchased, which is approximately 25 ½ feet tall. He added I am here to answer any questions you might have.

Chairman Dayvolt asked are there any questions from the Board. He asked is the message board is to be erected in the parking lot. He asked is that where it is going.

John DeVries replies yes, that is correct. He stated I can show you a physical representation of that. (He holds up a picture of the sign).

Chairman Dayvolt stated yes, we have that.

John DeVries stated so that is essentially what the proposed sign looks like.

Mike Moesner asked is there any sign there now.

John DeVries replied there is no sign on the premises besides what is on the fascia of the building. He stated I believe those are going to be removed at some point in time and be replaced.

Someone from the audience stated unintelligible...drawing on redoing the front....on the prices.

After ascertaining there were no questions from the Board and no remonstrators for or against the application, 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 any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to no use of the words, “stop”, “danger”, “look”, or any other word which would confuse traffic.
8. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Jeff Valiant and carried unanimously.

Mrs. Barnhill stated we will have your approval ready on Wednesday. She said thank you for coming in.

John DeVries stated thank you.

Mrs. Barnhill replied you're welcome.

VARIANCES

VARIANCE: BZA-V-22-05

APPLICANT & OWNER: Hirsch Pathway Land Group, LLC by Michael J. Hirsch, Member

PREMISES AFFECTED: Property located on the S side of SR 62 approximately ¼ mile E of the intersection formed by SR 62 and Stevenson Station Rd., Ohio TWP. 9-6-9 9997 & 9999 SR 62

NATURE OF 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 to create 2 parcels with access by easement. All in “A” Agricultural Zoning District. (*Advertised in The Standard on March 17, 2022*)

Chris Wischer, Attorney and Michael Hirsch were present.

Chris Wischer stated you all know me I think pretty well, although I haven't been up here in a while.

Chairman Dayvolt asked is Mr. Hirsch here. He stated this is Mike Hirsch with the applicant and Andy Nestruck, who is my law partner, is here as well. He said we should be able to answer any questions that you have.

Chairman Dayvolt asked did you sign in Chris.

Someone from the audience said something that was unintelligible.

Attorney Wischer asked is Brett here. He stated I handed out a packet just with some pictorial information basically and a couple of documents. He stated what I wanted to give you a little bit of a brief introduction to this. He said the variance is requesting a relaxation of your frontage requirement. He stated your zoning code requires that lots front a public road and this particular does not. He said it fronts the railroad right-of-way, which fronts the public road.

Chairman Dayvolt stated we need to do the staff report.

Attorney Wischer replied I'm sorry, I thought that was the staff report.

Mrs. Barnhill stated they sent notices out and we have all of the green cards except two. She added we have the white pay receipts and they were mailed correctly. She stated the existing land use is farm ground, some farm buildings, and 2 single-family dwellings. She said to the south, east, and west are all zoned "A" Agricultural with single-family dwellings or farm ground. She stated to the north is zoned "A" Agricultural and it has SR 62, the railroad, and across that is farm ground. She said there is AE floodplain on the property. She stated they have an existing drive on SR 62 for the single-family dwellings and farm access on Telephone Road down to the south of this property. She said the applicant's statement is, *Both parcels of the land access State Road 62 via an easement across railroad land. Applicant requests frontage via easement to both parcels for purpose of Parcelization.*

