

MINUTES

**POSEY COUNTY
BOARD OF ZONING APPEALS
REGULAR MEETING**

**THE HOVEY HOUSE
330 WALNUT STREET
MT. VERNON, IN 47620**

**FEBRUARY 11, 2021
5:00 P.M.**

MEMBERS PRESENT: Mr. Larry Williams-Chairperson, Mr. Ron Fallowfield–Vice Chairperson, Mr. Mark Seib, Mr. Larry Droege, Dr. Keith Spurgeon (via Zoom), Mrs. Beth McFadin Higgins – Attorney, Mrs. Mindy Bourne –Executive Director, and Mrs. Becky Wolfe – Administrative Assistant

MEMBERS ABSENT: None

Oaths were given by Attorney Beth McFadin Higgins to Ron Fallowfield, Mark Seib and Keith Spurgeon.

APPROVAL OF MINUTES FOR LAST REGULAR MEETING: Mark Seib made a motion in the affirmative to approve the minutes of the last regular meeting as emailed. Motion seconded by Larry Droege. **Motion carried.**

SPECIAL USE

DOCKET NO: 20-15-SU-BZA

APPLICANT: Rick Pharr

OWNER: Rick G. & Norma J. Pharr

PREMISES: A part of the Southeast corner of the North half of the Southwest quarter of Section 3, Township 4 South, Range 13 West, containing 6 acres, more or less, lying in Robb Township. More commonly known as 3401 Saxe Road, Poseyville, Indiana. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Special Use for a home occupation (woodworking shop) in an A (Agricultural) Zoning District Section 153.032 (B) (12) Use Unit 28 – Home Occupations, and Section 153.173 of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Larry Williams confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

RICK PHARR: 3401 Saxe Road, Poseyville, Indiana. The Area Plan Board asked me to apply for a permit to do my woodworking projects.

MINDY BOURNE: A little history here. There was a complaint filed that Mr. Pharr was operating a woodworking shop out of his pole barn at his house. The complaint is still pending. We have heard from both parties. The Area Plan did advise Mr. Pharr that if he was truly operating a woodworking business that he needed to come before this body and apply for a Special Use permit. He has now filed for a Special Use.

LARRY WILLIAMS: Does anyone on the board have any questions for Mr. Pharr?

MARK SEIB: Mr. Pharr the main lead on your complaint was noise from your shop and your dust collector. Have you been able to do anything with that to...?

RICK PHARR: I have turned in a report from...

MARK SEIB: Yes, but I want the BZA to understand what you have done.

RICK PHARR: I had a guy come out and do a sound check in the shop and over 20 feet off the property line, which was still on me. He laughed the whole time he was there. It was well below sound barrier levels. I sent the report in to Area Plan.

LARRY WILLIAMS: Did we have documentation for that?

MINDY BOURNE: Yes, I do have a copy here with me as well.

RON FALLOWFIELD: It was well below the 80 decibels?

RICK PHARR: Yes.

LARRY WILLIAMS: What are your hours? Are you doing this as a hobby or a business?

RICK PHARR: It is just a hobby. I do not do it every day. People will call me and ask me if I can build something for them. The only thing I charge is the materials and some of them will bring the materials to me.

LARRY WILLIAMS: Is there a specific time that you are doing this that you are getting complaints? Late in the evening?

RICK PHARR: No, I only had one complainant. He isn't even the closest neighbor to me.

LARRY DROEGE: Rick do you have any plans in the future to apply for a commercial business? Right now, you don't have any plans on becoming a commercial business?

RICK PHARR: No, it is just a hobby. I do not do it every day. I do not charge for my work.

ATTORNEY BETH MCFADIN HIGGINS: There was a report that was referenced and if you want that to be a part of this record, then the Board or Mr. Pharr would need to request that the sound report be a part of this record also.

A motion was made to reference a report by Ron Fallowfield for Special Use 20-15-SU-BZA. Motion was seconded by Larry Droege.

MARK SEIB: What are your plans for hours of operation? Are you planning on working late at night or during the day light hours.

RICK PHARR: I don't really have any set hours.

MARK SEIB: But what I am saying is you aren't going to be out there working at 1 a.m.?

RICK PHARR: No.

MARK SEIB: You would be doing regular business hours to accomplish most of your work?

RICK PHARR: Yes.

LARRY WILLIAMS: What is the latest time that you think you would be out there?

RICK PHARR: I'd say 9 or 10 p.m. It all depends on the weather. If it is hot, I will wait until later into the evening to go out and work because I do not have air conditioning out in the shop.

LARRY WILLIAMS: The reason I ask is because if we approve this, we would probably want to put a time limit on how late you can work on it.

RICK PHARR: I would say 10 o'clock at the latest that I would work.

