

MINUTES  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
May 29, 2012 at 6:00 P.M.

**MEMBERS PRESENT:** Larry Willis, Chairman; Don Mottley, Judy Writsel, Mike Winge and Jeff Valiant.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff

**MEMBERS ABSENT:** Tina Baxter and Terry Dayvolt

A moment of silence was held followed by the Pledge of Allegiance.

**MINUTES:** Upon a motion made by Don Mottley and seconded by Mike Winge the minutes of the last regular meeting held April 23, 2012, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

**SPECIAL USE:**

**BZA-SU-12-09**

**APPLICANT:** Liberty Mine, LLC by Alex Messamore, Land Acquisition and Permits

**OWNER:** ALCOA Fuels, Inc. by G. Royce Haws, President and Daryl & Beth Mottley

**PREMISES:** 1108 acres located on the N side of New Harmony Rd. and Weyerbacher Rd. in Campbell Twp. *Complete legal on file*

**NATURE OF CASE:** Applicant requests a Special Use (SU 13) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an A” Agriculture, “M-2” General Industrial, and “CON” Recreation and Conservancy zoning districts. *Advertised in the Boonville Standard April 12, 2012. Con’t from April 23, 2012.*  
**REQUEST TO WITHDRAW.**

Mrs. Rector read the letter from Liberty Mine to the Board. (Copy on file.)

Mike Winge said he was curious as to why they didn’t want to go through...he knows they have a State...where they can go around the County but he is curious as to why ALCOA would not go through the normal process with citizens and this Board to satisfy everybody rather than withdraw.

Attorney Doll said the Indiana General Assembly has passed a State Statute that has removed their jurisdiction from regulating this type of mineral extraction in anything, but what is defined, as an urban area. He said Indiana Code 36-7-4-11-03 reads this chapter does not authorize an ordinance or action of a Plan Commission (and the BZA is a sub unit of the Plan Commission) that would prevent, outside of urban areas, the complete use and alienation of any mineral resources or forest by the owner or alienee of them. He said that section of the code which was last modified in 2002 has been interpreted by numerous Indiana Appellate Court decisions and he then cited several cases. He said consistently in those decisions the Appellate Court has held that the language that says to prevent the complete use must mean that they

have absolutely no jurisdiction to regulate mining activities in a non-urban area. He explained there are two exceptions to that: an urban area and according to the new flood ordinance any mine within a flood plain. He then explained an urban area.

Mike Winge said he is real disappointed in that for the simple reason that it seems like when it comes to communities, anywhere across this country, anytime the State gets involved they don't do what they are supposed to do.

Attorney Doll said this is a Statute that has been batted about in various forms for twenty-one years in one capacity or another. He said it is really the Court of Appeals decision that put the final definition to it and his advice to the Board tonight is they have no further jurisdiction in the matter. He said he does recommend some changes to the rules that mines are required to come to Plat Review to determine if there are any urban areas affected by the applicable permit.

Mrs. Rector said that is what is being proposed. She then asked if they need to make a motion to allow the withdrawal.

Attorney Doll said if an applicant wishes to withdraw their application then it is automatic.

### **BZA-SU-12-13**

**APPLICANT:** Custom Sign & Engineering, by Debra Mounts, Sales Rep. **OWNER:** Newburgh Property Management, LLC, Mark Gavorski, owner.

**PREMISES:** Property located on the E side of Eli Place approximately 0' SE of the intersection formed by Stahl Rd. & Eli Place. Lot 2 Eli Place Subdivision, Ohio Twp.

**NATURE OF CASE:** Applicant requests a Special Use (SU 8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow a 2'3" by 13'4" LED digital message center on a previously permitted on premise sign in a "C-4" General Commercial zoning district. *Advertised in the Boonville Standard May 17, 2012.*

Debra Mounts and Mark Gavorski were present.

The Chairman called for a staff report.