Attorney Wischer stated I am sorry I didn't mean to steal your thunder there. He said in a nut shell so Mike Hirsch, his company bought this land from the Lant family in 2020. He stated the Lant family owned it for well over 100 years. He said I had a good conversation with Tom Lant and he kind of filled me in on those details. He stated what you've got on the first page of what I handed out, I didn't know if that would be in your materials or not is the parcelization that was submitted, and the goal here is to create two parcels. He said right now there are five tax parcels, if you look at that you see the dotted lines that cross in the middle and then the little triangular piece at the northwest corner, are the five current tax parcels. He stated what they would like to do is combine this and create two parcels, one which is the house and the ancillary residential buildings in the northwest corner and the other would be the remaining 231 plus acres and some of the farm buildings in the northwest corner. He said the second page of what I submitted is just a blown up portion of that parcelization so you can better see the division lines there, or the proposed division lines, the difficulty there is that this right-of-way here is interesting because you have State Road 62, then the railroad, and then the property. He stated this access has existed across the railroad to the road for as long as the railroad and the road have existed. He said I have some information about that to give you some idea of when that was but it is 1912 or

before. He stated next page will give you a little more of an overhead photo version of that property so you can kind of see those buildings but the idea is to have the residential structures on a lot. He said I can tell you that Mike has a buyer for this and has had a buyer since September. He stated they are actually living in the house now waiting for hopefully... this issue came up during that process while we were doing our title work and some notice issues that kind of pushed us out to here but they are living there rent free hopefully looking to buy that house and then Hirsch would retain the other parcel. He said so that is... what I gave you otherwise is just some, you can tell they were made by me, they basically...the first page is what this property looked like, how it was configured in 1884 when the Lant family first acquired the property. He stated George W. Lant and William H. Lant acquired 320 acres. He said the road and the railroad do not appear to have existed at that time. He stated the next page in 1912 we have a partition action where William H. Lant ends up with the northern piece that I have highlighted in blue and George Lant ends up with the southern part, including the little triangle, and that is the first deed that references a railroad right-of-way. He said so the northern boundary of that triangular piece is the railroad right-of-way. He stated in 1912 we have the railroad right-of-way established and that is the access point for that property. He said and then you follow in 1939 there is some more division of the property, we actually have William H. Lant acquiring the triangle and the acreage I have there in blue in that rectangular parcel, number two was George E. Lant. He stated finally in 1957 Robert P. Lant ends up through another partition action post estate acquiring all of these parcels. He said they all describe separately so those lines existed but in 1957 we have all this...so this is the present form, Robert P. Lant owned it and it was put in a trust and then another trust and in 2020 Mr. Hirsch and his company bought the land from the Lant Trust. He stated a couple of other documents I have put in here, I will say we did look through the records to try to find a written easement across the railroad or access agreement and there does not appear to exist to be one of record, although the railroad has acknowledged over the years the access rights of the owners all along that road. He said a couple of documents that I have attached to this just a part of the context the first document is a 1963 right-of-way to SIGECO and the reason I included that is it is really the earliest picture that we have in the record of this property. He stated if you look at the second page it shows all of those buildings, the house, the railroad, and State Road 62 so those were all in existence and this drive was used to access it. He said Mr. Hirsch tells me the house itself was built in 1906 so it has been in existence for that long. He stated the final document that I have at least in your packet is a document from the early 2000's. He said the State, they had some eminent domain activity on State Road 62 they entered into an agreed finding and judgement with Norfolk Southern Railway Company and in that agreed finding and judgement they agreed that State Road 62 would be limited access through there and they established it along the right-of-way line for State Road 62 as it abuts the railroad that would be cut off to access except for certain gaps they left in that access line including Epworth Road, including Stevenson Station Road, and including farm accesses. He stated I highlighted for you on the second page you will see that is where the gap exists in that legal description for this particular farm access. He said there is a similar gap at the Rexing property just north of there. He stated the railroad acknowledged, according to Tom Lant, they have talked at different times about agreements to establish maintenance and other things but they have never questioned their access. He said what Mr. Hirsch would like to do is to separate the farm property from the residential property, he doesn't live there as part of acreage he owns acres in other places as well. He stated he has a buyer, someone living there now that would like to buy the farmhouse and the ancillary residential buildings. He said we

would have... both properties would access across the railroad to State Road 62 and the residential piece would access across the farm property and then the railroad to State Road 62 and we would establish that easement across the farm property at the time of conveyance. He stated so that is it in a nutshell what Mr. Hirsch would like to have done. He said we need to get the variance first, so that we are not required to front the public road because we front the railroad right-of-way and then the next step would be to combine all of the tax parcels, I think, into one tax parcel, and then we could have the parcelization approved and that would be a saleable lot or parcel.