LARRY DROEGE: My question is to the Board. If Rick was applying for a commercial license and had a commercial business, would that change our discussion about how he came before our committee or the fact that it is home use is different than if he was an established business?

MARK SEIB: It means more because it means you don't have employees and you don't have daily deliveries. I guess you could have daily deliveries, but you don't have the traffic as you would if you had a shop or a store. It is more of a quiet little business.

ATTORNEY BETH MCFADIN HIGGINS: A person can have an LLC and still be a home

occupation. He will only be able to sell what is made on the property. He cannot retail sell other items. He cannot have employees and the signage is different.

LARRY WILLIAMS: Any further questions from the Board? We will now open it to the public portion. Is there anyone here that would like to speak for or against this request?

CHRIS KOESTER: 3431 Saxe Road, Poseyville, Indiana. I came to the last meeting and we discussed all of this. I have some things to submit first.

LARRY WILLIAMS: 3 documents, 23 pages, "Exhibit 1".

ATTORNEY BETH MCFADIN HIGGINS: You will need to identify what this is.

LARRY WILLIAMS: What is in Exhibit 1?

CHRIS KOESTER: When we left the meeting the last time, your Commission asked that we get along and come to an agreement. With that he has went publicly on Facebook with the complaint that I filed with you guys.

LARRY WILLIAMS: You filed it with the APC, not with us.

CHRIS KOESTER: Mr. Pharr went public with the complaint that I filed. It had my name and phone number on it and from there it went into a total harassment. I came to you guys in truth, I called the office three times before I filed any complaint with him because I was trying to be merciful about it because I know he likes to make things, but now has come to "he has sexually harassed me" ...

LARRY WILLIAMS: Again, you have filed the complaint with the Area Plan Commission, that is not this Board. He is now in front of us asking for a Special Use permit. We just need to know what is exactly in that exhibit and what was the purpose of submitting it.

CHRIS KOESTER: That is all what he has said about me.

MINDY BOURNE: It looks like it is all Facebook.

LARRY WILLIAMS: Alright, "Exhibit 2" is 3 pages.

CHRIS KOESTER: This is how he acts towards neighbors. This is how he treats us.

MINDY BOURNE: 3 pages and it looks like more stuff from Facebook.

LARRY WILLIAMS: "Exhibit 3" says something about selling items.

CHRIS KOESTER: Yes, selling items for money.

LARRY WILLIAMS: Give us a moment to look over these documents. How are your documents relevant to his request for this application?

CHRIS KOESTER: I would think when he took my information and posted it for the public. He is harassing me and that is where it draws the line. He has called me a lot of names. This is not right and he said in those posts that he is going to do whatever he wants to anyway.

LARRY WILLIAMS: Do you have any documentation that his noises are above the allowable level? Do you have anything to show that he is violating that ordinance?

CHRIS KOESTER: No, I don't.

LARRY WILLIAMS: He has documentation that shows that he is not. If you are for this or against this you can explain why.

CHRIS KOESTER: I am against this.

LARRY WILLIAMS: You made a statement that he is violating the noise levels, do you have documentation to prove that?

CHRIS KOESTER: I didn't say that he was violating the noise levels, I just said it is very noisy. I don't know the laws.

LARRY WILLIAMS: Does anyone on the Board have any questions for Mr. Koester? You may have a seat. Anyone else that would like to speak for or against this request? We will now close the public portion and open it among the Board.

Larry Williams confirmed with Mindy Bourne there were no emails, phone calls, or letters.

MARK SEIB: I think through this process Mr. Koester is confused, that the Area Plan is the one that heard the complaint at the very beginning of this situation. This is the Board of Zoning Appeals and this is where Mr. Pharr has made an application for it to be legal for him to go ahead and sell items from his home. It is not for a commercial use. It is only for a home occupancy. That is where he needs to come in and make a request for a Special Use permit. That is what this application is for right here. Before this was brought before the Area Plan it was not proved that he was and it was not proved that he wasn't selling stuff. The Area Plan made a comment for the two to try and work it out and try and figure out what they need to do to settle this situation. Supposedly it didn't go as well as we thought or have heard. The two are not in total agreement but Mr. Pharr is trying to go ahead and make this as legal as possible for him to have the home work shop. With that being said I know his application has been made to do so. Mr. Pharr you are located in an area that is residential and it is not intended for you to work late

and it is not intended for you to have a lumber truck deliver a whole truck of lumber, or such things like that, all hours of the day. It is made to work within the surrounding area which is people's homes. I know there has been a feud going on between the two. Mr. Pharr has sent the noise level readings that he had and yes, I read them too. They do meet the requirements of being a workable situation. The application before us is not to decide who is right or wrong. The application before us is to take up and decide if Mr. Pharr can have his woodworking shop on his property.

