

MINUTES

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

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

**SEPTEMBER 8, 2022
5:00 P.M.**

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

MEMBERS ABSENT: None

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

VARIANCE:

DOCKET NO: 22-11-V-BZA

APPLICANT: Rebecca S. Attebury

OWNER: Rebecca Sue Attebury

PREMISES: Part of the East Half of the Northeast Quarter of Section 35, Township 6 South, Range 12 West, lying in Marris Township, Posey County Indiana. More commonly known as 10926 Sunset Drive, Evansville, Indiana. Containing 1.23 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 non-domestic animals in an R-1 (Residential Single-Family) Zoning District under Section 153.021 (B) of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Mr. Williams confirmed no board members had any conflict of interest.

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

LARRY WILLIAMS: Who is here wishing to speak about this application? Step to the podium, please. State your name and address for the record and tell us what you are asking for.

JAMES ATTEBURY: 10926 Sunset Drive. We want to have chickens on our property. With the cost of eggs and meat going up, we are doing our best to have our own meat. We asked all of our neighbors before we got them and every neighbor was fine. They are out of site. Half of our neighbors didn't even know we had them until they got... the ones across the street didn't even know we had them until they got the letter.

LARRY WILLIAMS: How many chickens do you have?

JAMES ATTEBURY: We have eight right now.

LARRY DROEGE: Are you using an existing structure?

JAMES ATTEBURY: I've built a coop next to my garage. I have a detached garage in the back of the house and I've built a coop that has a run that goes around it and it is fenced in.

LARRY WILLIAMS: How big is the coop?

JAMES ATTEBURY: It's a 4 x 8 coop. Then I have a 14 x 8 run that goes around my garage.

LARRY WILLIAMS: Is eight about the number you have?

JAMES ATTEBURY: Yes. Any more than I that, I will have to butcher for meat.

RON FALLOWFIELD: But it is all for your personal use?

JAMES ATTEBURY: Yes, unless my uncle wants some eggs.

LARRY DROEGE: So no plans to expand any further than what you can use?

JAMES ATTEBURY: No, I wouldn't do any more than that.

LARRY WILLIAMS: Other questions from the board? OK. Have a seat. At this time, we will open up the floor for public comment. Is there anybody here who wishes to speak for or against this application?

JACOB LAWHEAD: 10910 Woodside Drive South, Evansville. I am for them having the chickens and eggs. I like fresh eggs every now and then. I'm just saying I am all for them. No complaints here. I don't know of any other neighbors that have any grievances.

LARRY WILLIAMS: Is there anyone else that wishes to speak for or against this application? Hearing none, we will close the public portion.

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

MINDY BOURNE: I do want to mention that there was actually a complaint filed on this property about the chickens. I sent them the letter informing them that there was a complaint filed. They were not aware that there was anything they needed to do as far as like filing a Variance or anything like that to have the chickens. So anyway, they are here before you tonight, but the complaint will have to go before the APC this evening.

Mr. Williams opened the application up to the board for further discussion and or action.

ATTORNEY BETH MCFADIN HIGGINS: Just as a point of information, this is a Variance application. I know there were questions about would this be for just personal use or that type of

thing. There is no application for a home occupation so it would need to be only for personal use, not for sale. I'm not saying you can't gift a neighbor, but no sales of the eggs.

LARRY DROEGE: What if they decide they want to put in a big chicken house? This Variance would not allow them to build a building to house chickens?

ATTORNEY BETH MCFADIN HIGGINS: It would not if you make that a stipulation of the Variance. If there is a certain size or if they have represented... usually we leave that to the applicant. If they come in and say they have a 4 x 8 with a run, then that is the Variance that is approved. Then that is not carte blanche to build a three story coop that has more. A Variance is tied to what the particular...

LARRY DROEGE: That is my concern. If you look at an aerial view of this area, that is a pretty well populated area. The more chickens, the more manure you would have. If you are talking about 1,000 chickens versus 8 or 9 chickens... would that be a problem with you all if the stipulation was such that it would not allow you to expand to 1,000 chicken operation?

JAMES ATTEBURY: No.

LARRY WILLIAMS: You say you currently have eight chickens, is that a number you are comfortable with?

JAMES ATTEBURY: I am saying that max would be 15. Let's say we did start getting about 4 or 5 dozen eggs that we weren't eating, what if I did want to sell them? Would I have to apply for another Variance?