Chairman Dayvolt asked if anyone on the Board had any questions. He asked so basically what you are telling us, is that Mr. Hirsch has a buyer for the residence of the Lant property.

Attorney Wischer stated that is correct. He said the next step will be to combine them all into 2 parcels.

Chairman Dayvolt asked if it was the grain bins and all.

Attorney Wischer said the grain bins would be included in the farm property. He said if you look at the blown up images on page 2, you can see the property lines that we proposed, would have the grain bins. He said so, the residence would have access but the Hirsch would still continue to access the grain bins from... there is no access drive or road. He said there is a farm access down on Telephone Road, but that is a long way from Telephone Road up there and there is no road or access that exists from Telephone Road. He said I don't know when Telephone Road... I found some documents of record from 1970s where there was right of way given for Telephone Road... there was Telephone Road and farm access established Telephone Road, in the 70s, so until then...

Chairman Dayvolt asked is there not access to the farm off Telephone Road.

Attorney Wischer said there is, that's what I am saying, they accessed the farm, but as far as accessing those bins and getting in and out, there is not any real drive or anyway to get all the way north.

Chairman Dayvolt asked the access to the highway is going to be the same access to the private property that he is wanting to sell.

Attorney Wischer replied, that is right they will have a shared drive. He stated we will establish that in an easement document when the parcel is conveyed.

Chairman Dayvolt asked the farm ground across the highway and the farm ground between Telephone and 62 is what he is wanting to keep, and just plot this off.

Jeff Valiant said I don't think there is any across the highway. He stated it's gone.

Mike Hirsch said no all the land is uh Telephone, and south of 62. He stated the homestead.

Chairman Dayvolt said please come up to the podium.

Mike Hirsch said okay, sorry, uh all of the farm land is south of 62 and then north of Telephone, the homestead is on the north end and that's where the entrance, this entrance always went into the homestead and then we go in there to the grain bins and the barns. He said one of the reasons I uh, at the closing there was four siblings to the Lant's. He said their daughter, at the closing, it was kind of funny, we closed and I was leaving and she said you aren't going to bulldoze the house down are you. He said I never forgot that, and I talked to her, they didn't want to buy it, but she was hoping that a family would live there and I'm a little bit kinda trying to honor that request that she had, so this house is there and uh, we have got a sale there, an owner and a family is living there. He said I told them to go ahead and live there because I thought that we could work all of this out. He said and uh, anyways that's kinda, I know there are a lot of legal things here but I just wanted to give you the reason that I felt that this needed to be done. He said I am trying to honor the Lant family, and their request and this family wants to live there, so anyways, is there any other questions.

Chairman Dayvolt asked would you please state your name.

He replied, oh Mike Hirsch, I'm sorry, Mike Hirsch, the owner. He asked oh, where do I sign. He said and then the, yea I am Mike Hirsch and our LLC that we own the land in, is Hirsh Pathway Land Group. He stated it's my wife and me and our son and our daughter and the reason its Hirsch Pathway land group is because Pathway is the name of the partnership of our farming operation, so I'm just, any other questions I would be willing...

Mrs. Barnhill asked Mr. Hirsch are there two houses on this property.

Mr. Hirsch replied, yes, they called it a cottage. He said it was the very original homestead that was like built in the 1800s, and it's south of the house, the main house that they are living in, but it's... they called it a cottage, but yes it is a building back there. He said I mean it's a... I don't know that it is very livable, but it's a building

Jeff Valiant said so, it stays with house.

Mike Hirsch went on to say, yes all of the house, the cottage and there is a garage to the side. He said those three buildings, that's what would stay with the homestead.

