

MINUTES

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

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

**JUNE 10, 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: 21-10-V-BZA

APPLICANT: Bryan Morrow

OWNER: Bryan K. & Gail J. Morrow

PREMISES: North Owens West Half and East Half Lot 30 Owen’s Enlargement to the City of Mt. Vernon of Section 8, Township 7 South, Range 13 West, lying in Black Township, Posey County Indiana. More commonly known as 422 East 3rd St., Mt. Vernon, Indiana. Containing 0.24 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 rear yard setbacks from 25’ to 10’ to build a garage 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.

BRYAN MORROW: 422 East Third Street, Mt. Vernon, Indiana. I am looking to build a garage in the other side of the yard. I want to try to make the yard look even, so I want to put

it the same distance as the other garage.

LARRY WILLIAMS: Are there any questions from the Board for Mr. Morrow?

MARK SEIB: So you are going to have a driveway out of that garage and it is only going to be 10' from the alley?

BRYAN MORROW: It is about 10' from the edge of the alley. That is what my other one is right now.

RON FALLOWFIELD: Do you think you will have any troubles seeing to get out?

BRYAN MORROW: No.

LARRY DROEGE: Are you going to have aprons on the... Do you have an apron on the front of your existing garage?

BRYAN MORROW: I do now, yes.

LARRY DROEGE: Are you planning to put the same type of apron on this new one?

BRYAN MORROW: I'm not sure yet. Right now, it is rock. I don't know that I am going to do that.

LARRY WILLIAMS: You may have a seat. We will now open this application up for public comment. Is there anyone here wishing to speak for or against this application? With no one coming forward, we will close the public portion.

Mr. Williams asked Mindy Bourne if there were any emails, phone calls or letters.

MINDY BOURNE: There was one phone call on 6/4/2021 from Lorelei Barnes. She has no issue with Mr. Morrow building a garage.

ATTORNEY BETH MCFADIN HIGGINS: Just a reminder, if there is currently rock, then it is ok. The City ordinance requires that within a residential district, then it would have to be an all-weather surface. If it is currently rock, you can keep it rock. If you make any changes, it would need to go to an all-weather surface.

BRYAN MORROW: It is all rock right now.

LARRY DROEGE: It seems like it makes sense since the existing garage is 10' then it would line up the garages.

A motion was made in the affirmative by Ron Fallowfield to approve Variance 21-10-V-BZA. Motion was seconded by Larry Droege. The Variance Voting Sheet was read. **Roll call vote (5-0) Yes. Motion carried.**

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: 21-09-SU-BZA

APPLICANT: Michael Bell

OWNER: Michael & Christy Bell

PREMISES: Holleman Lots 5, 6, 7 in Holleman's Addition, Section 8, Township 7 South, Range 13 West, lying in Black Township, City of Mt. Vernon, Posey County, Indiana. More commonly known as 322 W. Sixth Street, Mt. Vernon, Indiana. Containing 0.558 acres more or less. (Complete legal description is on file at the Posey County Area Plan Commission Office).

NATURE OF CASE: Applicant requests a Special Use to build a pole barn with a lean to for residential storage in an RM Zoning District Section 153.048 (B) (1) Use Unit 2 Area Wide Special Exception Uses, Section 153.147 (B) (14) Residential Storage Structure 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.

MICHAEL BELL: 333 W. 6th Street. I want to build a pole barn to store our camper and service truck to get away from parking it in our driveway.

RON FALLOWFIELD: Are you out of the area that is marked flood?

MICHAEL BELL: Yes.

MARK SEIB: Which way will you be entering into the pole barn?

MICHAEL BELL: It will be from the east.

LARRY WILLIAMS: What is your camper size?

MICHAEL BELL: 30 feet.

LARRY WILLIAMS: Will you run electricity to the pole barn?

MICHAEL BELL: Yes.

LARRY WILLIAMS: What about exterior lighting?

MICHAEL BELL: I haven't planned on that yet, but I can put lighting on it.

KEITH SPURGEON: What is the driveway surface?

MICHAEL BELL: We would probably end up concreting a driveway from the alleyway to the pole barn.

MARK SEIB: You will have to do something like that, whether it be asphalt or concrete.

MICHAEL BELL: Yes.

LARRY DROEGE: There are no issues with that easement if they pour concrete over that easement?

RON FALLOWFIELD: He is past the easement where the driveway will be.

MICHAEL BELL: It will not go over the top of the easement.

MARK SEIB: How tall is your building?

MICHAEL BELL: It is 14' tall.

