

**MINUTES
WHITLEY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
APRIL 24, 2018 7:30 P.M.**

MEMBERS PRESENT

Elizabeth Deckard
Will Klein
Danny Wilkinson
Doug Wright

STAFF

Nathan Bilger
Jennifer Shinabery

ABSENT

Tim Denihan

ATTORNEY

Dawn Boyd

VISITORS

There were 10 visitors who registered their attendance at the April 24, 2018, regular meeting of the Whitley County Board of Zoning Appeals. A list is included with these minutes.

CALL TO ORDER

Mr. Wilkinson called the meeting to order at 7:32 p.m.

ROLL CALL

Ms. Shinabery read the roll with all members present and absent listed above.

CONSIDERATION AND ADOPTION OF THE MARCH 27, 2018 REGULAR MEETING MINUTES

Mr. Wilkinson asked if there were any corrections or additions to the minutes as amended. There being none, Mr. Wright made a motion, seconded by Mr. Klein, to approve the minutes as submitted. The motion carried unanimously.

OATH TO WITNESSES

Attorney Boyd administered the oath to those present who wished to speak during the meeting. Mr. Wilkinson then briefly explained the procedure for conducting the meeting.

OLD BUSINESS

17-W-VIO-1 Continuation of a Public Hearing on a zoning code violation at 5750 East Dorland Street in Collins. The property is located at the east end of Dorland Street and the south end of N. Indiana Street in Section 28 of Smith Township and is zoned GC, General Commercial and RR, Rural Residential.

Mr. Bilger reviewed the situation and stated that as of April 17, 2018, Mark Ramsey is the new recorded owner of the property. He stated that progress has been made in terms of organizing and cleaning up the property and given the change of ownership, he suggests tabling the violation in order to allow the issue to be either closed administratively or brought back before the Board, if necessary.

Mark Ramsey, 2370 N. Indiana Street, Columbia City, reiterated that he is the current owner of the property. He stated that the purchase agreement states that the previous owner, James Rosencrans and the tenant, Tycris Smith, have until May 17, 2018 to completely vacate the property. He stated that after that time, any remaining items on the property will be considered abandoned and his responsibility to deal with. He stated that as of this date, he counted 21 vehicles parked on the property and possibly another 4-5 inside.

Following discussion amongst the Board, Mr. Wright made the motion to table the violation, giving staff the authority to either close the violation administratively or bring the violation back before the Board if Mr. Ramsey has not become fully compliant in 90 days. Mr. Klein seconded the motion and the motion passed unanimously.

NEW BUSINESS

18-W-SE-5 Clint and Jennifer Simmons, 4660 N. State Road 109, Columbia City, requested a special exception to allow for an auto repair business in an AG, Agricultural District. The property is located on the east side of N. State Road 109, in Section 16 of Thorncreek Township.

Mr. Bilger reviewed the staff report, reviewing the details of the petition. He explained that a letter from an adjacent property owner was received at the office earlier this date and was distributed before the Board members this evening. He referred to the aerial view of the property and the submitted site plan, pointing out the structure which is used for the repair business as well as the location of the proposed stone parking area. Lastly, he reviewed the criteria for Board consideration, possible concerns, and suggested conditions for the petition.

Clint and Jennifer Simmons, 4660 N. State Road 109, Columbia City, presented their petition. Mrs. Simmons stated that their goal was not to change the zoning of the property and they are in complete agreement with the suggested condition that the special exception be non-transferable. Mr. Simmons stated that their neighbor who had submitted the letter today had stopped by and they had talked and discussed his concerns.

Mr. Wilkinson asked if there was any public comment in opposition or in favor.

John Meister, 5995 S. Woodstrail Drive-57, Columbia City, stated that prior to his presentation, he had some questions and would like to give them in writing both to the petitioners and to the Board. The questions were directed toward the petitioners and were related to the details of their business and their future plans. The written questions were submitted for the petition record.

Mr. and Mrs. Simmons were given the opportunity to answer each question. Mr. Simmons explained that he had started his business on the side to supplement their income when he was required to care for his daughter at home. He explained that approximately two years ago, they purchased the property because the building on the property was ideal for the business, with the intent of moving into town if the business expands. He explained that there is no outdoor lighting. He stated that he has limited outdoor parts storage and wants to maintain an organized, clean property that is respectable to his neighbors. He stated that he realized that over the winter, there was too much outdoor storage and has been working diligently to clean that up. He stated that it is not his intention to buy and sell vehicles, other than possibly an occasional personal vehicle. He stated that he is very careful with his work and the time it takes to complete repairs varies. He reiterated that if the business expanded, he plans to relocate the business.

Mr. Meister then made a presentation, stating that there has been significant improvement in cleaning up the site, yet recently there were 18-20 cars stored outside with missing windows and no license plates, attracting vermin and possibly vandalism. He stated that it is assumed that the Ordinance pertaining to the accumulation of junk and trash Ordinance applies to this case, especially considering that the property is less than 20 acres in size, despite being located in an AG district and suggested that the petitioners may be in violation as a public nuisance. He then reviewed the Special Exception requirements listed in Chapter 10 of the Zoning Ordinance and his findings of fact under each requirement, suggesting that the special exception does not meet these requirements. He also requested that the Board take into consideration that the 2011 Comprehensive Plan sites this property as Rural Residential and desirable for residential development and does not allow for such operations as auto repair, although it is currently zoned Agricultural. He stated that simply screening the visibility of vehicles would mitigate the risk to the environment of the neighborhood. He stated that as State Road 109 is under the jurisdiction of INDOT, there may be the need for a driveway permit due to a potential traffic safety issue. He concluded that the petitioners are unable to satisfy the requirement of complete enclosure due to the barn's size and the capacity to only house approximately two cars. He concluded by stating that it is his recommendation that the Board deny the petition based upon the evidence that the requirements outlined in 10.9 of the Zoning Ordinance are not met. He offered additional conditions to be placed on the request in the event the Board approves the petition. These suggested conditions were submitted in writing to both the petitioners and the Board and were added to the record.

