

BOARD OF ZONING AND APPEALS MINUTES

Tuesday, November 14, 2017

7:00pm

A. Andrew Baudendistel's reading of the Voluntary Title VI Public Involvement Survey –

As a recipient of federal funds, and in support of Dearborn County's efforts to ensure nondiscrimination and equal access to all citizens, the County gathers statistical data regarding participants in county activities. Therefore, we have provided a Voluntary Title VI public Involvement Survey at this meeting. You are not required to complete this survey. However, the form is anonymous and will be used solely for the purpose of monitoring our compliance with Title VI and ADA.

B. ROLL CALL –

Members present:

Rick Pope

Russell Beiersdorfer

Phil Darling

Jim Thatcher

Jane Ohlmansiek

Nicole Daily – Zoning Administrator

Andrew Baudendistel – Attorney

Members absent:

NONE

C. ACTION ON MINUTES:

No action on the minutes.

D. OLD BUSINESS SCHEDULED TO BE REOPENED:

- 1. Request:** A Variance for side yard setback on a primary structure and a variance for driveway spacing.
- Applicant/Owner:** Seig Surveying/ Roseann Feuerstein
- Site Location:** 26731 Lawrenceville Road
- Legal:** Sec. 24, T8, R3 Parcel #15-03-24-100-010.000-009
- Township:** Jackson
- Zoning:** Agriculture (A) Size: 2.336 Acres

Ms. Daily stated that the applicant was not present in the audience and would requested the Board to table the case until the end of the meeting to wait for the applicant to show up. This case was tabled last month due to the driveway issue.

E. OLD BUSINESS TO REMAIN TABLED: NONE

F. NEW BUSINESS

- 1. Request:** A Variance for rear yard setback on a primary structure.
- Applicant/Owner:** Gregory & Nancy Bowen
- Site Location:** 32 Oakmont Court
- Legal:** Sec. 24, T6, R1 Parcel #15-06-24-100-165.000-020
- Township:** Miller
- Zoning:** Planned Unit Development (PUD) Size: 0.46 Acres
- Subdivision:** Lot 201 of Villages of Sugar Ridge

Ms. Daily presented the staff report and presentation slides for a variance request on a rear yard setback for a primary structure. The property owner is currently building a residential home which has already been permitted. During the construction, the owners ran into issues with the soil conditions and in order to find suitable ground for the footers the building had to be pushed back and rotated slightly. In doing so the home owner was unaware the house was too close to the rear property line, especially for the deck being proposed to be added to the back corner. The 2017 aerials were shown which illustrated the location of the foundation. The deck has been designated as not meeting the rear yard setback as it is located behind the rear face of the house, therefore the side yard for the house becomes the rear yard for the deck. A letter from the property owner was included in the Boards' packets. Ms. Daily also provided 3 emails from adjoining property owners, all of who had no issues or concerns with the variance being requested. There were 7 letters were mailed out, 6 of the letters were received and 1 remained in transit. The rear yard setback requirement through the Sugar Ridge PUD is 25 feet, therefore the property owner is needing a variance of 23 feet.

Mr. Greg Bowen, property owner, addressed the Board with his request. He stated that when the builder began, they had a hard time finding suitable ground for the foundation and he did not realize that he was encroaching on any setbacks when moving and rotating the building. He stated the contractor thinks the ground was used as a dump site for construction materials by the developer and covered up after the fact, because they had to dig down far to find solid ground.

The Board had no questions for Mr. Bowen.

Mr. Beiersdorfer made a motion to open public discussion. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

There was no public comments on this case.

Mr. Beiersdorfer made a motion to close public discussion. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Mr. Thatcher made a motion to grant a variance request for the rear yard setback on a primary structure of 23 feet for property located at 32 Oakmont Court in Miller Township. The approval is based on the request has met the criteria set forth in Article 3, Section 320 of the Zoning Ordinance and the attached Finding of Facts. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

- 2. Request: A Variance for pond side yard and road right-of-way setbacks.**
Applicant/Owner: Ray Hobbs/ Russell Love
Site Location: Texas Gas Road
Legal: Sec. 17, T4, R2 Parcel #15-11-17-400-023.000-004
Township: Clay
Zoning: Agriculture (A) Size: 71 Acres

