

BOARD OF ZONING AND APPEALS MINUTES

Tuesday, December 12, 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:

Mr. Beiersdorfer made a motion to approve the minutes as corrected for the August 8, 2017 meeting and the Finding of Facts. Seconded by Mr. Thatcher. All in favor. None opposed. Motion carried.

Mr. Beiersdorfer made a motion to approve the minutes as written for the November 14m 2017 meeting and the Finding of Facts. Seconded by Ms. Ohlmansiek. All in favor. None opposed. Motion carried.

D. OLD BUSINESS SCHEDULED TO BE REOPENED:

- Request:** A Variance for side yard setback and driveway spacing.
Applicant/Owner: Seig Surveying/Roseann Fuernstein
Site Location: 26731 Lawrenceville Road
Legal: Sec. 24, T8, R3 Parcel #15-03-24-100-010.000-009
Township: Jackson
Zoning: Agricultural (A) Size: 2.336 acres

This item has been tabled in the meetings set in October and November. It was tabled in October for lack of advertisement for a secondary variance request. It was tabled in November for the lack of attendance to the meeting by the applicant.

Ms. Daily presented the staff report and slide presentation. The property owner is wanting to split the existing parcel of 3.336 acres into two buildable lots. In order to split property the new property line would be 27 feet from the existing house (which will be on one lot) and 5 feet from the existing barn (which will be on the second lot being created). Requirements for newly created lot lines the setbacks must be met for existing structures. The setback for the existing house would need to be 30 feet, therefore needing a 3 foot variance. The 2.33 acre proposed track would also need a driveway spacing variance for a proposed driveway to access this newly created lot. The required driveway spacing for a roadway with a 50 MPH speed limit is 275 feet. The proposed driveway would be constructed between two existing driveways which are currently 275 feet from each other, therefore the proposed driveway would need a variance to the existing driveway to the north and the existing driveway to the south. The County Engineer, Todd Listerman, wanted the two properties to have a shared driveway, but the applicant would like two separate driveways since there is more than enough site distance for each driveway.

Letters were sent out again to all the adjoining. Only one phone call was received, a neighbor to the north wanted to make sure he wasn't missing out on any additional information since numerous letters were sent out. The neighbor had no other objections.

The Board had no questions for Ms. Daily.

Mr. Rob Seig, from Seig Surveying, the applicant, addressed the Board on behalf of the property owner for this request. Mr. Seig handed out driveway variances that were granted in the recent past meetings located in different areas of the County. Mr. Seig feels the scenario will be safe if the variance is granted because the sight distance is far greater than required for the speed limit of the road. Mr. Seig handed the Board photos of the current driveway, house, and road looking in both directions. Mr. Seig doesn't believe there is an issue if you compare the scenario to the variance examples he handed out to the Board. The property owner, Ms. Fuernstein, wants her own driveway and doesn't want a shared one with the neighbors, which could cause future maintenance issues. It is a safe situation even though it doesn't meet the code for driveway spacing on a road in which the speed limit is 50 MPH.

The Board had no questions for the applicant.

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

There was no public wishing to speak on this request.

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 approve a variance of 3 feet for the sideyard setback on the existing residential structure for Ms. Fuernstein on her property located in Jackson Township. 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. Seconded by Mr. Beiersdorfer. All in favor. None opposed. Motion carried.

Mr. Beiersdorfer made a motion to approve a variance for driveway spacing for a proposed driveway; a variance of 245 feet to the northern closest existing driveway and a variance of 65 feet to the southern closest driveway. 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. Seconded by Mr. Darling. All in favor. None opposed. Motion carried.

E. OLD BUSINESS TO REMAIN TABLED: NONE

F. NEW BUSINESS

1. **Request:** A Variance of Use for continuance operation of restaurant and banquet hall in an agricultural district.
Applicant/Owner: DA Kraus Surveying / Terry & Connie Zimmer
Site Location: 7211 Hyland Road
Legal: Sec. 23, T7, R2 **Parcel #**15-02-23-100-004.000-010
Township: Kelso
Zoning: Agricultural (A) **Size:** 2.6 acres (proposed)

Ms. Daily presented the staff report and slide presentation. A variance approval to continue the operation of an existing restaurant and banquet hall in an agriculture district. The owner previously operated a golf course with restaurant and banquet hall on the property. The golf course operations have since ceased but the restaurant and banquet hall have continued to operate. The property owner is looking to sell this portion of the property, but want to ensure that a potential buyer will be able to continue to restaurant and banquet hall use on the property without the existence of the golf course. Since the restaurant and banquet hall were uses associated with the golf course the property owner will need a variance of use to continue operations in an agriculture district.