ATTORNEY BETH MCFADIN HIGGINS: That would be a Special Use. It is called a Home Occupation. A Home Occupation allows you to do some things out of your home with no employees and selling things that are only generated or made on premises.

Ron Fallowfield made a motion in the affirmative to approve Docket # 22-11-V-BZA with the stipulation that they only have a maximum of 20 chickens. Motion seconded by Larry Droege. The Variance Voting sheet was read. **Roll Call Vote (5-0) Yes. Motion carried.**

MINDY BOURNE: The Variance has been approved. You will get a letter from our office stating that it has been approved with the condition that there is a maximum of 20 chickens on the property. Just keep that for your records.

VARIANCE:

DOCKET NO: 22-12-V-BZA

APPLICANT: Colton Givens

OWNER: Alex Colton & Andee L. Givens

PREMISES: The East part of Lot 21 in Raben and Fuelling's Addition, and Fractional Lot 1 in Jones' Addition, in the City of Mt. Vernon, Indiana. Also, 64 feet of Equal width off the West side of Lot 21 in Raben and Fuelling's Addition to the City of Mt. Vernon, Indiana. Except 4 feet of equal width off the West side of the above-described parcel. Section 8, Township 7 South, Range 13 West, lying in Black Township, Posey County Indiana. More commonly known as 733 E. 5th Street, Mt. Vernon, Indiana. Containing 0.40 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 yard setback from 25' to 18' and rear yard setback from 25' to 9' in an RT (Residential Townhouse) Zoning District under Section 153.045 (B) (1) (a) and 153.045 (B) (3) (a) of the Zoning Ordinance of the City of Mt. Vernon, Town of Cynthiana, Town of Poseyville and Unincorporated Posey County.

Mr. Williams confirmed no board members had any conflict of interest.

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

LARRY WILLIAMS: Who's here wishing to speak? Step to the podium, please. State your name and address for the record.

ALEX COLTON GIVENS: 733 E. 5th Street, Mt. Vernon, Indiana. I am looking to build a 30' x 40' pole barn to use as a garage on the property 9' from the property line on the alley side and 18' from the property line on the street side. I believe that is 5' further back from the alley than the current structure that is being demolished there as well as the same on the Harriett Street side as the current building.

LARRY WILLIAMS: And the purpose of the building you are going to construct?

ALEX COLTON GIVENS: Just a garage.

RON FALLOWFIELD: You're sure there are no utilities that will be in the way if we grant this Variance?

ALEX COLTON GIVENS: There is none currently.

MARK SEIB: You said there is a demo?

ALEX COLTON GIVENS: I have a current garage there and the new building is going to replace that.

LARRY WILLIAMS: Is your new building going to be lit on the outside anywhere?

ALEX COLTON GIVENS: It will be lit on the garage door side on Harriett Street.

LARRY WILLIAMS: Will the light be pointed at your neighbors?

ALEX COLTON GIVENS: No.

RON FALLOWFIELD: Where will you enter this pole building at?

ALEX COLTON GIVENS: From the Harriett Street side.

KEITH SPURGEON: The light that you will have on Harriett Street, will it be on all night long?

ALEX COLTON GIVENS: No, just when we come in. And if that is a problem, there is a streetlight there that will suffice.

LARRY WILLIAMS: As long as it isn't pointing at any of the neighbors, it shouldn't be an issue.

LARRY DROEGE: Is there a sidewalk that runs parallel with Harriet Street in front of your property?

ALEX COLTON GIVENS: Yes, there is.

LARRY DROEGE: So you will be compromising that sidewalk to get into your garage.

ALEX COLTON GIVENS: The way it is set up now, my lane that goes from the street side to the garage door butts up to the sidewalk and then the sidewalk is still in place.

LARRY DROEGE: So you are going to use the existing apron that you have now?

ALEX COLTON GIVENS: I will have to extend it and make it a little bit wider, but it will be the exact same style as it currently is.

LARRY DROEGE: Is it concrete all the way up to the new garage?

ALEX COLTON GIVENS: Yes sir.

RON FALLOWFIELD: You probably should work with the city on making sure on the extension you make meets their specs on the sidewalk.

ALEX COLTON GIVENS: Ok.

