MINUTES
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
September 26, 2016 at 6:00 P.M.

PLEDGE OF ALLEGIANCE : A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Terry Dayvolt, Vice-Chairman; Tina Baxter, Doris Horn, Mike Moesner, Jeff Willis and Mike Winge.

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

MEMBERS ABSENT: Jeff Valiant

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Mike Winge and seconded by Mike Moesner, the Minutes of the last regular meeting held August 22, 2016, were approved as circulated.

The Vice-Chairman explained the Rules of Procedure to the audience.

SPECIAL USE:

BZA-SU-16-14
APPLICANT: Prime Foods Holdings, LLC, by Ronald Bennett, Gen. Mgr.
OWNERS: Prime Foods Holdings, LLC, by Ronald Bennett, Gen. Mgr. (Pcl. 16) & Midwest Coal Reserves of Indiana, LLC, by Robert F. Bruer, V.P. (Pcl 1-15)
PREMISES AFFECTED: Property located on the E side S.R. 61 & the N side of Kelly Rd. approximately 3,000' E & 2,300" N of the intersection formed by S. R. 61 & Kelly Rd.(N 600). Hart Twp. *(Complete legal on file.)*
NATURE OF CASE: Applicant requests a Special Use (SU 5) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a commercial facility for a confined feeding operation for laying hens and egg productions in an "A" Agriculture and "CON" Recreation and Conservancy zoning district. *Advertised in the Standard September 15, 2016. Request to continue.*

Chris Wischer, Attorney, was present.

Mrs. Rector said this Special Use application was filed on August 26, 2016 and was advertised in the Standard on September 15, 2016. She said notices to all adjacent property owners were sent by certified mail with return receipt and they have submitted all the green cards. She said on September 23, 2016 they filed an Amended Special Use adding additional acreage (and property owner) and changing the location of the proposed buildings. She said they will send out all new notices to the adjacent property owners and it will have to be advertised again in the paper in order to be heard.

Attorney Wischer said he represents Prime Food Holdings and what Mrs. Rector said is correct, they did file an amended petition on Friday which added property and changed the configuration of buildings on the site plan. He said they have made a request by letter to continue this meeting, this hearing to the October 24th meeting to allow for proper notification of all interested parties.

Mrs. Rector said the Board is going to need to make a motion to continue the application.

Attorney Doll said Anthony Long represents the remonstrators.

Anthony Long said he and Hannah Belleau are attorneys who are getting their list of clients together but tonight he is appearing for Josh and Megan Cobb and for himself and his wife as trustees of their trust so he has a warm body client here tonight. He said for number one, they have no objection to the continuance. He said number two, and he mentioned to counsel ahead of time, that they need to have a defined set of documents that comprise the application; just as a point of order. He said they had some documents filed; they had some amended documents or modified documents – he needs to know the result and set – which ones out of the original still carry forward and which ones out of the new replace what so he and you all have a set of one application that they all know they are playing from the same page on. He said he doesn't care how that happens – if the petitioner can do it or staff can do it and share it with them and if they all agree and are comfortable – this is not an issue other than he wants the time they put in to prepare they are directed to active documents and not ones that were not intended to be replaced. He said thirdly, just as a matter of concern, the folks he represents here seem to have a common dress theme accordingly the folks in red are certainly people he will be filing an appearance for – certainly most of them – he questions the size of the facility for the hearing of this matter and suggest that be considered by them at some point.

Attorney Doll said to answer a little bit about his question, Mrs. Rector informed him that she emailed the amended application to him.

Attorney Long said she did.

Attorney Doll said that was complete and contained everything that had been filed by the applicants and they are treating the amendment – rather than cut and paste and put this page in and leave that page out – the whole new set was filed as an amendment so it completely replaced the first set for clarity purposes but they treated it as an amendment and collected the amendment fee for that and in addition Attorney Wischer emailed some of that to Attorney Long as well.

Chris Wischer said they did file a complete new set; he wasn't sure what the protocol should be – he didn't want there to be any confusion about what they were filing or what Attorney Long said was the active set of documents so they filed a complete set of everything he believes Friday. He said what Mr. Long received from him today was a partial set; he thinks his paralegal told him the entire document was 21 megabytes and so she didn't include the deed, property cards and some of the back data but if staff will give that to him or he can get it to him he doesn't have a problem.

Attorney Doll said if Attorney Long wants something else he is sure he isn't bashful to ask.

Attorney Wischer said he wants everyone who wants it to have it.

Mrs. Rector said she will make sure that Attorney Long gets a copy of everything.

Attorney Long said the staff has been really great to work with and he applauds the cooperation they have had. He said that answers his question on what he has gotten.

Attorney Doll said they will note his appearance on the record tonight and there is a pending motion before the Board they need to vote on. He said as to his second question about the location of the meeting, certainly they are sympathetic about that; they will have to see if there is another location that might be available; this is a pre-published date of the 24th of October at 6:00 p.m. – they published these as he knows months ago, so that is the regular date but they don't know whether as they sit here there is any larger location available.