The golf course was originally approved in January 1998 for a conditional use of a golf course in an agriculture district, but since the golf course will no longer be in operation the remaining restaurant and banquet hall are not listed as conditional uses in an agriculture district. There is no specific code that outlines banquet halls as a permitted use within an agriculture district, therefore the variance of use is needed to continue the use without the golf course. The uses were permitted when the restaurant and banquet hall were associated with the golf course.

There were 14 letters were mailed out, 9 were delivered, and 5 remain in transit. No phone calls were received.

Mr. Darling asked if a variance for a pond would be needed.

Ms. Daily stated that since the line it is on is already existing and the split would not be creating a greater non-conforming issue, so there would be no need for a variance.

The Board had no further questions for Ms. Daily.

Mr. Dennis Kraus Jr., applicant on behalf of the property owner, addressed the Board for the request. Mr. Kraus stated that the owner is not set on an exact acreage at this time but it will probably be between 2 or 3 acres. Mr. Kraus presented a drawing to the Board that shows both driveways will be accessed with the restaurant and banquet hall. The property line will meet current setbacks of 30 feet. The existing owners don't want a new owner to change the use of the restaurant and banquet hall when they sell it. All of the utilities are present. The business is existing and currently functioning and the owners would like to sell the establishment as it is currently being used.

The Board had no questions for Mr. Kraus.

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

There was no one from the public wishing to speak on this case.

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

Mr. Thatcher made a motion to approve the variance of use for the continuance operation of the existing restaurant and banquet hall for Terry and Connie Zimmer on property located at 7211 Hyland Road. 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. Seconded by Ms. Ohlmansiek. All in favor. None opposed. Motion carried.

2. Request:	Variances for building density and setbacks	
Applicant/Owner:	Andrew Hereman / Drewfab, LLC	
Site Location:	321 North State Street	
Legal:	Sec. 13, T7, R1	Parcel #15-01-13-401-007.000-007
Township:	Town of West Harrison	
Zoning:	Business (B)	Size: 0.736 acres

Ms. Daily presented the staff report and slide presentation. The property owner is requesting a variance to increase the allowable building density on one parcel and building setbacks in a Business district. The property owner would like to construct another building related to his business that has continued to grow over the last several years. This will be the third building constructed for the business. The proposed building would be 6,025 S.F. The existing building 5200 S.F. of gross floor area. The maximum based square footage based on the ordinance is 5,888 S.F. for the 0.736 acres. Therefore, the gross floor area is

proposed to be 11,225 S.F., making the requested variance for a 90% increase over the maximum square footage permitted.

The property owner is also requesting rear and side yard setback for the proposed building. The building would be 1 foot from the rear property line (west) and 1 foot from the side property line (north). The required building setback is 8 feet from the rear and 8 feet from the side. Therefore, a variance is needed of 7 feet for the rear setback and 7 feet for the side setback.

Property is located in a floodplain area but the applicant has completed a LOMA application through FEMA, therefore has been taken out of the floodplain based on the elevation of the property.

Since the property is located in the Town of West Harrison, the Board acts on behalf of the Town which is setup through an interlocal agreement between the Town and the County. Any applications are always discussed with the Town during a public hearing, prior to the Board of Zoning Appeals meetings. This case was heard by the Town of West Harrison on December 11, 2017. The Town Board had no objections to the request and are in support of the approval of the request as Mr. Hereman has made improvements of properties that were vacant for many years and want the business to be able to grow in the Town.

There were 5 letters mailed out, 2 have been delivered and 3 remained in transit.

The Board had no questions for Ms. Daily.

Mr. Andrew Hereman, applicant / owner, addressed the Board regarding the request. He stated to the Board that the building is will be used to expand his growing business. He has put a lot of investment into the property and wants to remain at the current location. He would like to invest in the business and grow in the Town of West Harrison.

The Board had no questions for Mr. Hereman.

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

There was no one from the public who wished to comment on this case.

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

No further discussion from the Board.

Mr. Darling made a motion to approve a variance of 7 feet for the rear yard setback, a variance of 7 feet for the side yard setback and a variance of a 90% increase over the maximum permitted square footage of building density on a single property; for applicant Andrew Hereman, owner Drewfab, LLC on property located on North State Street in the Town of West Harrison. 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. Seconded by Mr. Thatcher. All in favor. None opposed. Motion carried.