Ms. Daily presented the staff report and slide presentation. In 2006, a permit was issued for the construction of the pond. However, in 2015 it was determined the pond was not constructed according to the approved permit. The pond sits right on the northwest side property line and only 58 feet from the road right-of-way. A variance is required of 0 feet for the pond setback to the side property line. A variance is required of 92 feet for the pond setback to the road's right-of-way. A variance is required of 125 feet for the pond setback to an existing residence on an adjoining property. A letter was received from Todd Listerman (County Engineer), which stated if the variance was approved, a guardrail or some type of landscaping is needed to keep cars from going straight into the pond since the pond is lower than the road. There were 10 letters sent out and all 10 were delivered.

The Board had no questions for Ms. Daily.

Mr. Hobbs, the applicant, addressed the Board regarding his request. He owns the property to the northwest of the pond and had the pond constructed the pond on Mr. Love's property (Mr. Love is the father of Mr. Hobbs). The house was already there before the pond was built. Mr. Hobbs stated that in the next year he is wanting to hire a surveyor to split off the ground where the pond is located to he can combine it with the land his house is on. But he is uncertain when that exactly would happen and wanted to resolve the current issues with the pond.

Mr. Rick Pope asked Ms. Daily that if Mr. Hobbs obtained the land where the pond was located would that negate the need for the variances.

Ms. Daily stated that the property owner would no longer need the variance for the side yard setback or the setback to an adjoining existing residence, but he would still need a variance for the setback to the road right-of-way. She recommended making a decision on all the variances since the Board did not get a definite time frame on the survey. It does not cost the applicant any more or any less to have all three variances heard at the same time. If the property owner does obtain the ground where the pond is located at least he still has the variance of the right-of-way setback.

There were no questions for Mr. Hobbs.

Mr. Beiersdorfer made a motion to open public discussion. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

There is no public comment on this case.

Mr. Beiersdorfer made a motion to close public discussion. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Mrs. Ohlmansiek made a motion to approve the 0 foot side yard variance for the pond setback, a variance of 92 feet for the pond setback to the road's right-of-way, and a variance of 125 feet for the pond setback to an existing residence on an adjoining property with condition the owner must work with the County Engineer to install some type of guard between the right-of-way and the pond to keep cars from going into the pond. The approval is based on the request has met the criteria set forth in Article 3, Section 320 of the Zoning Ordinance and the attached Finding of Facts. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

**3. Request: A Variance for pond setback
Applicant/Owner: Douglas Nusekabel
Site Location: 22501 Burtzelbach Road
Legal: Sec. 10, T6, R2 Parcel #15-05-10-100-045.001-024
Township: York
Zoning: Agriculture (A) Size: 7.7 Acres**

Ms. Daily presented the staff report and slide presentation. In 2013, a prior property owner applied for a pond permit and it was approved by Staff. The applicant purchased the property in March 2017, and recently applied for a permit on a new residential structure. This is when it was discovered the pond was not constructed per the approved permit. Staff has asked the current owner to request a variance for the setbacks in order to make the pond compliant. The pond was constructed too close to the southern side property line. The setback requirement for a pond is 30 feet from the side or rear property lines. Therefore the applicant is requesting a variance associated with the construction of a pond: (1) a side yard setback variance of 25 feet.

If the variance is approved, a modification would be made to the permit to show the approval of the variance. Ms. Daily suggested putting rip-rap around the pond pipes. There were 9 letters mailed out and all 9 were delivered.

One of the adjoining property owners, Joseph Miller, 22497 Burtzelbach Road, sent a letter to the office about how he has no objections to the setback of the pond.

Staff also received a letter and email from another adjoining property owner, Dan and Carol Benoit, their farm land adjoins to the south. They have objections with the variance since the toe of slope and outlet pipe is only 5 feet from their property line. They believe the pond creates a complete wetland on their property and it causes problems when crops are being planted and harvested.

Ms. Daily illustrated to the Board the location in which Mr. & Mrs. Benoit were describing. She stated that when viewing the aerials and the topography of the ground, this area was a natural drainage line prior to the pond being constructed. Ms. Daily reviewed several aerials and the lower drainage area doesn't appear to have ever been planted with crop, with the assumption that with it being a drainage area, it is wet ground throughout the year.