Jeff Valiant asked so you are saying that it is not livable

Mike Hirsch replied oh you could if you really wanted to live there, but it's... there's plumbing there, there is water there...

Mike Winge asked guest house.

Mike Hirsch replied I would call it a guest house, a cottage house is what they always called it. He stated you could live there, but you would have to do a little plumbing work.

Chairman Dayvolt said but, I don't think we are looking at it as a separate... I mean, we aren't looking at a separate residential unit.

Mike Hirsch said no, no, no it is all together, it's combined.

Chairman Dayvolt asked any more questions by the Board.

Jeff Willis asked would they need a special permission for a mother in law house, or cottage, or second, is there any way to...

Mrs. Barnhill replied no, you can't have two living quarters on a parcel of ground.

Chairman Dayvolt stated but they aren't using it for living quarters right now.

Mrs. Barnhill replied yes, he said that it is not livable at the moment but it could potentially be.

Attorney Wischer said which would need, I mean if they did we could certainly notify the buyer that it can't happen, they would certainly have to come to you, but I mean.

Mike Hirsch said yea, I am glad that you said that because I didn't know that. He stated I don't think they had any intentions of living back there, but that could all be...

Chairman Dayvolt said well I know the Lant family, and that's probably the girls most, one of her, what would you say, remembrances...sentimental.

Mike Hirsch said yea, the homestead it is very sentimental, and I recognize that when we were leaving the closing and I wanted to respect that, and I... whatever we need to do there, it wouldn't be livable, I'm just trying to honor a request.

Jeff Valiant asked is it livable now. He asked is it walk-in livable now.

Mike Hirsch replied no, you wouldn't want to live there, the plumbing doesn't work, there's water to it, but if you walk in there the odor would... chase you out of there.

Jeff Valiant said I got it.

Mike Hirsch said that's how I see it.

Jeff Valiant asked could they just put something in there, stating it isn't to be living quarters. He asked it can't be converted.

Attorney Doll said no. He said I mean I think they have a right to ask for it at a future date, but it would be very difficult to get it approved.

Jeff Valiant said so, as it exists right now, Morrie or Molly, there is, I mean the code says they can't use it that way, and if they did it would be a violation and so they can't live in it.

Attorney Doll said unless they take the position of pre-existing non-conforming.

Attorney Wischer said we could put a condition on that approval that supposedly that house not be used, but we are certainly open to that.

Attorney Doll said Chris, tell me about the farm acreage, you have access to a public right of way.

Attorney Wischer said entrance from Telephone Road but Mike can explain the difficulty of using that to get to the grain bins, but this access pre-dates that from the legal standpoint, the access right here pre-dates and doesn't go away because of that, but it's there, but can you talk about what it would require to get from Telephone to the grain bins.

Attorney Doll asked how far is Telephone Road from the grain bins.

Mike Hirsch said one half of a mile. He said to the grain bins, it would require a road or something.

Jeff Valiant said it would cost you a small fortune, not only that you would remove good farm ground to establish the road, that's kinda the concern there, as far as you know

Jeff Willis said and right now there are four parcels there.

Attorney Wischer said yes, four tax parcels.

Jeff Willis asked so the parcel that you are cutting this out of, does it have access to Telephone Road.

Attorney Wischer said yes, the small triangle piece does.

Mike Hirsch said no, it's only to 62.

Jeff Willis said so, as of right now the parcel that it is in, doesn't have access to Telephone Road without crossing two other parcels.

Attorney Wischer said that is correct. He continues, if you look at what I submitted, the '39 and forward up until '57 it was done separately.

Mrs. Barnhill stated Morrie legally they said it isn't there, but they are going to create and write a legal description for an easement over this property owned by the railroad company. She asked how does that work.

