

BOARD OF ZONING & APPEALS MINUTES
Tuesday, May 10, 2016
7:00 P.M.

A. ROLL CALL-

Members present:

Phil Darling
Russell Beiersdorfer
Jim Thatcher
Rick Pope
Jane Ohlmansiek
Nicole Daily, Zoning Administrator
Derek Walker, Assistant Planner
Andrew Baudendistel, Attorney
Arnold McGill, Attorney (Clark case)

B. Action on Minutes-

Mr. Beiersdorfer made a motion to approve April 12, 2016 minutes with correction. Seconded by Mrs. Ohlmansiek. All in favor. None opposed. Motion carried.

C. Old Business Scheduled to be Re-opened-

1. Request: Requesting a Variance to build a house in an M-1 District
Applicant/Owner: Andrew & Kassie Clark
Site Location: Taylor Lane
Legal: Sec. 36, T5 R2 Parcel #15-08-36-400-041.000-008
Township: Hogan
Zoning: Manufacturing (M-1) **Size:** 19 Acres

Mr. Andy Baudendistel dismissed himself from the room as acting legal counsel for the Board during this case due to a conflict of interest. Mr. Arney McGill will be standing in during this case as acting legal counsel to the Board for any necessary legal advice.

Ms. Daily presented the Board with the additional photos of the site. This case was presented at the last meeting. There are a couple of issues that the Board would like to discuss before making a decision. The applicant is requesting the approval of a variance to construct a residential structure in a Manufacturing District. Residential units are not

permitted use within an M-1 district. The variance would be based on the use of the property.

Mr. Steven Taylor had brought in an additional letter to the office earlier that morning and it was handed to the Board this evening (See attached "Exhibit A"). Mr. Taylor would not be able to attend the meeting this evening but would request the Board consider his concerns as documented in the letter prior to any decision being made by the Board.

Ms. Daily stated that Mr. Taylor had met with Andrew Clark and have created an agreement document which has not been executed as of today. Ms. Daily has concerns with the 7 conditions which were outlined in the letter, which Mr. Taylor would like to have added to the Boards decision if the variance was approved. Most of the conditions are already included in the original easement that is associated with Taylor Lane. Ms. Daily's other concern is that if the Board would attach the other conditions the Board would be changing certain aspects of the original easement language and feels that this would not be advised for the Board to be a part of a civil agreement between the two parties. The Board could be over stepping their authority including these specific conditions that Mr. Taylor is requesting to be attached to an approval.

Ms. Daily gave the Board time to read the additional letter from Mr. Taylor.

Mr. Pope called the applicant to speak before the Board.

Mike Clark, representing Andrew and Kassie Clark, addressed the Board and stated that they had just received the letter from Mr. Taylor today. He stated that Andrew Clark had met with Mr. Taylor and it went well. He stated that of the 7 conditions they were pretty close but do not agree with #6 which states the performance of a boundary line survey. Mr. Clark stated that the cost would be at least \$4,000 and they feel that money should be placed in the cost of the house. They are cooperating with Mr. Taylor and would like to move forward on this variance request.

Mr. Thatcher asked if they had discussed the bridge issue. Mr. Clark stated not at this time. Eventually all property owners will have to discuss the concern of bridge structure issues. It will be costly and when the time comes for any repairs all current property owners will be involved in the cost of the repairs.

Mr. McGill asked Mr. Clark how many people use the Taylor Lane right of way. Mr. Clark stated 4.

Mr. McGill gave his opinion that specifically subject to the current easement that was given by Saunders and Taylor to Michael and Debbie Clark and Gary Probst should be the only

agreement that Andrew and Kassie Clark are bound by. Mr. McGill also stated they do not need another agreement. They can have an agreement on the damages to the bridge and/or road but does not need to be an attached condition. The Board does not need to attach Mr. Taylor's new conditions for approval. He stated he would advise the Board not to get involved in an agreement that is between both parties.

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

No public discussion.

Mr. Thatcher made a motion to close public discussion. Motion was seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Mr. Thatcher made a motion to grant the Variance approval for building a residential structure in a Manufacturing (M-1) Zoning District for Andrew and Kassie Clark, on property located on Taylor Lane, Parcel #15-08-36-400-041.000-008 of Hogan Township, containing approximately 19 acres. This Variance arises from Article 13, Section 1304. Citing the request meets the criteria of Article 3, Section 320 within the Dearborn County Zoning Ordinance. Motion was seconded by Mrs. Ohlmansiek. All in favor. None opposed. Motion carried.

D. Old Business to remain tabled- None

E. New Business-

Mr. Baudendistel returns to the meeting.