Attorney Wischer said for the record he will echo Attorney Long's concerns about the size of the room. He said he doesn't want it to become an issue for the Board or anyone.

Mrs. Rector said one of the problems is the software they have to use in the computers to do the Minutes and be able to record them properly. She said in order to listen to them they have to have this machine.

Attorney Doll said as everybody knows who comes before this Board, those recordings – that is why everybody has to come to the microphone to speak – those recordings then are typed and that becomes the official record of the meeting which is important to everybody's rights about what was said etc. here so if they have to err on the side comfort or clarity of minutes, they are probably going to err on the side of clarity and minutes. He said they are sympathetic – he doesn't know if there is another solution to this problem and unfortunately this room is bigger than any of the courtrooms in our county so it isn't like the could move to the Circuit Court room and gain space.

Attorney Long said one other point, one of the notices he got and he doesn't know where it came from, had the 23rd as the date and he thinks it got corrected by a letter and they are all clear it is the 24th.

Mrs. Rector said she sent him the new notice today.

Attorney Long said he understands.

Attorney Doll said so everybody in the room understands, if the motion to continue passes it will be heard in this room, as of now, on October 24th at 6:00 p.m. and come early if you want a seat.

Mike Winge made a motion to continue BZA-SU-16-14 to next month's meeting. The motion was seconded by Doris Horn and unanimously carried.

Attorney Doll said this has been continued to October 24th at 6:00 p.m., don't be late.

Attorney Wischer asked when the notice deadline was to which Mrs. Rector said they must be in the mail by Monday.

Attorney Long said a lot of his clients probably would like to leave.

Mrs. Rector said they are going to take a five minute recess in order for them to clear the room.

Attorney Doll said they have other items on the agenda and those people probably feel a little overwhelmed.

Terry Dayvolt said the Board will take a five minute break and anyone wishing to stay and listen and see how the Board operates is welcome to do so.

The meeting adjourned for a five minute recess at 6:15 p.m.

The meeting was called back to order at 6:20 p.m.

VARIANCE:

BZA-V-16-12
APPLICANT & OWNER: Thomas & Jennifer Weber
PREMISES AFFECTED: Property located on the W side of River Bluff Dr. approximately 730' S of the intersection formed by River Bluff Dr. & Pollack Ave, Lots 13 & Pt. Lot 12 River Bluff Sub. Ohio Twp. *(Complete legal on file) 6155 River Bluff Dr.*
NATURE OF CASE: Applicants request a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to the residence not meeting the minimum 25' front yard setback and encroaching into the 25' building setback line and an addition not meeting the minimum 25' rear yard requirement in an "R-1" One Family Dwelling zoning district. *Advertised in the Standard September 15, 2016.*

Thomas Weber was present.

The Vice Chairman called for a staff report.

Mrs. Rector said they have submitted all the return receipts from certified mail of notice of this meeting to the adjacent property owners except for one but the USPS website shows the letter was delivered. She said the existing use is residential and the surrounding zoning to the North, East, and South is zoned "R-1" One Family Dwelling and to the West is "R-2" Multiple Family Dwelling. She said there is no flood plain on the property and there is an existing driveway onto River Bluff Dr. Mrs. Rector explained this existing house only has a current 19.68' rear yard because the house was constructed prior to the ordinance change that required a 25' rear yard. She said the previous ordinance required 25% of the lot depth, which was the 19.68'. She said the plot plan shows the addition will be within 10 feet from the rear property line. Mrs. Rector said the front yard requirement is 25' and according to the plot plan the proposed corner of the house will be 22.27' from the front property line. She said since the house sits on a cul-de-sac the total amount of house in the building line is 4.61'. She said the applicant's state *"We are requesting variances due to our family's growing needs and irregular shaped lot. Our rear yard is very small and we have a pan-handle on the southern portion of their lot to the west. We request a variance in the minimum distance from the back of our house to the western property line for the addition of a family room. This addition would be within the twenty-three foot (23') back yard requirement by 9.88'. Also, the front setback line to the East arcs back to the west due to a curve in the street prior to the cul de sac. We also request a variance of the distance from the southeast corner of our house to the street. This would be for an added garage bay going from one car to two cars. The corner of the addition would come inside the twenty-five foot (25') setback by 2.7'."* Mrs. Rector said their statement is incorrect in that the back yard requirement is 25 feet not 23 feet. She said the application is in order. She said they can probably see more by looking at the plot plan.

Mr. Weber said they bought the house in 1997. He said he has three boys and their lot is kind of odd shaped because of the cul de sac and they would like to improve the area so it is more feasible for their family. He said they enjoy living there and he appreciates their consideration on this application.

Terry Dayvolt called for questions from the Board.

Jeff Willis said the house appears to jog back in some places and asked if the garage could go back two feet and get out of the cul de sac.

Mr. Weber said he thinks that would hamper the appearance of the two car garage bay to have it in a staggered position.

Mike Winge said as a builder, that would affect the actual construction of the house and it would cause some problems.

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

Mike Winge 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 irregular and odd shaped lot.