MARK SEIB: Which way does the watershed go?

MICHAEL BELL: The watershed goes back towards Mill Creek. There is a storm sewer that goes right down the east side alleyway. I talked to the City and they said we could either tie into the storm sewer or we can run the water off the building to the creek.

LARRY WILLIAMS: You may have a seat. We will now open this application up for public comment. Is there anyone here wishing to speak for or against this application? With no one coming forward, we will close the public portion.

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

A motion was made in the affirmative by Mark Seib to approve Special Use 21-09-SU-BZA. Motion was seconded by Keith Spurgeon. The Special Use Voting Sheet was read. **Roll call vote (5-0) Yes. Motion carried.**

MINDY BOURNE: This Special Use has been approved. You will need to come into our office

to obtain your Improvement Location Permit before starting construction.

ADDITIONAL BUSINESS: Resolution 2021-0610-1

ATTORNEY BETH MCFADIN HIGGINS: There were some changes in the legislature this last session. One of those involves the electronic meeting policy. We have been operating under the Governor's Emergency Order since last March of 2020. That continues now until June 26. We do not know if it will be renewed or not. However, notwithstanding that, the legislature did make some changes to the Open Door Law regarding the electronic meetings. So now in order for you to be able to participate by electronic meeting... By participate I mean to be there and counted toward the quorum and vote on a matter or during a meeting, then you have to have a policy in place. I sent you a proposed policy just for your consideration. You can decide what you want to do. However, notwithstanding, if there is no State of Emergency or there is no other changes to the Open Door Law, then without that policy you would not be able to participate, meaning that you couldn't vote and be counted as quorum. There is some stipulations within the law. A member cannot participate by more than two consecutive meetings without then being present before you would go into that again and during the year you cannot participate for more than 50% of the meetings electronically. In addition to that, there is a list of types of meetings that you cannot participate in and that specifically is any meeting... when I say you can't participate, it means in the entire meeting. It is not that you can come and participate in items 1, 2 and 7, but not the other three. So it means there is no participation. Because if you can't be counted as quorum on one item, you can't be counted as quorum on anything on the agenda. That would include anytime that there is final action taken, adopting a budget, reduction in personnel, initiating a referendum, imposing or increasing a fee, imposing or increasing a penalty, imminent domain or to impose or raise a new tax. If you have a meeting and are taking action on any of those items, then you must be present in person. There is a requirement for so many people to be physically present. Not all five can attend electronically at the same meeting. This does not mean that like Thursday morning you can call Mindy and say I need to appear tonight electronically because we still would have to get notice out at least 48 hours in advance if we are going to have someone participate electronically. If one member participates electronically, then the public must be able to observe the meeting electronically also. That then means we need to put out the Zoom link and we can't do that the day of the meeting.

LARRY WILLIAMS: Could you appear and not participate?

ATTORNEY BETH MCFADIN HIGGINS: You can go back to the default, which is, you can appear but not participate.

LARRY WILLIAMS: Is this the same one that was adopted by the City Council?

ATTORNEY BETH MCFADIN HIGGINS: Yes. It just follows the statute kind of verbatim. Your options are if you don't do anything then you will not be able to participate. You can adopt

this anytime and it doesn't have to be adopted before July. Some are saying it is likely that the State of Emergency may not be renewed. But we don't know that. And whether or not you want to have electronic opportunity that is up to you. But you are a board of five. If two are absent, we would have to advise our applicants that there is only three of you here and then the vote must be unanimous. All of our votes require at least three positive votes.

LARRY WILLIAMS: So if we adopt this and in the future another State of Emergency comes up it would override this?

ATTORNEY BETH MCFADIN HIGGINS: A State of Emergency overrides this.

KEITH SPURGEON: Wouldn't the opposite be true if we decide not to adopt it and there is a State of Emergency, because of that State of Emergency if it is allowed and we could still participate via Zoom.

ATTORNEY BETH MCFADIN HIGGINS: Correct, as long as it is a part of the State of Emergency like what we have been operating under.

KEITH SPURGEON: I can see where this would be handy with a five-person board. Obviously, I am participating via Zoom this evening and it is allowing me to do that. I also understand and am sympathetic with being a school superintendent and working with the public and the Open Door Law, the need to hold us accountable to meet with the public. I think that is very important also. This to me seems to strike a kind of middle ground. As long as Mindy is ok with... it seems to me there would be some recordkeeping that would need to be done with keeping track of which one of us attends via Zoom and have we done the required consecutive number.

LARRY WILLIAMS: I can see where it would come in handy if somebody is sick, then they could still participate without putting everyone else in danger. I don't see any reason not to have it.