LARRY WILLIAMS: OK. Have a seat. At this time, I'll open up the floor for public comment. Is there anybody here who wishes to speak for or against this Variance? Hearing none, we will close the public portion.

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

Mr. Williams opened up the board for further discussion and or action.

MINDY BOURNE: I just want to elaborate and say the reason he has to request a Variance on this. It is unique. He has an alley and a street that he is trying to work with. He has to meet greater setbacks because of those two things. Right across the street from him, he went through the same thing in 2018. This is the same exact thing. He was building a garage and he had two streets he was working with, Harriett and 6th Street. It was a similar situation and same reason for a Variance.

ATTORNEY BETH MCFADIN HIGGINS: If he is going to cut into the street or sidewalk, then the City of Mt. Vernon requires a Street Cut Permit. He would need to contact the Mt. Vernon Street Department and fill out a form so they know where you are cutting into the street or sidewalk and some dimensions. You can probably have DC Metals give... are they doing the concrete work as well?

ALEX COLTON GIVENS: Correct.

ATTORNEY BETH MCFADIN HIGGINS: They may be able to help with that.

ALEX COLTON GIVENS: If I am not making any cuts into the sidewalk, then there aren't any further approvals needed, correct?

MARK SEIB: No, you have to go to the city and ask the city if there are any stipulations. If they ever grind that asphalt down in front, it could cause a problem there. That has to be accepted by the city that you can enter across the sidewalk.

LARRY WILLIAMS: It may be more cost effective for you to address it now.

ALEX COLTON GIVENS: I understand.

ATTORNEY BETH MCFADIN HIGGINS: Is the curb already cut?

ALEX COLTON GIVENS: The curb has been cut in the one section that is currently there. The new drive will be a little bit wider.

ATTORNEY BETH MCFADIN HIGGINS: So if you are going to go in and cut the curb, then that is where you will need that permit. Just for clarification, it is not for the whole thing if it is already cut, but if you are going to take out a part of the curb or cut it again, that is where you will need to get the city permit.

ALEX COLTON GIVENS: Yes ma'am. Thank you.

Mark Seib made a motion in the affirmative to approve Docket # 22-12-V-BZA with the stipulation that he gets city approval for the entrance. Motion seconded by Larry Droege. The Variance Voting sheet was read. **Roll Call Vote (5-0) Yes. Motion carried.**

MINDY BOURNE: The Variance has been approved with the condition that you get city approval for your entrance. After you bring me the letter from the city, you can get your permit.

ADDITIONAL BUSINESS: None

CITIZEN CONCERNS: None

Keith Spurgeon made a motion to adjourn the meeting at 5:35 p.m.



Mr. Larry Williams, Chairman



Mrs. Mindy Bourne, Executive Director

VARIANCE VOTING SHEET

POSEY COUNTY BOARD OF ZONING APPEALS

Report of Findings of Fact

BZA NO: 22-11-V-BZA

Rebecca Sue Attebery

1. Will the granting of this variance be injurious to the public health, safety, morals and general welfare to the community?

No, small amount. Over an acre of ground - Ron Fallowfield

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	(<input checked="" type="checkbox"/>) NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	5
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

2. Will the use or value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?

far enough away from neighbors - Larry Williams

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	(<input checked="" type="checkbox"/>) NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	5
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

3. Does the need for this variance arise from conditions peculiar to the property included in the variance?

*You can't have chickens in residential - create by ordinance
Mark Seib*

Larry Droege	() NO*	(<input checked="" type="checkbox"/>) YES	Keith Spurgeon	() NO*	(<input checked="" type="checkbox"/>) YES	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() NO*	(<input checked="" type="checkbox"/>) YES	Larry Williams	() NO*	(<input checked="" type="checkbox"/>) YES	0	5
Mark Seib	() NO*	(<input checked="" type="checkbox"/>) YES					

4. Are these conditions general in the same zone?

No - chickens not raised on all homes - Larry Williams

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	(<input checked="" type="checkbox"/>) NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	5
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

5. Will the strict application of the applicable Ordinance constitute unusual and unnecessary hardship if applied to the property in question?