LARRY WILLIAMS: I do have to say, Mr. Pharr, that I am concerned that you were asked if you were selling stuff point blank and you said "no".

RICK PHARR: I build stuff and they just pay me for the materials. I do stuff for the Boy Scouts. They pay me for the materials. I have letters from the people I have built stuff for and I gave them to the Area Plan. They all stated that I did not sell them anything.

LARRY WILLIAMS: Like Mark said, I don't think we are going to, nor should we, get in the middle of this.

ATTORNEY BETH MCFADIN HIGGINS: On the Home Occupation, let's just be clear, the sale of merchandise is restricted to the sale on the premises. It has to be manufactured, or made, on the premises to be sold. There is no restriction if something is made on the premises and then brought to a store. It only restricts it to what is sold on the property.

LARRY WILLIAMS: Any action from the Board?

RON FALLOWFIELD: 80 decibels is way below the standards, so he is below the standards of noise. With that part there is no issue.

A motion was made in the affirmative contingent with hours of operation from 8am to 9pm by Mark Seib to approve Special Use 20-15-SU-BZA. Motion was seconded by Larry Droege. The Special Use Voting Sheet was read. **Roll call vote (5-0) Yes.**

SPECIAL USE & VARIANCE:

DOCKET NO: 21-01-SU-BZA & 21-01-V-BZA

APPLICANT: Charlie Seifert

OWNER: School City of Mt. Vernon

PREMISES: South Part Section 5, Township 7 South, Range 13 West, lying in Black Township, Posey County, Indiana, containing 7.02 acres more or less. More commonly known as 6th/Harriett Street, Mt. Vernon, Indiana. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Special Use to build an 18' x 36' baseball storage building in an RT (Residential Townhouse) Zoning District Section 153.044 (B) (3) Use Unit 4 Community Services, 153.149 (B) (21) and Variance for relaxation of front yard setback from 25' to 16' Section 153.045 (B) (1) (b) of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Larry Williams confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

CHARLIE SEIFERT: 1000 West 4th Street, Mt. Vernon, Indiana. We are wanting to build a baseball building for storage. The old one burned down in the fall and we are wanting to replace it with a similar structure.

MARK SEIB: Is it going back on the same identical spot?

CHARLIE SEIFERT: Yes, it is.

MARK SEIB: So, it was there before with that restriction of 16 feet?

CHARLIE SEIFERT: Yes.

LARRY DROEGE: Will the building have utilities?

CHARLIE SEIFERT: Yes, just electric.

LARRY DROEGE: I assume it has been approved by the school board? Or does it need to be approved by the school board?

CHARLIE SEIFERT: They are aware, but it does not have to be approved.

LARRY WILLIAMS: You may have a seat and we will now open this for the public portion. Is anyone here to speak for or against this request? Hearing none we will close the public portion. We will now open this for the Board to discuss.

RON FALLOWFIELD: I do have one question. If this is replacing a building that burned, why do we have to go through this?

MARK SEIB: Because of the setback. Once a building is destroyed you have to meet the new requirements.

RON FALLOWFIELD: Makes sense.

Larry Williams confirmed with Mindy Bourne there were no emails, phone calls, or letters.

MARK SEIB: That is the only thing they are asking for is for the setback to be 16 feet?

MINDY BOURNE: They are asking for the Special Use to build the building and then the Variance for the front yard setback.

ATTORNEY BETH MCFADIN HIGGINS: When you get to #7, the asterisk should be by "yes".

A motion was made in the affirmative to approve by Mark Seib for Special Use 21-01-SU-BZA. Motion was seconded by Larry Droege. The Special Use Voting Sheet was read. **Roll call vote (5-0) Yes. Motion carried**

A motion was made in the affirmative to approve by Mark Seib for Variance 21-01-V-BZA. Motion was seconded by Ron Fallowfield. The Variance Voting Sheet was read. **Roll call vote (5-0) Yes. Motion carried**

MINDY BOURNE: Your Variance was approved. You will need to come into the Area Plan office to get your permit before you begin construction.

VARIANCE:

DOCKET NO: 21-02-V-BZA

APPLICANT: Max Dieterle

OWNER: City of Mt. Vernon

PREMISES: South part Lot 44 Kimballs Additional Enlargement to the City of Mt. Vernon and Part of the SE/4 of the NW/4 of Section 9, Township 7 South, Range 13 West, lying in Black Township, Posey County Indiana. More commonly known as 228 S. Kimball St., Mt. Vernon, Indiana. Containing 1.40 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Variance for relaxation of street side setbacks from 25' to 10' to build a pole barn in an RM (Residential Multiple Family) Zoning District under Section 153.049 (B) (1) (b) of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Larry Williams confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

MAX DIETERLE: 228 S. Kimball. I am requesting a Variance to erect a 48X100 storage

building.