Attorney Doll said the railroad has to consent

Attorney Wischer said well we would, our position is that the railroad, access across the railroad exists. He said what we would be creating is from parcel 1 across parcel 2 to the railroad, and we can convey whatever rights exists to the access across the railroad, but we have not, we don't believe we need to prescriptive implied, by use, there's a bunch of legal arguments

Attorney Doll asked is that consensual with the railroad.

Attorney Wischer replied well I just directed you to that 2003 agreed finding and judgement to the State where they agreed and approved limited access right-of-way but preserved access for those drives. He said including this drive and the only person who needs that is the owner of that property. He said so we asked if that documents exists. He said according to Tom Lant they have never even challenged it , I don't even think at this point, Tom told me this, and the arm bars are down, I don't even think the railroad right of way is in use. He said I've heard from other folks, they might be trying to sell it, well I heard from Tom and other people. He said so at this point that access exists and has never been challenged, and I don't think it could be.

Attorney Doll said so you may have to go to court if you can't get written consent from the railroad for this easement.

Attorney Wischer said if the railroad came to stop us from accessing it, that's when we would have to go to court, but I don't want to fight the battle until then. He stated I'm not going to go ask for...

Attorney Doll said no, no I know. He continued, I'm not going to ask for... He said the reason you don't want to use Telephone Road is because of the distance.

Mike Hirsch responded, it's all field, it would be a half mile to the grain bins through the field, and in order to use the grain bins you have to haul in heavy trucks can't... He said we would have to build some sort of substantial road.

Attorney Doll asked a road base.

Mike Hirsch said yes that would go all the way, a ½ mile all the way to the grain bins.

Chairman Dayvolt said that is not even feasible.

Attorney Doll said well it is.

Chairman Dayvolt well it is but beyond what you would want to go cost wise.

Mike Hirsch said the grain bins have used well that's the access for 80, 90, or 100 years to the grain bins and the farm building and there are several other accesses to farm buildings from Epworth and on down the way, and...

Attorney Wischer said and not all of those would have access to the south, so what we are asking for is to preserve the access that has been in place for 100 years, but just to allow separate ownership from the house and the farm land and farm buildings but to keep it in place

Attorney Doll said alright the Warrick County ordinance requires access to a right of way, it does not state that it has to be pre-existing, or that it has to be a convenient access, it just has to have access and a variance would be a relief from that and would allow us, the applicant to use the property by means of a right-of-way or easement, uh, its uh it's not a new use, it's an existing purpose, this has been farmland for decades. He said it's just sort of a peculiar use, a peculiar application, and it's a strangely drawn ditch, piece of land to get it to 62. He added but I guess it has been that way for a long time

Chairman Dayvolt said it has been that way for a long long time, I used to live there in 1959.

Attorney Doll asked this house.

He replied no Stevenson Station.

Attorney Doll said oh, so it's up to Board, you can make it or not, either direction. He added you need to look at page 149 of our ordinance that defines the variances it has to be something unusual about it, like size or shape, and it's certainly unusual shape. He said or its location and something that creates a hardship and you testified that this piece of property has used this access for generations and it would cost a lot and the land isn't suitable for it to go to Telephone Road. He added Telephone Road has a tendency to flood, so those would be the peculiar circumstances. He said so it has to be fact based, it can't just be hey lets approve it, has to be fact based and it's a hardship that wasn't created by the applicant. He said this hardship was created by the railroad right-of-way, alright. He said peculiar shape, railroad right of way, and long distance from Telephone Road, expensive installing a driveway to Telephone Road. He clarified that would be the justification for granting the variance.

Chairman Dayvolt said okay so, addressing the summer cottage.

Attorney Doll said well that was not what they asked for. He said that was discussed by us here tonight.

Jeff Valiant asked do you think it's covered by current code.

Attorney Doll asked any idea how long it has been vacant.

Mike Hirsch said 40 years.

Mrs. Barnhill said and that's one of those things we just happened to find, playing around on GIS getting our research before the meeting.