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:

a) Subject to an Improvement Location Permit 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 Doris Horn and unanimously carried.

Mrs. Rector said they would have their approvals done by Wednesday and they could get their permits.

BZA-V-16-13
APPLICANT: Diane M. Roth
OWNER: Eric Wetzel
PREMISES AFFECTED: Property located on the N side of Gemlich Rd. approximately 700' W of the intersection formed by Gemlich Rd. (S 200) & Bullocktown Rd. (E 75), Parcel 2A Gemlich Rd. Minor Sub. II, Boon Twp. (*Complete legal on file.) 422 E. Gemlich Rd.*
NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be amended to allow living quarters in an unattached accessory building on property with an existing residence in an "A" Agriculture zoning district. *Advertised in the Standard September 15, 2016.*

Eric Wetzel and Diane Roth were present.

The Vice-Chairman called for a staff report.

Mrs. Rector said they have submitted all the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said there is an existing mobile home on the property that Ms. Roth lives in and they have obtained a permit for an unattached accessory building and they now want to put living quarters in the accessory building for Mr. Wetzel to live in. She said all the surrounding property is zoned Agriculture with residences and there is no flood plain on the property. She said they have an existing driveway off Gemlich Rd. She add if this Variance is approved they will need to void the existing Improvement Location Permit for the accessory building and obtain a permit for a single family dwelling. She said the statement from the applicant is "*adding a bedroom to new barn (when finished building). Eric works out of state as a boilermaker and lives in his camper except between jobs when he comes home until he is called back to work.*" She said the application is in order.

Mr. Wetzel had nothing to add.

The Vice Chairman called for questions from the Board.

Doris Horn said so he is just going to live in this when he comes home.

Mr. Wetzel said it isn't going to be permanent; it is just for now until he can buy another piece of property and build a house.

Terry Dayvolt asked how big the building is.

Mr. Wetzel said it is a 30'x40' building.

Mrs. Rector said he will have to build it to residential code in order to live in it.

Mr. Wetzel said yes, he knew.

Ascertaining there were no other questions from the Board, the Vice Chairman called for remonstrators.

Susan Galloway apologized for not having something in writing but she has been busy caring for her mother who passed away Sunday and she hasn't had a chance to read over this until today. She said she lives across the street from this and this is actually the fourth property they are adding. She said the first mobile home they put in she didn't say anything but after the second one was proposed it (the first one) was to be taken out. She said they didn't fight that because they were supposed to move one out. She thinks that is too many properties (homes) on one parcel of land. She said this is the fifth and one isn't shown on the drawing. She said the "proposed mobile" is about 25' from the road and there are about 4-5 families living in there. She said it is kind of crowded in that area with kids running around. She said she has had trouble with them coming into her yard and driveway. She said this is just a lot of people in one area and she doesn't know if it zoned for that many septic tanks because there are five properties (homes) on what was zoned for one house to begin with.

Mrs. Rector said this property was divided into different parcels and on this parcel there is only a mobile home and the proposed garage. She said the other home she is talking about is on a different parcel of ground by deed.

Mrs. Galloway said they did say they were going to move one mobile home out when they separated it. She said there is one mobile home behind the house.

Mrs. Rector said that is another parcel.

Mrs. Galloway said when she called she was told they would move the other one out when they put the second one in.

Mrs. Rector said but that is another piece of property, not what their petition is on today. She said they also have a letter from the Health Department that the property has an existing septic system and there is no new permit required and the system is designed for its current use and will accommodate the proposed addition.

Terry Dayvolt said if she has problems with the other piece of property she can speak with the Executive Director about that.

Mrs. Rector said yes because she doesn't remember the conditions on the other applications.

Mrs. Galloway said she understands that.

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

Mike Moesner 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 …

Mike Moesner said he didn't think there is a condition.

Attorney Doll said he didn't know what conditions there are that are property based that would justify a Variance other than this is a part time, temporary circumstance. He said if they do that then it seems to him there should be a time limitation on it or a restoration of it back to a barn if Eric does locate other property and moves to a different location for his residence.

Mike Moesner asked if they could put a two year time limit on it or is that too long or …

Mrs. Rector said they have in the past put a condition that it is for a certain individual only and not for rental property or anybody else just for him.

Mike Moesner said he would include that this would only apply to him and as his residence only, not rental property and up to two years.

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:

a) Subject to an Improvement Location Permit being obtained.

b) Subject to a Building Permit being obtained.

c) The living quarters are to be only used for Eric Wetzel for a period of two years and not for rental property.

d) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

f) Subject to all utility easement and facilities in place

The motion was seconded by Doris Horn. Tina Baxter abstained from voting. All other members voted for the motion.

Mrs. Rector stated they can pick up their approval and permit Wednesday.

Mrs. Roth asked the costs of the permits.

Mrs. Rector told her the cost of the Improvement Location Permit and that she will also have to go to the Building Department because they are changing the use of the building.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 6:45 p.m.

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Terry Dayvolt, Vice 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 the said Board at their monthly meeting held September 26, 2016.

_____
Sherri Rector, Executive Director