

BOARD OF ZONING AND APPEALS MINUTES

Tuesday, June 12, 2018

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

Joe Schmeltzer

Mark Lehmann

Nicole Daily – Zoning Administrator

Andrew Baudendistel – Attorney

Members absent: NONE

C. ACTION ON MINUTES: NONE

D. OLD BUSINESS SCHEDULED TO BE REOPENED: NONE

E. NEW BUSINESS-

1. Request: A Development Standard Variance for pond setbacks and on under 5 acres
Applicant/Owner: Steven Williams
Site Location: 8505 SR 350
Legal: Sec 27, T5, R2 Parcel #15-08-27-300-026.001-008
Township: Hogan
Zoning: Agricultural (A) Size: +/-4.49 acres

Ms. Daily presented the staff report, a variance of development standards is requested for a pond on less than 5 acres with the dam's toe of slope closer than 30 feet to the side yard property line as required in Article 25 Section 2544 items 1 and 3 of the Dearborn County Zoning Code. The specific request is a side yard variance of 25 feet and a 0.51 acres variance to the 5-acre requirement.

The property is located off SR 350 a publicly maintained roadway having 60 feet wide rights-of-way, approximately 25 feet pavement width at this location, and a speed limit of 55 MPH. If the variance is approved, the owner will need to obtain a Location Improvement Permit for the pond. The dam and edge of water is proposed to be at a higher elevation than the ground on the neighboring property. If approved staff recommends placing a condition on the approval that the ditch line be maintained as not to interfere with the natural ditch line to avoid potential risks of erosion along neighboring property. There were 5 letters mailed out to adjoining land owners, all 5 letters have been delivered.

Mr. Lehmann asked if 5 feet is enough for the proposed swell to be created and maintained?

Ms. Daily stated that as long as the 5 feet is maintained there should be enough room for a swale.

No further questions from the Board.

Mr. Jacob Williams, on behalf of the applicant, addressed the Board with no further additional statements. Was present on behalf of the property owner as he is out of town for work. He was present in case there were further questions.

Mr. Lehmann, do you know the height that your berm is proposed.

Mr. Williams, around 10-12 feet, but no more than 15 feet.

Mr. Lehmann, will you start your toe of slope at the 5 feet minimum?

Mr. Williams, yes 5 feet.

Mr. Lehmann, is the owner prepared to mow and maintain the toe of slope so the dam is not eroded.

Mr. Williams, yes.

No further questions for applicant.

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

There were no comments from the public.

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

Mr. Beiersdorfer made a motion to grant approval of the variance request of 25 feet setback from side property line and a variance of 0.51 acres to allow for the pond to be constructed on less than 5 acres with the condition that a swale be constructed and maintained between the toe of the dam and the property line to keep drainage with the natural flow of the land. The approval is based on the request has met the criteria set forth in Article 3, Section 320 of the Dearborn County Zoning Ordinance and the attached Finding of Facts. Mr. Pope seconded the motion. All in favor. None opposed. Motion carried.

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| 2. Request: | A Development Standard Variance to create a buildable tract with no road frontage and Modification to removed prior BZA condition of approval |
| Applicant/Owner: | Brian Meyer / Kristen Ehlers & Jeff Mitchelle |
| Site Location: | 27512 Breller Lane |
| Legal: | Sec 17, T7, R1 Parcel #15-01-17-200-016.000-018 |
| Township: | Logan |

Zoning:

Agriculture (A) Size: 22.7 acres

Ms. Daily presented the staff report. The applicant is requesting a modification to a prior condition set by the BZA on a previous land division and a variance to create a new building lot without road frontage. There is currently a sales contract on the requested property and the prospective purchasers are wishing to create an additional building site for their daughter. On April 18, 1983 a request was made to the Board of Zoning Appeals to split a 50-acre tract into two lots. The Board approved the request with the condition restricting further subdivision of either tract, establishing the need to request a modification of the condition of the prior approval in 1983 and an additional variance to create a buildable lot without road frontage for the applicant's daughter. Staff recommends that if the request is approved that the Board place a condition on approval that the property be restricted to no further divisions since the reasoning for the original restriction is not known. Should the Board decide to grant approval of the modification then the Board may then decide whether to grant the variance of development standards and allow an independent building lot without road frontage.

Staff assumes Breller Lane was never recorded as an easement because it was not determined which direction Witt road traversed. Staff has recommended an easement be drafted and recorded, as opposed to the current gentlemen's agreement for maintenance of the lane.

Micha and Brian Meyer, subject buyer of property/applicants, addressed the Board and stated that they have been in contact with every property owner along the lane about the easement. Bob Gaynor owner of property along the Witt Road and Breller Lane intersection does not like legal documents and prefers the handshake. All property owners seem to be fine with signing the gentlemen's agreement with the exception of Mr. Gaynor not wanting the document recorded. In the current agreement any changes to the lane has to be mutual to all. There is no maintenance agreement rather if it is needed all property owners would get together and talk about maintenance, currently only access is granted.