The Board asked if they were in attendance, and no one from the public spoke up.

Mr. Doug Nusekabel, applicant and property owner, addressed the Board. He stated that he purchased the property at the beginning of the year and the pond was already in place and he had no idea there were issues with the setbacks. He is willing to be install rip-rap around the pipes, as recommended by Ms. Daily, once the electric has been installed for the construction of the house, which will be by the end of the year.

The Board had no questions for the applicant.

Mr. Darling made a motion to open public discussion. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Mr. Phil Ketron, adjoining property owner, 22623 Burtzelbach Road, addressed the Board. He doesn't have an issues with the variance. He himself enjoys the pond. He doesn't believe that it has a leak and he has never seen it back up in the 5 years he has been there.

There were no other comments from the public.

Mr. Darling makes a motion to close public discussion. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

No further discussion from the board.

Mr. Darling make a motion to grant the variance of 25 feet for the pond setback located at 22501 Burtzelbach Road. The approval is based on the request has met the criteria set forth in Article 3, Section 320 of the Zoning Ordinance and the attached Finding of Facts. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Ms. Daily addressed the Board in regards to the tabled case, Feuerstein variance, from the beginning of the meeting, and stated that applicant was still not present at the meeting, therefore the case will need to be tabled for the December meeting.

Mr. Darling made a motion to table the Feuerstein case until the next meeting in December. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

G. ADMINISTRATIVE

There is no administrative agenda for this meeting.

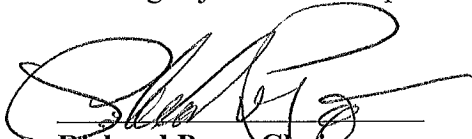
There will be a December meeting and there will be the tabled case and an additional case. The meeting minutes from October will be at the December meeting.

Mr. Baudendistel (update on court case of landscape business on Kaiser Road) reported that judicial review was given ruling in favor of the Board. The court affirmed that the BZA had enough evidence to make the decision that they did regarding the case.

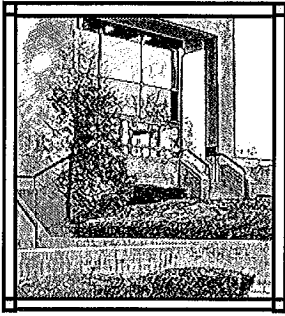
Mr. Baudendistel doesn't feel that any appeals will be made. Mr. Baudendistel doesn't know if the couple is still in business. They have not yet filed for a minor site plan for their small barn.

Mr. Beiersdorfer makes a motion to adjoin the meeting. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

Meeting adjoined at 8: 15pm.


Richard Pope, Chairman


Nicole Daily, Zoning Administrator



Dearborn County Plan Commission

Board of Zoning Appeals: Findings of Fact

215 B. West High Street
Phone: (812) 537-8821

Lawrenceburg, IN 47025
Fax: (812) 532-2029

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CASE TITLE: Bowen rear yard building setback variance request

CASE NUMBER: 17BZA1114-001

PROPERTY ADDRESS: 32 Oakmont Court, Lawrenceburg, IN 47025

PROJECT DESCRIPTION:

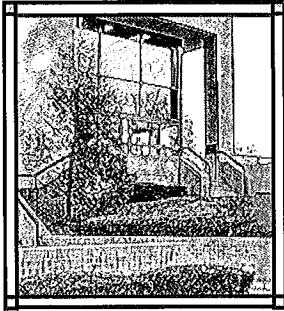
The property owner began construction on a permit residential structure. During the course of the construction it was determined the soil conditions were bad, forcing the contractor to move and rotate the structure to find solid ground. The property owner did not realize the attached deck would be encroaching on the rear yard setback. The foundation has been construction and meets the setbacks for the side yard, but the deck on the back of the northeast corner of the house would not meet the rear yard setback. The required rear yard setback through the PUD of Sugar Ridge is 25 feet. Therefore the property owner was requesting a variance of 23 feet.

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on **November 14, 2017** (date). After testimony was given and evidence was presented to the Board, a motion was made to **APPROVE** or **DENY** the request for a variance and the motion was carried with a vote of **5 - 0 - 0**.

