

**MINUTES  
WHITLEY COUNTY BOARD OF ZONING APPEALS  
REGULAR MEETING  
February 22, 2022  
7:30 P.M.**

**Whitley County Government Center  
Meeting Room A/B**

<b>MEMBERS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>STAFF</b>
Tim Denihan		X	Nathan Bilger
Sarah Lopez		X	Brent Bockelman
Danny Wilkinson	X		
Doug Wright		X	<b>LEGAL COUNSEL</b>
Joe Wolf	X		Elizabeth Deckard
<i>Kelley Sheiss (alt.)</i>	ELECTRONIC		

**AUDIENCE MEMBERS**

The list of audience members, in-person and electronic, is attached to these minutes. The signed guest list is kept on record.

**CALL TO ORDER/ROLL CALL**

Mr. Wilkinson called the meeting to order at 7:30 p.m. Mr. Bockelman read the roll call; the members present and absent are listed above.

**CONSIDERATION OF PREVIOUS MEETING MINUTES**

The minutes for the January 25, 2022 regular meeting were presented for review. Mr. Wolf made a motion to approve the minutes as presented. Ms. Sheiss seconded the motion. The motion passed by a vote of 3-0.

**ADMINISTRATION OF OATH**

Ms. Deckard provided the oath to the audience members wishing to speak.

**OLD BUSINESS**

**21-W-SE-6, Special Exception, Jonathan & Katherine Parker, 4700 N. 50 West**

Jonathan and Katherine Parker request a special exception approval for a licensed childcare home. The property at 4700 N. 50 West consists of Lot 8 of Zumbrun’s Third Addition, located on the east side of 50 West, about 1,500’ south of 500 North in Section 16 of Thorncreek Township.

Mr. Bilger presented the staff report. He explained that the petitioner’s business, Kati’s Daycare, has been in operation for some time as a State-licensed childcare home, caring for up to 16 children Monday through Friday from 6am until 5pm. The petitioner was unaware of the special exception requirement until recently. The petitioner then filed an application upon notification of

the special exception requirement. He explained that the home has a shared drive with three other homes. The driveway situation was the reason for the continuation to the February meeting.

Mr. Bilger presented aerial views of the property and explained the suggested conditions by staff.

Katherine Parker, 4700 N. 50 West, addressed the board. She explained their request and discussed the location of the new driveway to their property. She stated that when the new driveway is installed, the old driveway would be vacated. Discussion was made about the driveway and property swap with the neighboring property. Mr. Bilger explained the access to the additional lots in the area that have not been built on yet.

Mr. Wilkinson asked for questions from the attendees.

Robert & Terrie Bisher, 4690 N. 50 West, adjacent neighbors to the property, addressed the board. Mr. Bisher asked what the intentions were for the existing drive. Mrs. Parker stated that the existing drive would be removed and planted to grass. She said that the gravel from the existing driveway would be used in the construction of the new driveway. Mr. Bisher also asked about the septic system and if it had been upgraded. Mrs. Parker stated the septic had been inspected and new lines and fingers had been installed. She has them come out every year to inspect and have it pumped out. Mr. Bisher asked if it was larger than before. Mrs. Parker stated that it was not larger and did not need to be due to the number of bathrooms.

Ms. Bisher asked if anything was being addressed for the trash collection. She stated that there have been times in the past where trash has been overflowing and had been placed in their bins. Mrs. Parker apologized and stated that the disposal company trucks have had collection issues and that she would be having the trash bins at the end of the new drive so that problem would no longer be an issue.

Mr. Bisher asked if there was a plan to install any fencing around the property. Mrs. Parker stated that they had no plans for a fence. Mr. Bisher stated that he felt at risk of being sued because of his pond.

Ms. Bisher provided exhibits of the covenants and restrictions from the time they purchased their property.

Mr. Wilkinson asked staff if the BZA had jurisdiction over the covenants and restrictions of a subdivision. Ms. Deckard, Legal Counsel, stated that the BZA did not enforce covenants or restrictions. She stated that those are a private right of action. Mr. Wilkinson stated that matters of those covenants and restrictions needed to be addressed with whomever developed the subdivision or bring suit.

Mr. Wilkinson stated that Mr. & Mrs. Bisher needed to address the board, not Mrs. Parker.

Lori Kreider, 4658 N. 50 West, addressed the board. She asked if a replat would need to be done and who would be responsible for paying for that process. Mr. Bilger explained that a replat would not need to be done per code. Ms. Kreider just wanted to make sure that no cost of the recordation would be her responsibility. She also made comment of the covenants and restrictions.

With no more questions, Mr. Wilkinson opened the floor to comments.

Robert & Terrie Bisher, 4690 N. 50 West, stated that a few years ago there was an issue with the septic system. This caused overflow onto their property. He shared his concern with the number

of children and the septic system in place right now. Mrs. Bisher discussed the driveway situation. She explained problems that had occurred in the past with the amount of traffic on the shared drive.

