

**MINUTES**

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

**THE POSEY COUNTY COMMUNITY CENTER  
111 HARMONY TOWNSHIP ROAD  
NEW HARMONY, IN 47631**

**MARCH 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

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

**VARIANCE:**

**DOCKET NO:** 21-04-V-BZA  
**APPLICANT:** Richard Wilson  
**OWNER:** Norman Richard & Kathryn Jean Wilson  
**PREMISES:** Part of the Southeast quarter of Section 18, Township 4 South, Range 12 West, lying in Robb Township, Posey County Indiana. More commonly known as 146 W. Main Street, Poseyville, Indiana. Containing 0.12 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 front yard setback from 25' to 5' and relaxation of lot coverage of 30% to 34% for a carport in an R-2 (Residential Two-Family) Zoning District under Section 153.047 (B) (1) (a) and 153.047 (D) 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.

**RICHARD WILSON:** 146 W. Main Street. We are asking for a Variance to put up a 24' x 26' garage.

**LARRY WILLIAMS:** Any questions from the Board? Hearing none we will open it to the public. Is there anyone here who would like to speak for or against this application? Hearing none we will close the public portion and open it to the Board for discussion.

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

**RON FALLOWFIELD:** This is the same as a previous application. The way the lot is situated it will not affect anybody else. I personally do not see any issue with this.

**LARRY DROEGE:** Yeah, I agree. There is no issue with reducing that setback.

**ATTORNEY BETH MCFADIN HIGGINS:** On the one it looks like a lot line goes through it.

**MARK SEIB:** Yeah, that is one of the questions I had was if it went through a lot line?

**MINDY BOURNE:** No, that all has been combined.

**MARK SEIB:** So, it is a combined lot. Which way are they talking is the front?

**MINDY BOURNE:** The front would be the line that is parallel to Main Street.

**LARRY WILLIAMS:** Any more questions from the Board?

A motion was made in the affirmative by Ron Fallowfield to approve relaxation of front yard setback for Variance 21-04-V-BZA. Motion was seconded by Mark Seib. **Roll call vote (5-0) Yes.**

A motion was made in the affirmative by Ron Fallowfield to approve relaxation of lot coverage for Variance 21-04-V-BZA. Motion was seconded by Larry Droege. **Roll call vote (5-0) Yes.**

**MINDY BOURNE:** This application has been approved. You will need to come into our office for your permit before you start construction.

**SPECIAL USE:**

DOCKET NO: 21-03-SU-BZA

APPLICANT: Ryan Embry

OWNER: Ryan E. & Lucinda D. Embry

PREMISES: Part of the South Half of Section 1, Township 5 South, Range 14 West, Harmony Township, Posey County, Indiana, containing 3.174 acres, more or less. More commonly known as 5150 Old Plank Road North, New Harmony, Indiana. (Complete legal description is on file at the Posey County Area Plan Commission Office).

**NATURE OF CASE:** Applicant requests a Special Use for an event venue in an R-3 (Residential Multiple Family) Zoning District Section 153.048 (B) (3) Use Unit 4 Community Services and 153.149 (B) (6) 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.

**RYAN EMBRY:** 5150 Old Plank Road N., New Harmony, Indiana. We would like to get a Special Use to have gatherings in our barn for 50 people or less, to be used seasonally.