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

Mr. Dave Hartman, property owner of lands on the West side of Breller Lane from Witt road to the end of Breller Lane, addressed the Board and stated that ever since he has been there which is now about 70 years, he can tell say where Witt Road has been and where it now goes. His concern is how many more times is the property going to be split with such poorly defined access. I don't have a problem putting one new home here for their daughter, but there's too many uncertainties in the future. He would rather not see any more houses. He also listed several concerns he had that the previous owners have done to negatively affect his property. The more people you allow back in there the more things will happen that can't be controlled.

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

Mr. Pope stated that he could get behind this with the condition that the option to put a secondary house in an agriculture district be removed to restrict further development back there, until such time that Breller Lane were to become a public road.

Mr. Lehmann stated that he didn't have a problem with the current agreement being written down so it can be traced as an ingress egress easement, but he had concerns with the fact that in 1983 the Board determined that the lot could not be split but again another request to split the lot. When Mr. Sergeant split the lot in 1983 was that a condition he agreed to in order to satisfy the Board and the surrounding property owners along Breller Lane. He can understand that before stated condition, that helps but he would like more advice as to why it's not written down in stone a little more than it currently is.

Mr. Schmeltzer stated that he hoped that with better record keeping this is documented going forward.

Mr. Beiersdorfer stated that it was stated by Ms. Daily best, because you can put a secondary home in an agricultural zoning district if they wanted to build they could build and the Board couldn't stop that, but that they are needing to do this to obtain financing.

Mr. Pope made a motion to approve the modification to the previous Board of Zoning Appeals decision on April 18th, 1983 to restrict subdivision of property, then allowing this request split. The approval is based on the request has met the criteria set forth in Article 3, Section 320 of the Dearborn County Zoning Ordinance and the attached Finding of Facts. Motion seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Mr. Pope made a motion to grant approval of the request to create a buildable lot with no road frontage with the condition that neither tract, the existing lot or proposed lot split, be allowed to be split again nor shall the tracts be privileged to allow a secondary residence as allowed under Article 9, Section 920, Item 4. The approval is based on the request has met the criteria set forth in Article 3, Section 320 of the Dearborn County Zoning Ordinance and the attached Finding of Facts. Motion seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

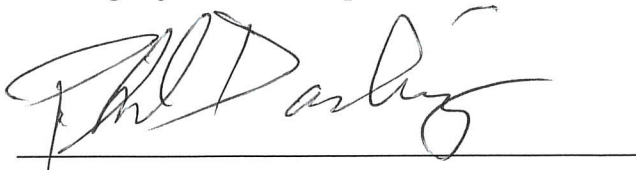
F. ADMINISTRATIVE

Ms. Daily stated there will be no July meeting.

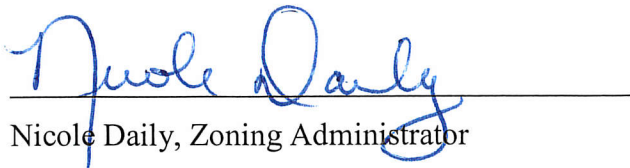
Mr. Baudendistel provided the board an update on a legal case, BZA v. Hammond. Judge has signed the order and the property will be forwarded to sheriff sale in 90 days.

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

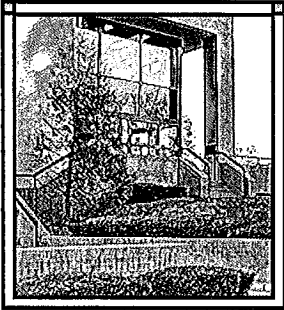
Meeting adjoined at 9:00 p.m.



Phil Darling, Chairman



Nicole Daily, Zoning Administrator



Dearborn County Plan Commission

Board of Zoning Appeals: Findings of Fact Development Standard Variance

165 Mary Street
Phone: (812) 537-8821
Lawrenceburg, IN 47025
Fax: (812) 532-2029
www.dearborncounty.org/planning

CASE TITLE: Williams--Pond property line setback and less than 5 acres variance

CASE NUMBER: 18BZA0612-001

PROPERTY ADDRESS: 8505 SR 350, Aurora, IN 47001 (15-08-27-300-026.001-008)

PROJECT DESCRIPTION:

The property owner wants to construct a pond on property he owns at 8505 SR 350. The setback requirement for a pond is 30 feet from any property line and it is required to have 5 acres or more to construct a pond. The toe-of-slope will be within 5 feet of the northern property line and the property contains 4.49 acres. Therefore the applicant is requesting a variance of 25 feet for setback from the property line and a variance of 0.51 acres to construct a pond on less than 5 acres.