G. ADMINISTRATIVE


The new schedule for 2018 was handed to the Board members for their review. The schedule will be approved by the Plan Commission at their December meeting.

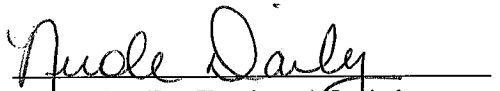
There will be one case for the meeting in January 2018.

Ms. Ohlmansiek's term expires this month and she has asked to be replaced. A council meeting will be held January to appoint a replacement. Ms. Daily thanked Ms. Ohlmansiek for her many years of service.

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

Meeting adjoined at 8:00 p.m.


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

www.dearborncounty.org/planning

CASE TITLE: Fuernstein--a side yard setback variance and driveway spacing variance

CASE NUMBER: 17BZA1010-007

PROPERTY ADDRESS: 26731 Lawrenceville Road

PROJECT DESCRIPTION:

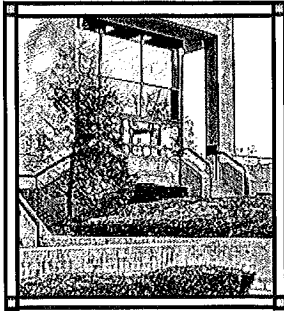
The property owner is wanting to split the existing parcel into two buildable lots. The new property line would be 27 feet from the existing house and 5 feet from the existing barn. Any newly created lot the setbacks must be met for existing structures. The setback for the existing house would need to be 30 feet, therefore needing a 3 foot variance. The 2.33 acre proposed track would also need a driveway spacing variance for a proposed driveway to access this newly created lot. The required driveway spacing for a roadway with a 50 MPH speed limit is 275 feet. The proposed driveway would be constructed between two existing driveways which are currently 275 feet from each other, therefore the proposed driveway would need a variance to the existing driveway to the north and the existing driveway to the south.

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on December 12, 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. *Approval and votes were same for both request.*

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 variances WILL NOT be injurious. The building setback is for existing structures and the distance between the structures will not change. The driveway spacing WILL NOT be injurious as the sight distance exceeds the requirement for the speed limit. Therefore maintaining the safety of traffic.



Dearborn County Plan Commission

Board of Zoning Appeals: Findings of Fact

215 B. West High Street

Lawrenceburg, IN 47025

Phone: (812) 537-8821

Fax: (812) 532-2029

www.dearborncounty.org/planning

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:

The variances WILL NOT have an adverse value to the area. The building setback is based on existing conditions therefore nothing will appear different. The driveway spacing WILL NOT have an adverse value of the area as the the proposed driveway exceeds the required sight distance and will not hinder the safety of the area.

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 need for the variances DOES arise from a peculiar condition, as the buildings are existing and allows for the space to create two buildable lots. This variance offers the property to be split, which will conserve surrounding agriculture farming ground, which is a goal set forth through the Dearborn County Comprehensive Plan.

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:

The strict application WILL constitute an unnecessary hardship because the buildings are existing and can not be moved. There would be no other location for the proposed driveway as neighboring driveways already exist.

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

The special conditions and circumstances DO NOT result from the actions of the applicant as the structures are existing and the neighboring driveways are existing which do not allow other options for the applicant.



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

www.dearborncounty.org/planning

CASE TITLE: Zimmer--variance of use to continue operation of an existing use in Ag

CASE NUMBER: 17BZA1212-001

PROPERTY ADDRESS: 7211 Hyland Road

PROJECT DESCRIPTION:

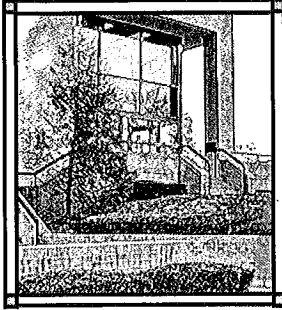
Previously a golf course with restaurant and banquet hall existed on the property. The golf course operations have ceased but the restaurant and banquet hall continue to operate. The owner is wanting to sell the restaurant, but want to ensure the restaurant and banquet hall use can continue without the golf course. Since the restaurant and banquet hall were uses associated with the golf course the property owner will need a variance of use to continue operations in an agriculture district. The golf course was originally approved in January 1998 for a conditional use of a golf course in an agriculture district, but since the golf course will no longer be in operation the remaining restaurant and banquet hall are not listed as conditional uses in an agriculture district.