LARRY WILLIAMS: What are you going to store in there?

MAX DIETERLE: Tractors, mowers and trucks.

LARRY WILLIAMS: Open to the Board for questions.

LARRY DROEGE: Max, that existing 48X100 building that is on that property, is the setback the same on it?

MAX DIETERLE: This building is the exact same as the building we built last year.

MINDY BOURNE: He received a Variance for that a couple of years ago.

LARRY WILLIAMS: You may have a seat and we will now open it to the public. Is anyone here to speak for or against this request? Hearing none we will now close the public portion and open it for the Board for action or discussion.

MARK SEIB: It looks like it is staying in line with the previous building built. I don't see any issues with it.

Larry Williams confirmed with Mindy Bourne there were no emails, phone calls, or letters.

A motion was made in the affirmative to approve by Ron Fallowfield for Variance 21-02-V-BZA. Motion was seconded by Larry Droege. The Variance Voting Sheet was read.

Roll call vote (5-0) Yes. Motion carried

MINDY BOURNE: Your Variance was approved. You will need to come into the Area Plan office to get your permit before you begin construction.

VARIANCE:

DOCKET NO: 21-03-V-BZA

APPLICANT: Kim Higginson

OWNER: William R. & Norma S. Butler

PREMISES: Lot Number Twenty-eight (28) in East Park Addition to the City of Poseyville, Indiana. Section 17, Township 4 South, Range 12 West, lying in Robb Township, Posey County Indiana. More commonly known as 204 E. Fletchall Ave., Poseyville, Indiana. Containing 0.20 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Variance for relaxation of street side yard setback from 25' to 18' in an R-1 (Residential Single-Family) Zoning District under Section 153.043 (B) (1) (a) of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Larry Williams confirmed with Mindy Bourne that the applicant met all the requirements for notification per the statute.

KIM HIGGINSON: 170 E. Fletchall, Poseyville. I want to build a building with residents on that lot. I am asking for a Variance on the side yard from 25 to 18 feet.

MARK SEIB: Any storage for anything? What are you doing with the building?

KIM HIGGINSON: Mostly storage of things from a warehouse I just sold. Mainly my toys and we are probably going to have to move my mother in there.

MARK SEIB: There will be no hazardous material or anything such as that?

KIM HIGGINSON: No, sir.

LARRY DROEGE: Kim, I assume the setback is between the property line and Central Avenue?

KIM HIGGINSON: That is correct.

MARK SEIB: I think that is a pretty good move to put it that way.

LARRY WILLIAMS: You may have a seat and we will now open it to the public portion. Is anyone here that would like to speak for or against this proposal? Hearing none we will now close the public portion and open it to the Board for discussion and/or actions.

Larry Williams confirmed with Mindy Bourne there were no emails, phone calls, or letters.

RON FALLOWFIELD: This is a nice-looking building. It was always the County Garage there for years. I don't see any issues with it. I am almost positive there are no utilities that run through there.

LARRY DROEGE: It is such a narrow lot that you really couldn't build anything without the set back and it doesn't interfere with the street or anything.

A motion was made in the affirmative to approve by Ron Fallowfield for Variance 21-03-V-BZA. Motion was seconded by Mark Seib. The Variance Voting Sheet was read.

Roll call vote (5-0) Yes. Motion carried

MINDY BOURNE: Your Variance was approved. You will need to come into the Area Plan office to get your permit before you begin construction.

ADDITIONAL BUSINESS: None

CITIZEN CONCERNS: None

MARK SEIB: On March 11th the APC will have a public hearing at the fairgrounds at the Community Center and I believe Mindy is wanting to have the BZA meeting up there as well.

LARRY WILLIAMS: That works for me.

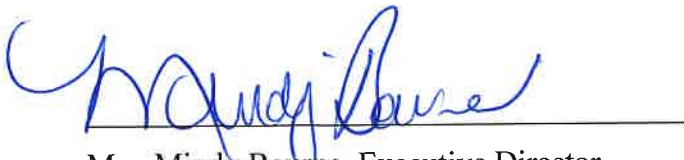
MARK SEIB: Let's have Mindy let the media know the meetings will be there.

A motion was made in the affirmative to move the next meeting to the Posey County Community Center by Mark Seib. Larry Droege seconded the motion. **Motion carried.**

ADJOURNMENT: Ron Fallowfield made a motion to adjourn the meeting at 6:16 p.m. Larry Droege seconded the motion.



Larry Williams – Chairman



Mrs. Mindy Bourne, Executive Director