Mrs. Rector said they still need the unopened envelope or return receipt from Wade Farr; Travis Kaiser; Megan Craig and Carol Russler. She said this property is Lot 2 Eli Place Subdivision they want a message board to be located on an existing on premise sign. She said they obtained the permit for this sign just about a month ago and now they want to place the message board on it. She said this lot has the Assisted Living & Continuous Care Facility to be known as Hamilton Place. She said the property to the west is vacant C-4, lot 1 Eli Place; to the east is R-1A existing Sweats Subdivision; to the south is M-1 – Deaconess Gateway and to the north is C-4 Stahl Road Business Park. She further said the property lies within a 500 year flood plain but nothing extra was required for that. Mrs. Rector said the nursing home has entrance off Eli Place but this sign is at the southern portion of the lot and will be seen from SR 66. She added they have answered the use statements on the application and it is in order.

Debra Mounts said that is pretty much a correct summary. She said they are requesting the Special Use in order to be able to use that technology to market this new business that has invested into Warrick County and to try to help them make a successful presentation to the County of their services available.

Judy Writsel asked how they feel a reader board is going to enhance their communication about an elder care community; what kind of messages are they going to put on there...it is obvious what it is and if someone has need of that care don't they think that ...she doesn't get the point.

Mark Gavorski said it could be many things; it could be for employee morale and maybe they can congratulate the employee of the month. He said they could recognize someone who is 100 years old for good will. He said right now they have sold nine out of their 24 independent living cottages and they could announce that. He said they could also talk about their mission and vision for the company.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any State or Federal Permit
2. Subject to an Improvement Location Permit being obtained on the existing sign including the new message board.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to no use of the words, 'stop', 'danger', 'look', or any other word which would confuse traffic.
8. Subject to no rotating or revolving beams of light or strobe lights.

The motion was seconded by Jeff Valiant and unanimously carried.

**VARIANCES:**

**BZA-V-12-11**

**APPLICANT & OWNER:** Kimberly Doty

**PREMISES:** Property located on the E side of Maurer Rd approximately 680' S of the intersection formed by Maurer Rd. & Tennyson Rd. Skelton Twp. *2488 Maurer Rd*

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow an Improvement Location Permit to be issued for a manufactured home on property with an existing manufactured home (to be removed) & existing unattached accessory building in an "A" Agriculture zoning district. *Advertised in the Boonville Standard May 17, 2012.*

Kimberly Doty was present.

The Chairman called for a staff report.

Mrs. Rector said they have all the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said this Variance to allow a permit to be issued for a manufactured home on property with an existing manufactured home and pole barn in an Agriculture zoning district. She said the existing manufactured home is to be removed once they get the new one set up and move in. Mrs. Rector said all surrounding property is zoned agriculture with residences to the north and south and there is no flood plain. She said there is an existing driveway on Maurer Road. She said the applicant states on the application she wants to improve her home and sewer system and has informed staff she is asking for 60 days to remove the existing manufactured home.

Mrs. Doty said the only thing she has to add is there is going to be a five week delay in getting her home constructed and delivered.

Mrs. Rector said the Variance is good for six months and if need be she can give her an extension if this is approved.

Larry Willis asked if she is locating home in the same place as the existing.

Mrs. Doty explained the new home will be located about twenty feet behind the old modular home. She said she needs to get her permits so they can start the footers and then when the house is delivered they can set it up. She said they will then move their stuff out of the old one and into the new one and then the old one is gone. She said they are also going to have their new septic mound system constructed at the same time too.

Discussion ensued over the five week delay.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.

2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the location of the property in Warrick County which is the only property that can be their residence.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - 1 Subject to an Improvement Location being obtained.
  - 2 Subject to a Building Permit being obtained.
  - 3 Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - 4 Subject to all utility easement and facilities in place.
  - 5 Subject to the existing manufactured home to be removed within 90 days of issuance of certificate of occupancy.