**LARRY WILLIAMS:** It is currently a bed and breakfast and you want to add a venue to it?

**RYAN EMBRY:** Correct. It is basically an extension to the bed and breakfast.

**RON FALLOWFIELD:** The barn is already there?

**RYAN EMBRY:** Yes. We have a current layout of our property and the current location of the barn and the parking area.

**MINDY BOURNE:** Is this the one you submitted with the application?

**RYAN EMBRY:** No, this is a different one.

**MINDY BOURNE:** If you present it to the Board then we have to keep it as an exhibit.

**RYAN EMBRY:** That is okay.

**MINDY BOURNE:** We will mark this as "exhibit A" and it is one page.

**LARRY WILLIAMS:** What are we looking at here?

**RYAN EMBRY:** This is of our property. The main reason is to show, like I said it will be a gathering of 50 people or less, and we have a parking area to the right side of our property. There is a line of trees blocking that lot. We are extending that out to accommodate for the parking. This is to show that we have more than enough room. As far as the gatherings go, it will be seasonal. The barn is about 150 years old. We made the decision to save it. It is not heated or cooled so it would not be used certain times of the year. We think it could be used for church gatherings, retreats, small weddings. There will be absolutely no alcohol on the property, no outside vendors. We provide all of the services ourselves.

**LARRY WILLIAMS:** Where is your nearest neighbor?

**RYAN EMBRY:** Right across the street.

**LARRY WILLIAMS:** Is there any outside lighting on the barn?

**RYAN EMBRY:** No, there is not any outside lighting.

**LARRY DROEGE:** I drove by there and it is a pretty secluded location. Did you guys come before the Board about a year ago? Was the use going to be something different?

**RYAN EMBRY:** Yes, for the bed and breakfast.

**LARRY DROEGE:** Can you explain what is different now from a year ago?

**RYAN EMBRY:** We didn't present this before because we really wanted to get the bed and breakfast passed. We wanted to hold off on this for its own separate agenda. Again, it would just be an extension for the business itself. For example, if there is a small wedding there then we could offer the bridal party to stay at the bed and breakfast. I know there are certain concerns with traffic and with noise but we would take every measure we could...we moved to this property because of the peacefulness of it. It is very peaceful and quiet and we would never want to disrespect any neighbors around us. Excessive noise would never be allowed. That is another reason why we are keeping that number very low. This will not be an "every weekend" event. Absolutely no alcohol. There is no alcohol allowed in our bed and breakfast or any event of any kind, or smoking for that matter.

**MARK SEIB:** How are you going to handle if you have 50 people driving in?

**RYAN EMBRY:** We have done some measurements, if we need to accommodate for 20 to 25 cars. It will not be your typical parking lot. It will be filled with people who know each other. We would accommodate for everyone to fit in comfortably.

**LARRY WILLIAMS:** Is it gravel?

**RYAN EMBRY:** Yes. There is an existing lot but we did measure out to accommodate what we know we are going to need. We will be extending that out, upon approval.

**MARK SEIB:** Does that include if you have 50 people driving in? What about the capacity of your bed and breakfast?

**RYAN EMBRY:** What is the capacity of the bed and breakfast? We can probably hold up to 10 people.

**MARK SEIB:** So now you have 60 cars.

**RYAN EMBRY:** We have enough space. There is the designated lot and two turn around areas. This is all contained to one side of the property. There will not be any parking on the street. It will all be contained to this one general area. With the line of pine trees, it will be hardly visible from the street.

**MARK SEIB:** You said it is seasonal, what is seasonal?

**RYAN EMBRY:** Again, the barn is very rustic so it is not heated or cooled. We have had it resided and a new roof put on just to save it, but being that it is not heated or cooled people will not want to gather there during the winter or during the warmer months when it is hot. Probably more used during the spring type of season.

**MARK SEIB:** Do you have a set amount of months that you are going to be open?

**RYAN EMBRY:** It will be open anytime. But there hasn't been a set schedule. We would advertise it as such for certain events and I assume that people would want to gather when the weather is favorable.

**MARK SEIB:** What kind of hours would you allow for that?

**RYAN EMBRY:** It wouldn't extend late into the night or anything like that. We would probably just go into the evening during the summer time, 8 or 9, when the sun starts to set.

**MARK SEIB:** So, you are saying that the barn would only be used until 9 p.m.?

**RYAN EMBRY:** Yes. We haven't set a time for that yet, but I would say 9 o'clock. There is no lighting.

**LARRY DROEGE:** Ryan you said you made improvements to this barn. Have you done anything to the inside? Is there any moldy barn wood?