Ms. Daily also introduced Derek Walker, Assistant Planner to the meeting. He will be presenting the next 2 cases tonight. He will be filling in for Ms. Daily for the June meeting due to the fact she will be on vacation.

- | | |
|-------------------------|---|
| 1. Request: | Requesting a Variance to create a Buildable lot with reduced road frontage |
| Applicant/Owner: | Cheryl Schneider |
| Site Location: | 10766 Cheryl Way Lane |
| Legal: | Sec. 10 T5 R3 Parcel #15-10-10-100-010.000-004 |
| Township: | Clay |
| Zoning: | Manufacturing (M-1) Size: 2.273 Acres |

Mr. Walker presented the Board with the Variance request. The applicant is requesting the approval of a variance to split the property into two lots. In order to allow both lots with road

frontage, the lot that would contain the existing residential structure will need a road frontage variance to allow a panhandle lot split. The proposed tract with the existing house would have 135 feet of road frontage. This property was previously granted an approval of additional residential structures on one property in a manufacturing one district. Since that time, the owner has been dealing with the bank to begin construction of one of the new units. The bank wants the second unit to be on its own parcel; therefore the owner needs approval to obtain financing for the second residential unit. The property would still be owned by the applicant and not sold to the family member at this time. If granted approval this would also maintain the previously approved variance. The required setback is 150 feet; therefore the variance required is 15 feet.

Mr. Walker also noted that the previous variance request was listed under the address of 14053 US 50. Since that request the address of this property has changed due to the setup of a private lane.

No further questions for Mr. Walker.

Mr. Pope called the applicant to speak before the Board.

Ms. Cheryl Schneider asks the Board if they have questions for her.

Mr. Pope asked Ms. Schneider if she is selling this property and she stated no. This property is for a family member. This split is necessary by the bank for financing.

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

No public discussion.

Mr. Thatcher made a motion to close public discussion. Motion was seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Mr. Darling made a motion to grant the Variance approval of 15 feet to create a buildable lot with reduced road frontage on property located at 10766 Cheryl Way Lane, Parcel #15-10-10-100-010.000-004 of Clay Township. The Variance arises from Article 25, Table 25.1. Citing the request meets the criteria of Article 3, Section 320 within the Dearborn County Zoning Ordinance. Motion was seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried

2. Request:	Variance request for front yard fencing
Applicant/Owner:	John Black
Site Location:	307 N. State Street

Legal: Sec. 13, T7, R1, Parcel #15-01-13-404-005.000-007
Township: Town of West Harrison
Zoning: Business (B) Size 1.243 Acres

Mr. Walker presented the Board with the staff report. The applicant was a tenant with a towing business prior to the recent purchase of the property. The owner wants to expand his business now that he owns the property. In order to shield the outdoor storage of vehicles, the owner wants to install a six foot fence around the entire property except for the area in front of the building. This would include installing fencing within the front yard of the property. The Town of West Harrison has reviewed this application. The only condition they request is to slats to be placed in the fencing for any front or side yard fencing installed. Any fencing along the rear of the property, along the railroad tracks, would not be required to have slats installed.

The Board had no further questions for Mr. Walker.

Mr. Pope called the applicant to speak before the Board.

The applicant had nothing to add to the discussion.

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

No public discussion.

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

Mr. Beiersdorfer made a motion to grant the Variance approval for front yard fencing with a height of 6 feet and chain link with slats for any front or side yard fencing on property located at 307 North State Street, Parcel #15-01-13-404-005.000- 007 in Town of West Harrison. The Variance arises from Article 22, Section 2275. Citing the request meets the criteria of Article 3, Section 315 within the Dearborn County Zoning Ordinance. Motion was seconded by Mrs. Ohmansiek. All in favor. None opposed. Motion carried.

ADMINISTRATIVE:

Ms. Daily stated Marvin Hamon missed his deadline for building permit. The day that Mr. Baudendistel filed for a hearing, Mr. Hamon filed for his building permit. His next deadline will be May 27th concerning his fencing.

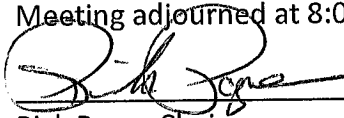
Ms. Daily is going to try and go to the Commissioners to suggest an ordinance concerning fireworks. There have been several complaints concerning the Lynch's fireworks, the noise and

demoing of fireworks during late hours and also issues with the debris falling into adjoining property owners. Discussion took place concerning this issue. Mr. Baudendistal requested Ms. Daily submit sample ordinances to him prior to scheduling to be on the agenda for a Commissioners meeting.