In its deliberations, the Dearborn County Board of Zoning Appeals weighed the evidence associated with the following criteria and made the following findings in **APPROVING** OR **DENYING** the request for a Variance. Dearborn County Zoning Ordinance Article 3, Section 320 states that a variance may be approved only upon a determination in writing that the following are true:

1. That the approval will not be injurious to the public health, safety, morals, and general welfare of the community:

The variance **WILL NOT** be injurious to the public health, safety, moral and general welfare of the community. The proposed deck will still be solely on the owner's property and there will not be any development behind the lot, as there is only a small strip of ground for the golf cart path and beyond that is the Ohio State line.



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2. That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

It is likely that the use and value of real estate adjacent to the subject site WILL NOT be affected in a substantially adverse manner by allowing the requested variance. There is only a small strip of ground behind the property which is only used for a golf cart path. There is not enough space for further development.

3. That the need for the variance arises from some condition peculiar to the property involved which are not applicable to other lands, structures or buildings in the same district:

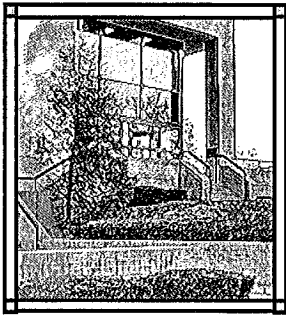
In the past the property was used as a dumping ground for construction materials by the past developer which was not disclosed to the buyer or seller. The seller of the property was not the original developer. Therefore the property owner was unaware of the poor soil conditions of the property, and the depth in which solid ground would be able to be found to construct the foundation of the house.

4. That the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is ought:

If the strict application of the terms of the zoning ordinance were to be held, the site would have been deemed non-buildable, due to the prior developers negligent. The unnecessary hardship if applied would have meant the property owner would have been unable to build or sale the lot as it was sold to him as a buildable lot.

5. That the special conditions and circumstances do not result from the actions of the applicant:

The conditions of the property were not the result from the actions of the applicant. The property owner had no prior knowledge of the condition of the soils until construction began. There were special conditions of the property which afforded the approval of the variance to the property owner.



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CASE TITLE: Lovins pond side yard and right-of-way setback variance request

CASE NUMBER: 17BZA1114-002

PROPERTY ADDRESS: Texas Gas Road, Aurora Parcel#15-11-17-400-023.000-004

PROJECT DESCRIPTION:

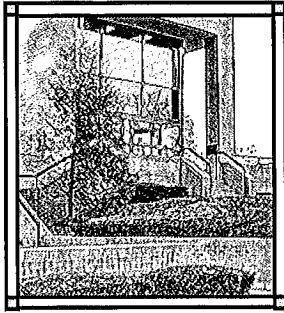
In 2006 the applicant was issued a permit to construct a pond on the property. In 2015, it was determined that the pond was not constructed according to the approved permit site plan. The pond was constructed too close to the side property line and the road right-of-way. The setback requirement for a pond is 30 feet from the side or rear property lines and 150 feet from road right-of-way and no closer than 150 feet from an existing residence on an adjoining parcel. Therefore the applicant is requesting three variances associated with the construction of a pond: (1) a side yard setback variance of 30 feet (north side, and 100% reduction), (2) a front yard setback variance of 92 feet (from road right-of-way, required to be 150 feet) and (3) a setback variance of 125 feet (from the closest existing residence, required to be 150 feet).

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on **November 14, 2017** (date). After testimony was given and evidence was presented to the Board, a motion was made to **APPROVE** or **DENY** the request for a variance and the motion was carried with a vote of **5 - 0 - 0**.

In its deliberations, the Dearborn County Board of Zoning Appeals weighed the evidence associated with the following criteria and made the following findings in **APPROVING OR DENYING** the request for a Variance. Dearborn County Zoning Ordinance Article 3, Section 320 states that a variance may be approved only upon a determination in writing that the following are true:

1. That the approval will not be injurious to the public health, safety, morals, and general welfare of the community:

The variance **WILL NOT** be injurious to the public health, safety, moral and general welfare of the community. A condition has been placed on the approval to add a guardrail or something similar approved by the County Engineer to prevent errant cars from entering the pond. Therefore the safety has been satisfied.