Attorney Doll said it has been abandoned. He said I don't think he could resurrect the right to use it. He said I don't think we can address it with this variance.

Attorney Wischer said and I don't think it needs to, it's been abandoned and doesn't exist and is not approved by code.

Doris Horn asked how big of a home it was.

Mike Hirsch said 4,000 square feet.

Doris Horn said no, I meant the old house, the cottage. She asked is it about the same size as a garage or bigger.

Mike Hirsch said uh it's not very much bigger.

Doris Horn replied a lot of times they would take the older houses and make it into what they considered a wash house or when they butchered that's what they cleaned up with, that's what they used them for.

Jeff Valiant said that's what they did in Little House on the Prairie, lived in the little house while they built the big house

Attorney Doll asked have I answered the Boards questions.

All agreed.

After ascertaining there were no more questions from the Board and no remonstrators for or against the application 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 the railroad right of way preventing access to SR 62, additional access is too far or removed from that location.

Mike Moesner asked if there was anything else he needed to add.

Attorney Doll said no, I think that is it but the thought has occurred to me Chris, will the railroad right of way block or prevent access for emergency vehicles at any point in time, and if it will, we general ask for a Hold Harmless.

Attorney Wischer said they never, it never has...

Attorney Doll responded well maybe when the railroad was used.

Attorney Wischer said I don't know, I mean if there was a train in the way they might have to stop and wait or whatever

Attorney Doll said in Warrick County we have customarily asked for a Hold Harmless agreement, so that the land owner understands... we are not liable by approving this, we aren't liable if there is physical harm to them if a firetruck can't get there and put out a fire, or an ambulance can't get there, we don't want... because we approved it, we don't want them to say hey...you aren't going to get all these services when a railroad comes through.

Attorney Wischer said and Mike can put in the Hold Harmless and not put that other owner in that position.

Morrie responded so you would agree that it would be possible.

Attorney Wischer and Mike Hirsch said yes.

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:

- a) Subject to the Parcelization being approved.
- b) Subject to Hold Harmless Agreement being executed and recorded with the subdivision.
- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.

The motion was seconded by: Doris Horn and carried unanimously.

Attorney Wischer asked can I ask one question, keep you for one second. He said the 6 month, there's nothing new that's going to be built, so when we do the parcelization does that count as furtherance of the variance.

Mrs. Barnhill responded it says or unless the provision of the variance are adhered to, so that would cover filing that.

Attorney Wischer said okay, I just wanted to make sure because there is not going to be a permit taken for any building but we are going to do a parcelization, if we get that done we will be good to go.

Attorney Doll responded yep.

Attorney Wischer said okay, thank you.

Mrs. Barnhill said we will prepare the hold harmless and I will get that to you.

Attorney Wischer said okay that sounds good and we will get started on the tax and parcelization and get that filed. He said thank you very much for your time and consideration.

Attorney Doll asked when are you going to file on the parcelization.

Attorney Wischer responded as soon as we get the consolidation of parcels and if you need the Hold Harmless before then just get it... I don't know when you need that, he will sign it whenever, but we will submit the parcelization and if you want it all at the same time we will get that done too.

Attorney Doll responded okay.

Attorney Wischer said we will get with you and figure it all out.

Everyone said thank you.

ATTORNEY BUSINESS IS:

Chairman Dayvolt asked if there was any Attorney business.

Attorney Doll said none.

EXECUTIVE DIRECTOR BUSINESS:

Molly Barnhill said I introduced her to the Area Plan Commission, but I have hired Kim Eden, she's in the audience tonight, so we are back to a full office and she's doing really well so things are going well.

Chairman Dayvolt said welcome.

Chairman Dayvolt asked for a motion.

Mike Winge made a motion that we adjourn. The motion was seconded by Doris Horn and the motion carried unanimously. The meeting adjourned at 6:50.

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 March 28, 2022.

Molly Barnhill, Executive Director