Lori Kreider, 4658 N. 50 West, wanted to make sure that it is on written record that the old drive will be vacated. She also discussed the approval for the new driveway through the Highway department.

Tiffany Taulbee, 4732 N. 50 West, explained that agreement had been made with the Parkers for the driveway. She just wanted to make sure that everything was being taken care of. Discussion was made concerning talks with their attorneys. Driveway specs and permitting will be determined by the highway department.

Discussion was made regarding the conditions of approval. The following conditions were put in place.

1. The special exception is granted for the applicant and is non-transferable.
2. The special exception is granted as presented. If an alternative driveway arrangement is agreed upon, that arrangement is also included in this approval.
3. No more than one license for a childcare home may be obtained for this property without further Board approval.
4. A driveway permit be obtained from the Whitley County Highway Department and section of parcel be 50 feet wide.
5. The existing driveway be disconnected from the shared drive by September 1, 2022.
6. The Septic system must meet the Health Department regulations.

Mr. Wolf made a motion to approve 21-W-SE-6 with conditions. Mr. Sheiss seconded the motion. Motion passes by roll call vote 3-0.

## **NEW BUSINESS**

### **22-W-VAR-2, Setback Variance, Denise McCann, 1278 E. Pressler Road**

The petitioner, Denise McCann, is requesting a development standards variance for an encroachment into the required rear (road) setback on their property located at 1278 East Pressler Road in Thorncreek Township. The property is Lot 2 of the First Addition to Emmitt V. Pressler's Original Plat to Crooked Lake.

Mr. Bilger presented the staff report. He explained that the petitioner has proposed to remove the existing carport and construct an attached garage addition. The addition would extend along the existing dwelling's side setback and would be 3.8' from the road right-of-way line. He displayed aerial view of the property and build site.

Alex Frantz, 518 W. Porter St. Warsaw, addressed the board and explained the project.

With no questions, Mr. Wilkinson asked for a vote. Petition was approved with a roll call vote of 3-0.

**22-W-VAR-4, Setback Variance, John West, 2660 Beech Avenue**

The petitioner, John West, petitioner is requesting a development standards variance for an encroachment into the required front and rear setbacks on their property located at 2660 East Beech Avenue in Section 12 of Thorncreek Township.

Mr. Bilger presented the staff report. He explained that the petitioner has proposed to remove the existing dwelling and construct a two-story 24'x32' dwelling with a 24'x8' deck, roughly centered on the lot. The building would be 8.4' from the Beech Avenue right-of-way and 9.8' from the south (rear) property line. He displayed aerial view of the property. Mr. Bilger described the need for variances of front setback of 26.6', rear setback of 5.2', and minimum lot area of 7085 sq. ft. He explained the history of the property and lot splits. Parking area was discussed.

Ms. Sheiss asked if there were any issues with side setbacks and area for emergency services. Mr. Bilger stated that these side setbacks should leave ample room for emergencies.

John West, 2660 Beech Avenue, Addressed the board and explained what happened to the previous home and his plans for the property.

Hearing no questions, Mr. Wilkinson asked for a vote. The petition passed by roll call vote of 3-0.

**22-W-VAR-5, Setback Variance, James Morris, 6798 E. Harrold Place**

James Morris is requesting a development standards variance for the encroachment into the required rear yard setback on their property located at 6798 E. Harrod Place in Section 15 of Smith Township.

Mr. Bilger presented the staff report. He stated that the petitioner has proposed to remove the legal nonconforming 16'x18' detached garage and replace it with a new 30'x30' garage. The top of the lake bluff would be just to the north of the proposed garage location. As proposed, the new garage would maintain the existing 10.6' setback along Harrold Road and have side setbacks of 10' and 5'.

James Morris, 635 Clinton St. Defiance, Ohio, addressed the board and explained the building project.

Hearing no question, Mr. Wilkinson asked for a vote. The petition was passed by roll call vote of 3-0

**22-W-VAR-6, Setback Variance, Ryan Diepenbrock, 7907 E. Popcorn Drive**

Ryan Diepenbrock is requesting a development standards variance for the encroachment into the required side yard setback on their property located at 7907 E. Popcorn Dr.-92, Roanoke, in Section 25 of Jefferson Township.

Mr. Bilger presented the staff report. He explained that principal dwelling is located on the property to the north of the subject property. They have proposed to construct a 70'x60' two-story detached garage with entertainment spaces, office, media room, bathrooms, etc. The garage would have a driveway connection to the petitioner's existing driveway and to Popcorn Drive. He explained that with the building being a principal dwelling on this lot, the north setback would require approval of a 9.65' variance and a 19.65' building line encroachment.