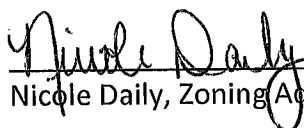
Mr. Baudendistal stated that there was a hearing or Johnny Wright on May 9th. There were discrepancies on information that was missing. Mr. Wright's attorney, John Watson is working on all the paperwork necessary for the site plan needed for permitting. New court hearing is set for June 20th. An Affidavit for Contempt prepared by Mr. Baudendistel is being held under advisement with the courts.

Mr. Beiersdorfer made a motion to adjourn. Motion was seconded by Mr. Darling. All in favor. None opposed.

Meeting adjourned at 8:05 p.m.



Rick Pope, Chairman



Nicole Daily, Zoning Administrator

"Exhibit A"

Steven Dean Taylor

12617 Taylor Lane, Aurora, IN 47001 • Phone: (812) 926-3289 • Email:
sdean_taylor@hotmail.com

May 10, 2016

Dearborn County Plan Commission
215 B West High Street
Lawrenceburg, IN 47025

RE: May 12, 2016 Variance Request Proceeding; Andrew and Kassie Clark

Board Members:

Again, thank you for the opportunity to address the Board.

Subsequent to the April 12 Board meeting, I was able to meet with Andrew Clark to discuss petitioner's plans regarding petitioner's parcel and my corresponding concerns. As anticipated, it appears that a mutually acceptable arrangement can be achieved, though such arrangement has not yet been formally memorialized.

Efforts were made to draft and execute an easement, a liability waiver and hold harmless contract, and a license, granting petitioners temporary permission to exceed the 26,000 lb. load limit, inherent in the easement, prior to the May 12 Board meeting but such documents are not yet complete. It is anticipated that all documents will be completed the week of May 08 but execution of such will likely require several more days.

In order to minimize potential damage to Taylor Lane, its berms and the Taylor Lane bridge, it is desirable that heavy construction traffic occur only in the normally driest months of July and August. As a result, petitioners hope to start their building project sufficiently early such that heavy construction traffic should be necessary only in July and August of 2016. I concur with this plan. Accordingly, to avoid delaying petitioner's building project yet another month, I am willing to compromise regarding the timing of the execution of the aforementioned legal documents if the Board attaches conditions to petitioner's variance.

Specifically, I will withdraw my objection to petitioner's variance request, see letter, dated Apr. 12, 2016, copy attached, under the following conditions:

1. Execution of a written, enforceable, and recorded prohibition against any further subdivision and/or development upon any properties accessed only via Taylor Lane;
2. Execution of a written, enforceable, license and hold harmless provision allowing traffic exceeding the 26,000 lb. weight limit provisions inherent in the easements of the existing easement holders, only for and during the construction period of the petitioner's single-family residence building;

Steven Dean Taylor

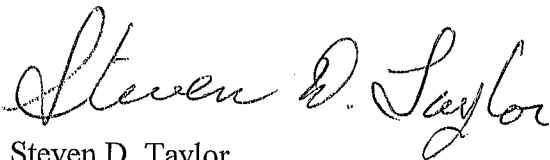
12617 Taylor Lane, Aurora, IN 47001 • Phone: (812) 926-3289 • Email:
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3. Execution of a written, enforceable, liability release protecting Steven D. Taylor, his heirs and/or assigns, from any and all liability resulting from any and all construction traffic on or over Taylor Lane resulting from the actions of any and all construction and/or maintenance acts on petitioner's parcel;
4. Execution of a written, enforceable, and recorded easement provision providing that the petitioners and/or their heirs or assigns be responsible for their proportional share of any and all maintenance expenses of Taylor Lane, including its berms and the Taylor Lane bridge from its inception with Wilmington Pike to such extent that Taylor Lane may be used to access petitioner's parcel now or in the future;
5. Execution of a written, enforceable, contract binding the petitioners to repair any damage to Taylor Lane, including berms and the Taylor Lane bridge, and to the property currently owned by Steven D. Taylor, over which Taylor Lane meanders, resulting from the construction of the petitioner's single-family residence building;
6. Performance of a boundary line survey between petitioner's parcel and the property currently owned by Steven D. Taylor by a practicing, Indiana licensed surveyor. Such survey being necessary to definitively establish the property boundary and to assure compliance with county set-back ordinance(s). Such surveyor being mutually acceptable to both the petitioners and myself; and,
7. Execution of a written, enforceable and recorded easement provision prohibiting drainage of runoff or other waste water from the petitioner's property onto my property resulting from acts of the petitioners.

Please add this document to the minutes of this proceeding and record the minutes into the county records.