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2. That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

It is likely that the use and value of real estate adjacent to the subject site WILL NOT be affected in a substantially adverse manner by allowing the requested variance. The pond was built by the neighbor, Mr. Hobbs who is the son-in-law to Mr. Love and both parties knew the pond was being constructed

3. That the need for the variance arises from some condition peculiar to the property involved which are not applicable to other lands, structures or buildings in the same district:

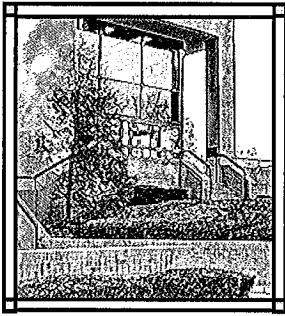
The pond was constructed in the natural drainage valley of the property which is located near the side property line which is a condition that is peculiar to this property.

4. That the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought:

If the strict application of the terms of the zoning ordinance were to be held, it WILL constitute an unnecessary hardship for the property owner. The owner hired a contractor who did not build the pond correctly. The owner has taken the contractor to court, but even when its over he would not hire the same contractor.

5. That the special conditions and circumstances do not result from the actions of the applicant:

The conditions of the property were not the result from the actions of the applicant. The contractor of the pond has made many mistakes with this pond. The property owner is trying to resolve the issues between the setbacks and the pond not holding water. He also will be in the process of acquiring more property to satisfy two the setback issues but did not want to let this go unresolved until he could do that.



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CASE TITLE: Nusekabel pond side yard setback variance request

CASE NUMBER: 17BZA1114-003

PROPERTY ADDRESS: 22501 Burtzelbach Road, Guilford, IN 47022

PROJECT DESCRIPTION:

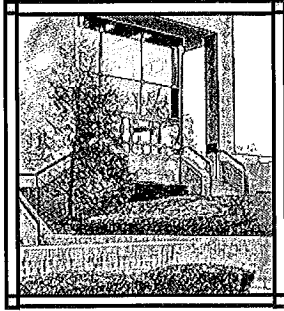
In 2013, a prior property owner applied for a pond permit and it was approved by Staff. The applicant purchased the property in March 2017, and recently applied for a permit on a new residential structure. This is when it was discovered the pond was not constructed per the approved permit. The pond was constructed too close to the southern side property line. The setback requirement for a pond is 30 feet from the side or rear property lines. Therefore, the applicant is requesting a variance associated with the construction of the pond, a 25 foot side yard setback variance.

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on **November 14, 2017** (date). After testimony was given and evidence was presented to the Board, a motion was made to **APPROVE** or **DENY** the request for a variance and the motion was carried with a vote of **5 - 0 - 0**.

In its deliberations, the Dearborn County Board of Zoning Appeals weighed the evidence associated with the following criteria and made the following findings in **APPROVING OR DENYING** the request for a Variance. Dearborn County Zoning Ordinance Article 3, Section 320 states that a variance may be approved only upon a determination in writing that the following are true:

1. That the approval will not be injurious to the public health, safety, morals, and general welfare of the community:

The variance **WILL NOT** be injurious to the public health, safety, moral and general welfare of the community. The setback is associated with the toe of slope therefore not providing any dangers for the edge of pond water being too close to the property line.



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2. That the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

It is likely that the use and value of real estate adjacent to the subject site WILL NOT be affected in a substantially adverse manner by allowing the requested variance. The pond and all the areas associated with the maintenance of the pond are still solely on the applicants property and has been placed in a natural drainage line.

3. That the need for the variance arises from some condition peculiar to the property involved which are not applicable to other lands, structures or buildings in the same district:

The prior property owner constructed the pond, and was purchased by the applicant prior to violations being determined. The condition related to the property involved was created by another party who is no longer associated with the property.

4. That the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is ought:

If the strict application of the terms of the zoning ordinance were to be held, it WILL constitute an unnecessary hardship for the property owner since the pond added to the value of the property when it was purchased. It would cause a hardship on the property owner to begin the process of finding the buyer to resolve the issue.

5. That the special conditions and circumstances do not result from the actions of the applicant:

The conditions of the property were not the result from the actions of the applicant. The current property owner was not responsible for the construction of the pond. He was not even aware the pond did not meet standards until applying for a residential structure permit.