Yes - couldn't have them - Ron Fallowfield

Larry Droege	() NO*	(<input checked="" type="checkbox"/>) YES	Keith Spurgeon	() NO*	(<input checked="" type="checkbox"/>) YES	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() NO*	(<input checked="" type="checkbox"/>) YES	Larry Williams	() NO*	(<input checked="" type="checkbox"/>) YES	5	0
Mark Seib	() NO*	(<input checked="" type="checkbox"/>) YES					

6. Will the granting of this variance interfere substantially with the comprehensive plan or materially increase street congestion?

No impact on street congestion or Comprehensive Plan Larry Williams

Larry Droege	(<input checked="" type="checkbox"/>) NO	(<input type="checkbox"/>) YES*	Keith Spurgeon	(<input checked="" type="checkbox"/>) NO	(<input type="checkbox"/>) YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	(<input type="checkbox"/>) YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	(<input type="checkbox"/>) YES*	0	5
Mark Seib	(<input checked="" type="checkbox"/>) NO	(<input type="checkbox"/>) YES*					

***If any one of your answers above is followed by an asterisk, under the statute you must deny the application.**

DECISION: It is therefore the decision of the Board, that the variance:

is hereby granted _____ ()

is hereby denied _____ ()

subject to any conditions stated in the minutes of the Board, and incorporated herein and made a part of the decision.

Adopted this 9th day of September 2022
(date)

VARIANCE VOTING SHEET

POSEY COUNTY BOARD OF ZONING APPEALS Report of Findings of Fact

BZA NO: 22-12-V-BZA

Alex Colton + Andrew Stevens

1. Will the granting of this variance be injurious to the public health, safety, morals and general welfare to the community?

many garages in area - Larry Droege

No, replacing older garage with new garage - Larry Williams

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	(<input checked="" type="checkbox"/>) NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	5
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

2. Will the use or value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?

No, will improve property value in area - Larry Williams

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	(<input checked="" type="checkbox"/>) NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	5
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

3. Does the need for this variance arise from conditions peculiar to the property included in the variance?

Yes, alley and street - Ron Fallowfield

Larry Droege	() NO*	(<input checked="" type="checkbox"/>) YES	Keith Spurgeon	() NO*	(<input checked="" type="checkbox"/>) YES	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() NO*	(<input checked="" type="checkbox"/>) YES	Larry Williams	() NO*	(<input checked="" type="checkbox"/>) YES	5	0
Mark Seib	() NO*	(<input checked="" type="checkbox"/>) YES					

4. Are these conditions general in the same zone?

No, location of house - Larry Droege

Larry Droege	(<input checked="" type="checkbox"/>) NO	() YES*	Keith Spurgeon	(<input checked="" type="checkbox"/>) NO	() YES*	<u>YES</u>	<u>NO</u>
Ron Fallowfield	(<input checked="" type="checkbox"/>) NO	() YES*	Larry Williams	(<input checked="" type="checkbox"/>) NO	() YES*	0	5
Mark Seib	(<input checked="" type="checkbox"/>) NO	() YES*					

5. Will the strict application of the applicable Ordinance constitute unusual and unnecessary hardship if applied to the property in question?

would not be able use existing drive Larry Droege

Yes - would not have room for structure - Ron Fallowfield

Larry Droege	() NO*	(<input checked="" type="checkbox"/>) YES	Keith Spurgeon	() NO*	(<input checked="" type="checkbox"/>) YES	<u>YES</u>	<u>NO</u>
Ron Fallowfield	() NO*	(<input checked="" type="checkbox"/>) YES	Larry Williams	() NO*	(<input checked="" type="checkbox"/>) YES	5	0
Mark Seib	() NO*	(<input checked="" type="checkbox"/>) YES					

6. Will the granting of this variance interfere substantially with the comprehensive plan or materially increase street congestion?

No - location of garage - will not affect view - Larry Droege - Comp plan residential area - home

Larry Droege () NO () YES* Keith Spurgeon () NO () YES* YES NO
Ron Fallowfield () NO () YES* Larry Williams () NO () YES* 0 5
Mark Seib () NO () YES*

***If any one of your answers above is followed by an asterisk, under the statute you must deny the application.**

DECISION: It is therefore the decision of the Board, that the variance:

is hereby granted _____ ()

is hereby denied _____ ()

subject to any conditions stated in the minutes of the Board, and incorporated herein and made a part of the decision. Adopted this _____ day of _____

(date)

8th day of *September 2012*