

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

Regular meeting to be held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
August 26, 2019 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Jeff Valiant, Chairman; Terry Dayvolt, Paul Keller, Mike Moesner, Mike Winge, and Jeff Willis.

Also present were Morrie Doll, Attorney, Amanda Key, Staff and Kim Kaiser, Staff.

**MEMBERS ABSENT:** Doris Horn

**MINUTES:** Chairman Valiant called for a motion to approve the minutes from the July 22, 2019.

Mike Winge made a motion to approve the minutes from July 22, 2019 as circulated.

The motion was seconded by Mike Moesner and approved unanimously.

Chairman Valiant explained the rules and procedures.

**SPECIAL USES:**

**BZA-SU-19-15**

**APPLICANT:** Julie Chandler

**OWNER:** Cody Chandler

**PREMISIS AFFECTED:** Property located on the north side of SR 62 E approximately 475 feet west of the intersection formed by SR 62 E and Two Story Road, parcel number B in Equine Estates Minor Subdivision. Boon, Twp. 31-5-7 866 E SR 62

**NATURE OF CASE:** Applicant requests a Special Use, SU 22, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an Improvement Location Permit for a mobile home as a residence in an "A" Agriculture Zoning District. (*Advertised in The Standard August 15, 2019*)

Julie & Cody Chandler were present.

Chairman Valiant called for a Staff Report.

Mrs. Rector said we do have all the pay receipts sent certified mail from the adjacent property owners. She said on this property there are existing three unattached accessor buildings. She The properties to the north, south, east and west are all zoned "A" Agriculture and are either vacant or

have single family dwellings. She said there is no flood plain. She stated they have an existing drive on SR 62. She said the applicant statement is, "I'm wanting to put a home by my family and horses." She said a mobile home that is not being put on a permanent foundation requires a special use. She stated their application is all in order.

Chairman Valiant asked if there was anything to add to the staff report.

Mrs. Chandler said just that he has bought the farm back, and he asked his dad and me if he can live up on the hill. She said she is the babysitter, so it would be easier for all of us. She stated they are putting a steal skirt, not a plastic one underneath. She said so if one day, they do pass away, he can take it down instead of having a cinderblock.

Chairman Valiant asked if there was any questions from The Board.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Valiant called for a motion.

I, Mike Winge make 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 required State or Federal Permits.
2. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
3. Subject to any required Building Permit for the Warrick County Building Department.

4. Subject to all public utility easements and facilities in place.

The motion was seconded by Mike Moesner and unanimously carried.

Mrs. Rector said their approval would be ready Wednesday.

**BZA-SU-19-16**

**APPLICANT:** Husk Signs by Kathy Heck, Account Executive

**OWNER:** J & A Kinsey Properties, LLC by Ashley Kinsey, owner

**PREMISIS AFFECTED:** Property located on the west side of SR 66 approximately 500 feet north of the intersection formed by SR 66 and Heritage Drive Ohio Twp. 26-6-9 7000 *Savannah Drive*

**NATURE OF CASE:** Applicant requests a Special Use, SU 8, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an Improvement Location Permit for a 3 ½' x 8 ½' message board in a "C-4" General Commercial Zoned District. (*Advertised in The Standard August 15, 2019*)

Jeff Husk and Ashley Kinsey were present.

Chairman Valiant called for a staff report.

Mrs. Rector said we have all of the green cards except for five, which we have the white pay receipts showing they were mailed correctly and on time. She said when they get the rest in, to please bring them in. She stated the existing land use is a commercial business, Cabinets and Counters. She said to the north and east is zoned "R-MH" being Pecan Mobile Home Park and Heritage Hills Mobile Home Park. To the east is also zoned "C-4" with a commercial business. To the south is zoned "C-4" and "M-2" and is Heritage Commercial Court Subdivision. To the west the zoning is "R-2" with Oak Park Subdivision. She stated there is no flood plain. She said they have an existing drive on SR 66 that was put in when they re-did the highway. She said the applicant statement is, "New sign to show entrance to business due to address being on other street." She said this was property that was split up illegally and they did finally put it back together. She stated, initially the entrance to the business was on Savannah Dr. and it they did not have an entrance coming off of SR 66. She said the State bought that entrance out so now they no longer can access it through Savannah Dr. She said they are still using the address and she told Mr. Russio that they will issue him a SR 66 address, whether they use it or not is up to them. She said this now put back legally and now they need a sign to show the business. She said their application is all in order.

Chairman Valiant asked if there was anything to add to the staff report.

Mr. Husk and Ashley Kinsey said that pretty much sums it up.

Chairman Valiant asked if there were any questions from the Board. He then called for remonstrators.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Valiant called for a motion.