Todd Hartzog, 4267 Gallmeyer Ct. Fort Wayne, Explained the project to the Board.

Monte Dull, 7763 Popcorn Drive, Roanoke, Addressed the Board with concerns. He discussed the driveway onto Popcorn drive, water drain issues, drive maintenance, and increase of traffic and construction traffic.

Todd Hartzog addressed the concerns and explained the drive situation. He confirmed that he would address the concerns and have construction traffic enter the other drive off County Line.

Rebecca Dull, 7763 Popcorn drive, Roanoke, stated a concern on the upkeep of the road.

Mr. Wilkinson stated that the upkeep of the road would not be in the Board's jurisdiction.

Hearing no other questions or comments, Mr. Wilkinson asked for a vote. The petition was approved by roll call vote of 3-0.

### **22-W-SE-1, Sawmill Operation, Amos Yoder, 7579 W. 1000 South**

Amos Yoder is requesting a special exception approval to operate a sawmill on their property at 7579 W. 1000 South in Section 33 of Cleveland Township.

Mr. Bilger presented the staff report. He stated that The property is improved with a dwelling and several outbuildings. A sawmill has been in operation for some years but was only brought to light recently when researching the construction of a structure without a building permit. He described the location of the buildings and dwelling on the property.

Mr. Bilger discussed review criteria including adequate fire protection, buildings with the sawmill operation, outdoor storage, traffic generation, and buffer screening.

Mr. Yoder, 7579 W. 1000 South, South Whitley, addressed the Board and explained his operation. He agreed with the planting of screen trees on the property edge.

Mr. Wolf made a motion to approve 22-W-SE-1, Seconded by Ms. Sheiss, with the following conditions.

1. The Special Exception is granted for the applicant and is non-transferable without Board approval.
2. The Special Exception is granted as presented and per the site plan.
3. Outdoor storage of lumber and product be screened from view from the county road with screen trees being planted on the North and East side of the property.
4. Hours of operation are limited to 7 A.M. to 7 P.M., Monday-Friday, and 7 A.M to noon, Saturday.
5. The use must have ongoing compliance with building and fire codes

With no other questions, Mr. Wilkinson asked for a vote. The petition was approved by roll call vote 3-0.

**22-W-SE-2, Traffic Generating Home Occupation, Jason Barbknecht, 2185 N. Etna Road**

Jason Barbknecht is requesting a special exception approval for a traffic generating home occupation on their property located at 2185 N. Etna Road in section 28 of Thorncreek Township

Mr. Bilger presented the staff report. He explained that the petitioner is requesting special exception approval for a hunting/fishing guide business operated out of his home. He stated that clients would arrive on-site, be briefed and outfitted as necessary, and depart with the petitioner on a guided fishing expedition. It is not expected that clients would normally enter the buildings.

Mr. Bilger discussed the review criteria and gave the following staff suggested conditions.

1. The Special Exception is granted for the applicant and is non-transferable.
2. The Special Exception is granted as presented and per the site plan.
3. The area used for the business shall not exceed 20% of the habitable area of the residence.
4. Any signage will conform to the requirements of the code.

Jason Barbknecht, 2185 N. Etna Road, addressed the Board. He described his home occupation in detail. He gave descriptions of his everyday operations as well as the possibility of having occasional events at the property including Big Brothers/Big Sisters, Hunter’s education, and National Wild Turkey Federation for children. These events would have the possibility of having additional vehicles on the property up to three times per year.

Hearing no other questions or comments. Mr. Wolf made a motion to approve 22-W-SE-2 with suggested conditions. Seconded by Ms. Sheiss. Petition was approved by roll call vote of 3-0.

**OTHER BUSINESS**

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**ADJOURNMENT**

Having no other business, Mr. Wilkinson adjourned the meeting at 9:52 p.m.

**GUEST LIST**

1. John West.....7165 W. 550 North, Sharpsville, IN
2. Jim Morris.....635 Clinton St. Defiance, OH
3. Amos Jay Yoder.....7579 W. 1000 South, South Whitley
4. Robert Bishir.....4690 N. 50 West
5. Terrie Bishir.....4690 N. 50 West
6. Alex Frantz.....518 W. Porter St. Warsaw, IN
7. Todd Hartzog .....4207 Gallmeyer Ct. Fort Wayne
8. Kati Parker .....4700 N. 50 West
9. Monte Dull.....7763 Popcorn Dr. Roanoke
10. Rebecca Dull.....7763 Popcorn Dr. Roanoke
11. Matt Barton.....6788 E. Harrold Rd. Churubusco
12. Lori Kreider .....1760 N. Mary Lane

- 13. Jason Barbknecht .....2185 N. Etna Road
- 14. Tiffany Taulbee.....4732 N. 50 West

**GUEST LIST – ELECTRONIC**

- 15. Sonya Emerick .....5865 E. State Road 14