Ed Harrison, 4830 N. State Road 109, Columbia City, stated that he was the adjacent property owner that had submitted the letter on this date. He stated that he is requesting fencing to shield his view to the east. He stated that he has spoken to the petitioners and they are agreeable. He stated that he and Mr. Simmons have had good communication. He explained that he believes at one point, the outdoor storage became too much, but they have made a good faith effort to clean that up and believes they will continue to. He requested that the Board provide some leeway as

he believes they have good intent. He stated that it is his recommendation that the Board approve the petition with parameters.

Richard Mullinax, 5470 S. Meridian Road, Columbia City, stated that a friendly atmosphere that encourages small business favors economic development. He stated that we want to have a county that is welcoming to and supportive of entrepreneurs. He explained that he has been a patron of Mr. Simmons, who is an honest businessman. He stated that Mr. Simmons helps a lot of people and can get backed up as a result, but is able to easily correct that. He concluded by stating that Mr. Simmons is the kind of businessman that we want in the community and it is the right thing to do to allow him to operate.

Sonya Emerick, 5865 E. State Road 14, Columbia City, stated that she also encourages economic development and growth and believes an AG zoned area is a perfect place for a repair operation. She stated that Mr. Meister is complaining and judging our county without being a resident of Whitley County. She concluded that she believes the Board should approve the petition.

Mr. Meister responded that his property is on the Whitley/Noble county line and it is his understanding that all parties are permitted to render an opinion and comment. He explained that his commitment to this county is evident in the fact that he has been a past President of the Columbia City Chamber of Commerce, a member of the Whitley County United Way Board of Directors, as well as past President of Parkview Whitley Hospital. He explained that he is pro-business and his intent is to continue the good faith efforts of the petitioners.

Mr. Wilkinson offered the petitioners the opportunity to rebut. Mr. Simmons thanked everyone who commented and stated that he appreciated the opportunity for everyone to get things out in the open. He stated that he is willing to do whatever needs to be done in order to get along. Mrs. Simmons stated that the only thing she wanted to rebut was the danger of traffic utilizing the driveway. She stated that the driveway existed prior to their purchase of the property and they use the driveway personally many times a day. Mr. Simmons added that INDOT maintains the easement and if you are obeying traffic laws, you can get in and out of the property safely. Mr. Simmons also stated that the number of vehicles that were alleged to be outside at one time was overstated. Mrs. Simmons added that the three vehicles that were parked in the field were all able to run. She stated that the one had a broken window because it had been in an accident. She stated that they would have been more than willing to address Mr. Meister's concerns had he approached them. Mr. and Mrs. Simmons concluded by thanking the Board for their time and again for everyone's comments – whether in favor or in opposition.

Mr. Wilkinson asked the petitioners their thoughts on the nine suggested staff conditions, specifically regarding the issue of screening. Mr. Simmons stated that they park their personal vehicles between the barn and the house, which screens that area from the road. Mr. and Mrs. Simmons explained the difficulty and impracticality of providing fencing between the barn and the house on that north side. He stated that if his neighbor, Mr. Harrison needed screening on the east side, he would accommodate. He explained that he would need to complete the screening over time, as it would be a significant financial expense for him.

The Board reviewed and discussed the suggested staff conditions individually.

Mr. Harrison asked if he could comment one additional time and requested that the Board allow the petitioners time to complete the requirements of screening due to the expense involved.

Following additional discussion of screening, Mr. Klein made the motion to approve the petition with the following conditions:

1. The Special Exception is granted as presented and per the site plan.
2. The Special Exception is granted for the applicant and is non-transferable.
3. All automobile repair and maintenance operations shall take place within the shop building and shall not go beyond the submitted hours of 10am to 7pm.
4. There shall be no employees of the use other than the petitioner.
5. Dismantled or disassembled vehicles shall not be parked outside overnight. The total number of vehicles parked on the property, including those for business and personal use, shall not exceed 9. Vehicle parking shall be confined to the parking area. No vehicles shall be parked north of the north facade of the shop building. Temporary parking for personal events, guests, etc. is an exception.
6. Solid opaque fencing 6-8' in height shall be required to screen visibility on the east side of the barn, which is mutually agreed upon with the neighbor Mr. Edmond Harrison, and shall be completed within six months.
7. Outdoor work lighting shall not be permitted.
8. Any freestanding signage shall not exceed a total of 24 sq. ft. in area of all sign faces.
9. The dumpster shall be kept in a location that is not visible from the public right-of-way or else screened with a solid opaque enclosure.

The motion was seconded by Mr. Wright and passed unanimously.

OTHER BUSINESS

Mr. Bilger mentioned a form he will be distributing to the Board members describing the voting options to help organize thoughts during meetings.

ADJOURNMENT

There being no further business to discuss, Mr. Wilkinson declared the meeting adjourned at 8:45 p.m.