I, Mike Moesner, make a motion finding of fact be made as follows from the testimony and proposed use statement:

7. The USE is deemed essential or desirable to the public convenience or welfare.
8. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
9. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
10. The USE as developed will not adversely affect the surrounding area.
11. Adequate and appropriate facilities will be provided for proper operation of the USE.
12. 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 the property being in compliance at all times with the applicable zoning Ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to obtaining an Improvement Location Permit.
4. Subject to obtaining any Building Permits needed.
5. 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.
6. Subject to no use of the words, “stop”, “danger”, “look”, or any other word which would confuse traffic.
7. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Paul Keller and unanimously carried.

Mrs. Rector said their approval would be ready Wednesday.

**BZA-SU-19-18**

**APPLICANT:** David A. Spradling, Senior Land Manager for American Land Holdings of Indiana LLC

**OWNER:** American Land Holdings of Indiana LLC by Mark A. Scimio, Vice President

**PREMISIS AFFECTED:** Property located on the north side of Seven Hills Road approximately 1,540 feet east of the intersection formed by Seven Hills Road and Lilly Pad Road in Greer Twp. 26-4-9 7200 Seven Hills Road

**NATURE OF CASE:** Applicant requests a Special Use, SU 18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an Improvement Location Permit for a 190 foot tower with a 4 foot lightening rod (194 feet total height) in an "A" Agricultural Zoning District. (*Advertised in The Standard August 15, 2019*)

David Spradling was present.

Chairman Valiant called for a staff report.

Mrs. Rector said notices were not required to be sent. They own all of the surrounding property. She stated the existing land use is vacant and all of the adjoin properties are zoned "A" Agriculture with the property to the east, which has a tower. She said there is no flood plain. She stated they will need to file a utility entrance and post surety if this is approved. She said the nearest residence to the proposed tower is over 5,000 feet away. She stated there is room for an additional six dishes and antennas on the proposed tower. She said there is a letter included in your packet discussing the two towers that are closest to the proposed tower. She stated the tower owned by American Tower Management is 1,050 feet east of the proposed site and would meet all of the requirements, and there is no one using the tower now and the 20-year lease proposal payments would exceed 600% of the total cost of construction for the proposed tower. She stated the other tower is an abandoned cell-phone tower owned by Gayle Begley located 1.5 miles southeast of the proposed tower and requires major structural work to meet the minimum engineering requirements and safety specifications. She said in addition to costly repairs, the tower is not a long-term viable solution due to being located within the active Highpoint Mine permit area, which is projected to be surface mined within ten years. She said the Applicant's statement, "Installation of a 190 foot tower with a four foot lightning rod (194 feet total height) for personnel safety and direct communication with all mining operations within the vicinity".

Chairman Valiant asked if there were any questions from the Board.

Mike Moesner asked if there are going to be more than one leaser on the tower.

Mr. Spradling said it's going to start off just our mining operations because we have towers at Summerville Mine, Wild Boar Mine, and this new one at High Point. He said but they are willing to co-locate with others.

Mike Moesner said the primarily your own use then is what you're doing with the towers.

Mr. Spradling said exactly.

Mike Moesner said okay.

Chairman Valiant asked if there were any remonstrators for or against the project.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Valiant called for a motion.

I, Paul Keller, make 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.

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

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
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 an anti-climbing device and/or fence, be put up around tower.
8. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property. (pg. 35)

The motion was seconded by Mike Winge and unanimously carried.

Mrs. Rector said their approval would be ready Wednesday.

**BZA-SU-19-19**

**APPLICANT:** Nicholas Henning, Member Maxmar Properties

**OWNER:** Maxmar Properties LLC by Jeff Henning, Member

**PREMISIS AFFECTED:** Property located on the north side of New Hope Road approximately 3,500 feet west of the intersection formed by New Hope Road and Pelzer Road. Boon Twp. 14-6-8 1166 New Hope Road

**NATURE OF CASE:** Applicant requests a Special Use, SU 28, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: 3,840 square foot of an existing attached garage to be used for a home workshop (Welding Shop) in an "A" Agricultural Zoning District. (*Advertised in The Standard August 15, 2019*)

Nick & Jeff Henning were present.

Chairman Valiant called for a staff report.

Mrs. Rector said we have all return paid receipts. She said the existing land use is single family dwelling. She stated the property to the north and east is zoned "A" Agriculture and "CON" Recreation and Conservancy and are either vacant or single family dwellings and to the south and west is zoned "A" Agriculture with single family dwellings. She stated there is no flood plain and they have an existing drive. She said the applicant's statement "Small welding shop used to weld furniture and fix small equipment for local employers/contractors." She said the structure is located on 46.95 acres and the ordinance requires at least 3.5 acres to be a home workshop and use does not exceed 1,000 square feet per acre or a maximum of 10,000 square feet per tract. She stated this

does meet those requirements. She stated In addition to the owner/operator the ordinance allows one (1) employee for every one thousand square feet of the building being used as the home workshop, so they would be allowed three (3) employees. She said any outside storage must be enclosed in a solid fence and not exceed the square footage of the building. She stated the ordinance will allow one commercial vehicle maintained for one thousand square feet of the building used for the home workshop and they cannot be visible from adjacent properties and public roadways. She said this ordinance was created some years back so individuals could have a small type business at their homes if they could meet these regulations, so they wouldn't have to go through rezoning their property or trying to purchase commercially zoned property. She said so it was to help out the small business person. She said so their application is all in order.