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on **December 12, 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 use **WILL NOT** be injurious to the public health, safety, morals and general welfare of the community. The restaurant and banquet hall have been in operation since 1999 and have already proven not to be injurious to the public. The continuance without the golf course will not change that.



Dearborn County Plan Commission

Board of Zoning Appeals: Findings of Fact

215 B. West High Street

Lawrenceburg, IN 47025

Phone: (812) 537-8821

Fax: (812) 532-2029

www.dearborncounty.org/planning

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:

The use WILL NOT have an adverse value to the area. The restaurant and banquet hall have been in operation since 1999 and the surrounding area continues to grow proving the continuance of the use will not substantially affect the surrounding area in an adverse manner.

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:

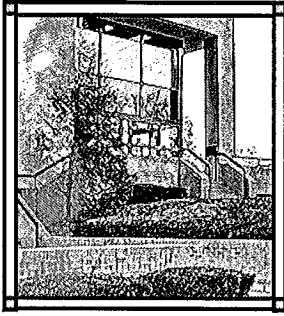
The need DOES arise from a peculiar condition, the restaurant and banquet hall have been in operation since 1999 and although the golf course was unable to serve economically the restaurant business continues to serve even without the golf course. This business was already approved even if it was associated with a golf course.

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:

The strict application WILL constitute an unnecessary hardship because the restaurant and banquet hall have been in operation since 1999 and being unable to continue the use will be a major hardship to the property owner for the lost in value of the existing structure and business.

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

The special conditions and circumstances DO NOT result from the actions of the applicant as the use has been in existence since 1999 and just because the golf course could not serve financially doesn't mean the restaurant should suffer that loss as the business has not suffered from the closing of the golf course.



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

www.dearborncounty.org/planning

CASE TITLE: Drewfab--variance for setbacks and building density

CASE NUMBER: 17BZA1212-002

PROPERTY ADDRESS: 321 North State Street, West Harrison, IN 47060

PROJECT DESCRIPTION:

The property owner would like to construct another building related to his business that has continued to grow over the last several years. This will be the third building constructed for the business. The proposed building would be 6,025 S.F. The existing building 5200 S.F. of gross floor area. The maximum based square footage based on the ordinance is 5,888 S.F. for the 0.736 acres. Therefore, the gross floor area is proposed to be 11,225 S.F., making the requested variance for a 90% increase over the maximum square footage permitted.

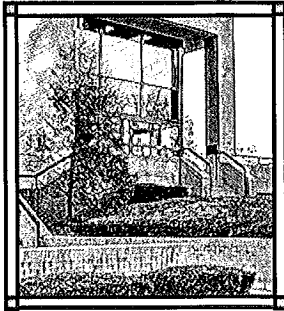
The property owner is also requesting rear and side yard setback for the proposed building. The building would be 1 foot from the rear property line (west) and 1 foot from the side property line (north). The required building setback is 8 feet from the rear and 8 feet from the side. Therefore, a variance is needed of 7 feet for the rear setback and 7 feet for the side setback.

The Dearborn County Board of Zoning Appeals conducted a hearing regarding the application on December 12, 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 variances **WILL NOT** be injurious to the public health, safety, morals and general welfare of the community. The existing business is growing which is a positive for the community and it establishes a use for a vacant property that was a detriment to the community as safety is always a concern for vacant rundown properties.



Dearborn County Plan Commission

Board of Zoning Appeals: Findings of Fact

215 B. West High Street

Lawrenceburg, IN 47025

Phone: (812) 537-8821

Fax: (812) 532-2029

www.dearborncounty.org/planning

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:

The variances WILL NOT have an adverse value to the area. The property was vacant and rundown and the proposed improvements will only add value to the surrounding business area.

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 need DOES arise from a peculiar condition, the property is located in between a river, railroad tracks and public roadway. The same ordinances and conditions did not exist when the property was created and used for businesses and therefore with the current standards this property could not be used for business as it is zoned.

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:

The strict application WILL constitute an unnecessary hardship because the property is located in between a river, railroad tracks and public roadway. The ordinances did not exist when the property was created and used for businesses and therefore with the current standards this property could not be used for business as it is zoned.

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

The special conditions and circumstances DO NOT result from the actions of the applicant as the property is located in between a river, railroad tracks and public roadway. The same ordinances and conditions did not exist when the property was created and used for businesses and therefore with the current standards this property could not be used for business as it is zoned.