Thank you again for your time and consideration.

Respectfully,



Steven D. Taylor

Attachment: Letter dated April 12, 2016

Steven Dean Taylor

12617 Taylor Lane, Aurora, IN 47001 • Phone: (812) 926-3289 • Email:
sdean_taylor@hotmail.com

April 12, 2016

Dearborn County Plan Commission
215 B West High Street
Lawrenceburg, IN 47025

RE: April 12, 2016 Variance Request Proceeding; Andrew and Kassie Clark

Board Members:

Thank you for the opportunity to address the Board.

INTRODUCTION

By way of introduction, my name is Steven D. Taylor. I was notified of this proceeding via certified mailing dated March 29, 2016 and received April 01, 2016 because I own property adjacent to the Andrew and Kassie Clark, hereinafter, petitioners, property, hereinafter, parcel, at issue in this proceeding.

The Dearborn County property where I currently reside at 12617 Taylor Lane was purchased by my parents in November of 1951 after they returned from their service in WWII. I spent my childhood here and have resided here since November of 1951, excepting the period between June of 1973 and July of 1993 when I lived and worked in Ohio, and the period between August 1999 and June 2002 when I returned to Ohio to continue my professional education.

PREMISE

I would like to premise this letter by stating that I would have preferred to avoid appearing before the Board but am compelled to do so due to the manner in which the petitioners and the most recent conveyors of said property have chosen to proceed. Given protection of my existing legal rights and property, and protection from any liability resulting from actions by the petitioners, I may well not object to the construction of a single, single-family residence building on said parcel accessed via Taylor Lane. Indeed, I believe that common ground could well be found allowing the petitioners, to construct such a residence on the subject parcel. Unfortunately, I have not been consulted regarding the plans of the petitioners. Rather, I have been told.

ISSUES

Issues concerning the proposed variance include, among others, the suitability of Taylor Lane for additional ingress and egress traffic, especially police, fire and emergency traffic and heavy construction traffic, protection of my existing legal rights, protection from

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liability resulting from the acts of the petitioners, the suitability of the parcel for use as a residence where small children might reside or be anticipated to reside, as well as highest and best use of the property.

ORDINANCE

In accordance with Article 3, Section 320, Subsection 1, of the Dearborn County Zoning Ordinance, hereinafter, Ordinance:

An appeal to the Board requesting a variance shall demonstrate:

A variance may be appropriate by reason of exceptional narrowness, shallowness or unusual shape of a site on the effective date of these regulations or amendment thereof or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site. In addition, a variance may be appropriate if the literal enforcement of the terms of the zoning regulations would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zone.

1. An appeal to the Board requesting a variance shall demonstrate:
 - a. That the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. 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;
 - c. 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;
 - d. 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; and
 - e. That the special conditions and circumstances do not result from the actions of the applicant.

FACTS

The subject parcel is located in a district that is currently zoned M1. The subject parcel and surrounding area has been so zoned for over fifty years.

Article 3, Section 320, Subsection 1, e, states: "That the special conditions and circumstances do not result from the actions of the applicant." Here, the petitioners acquired the subject parcel from Michael and Deborah Clark, parents of Andrew Clark, well knowing that the parcel was zoned M1, and that residential construction was prohibited in such parcels, see Dearborn County Zoning Ordinance, Section 1302 and 1304. Additionally, the petitioners well knew of the easement provisions prohibiting subdivision and development of the subject parcel as evidenced by Items 1 and 2 of the easement document, hereinafter, Easement, submitted by the petitioners. Accordingly, the

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petitioners have not demonstrated that the special conditions and circumstances of Article 3, Section 320, Subsection 1, e do not result from the actions of the applicant. These facts alone are dispositive in this proceeding.

Taylor Lane is a privately maintained road providing access to my property as well as three additional properties aside from that of the petitioners. My property is situated between the public access via Wilmington Pike and the other properties accessed via Taylor Lane. All traffic to and from the three other properties travels over my property subject to recorded easements solicited and accepted by the owners of these properties. All such easements include prohibitions against subdivision and development as well as restrictions upon the type and weight of traffic allowed upon Taylor Lane.

Taylor Lane is a single lane, privately maintained road limited by easement provisions to twenty feet overall and a ten foot maintained roadway. Please refer to Easement, Item 3. Traffic on Taylor Lane is restricted via easement provisions to residential and agricultural vehicles, not to exceed 26,000 lbs. gross vehicle weight. Please refer to Easement, Items 1 and 2.