**RYAN EMBRY:** We had a professional contactor come in, Graber Brother's Construction, to do all of the work for us. Luckily, when we purchased the property the barn was in good shape, just not the siding or the roof. The inside was not getting wet what-so-ever, which was incredible. There was no damage, the bones were in really great shape. There was a second level which we have completely removed and a loft put in. Any type of old material like that was removed.

**LARRY WILLIAMS:** Any further questions from the Board? Hearing none, you may have a seat. Is there anyone here that would like to speak for or against this proposal?

**TOM AUSTERMAN:** 5271 Old Plank Road. My property is 37.5 acres and it is kind of across the road from this property. I have 8 horses, 3 cats, 3 dogs, 1 wife and no brain. I don't know

that I am opposed about this as I am concerned about it. As far as the bed and breakfast, I didn't voice any objection to that. Last Fourth of July they had, what I consider, a commercial grade firework presentation and my horses went crazy. I had one go through a fence and one go over a fence into an adjacent pasture that does not have a fence. I felt like I was very fortunate to be able to get them and get them back into a stall. It was after 9 o'clock, because I go to bed at 9 o'clock and I had to get out of bed to take care of the situation. I would be concerned about any noise. Horses are sensory animals and they can hear things and smell things that the human can't. Activities that they are not familiar with can cause them anxiety and anxiety is just short of panic. Panic is what happened last July 4<sup>th</sup>. As an individual, I moved to the county and I have owned this property for 20 years. I have had some people come to my place and ask if we are the bed and breakfast and we have pointed them down the road. I live out there because it is quiet and serene. I enjoy a big part of living out in the county as the joy of silence. I would ask that you restrict anything that happened like last July 4<sup>th</sup> with the fireworks.

**LARRY WILLIAMS:** Were your horses put up in a stall?

**TOM AUSTERMAN:** No, my horses are out. Except for a feeding twice a day, my horses are out 24/7. I do have stalls for each one of them, but I do not keep them in them.

**LARRY WILLIAMS:** Had you known about the firework show, would you put them in a stall?

**TOM AUSTERMAN:** I would not want to do that. I believe a horse is an outside animal and when you put them in a stall, they can develop bad behaviors. My wife is concerned about the parking and the traffic, about the egress and ingress.

**LARRY WILLIAMS:** Would anyone else like to speak for or against this proposal?

**CURT SCHMITT:** 5250 Old Plank Road. We live next door and our house is closer to the barn. We are concerned about the noise that a party of 50 people will make. It might affect our enjoyment of our own property. We have a deck that we like to be outside on all spring, summer and fall. We can easily hear what is going on in the barn. Especially a barn without air during the summer they would have to have windows and doors open. You add music to that it could create a lot of noise. We are also concerned about the time restrictions in terms of frequency of events, how long these events might last, or how frequent these events will be. New Harmony has weddings and events every weekend, spring, summer and fall. The potential for wedding receptions is great there. The other concern I have is traffic. The road was recently refurbished and the speed limit was raised considerably to 40 mph. I don't know if you have looked at the property, but between Ryan's house and our house is a blind curve. We are very concerned about people flying around that curve when 25-50 cars are trying to get parked in that parking lot. If you haven't been to that property, I have photographs of that curve from both directions.

**MINDY BOURNE:** If you submit it, we have to keep it.

**CURT SCHMITT:** Absolutely.

**MINDY BOURNE:** Exhibit B, two pages.

**CURT SCHMITT:** I know Ryan has taken the trouble to park cars, to have parking spots for cars, but it is a single driveway going back to that parking area. If you have 25-30 cars descending on that at any particular time you have people backed up onto the road, right behind that curve. We are very concerned about the safety issue here. We are not against what they are trying to do but there must be some type of restriction in place in terms of potential noise and certainly for traffic and safety. I might add that in the last two years there have been two serious accidents on that curve.