RON FALLOWFIELD: Just remember there has to be two days' notice.

ATTORNEY BETH MCFADIN HIGGINS: If you are sick just remember we are going to see you sick. One of the requirements is you have to be able to be seen and heard. That means no blank screens, no picture. Just as Keith is tonight, he is live. But you have to be able to be seen and heard.

MARK SEIB: The question I have is the conflict of interest. If you have a conflict of interest, would you not be able to participate in any of the rest of the discussion?

ATTORNEY BETH MCFADIN HIGGINS: No. The conflict of interest would be per case or per application. It would only be the one you have a conflict of interest with.

MARK SEIB: So the conflict of interest would not excuse you from the rest of the applications?

ATTORNEY BETH MCFADIN HIGGINS: Correct.

LARRY DROEGE: Does this only apply to the members or does it also apply to the applicants? We have had applicants that we've talked to via Zoom. Can they still do that after the Emergency Order is lifted?

ATTORNEY BETH MCFADIN HIGGINS: That would be a local policy. We are talking about final action being taken by the governing body. The Open Door Law only really applies to that. Whether or not you are allowing applicants to appear would be a local policy.

LARRY DROEGE: Has the board ever faced that where the applicants have not appeared in person?

MINDY BOURNE: Not until now.

LARRY DROEGE: So prior to Covid, we really didn't have too many people that appeared before this board that weren't in person.

MINDY BOURNE: No, we did not.

MARK SEIB: It does open up the question as to whether or not we should allow that and if there are standards that they have to meet. Like if they don't live here but they own the property. We are also trying to get the County to get things lined up so that all of our meetings are sent by streaming or via Zoom so that the public can hear. I think this is a good policy.

LARRY WILLIAMS: I think we should go ahead and go forward with this. We can wait and see what the County does for the audience or participants. See what they do so that everyone is doing basically the same thing.

RON FALLOWFIELD: Do we need to add in whether we want to allow that?

ATTORNEY BETH MCFADIN HIGGINS: I think that would be a separate policy. I do think that it might make sense that we work with the Area Plan Commission, because what one does I think they both need to do.

LARRY WILLIAMS: I think that since Mark is a member of both boards, then he can be the liaison between the two. However, with this issue, do we have any action?

Ron Fallowfield made a motion in the affirmative to adopt Resolution 2021-0610-1. Mark Seib seconded the motion. **Roll call vote (5-0) Yes. Motion carried.**

MARK SEIB: I would like Beth to look into a policy that would address what Ron was talking about. There is no timeline on that.

LARRY WILLIAMS: I would say at least by the end of the year so when we adopt the new procedures next year it would be ready.

CITIZEN CONCERNS:

EARL SCHROEDER: Marris Township. I have a hearing disability and I would say 60% of my communication relies on reading lips. I'm always trying to promote something to allow for me and others to... I know there are other people that have this same issue. If I could stay home and watch this, I don't know that it would work because I still couldn't see the lips. I do want you to know that is an issue. If you expect the public to participate, you have to make it audible and visible to the point where the public can hear and understand what is going on. I would say about 15% of what was said tonight I had to guess. I couldn't hear the Chairman very well. I am bringing it up for your consideration. It is a concern of mine and I do know it is a concern of others.

MARK SEIB: Keith, can people on Zoom hear the discussion better than the members? Do you hear ok with what the members are saying through the microphones?

KEITH SPURGEON: It is better, but it is not perfect. When we first started this, about 50% I couldn't hear. It has gotten better from this end. But it could still improve. There are some of you that need to get closer to the mic. If you could do that, it would help greatly. Can you hear me ok?

MARK SEIB: Yes. Very strong.

KEITH SPURGEON: When there are other people participating by Zoom, I can hear those other members participating via Zoom crystal clear. But there in the room, it can be difficult. And it can be difficult at the podium. The gentleman that just spoke, I caught most of it. There were parts of it that I missed. They need to lean into that mic.


MARK SEIB: I wanted to know in order to be able to have some discussions with the company that is in charge of putting this thing together to make it easier for us to stream and Zoom. I just need to know which areas we need to work on gaps that are not quite good enough yet.

LARRY WILLIAMS: One thing that might work is a mic that clips on. I have a tendency to move away from the mic.

ADJOURNMENT: Mark Seib made a motion to adjourn the meeting at 5:44 p.m. Ron Fallowfield seconded the motion.



Mr. Larry Williams, Chairman



Mrs. Mindy Bourne, Executive Director