Variances approved:

- 1) Toe of slope of dam can be no closer than 5 feet from the northern property line
- 2) The pond can be constructed on a tract less than 5 acres. Existing acreage is 4.49 AC

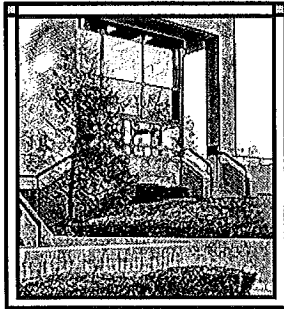
ZONING ORDINANCE: Article 25, Section 2554

ARTICLE NOTES:

Items number 1 an 3 and within Section 2554

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on **June 12, 2018** (date). After testimony was given and evidence was presented to the Board, a motion was made to **APPROVE** or **DENY** the request for a development standard 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 Development Standard 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:



Dearborn County Plan Commission

Board of Zoning Appeals: Findings of Fact Development Standard Variance

165 Mary Street Lawrenceburg, IN 47025
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1. That the approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, morals, and general welfare of the community:

The approval WILL NOT be injurious to the public health, safety, morals and general welfare of the community. The pond will be elevated higher than the surrounding ground creating a hillside from the northern properties.

2. That the approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner:

The approval WILL NOT affect the use and value of the area adjacent to the property as the majority of the surrounding properties are residential and ponds can create natural characteristic to the area. The pond would serve a small value to the adjoining property to help decrease and slow the water drainage from the subject property.

3. That the approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which is defined as a significant development limitation in Article 3, Section 320 of the Dearborn County Zoning Ordinance:

The approval IS the minimum variance necessary to eliminate practical difficulties in the use of the property. With the topography of the land it will allow a better area for the pond location and drainage into the pond. The pond will help support drainage in the surrounding area.



Dearborn County Plan Commission

Board of Zoning Appeals: Findings of Fact Development Standard Variance

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If the Board of Zoning Appeals approves the Development Standard Variance it will apply to the subject parcel until such a time as (a) the improvement in which the variance was granted for is not built, constructed, established or permitted within twelve (12) months of the date of the approval, (b) the use of the variances ends, is vacated, or unused for twelve (12) months consecutively, or (c) the property conforms with the applicable Zoning Ordinance as written.

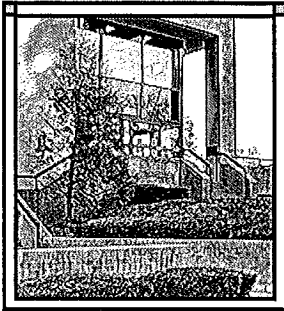
The approval of this application is subject to the following reasonable conditions being met and maintained by the applicant and current and all future property owners or entities responsible for the conditions of this property:

- 1) The property owner must maintain a swale along the northern property line, between the toe of slope and the adjoining properties to the north. This will allow the natural water flow to continue to drain around the pond without causing back of water onto the neighboring properties.

*Said conditions must be attached to any permit that is issued for the proposed improvement or a signature is required hereto these conditions and attached to a previously issued permit of the improvement.

Owner's Signature

Date



Dearborn County Plan Commission

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CASE TITLE: Meyer--Variance buildable tract with no frontage and Modification

CASE NUMBER: 18BZA0612-002

PROPERTY ADDRESS: 27512 Breller Lane, West Harrison, IN 47060

PROJECT DESCRIPTION:

The buyer of the property wants to split off a tract of ground for their daughter to build a house next to the house they are buying. The original tract was split in 1983 and was before the BZA to split with no road frontage. The Board approved the request with the condition restricting further subdivision of either tract. The Board must modify the previous condition to allow for further subdivision of the lot. The Board must approve a variance to create a buildable tract with no road frontage.

Approval was granted for the variance of road frontage and the modification to the prior restriction of 1983.

ZONING ORDINANCE: Article 25, Section 2502

ARTICLE NOTES:

Minimum frontage for an agricultural district is 150 feet

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on **June 12, 2018** (date). After testimony was given and evidence was presented to the Board, a motion was made to **APPROVE** or **DENY** the request for a development standard 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 Development Standard 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:



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1. That the approval, including any conditions or commitments deemed appropriate, will not be injurious to the public health, safety, morals, and general welfare of the community:

The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community. The location of the split is far from other residential development. The location and vegetations in the area, even most adjoining will not notice the addition of one single family residents.

2. That the approval, including any conditions or commitments deemed appropriate, would not affect the use and value of the area adjacent to the property included in the variance in a substantially adverse manner:

The approval WILL NOT affect the use and value of the area adjacent to the property as the majority of the surrounding properties are vegetative woodlands and some residential structures. Most will not even notice the addition of one single family residents therefore not affecting the value of the area.

3. That the approval, including any conditions or commitments deemed appropriate, is the minimum variance necessary to eliminate practical difficulties in the use of the property, which is defined as a significant development limitation in Article 3, Section 320 of the Dearborn County Zoning Ordinance:

The approval IS the minimum variance necessary to eliminate practical difficulties in the use of the property as the existing two properties are exactly the same. There is no means to change the existing conditions of the lack of public road frontage.



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The approval of this application is subject to the following reasonable conditions being met and maintained by the applicant and current and all future property owners or entities responsible for the conditions of this property:

1. Neither tract, the existing lot or the proposed lot split, be allowed to be split again.
2. Neither tract, the existing lot or the proposed lot split, shall be privileged to allow a secondary residence as allowed under Article 9, Section 920, Item 4.

*Said conditions must be attached to any permit that is issued for the proposed improvement or a signature is required hereto these conditions and attached to a previously issued permit of the improvement.

Owner's Signature

Date