**LARRY WILLIAMS:** Would anyone else like to speak for or against?

**RYAN EMBRY:** Generally speaking about the fireworks, that was not some sort of commercial event, that was a one-time family event that we had with our kids and some of their church friends. There will never be any kind of firework show after dark. I apologize for that. I don't know what needs to be put forth as far as noise restrictions because I respect what Curt and Tom were saying and I understand that. I had the same concerns. We moved to this property for the same reasons they did and I think it would be a benefit to the community and the Town of New Harmony. We will take whatever measures possible to maintain peace with our neighbors. I think the accident he was referring to, the one was late at night. There will be no traffic during the dark hours.

**LARRY WILLIAMS:** Do you anticipate weekends only? And how many do you plan on having?

**RYAN EMBRY:** The frequency? Again, it is only going to be during the months where people can be outside enjoying the weather when it is nice.

**LARRY WILLIAMS:** Are you thinking every weekend?

**RYAN EMBRY:** I doubt very much. We have already had people contact us about wedding events, even though this hasn't passed yet, asking about exceeding that number and we told them that we will not do that. We cannot do 100 people. It has to be this amount or less.

**LARRY WILLIAMS:** If we put an hour restriction on it would you want 8 o'clock, 9 o'clock?

**RYAN EMBRY:** I would say sunset. I know in the summer it would be later than in the winter months, but I would say sunset we are done.

**LARRY WILLIAMS:** As far as music and things like that, are you going to have a microphone and speakers?

**RYAN EMBRY:** We haven't gotten into all of those specifics yet, but again we are very aware of the concerns about noise. We will do whatever we need to do to keep it at a minimum. That is definitely a top priority to us.

**LARRY WILLIAMS:** I will ask one more time if anyone would like to speak for or against this application? Hearing none, we will close the public portion.

Larry Williams asked Mindy Bourne if there were any phone calls, emails, or letters?

**MINDY BOURNE:** I do need to make one statement. On the last exhibit that was presented it is actually "exhibit B" and that was two pages. We did have one phone call on 3/1 from Tom Austerman and he did speak tonight. He did call on March 1<sup>st</sup>, 2021 that he opposes anything that would scare his horses like that again. That is the only phone call, letter, or email that I received.

**LARRY WILLIAMS:** Discussion among the Board?

**MARK SEIB:** I am somewhat concerned about the hours of operations. I don't think the 9pm would be an unreasonable amount of time. I do believe that we need to have all of the parking off of the road and has to be on-premise parking. It will not be allowed on the grass, it would have to be on the gravel. 50 people I understand he has already put a limit on, so that is what we will adhere to. Then as far as fireworks or anything that would be creating loud noise, they would have to notify adjacent property owners, with there being livestock involved. That is what I think is important for this venue to take place.

**LARRY WILLIAMS:** I will agree with that. My suggestion is instead of 9pm is dark, because if you have one in the spring or the fall, dark would be way before 9 o'clock.

**RON FALLOWFIELD:** I make a motion to approve dark instead of 9 o'clock as a restriction.

**MARK SEIB:** My time would be sunset. My conditions would be all events be finished at sunset, all parking be off-street and only on gravel, they must notify adjacent property owners if they are going to do fireworks or loud music, prior to the event, and a maximum of 50 people.

**LARRY DROEGE:** I guess my only comment is what is our premise for setting their hours of operation? Is it because it is in a residential area? I have a little bit of a problem dictating how a person can use their business. I understand the concerns of course.

**LARRY WILLIAMS:** We have done this before for a situation like this for something in a residential neighborhood, for something that would impact the neighbors.

**ATTORNEY BETH MCFADIN HIGGINS:** And because this is a Special Use as opposed to a Rezone. If this were a Rezone, then they would be able to use it within any of the parameters of that zoning district. This is asking for a Special Use which is more restrictive and the statue



allows you to put on reasonable restrictions.