Chairman Valiant asked if there was anything to add to the staff report.

Jeff Henning said no.

Chairman Valiant asked if there were any questions from the Board. He then called for remonstrators.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Valiant called for a motion.

I, Mike Winge, make 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 the property being in compliance at all times with the applicable zoning

Ordinances of Warrick County.

2. Subject to all public utility easements and facilities in place.
3. Subject to any required Local, State or Federal Permits.
4. Subject to the owner remaining a resident of the residence.
5. Subject to the home workshop remaining in the existing 3,840 square foot area as shown on the plot plan.
6. Subject to Article V Special Uses, Section 5 Procedure Subsection K SU-28.

The motion was seconded by Terry Dayvolt and unanimously carried.

Mrs. Rector said their approval would be ready Wednesday.

**VARIANCES:**

**BZA-V-19-17**

**APPLICANT & OWNER:** Community Outreach Ministries, Inc. by Penni Beckman, President

**PREMISIS AFFECTED:** Property located on the south side of Oak Street approximately 180 feet west of the intersection formed by Oak Street and Main Street, Skelton Township Lot No. 17 & 18 in the Town of Tennyson *113 W Oak Street*

**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 issued for: a community center with access by alley and inadequate parking with 37 parking spaces required and 23 available in a “C-4” General Commercial Zoning District. *(Advertised in The Standard August 15, 2019)*

Penni Beckman was present.

Chairman Valiant called for a staff report.

Mrs. Rector said we have all of the green cards back except for two. We have the returned letters for the two we didn't get cards for. They were all mailed correctly. She stated the existing land use is vacant and the surrounding land use to the north and east are zoned “C-4” with a residence, an apartment, buildings used for storage, or vacant. She said the property to the south is zoned “C-4” with a residence and “M-1” that have an empty building on it and the property to the west is zoned “R-1A” with an unattached accessory. She said there is no flood plain and the access must be by the alley. She stated they have a letter from the Town of Tennyson that they are aware of this proposed application and stated the surrounding alleys are for public use. They will only have parking on the south portion of the property that is zoned “R-1A”. She stated we have a letter from Anthony Long, that is included in your packet, stating he will sign a lease allowing parking subject to the Town of Tennyson utilizing the lots one or two times a year for town events subject to notice

and use conjointly with the community building. She stated the applicant's statement, "to benefit the community and there is limited spots for parking." She said if you recall, of you that were on the Board, we approved the new Tennyson Library the same way, they only had access by alley way. She said their application is in order.

Chairman Valiant asked if there was anything to add to the staff report.

Penni Beckman said no.

Chairman Valiant asked if this would be a facility that would be rented out.

Penni Beckman said they actually feed the community once a month.

Chairman Valiant said okay.

Penni Beckman said there has been some interest, so yes, if that comes up they would be willing to do that as well.

Chairman Valiant said okay, people are always looking for somewhere to rent so that is good to know.

Chairman Valiant asked if there were any questions from the Board. He then called for remonstrators.

Anthony Long stated he owns two lots that are immediately adjacent to the property both on the East side of the alley and I've told them with this operation they can use my property as needed. He said his long term goal is, if this is successful, would be to give it to them. He said it should be adequate parking and it's a good deal for the Town of Tennyson. He said he has volunteered his time to get this started and they still do a community feed once a month. He stated it is just a good thing that is going on over there and he encourages The Board to approve this.

Terry Dayvolt asked how many people it would hold.

Penni Beckmand said 225 people.

Terry Dayvolt asked if there was only the one ingress and egress.

Penni Beckman said there are three.

Mr. Long said across his lots

Penni Beckman said yes and the alley & Oak St.

Chairman Valiant asked what was that.

Penni Beckman said the alley between the grocery store and also on Oak St.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Valiant called for a motion.

I, Terry Dayvolt, make 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 landlocked.
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 Mike Winge and unanimously carried.

Mrs. Rector said their approval would be ready Wednesday.

**ATTORNEY BUSINESS:**

Attorney Doll said in response to our latest motion to dismiss from his lack of standing on the approval of the mining operation will be at the end of this week. He said he will have more next month.

**EXECUTIVE DIRECTOR BUSINESS:**

None

Mike Winge made a motion to adjourn the meeting. The motion was seconded by Paul Keller and unanimously carried. The meeting adjourned at 6:33 pm.

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Jeff Valiant

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 August 27, 2019.

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Sherri Rector, Executive Director