The motion was seconded by Jeff Valiant and unanimously carried.

**BZA-V-12-12**

**APPLICANT & OWNER:** Joe & Kimberly Ballard

**PREMISES:** Property located on the N side of Angel Dr. approximately 200' SE of the intersection formed by Angel Dr. & Heather St. Lot 26 Sunnymeade Subdivision Sec. "B", Ohio Twp. 8344 Angel Drive

**NATURE OF CASE:** Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow an Improvement Location Permit be issued for an addition to a residence encroaching in the 25' rear yard requirement by 10' 2" in an "A" Agriculture zoning district. *Advertised in the Boonville Standard May 17, 2012.*

Joe & Kimberly Ballard were present.

The Chairman called for a staff report.

Mrs. Rector said they have all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said this a Variance to allow a permit to be issued for an addition to the residence encroaching into the 25' rear yard requirements by 10'2" in an Agriculture zoning district. She said all surrounding property is zoned Agriculture with residences being within the Sunnymeade Subdivision Sec. B and there is no flood plain. She said they have an existing driveway on Angel Drive. She said the applicants have stated *Please consider granting a variance for my property at 8344 Angel Dr. in Newburgh. I have two young daughters that enjoy helping, and learning to cook. With the size of our current kitchen, this makes for a very cramped work space. We would like to add on to our kitchen, but when the house was built in the early 1970's it was positioned only 26 feet off the of the back property line. This was done because the drainage ditch in the front yard sometimes overflows. The sewer line coming from the houses on Heather St. go across the west side of my property, then cross the drainage ditch. Due to the slope needed for proper sewage flow, the line is not below the ditch level. This dams up the drainage ditch, adding to the problem. Standing water also results in a mosquito problem. I've been told by the water department that the only solutions would be to either add a pump station or dig up Angel Dr and lower the main trunk line. By spraying the yard during warm months of the year, I've been able to manage the mosquito issue, and when the water does overflow it usually subsides fairly quickly, but because of the mosquitoes and the possibility of high water causing damage, we are reluctant to add on to the front of our house. Thank you for your consideration in this matter.*

Mrs. Rector said they have supplied the Board with photos that show how the property holds water in the front. She said it also shows the ditch and sewer pipe. She added the application is in order.

Don Mottley asked if the unattached garage is meeting yard requirements to which Mrs. Rector said an unattached garage can be as close as 3' to a side and rear property line.

Jeff Valiant asked if they were basically adding on more kitchen space.

Mr. Ballard said that is correct.

Mike Winge said that is good and more Mothers need to teach their children how to cook.

Larry Willis asked if the drainage ditch in front has the main sewer line of the neighborhood going across his property and it dams up the ditch.

Mr. Ballard said that is correct.

Larry Willis said that would be a problem he can't really correct because it is a municipality problem.

Attorney Doll said he has a question for the record; if they had their choice would they put the kitchen on the front of the house or is it their first choice to put it where they are asking.

Mr. Ballard said this is their first choice because the kitchen is in the back of the house.

Attorney Doll said no one has the right to flood their property and there are remedies for this if they wish to seek them out. He said this is awful and he wants to let them know there are Boards he can go before. He said they do have a unique problem to their property which they did not create and because of its location that would justify a Variance.

Judy Writsel asked if there is still good distance between them and the neighbors to which Mr. Ballard said there is.

Ascertaining there were no other comments from the Board and being no remonstrators present the Chairman called for a motion.

Don Mottley made a motion to approve the Variance Application based upon and including the following findings of fact:

11. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
12. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
13. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is location and health concerns over drainage.
14. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
15. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
16. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
17. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.

18. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
19. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
20. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place

The motion was seconded by Judy Writsel and unanimously carried.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

None.

Mike Winge made a motion to adjourn.

Don Mottley seconded and the meeting adjourned at 6:35 p.m.

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Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held May 29, 2012.

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Sherri Rector, Executive Director