A motion was made in the affirmative by Ron Fallowfield to approve Variance 21-03-SU-BZA with the following conditions: maximum hours to be concluded at sunset, all parking in lot off road on hard surface, notify adjoining property owners if conducting firework display and maximum capacity of 50 people. Motion was seconded by Mark Seib. The Special Use Voting Sheet was read. **Roll call vote (5-0) Yes. Motion carried.**

**MINDY BOURNE:** This Special Use has been approved and you will receive a letter from our office.

**SPECIAL USE & VARIANCE:**

DOCKET NO: 21-04-SU-BZA & 21-05-V-BZA

APPLICANT: Matt Riney

OWNER: Matthew E. & Joanna M. Riney

PREMISES: Pt NW/4 NE/4 Section 24, Township 6 South, Range 12 West, lying in Marris Township, Posey County, Indiana, containing 1.00 acres more or less. More commonly known as 3201 Conservation Dr., Evansville, Indiana. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Special Use to operate a home occupation (street rod shop-expansion) in an R-1 Zoning District Section 153.042 (B) (4) Use Unit 28 Home Occupations Section 153.173 and Variance for relaxation of rear yard setback from 25' to 21' Section 153.043 (B) (3) (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.

**MATT RINEY:** 3201 Conservation Drive. I ran out of room in my shop and I need to expand it out. When I originally can to you guys for the Special Use, I had drawn in originally an expansion of the shop, but I did not have the time to get it done. Now we have the time to do it and am asking for the approval to expand it. On the Variance the barn is 20 feet from the road and I would like to keep it as one building.

**LARRY WILLIAMS:** How close is this to the nearest neighbor?

**MATT RINEY:** One lady asked me to get rid of one of my yard barns, so I have moved it out of the way. I don't think any of the others have any reservations about me doing it. I think everyone is okay with it.

**LARRY WILLIAMS:** Any questions from the Board?

**LARRY DROEGE:** Is this a hot rod shop? How long have you been doing this at your residence?

**MATT RINEY:** Yes, and about a year and a half.

**LARRY DROEGE:** Have you had any complaints from any of your neighbors?

**MATT RINEY:** One of my neighbors asked my boy not to fire up his hot rod after 9 o'clock.

**LARRY WILLIAMS:** Any further questions from the Board? You may have a seat. We will now open this for anyone who is here to speak for or against this proposal. Is anyone here to speak for or against this proposal? We will now close the public portion and open it for discussion and/or action from the Board.

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

**MARK SEIB:** How many cars will you store outside?

**MATT RINEY:** When we did the Special Use before we were allowed two vehicles outside. That is why I am wanting to add on is for more storage for parts and things.

**MARK SEIB:** And you can maintain that two?

**MATT RINEY:** Yeah, should be able to.

**LARRY WILLIAMS:** Any further questions from the Board? Any action?

A motion was made in the affirmative by Ron Fallowfield to approve Special Use 21-04-SU-BZA. Motion was seconded by Larry Droege. The Special Use Voting Sheet was read. **Roll call vote (5-0) Yes. Motion carried.**

**MINDY BOURNE:** I will state that we did receive one phone call on March 11<sup>th</sup> at 2:50pm, she did not mention her name and she said that she did suggest a stipulation to only have one exterior storage shed.

A motion was made in the affirmative by Ron Fallowfield to approve Variance 21-05-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 Special Use and Variance have been approved. You will need to come into our office to get your Land Use Permit before you start construction.

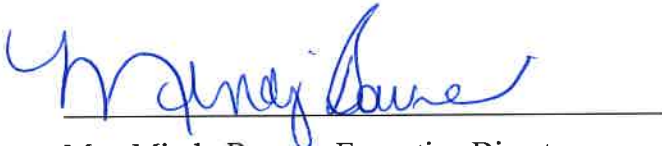
**ADDITIONAL BUSINESS:** None

**CITIZEN CONCERNS:** None

**ADJOURNMENT:** Ron Fallowfield made a motion to adjourn the meeting at 6:13 p.m. Larry Droege seconded the motion.



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Larry Williams, Chairman



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Mrs. Mindy Bourne, Executive Director