Such provisions are for good purpose. Taylor Lane is a single lane road traversing a steep hill, with sharp corners. Berms, drainage and ditching are inadequate and maintenance is marginal. Taylor Lane is, at best, marginally adequate for ingress/ingress traffic of the existing three residential and agricultural easement holders.

Furthermore, Taylor Lane traverses a bridge, hereinafter, Taylor Lane Bridge, over a substantial tributary to South Hogan Creek. This bridge was built nearly 100 years ago and has been inadequately maintained in recent decades. This bridge was neither designed nor intended for modern heavy construction traffic. Nor was it designed for heavy fire and emergency vehicles such as fire pumper and tank trucks that might be necessary should a fire occur at the proposed residence, which is without provision for municipal water connection or fire hydrant. Allowing heavy construction traffic across this bridge presents a safety and liability issue which, as owner of the property upon which the bridge is situated, I am not willing to accept without a liability waiver executed by the petitioners.

Additionally, Taylor Lane traverses through the Ohio River floodplain near its intersection with Wilmington Pike. An Ohio River level of approximately 54.5 feet causes Ohio River backwater to cross Taylor Lane near the Taylor Lane Bridge. A similar Ohio River level of approximately 55 feet closes Taylor Lane to automobile traffic. Such closure to traffic on Taylor Lane is a safety and liability issue for residents accessed only via Taylor Lane. Moreover, should police, fire, or emergency vehicles need to access the proposed subject residence, such access might not be available in flood or adverse weather conditions. Granting a variance allowing construction of another residence that can be accessed only via Taylor Lane would be "injurious to the public health, safety, morals, and general welfare of the community," and is proscribed by Article 3, Section 320, Subsection 1, a of the Ordinance.

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Prior to considering the proposed variance, I would invite all Board members to visit and inspect Taylor Lane and, especially, the Taylor Lane Bridge.

Finally, the subject property borders the CSX railway. Growing up on my property in the 1950s, I found the railroad to be an intoxicating attraction to a small child. Indeed, I spent many, many hours exploring the railroad property even though my residence was further removed from the railroad than is the subject parcel. Given the current litigious environment in the United States, I would not consider the subject property appropriate for a residence wherein small children would reside or might be anticipated to reside. Again, I would refer the Board to Ordinance, Article 3, Section 320, Subsection 1, a.

CONCLUSION

In conclusion, I would like to again state that I am not necessarily opposed to the petitioner's request for a variance to build a single, single-family residential building upon the subject property. Indeed, I remain convinced that common ground can be found to allow such construction while, at the same time, protecting my existing legal rights and property, and protecting me from any liability resulting from the acts of the petitioners.

ALTERNATIVE

Should the Board decide to take the subject variance under advisement, pending further review and/or consultation between the petitioners and myself, I remain convinced that a mutually acceptable solution can be found, and remain willing to discuss alternatives with the petitioners.

Specifically, I would not object to said variance under the following conditions:

1. Execution of a written, enforceable, and recorded prohibition against any further subdivision and/or development upon any properties accessed only via Taylor Lane;
2. Execution of a written, enforceable, license allowing traffic exceeding the 26,000 lb. weight limit provisions inherent in the easements of the existing easement holders, only for and during the construction period of the petitioner's single-family residence building. Such construction period to be defined upon execution of said document(s);
3. Execution of a written, enforceable, liability release protecting Steven D. Taylor, his heirs and/or assigns, from any and all liability resulting from any and all construction traffic on or over Taylor Lane resulting from the actions of any and all construction and/or maintenance acts on said parcel;
4. Execution of a written, enforceable, and recorded easement provision providing that the petitioners and/or their heirs or assigns be responsible for their proportional share of any and all maintenance expenses of Taylor Lane from its inception with Wilmington Pike to such extent that Taylor Lane may be used to access said parcel now or in the future;

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5. Execution of a written, enforceable, contract binding the petitioners to repair any damage to Taylor Lane, including berms and the Taylor Lane Bridge, and to the property currently owned by Steven D. Taylor, over which Taylor Lane meanders, resulting from the construction of the petitioner's single-family residence building. Such terms and conditions to be defined upon execution of said document(s);
6. Performance of a boundary line survey between the subject parcel and my property by a practicing, Indiana licensed surveyor. Such survey being necessary to definitively establish the property boundary and to assure compliance with county set-back ordinance(s). Such surveyor being mutually acceptable to both the petitioners and myself; and,
7. Execution of a written, enforceable and recorded easement provision prohibiting drainage of runoff or other waste water from the petitioner's property onto my property resulting from acts of the petitioners.

Please add this document to the minutes of this proceeding and record the minutes into the county records.

Thank you again for your time and consideration.

Respectfully,

Steven D. Taylor

Copy