

MINUTES
WHITLEY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
January 28, 2020 7:30 P.M.

MEMBERS PRESENT

Joe Wolf
Sarah Lopez
Danny Wilkinson
Doug Wright

ATTORNEY

Liz Deckard

MEMBERS ABSENT

Tim Denihan

STAFF

Nathan Bilger
Mark Cullnane

VISITORS

Thirteen visitors signed the guest list at the January 28, 2020 regular meeting of the Whitley County Board of Zoning Appeals. The original guest list is kept on record in the Columbia City/Whitley County Planning & Building Department.

CALL TO ORDER/ ROLL CALL

Mr. Wilkinson called the meeting to order at 7:30 p.m. Mr. Cullnane read the roll call with all members present and absent listed above.

ELECTION OF OFFICERS

Mr. Wilkinson introduced the election of officers. Mr. Bilger stated that Mr. Wolf is the designated alternate for Liz Deckard, who resigned from the Board in December 2019. Mr. Bilger stated that Mr. Wolf would be able to continue serving as an alternate for Ms. Deckard until the County Commissioners appoint a replacement for Ms. Deckard and a final permanent appointment is made.

Mr. Wilkinson called for a motion. Mr. Wright made a motion to nominate Mr. Wilkinson as Chair and Ms. Lopez as Vice-Chair. Mr. Wolf seconded the motion. Mr. Wilkinson asked if there were any questions or comments. Hearing none, Mr. Wilkinson called for a vote. The motion passed unanimously by a vote of 4-0.

APPOINTMENT OF LEGAL COUNSEL

Mr. Bilger stated that the Board needs to formally appoint legal counsel. He stated that this is because the County Commissioners want to, as much as is possible, bring legal counsel for the County under one firm. The firm would then be Bloom Gates Shipman & Whiteleather, LLP.

Mr. Wright made a motion to appoint Bloom Gates Shipman & Whiteleather, LLP as legal counsel for the Board. Mr. Wolf seconded the motion. Mr. Wilkinson asked if there were any questions or comments. Hearing none, Mr. Wilkinson called for a vote. The motion passed unanimously by a vote of 4-0.

CONSIDERATION AND ADOPTION OF THE NOVEMBER 26, 2019 REGULAR MEETING MINUTES

The minutes for the November 26, 2019 regular meeting were presented for approval. Mr. Wilkinson asked the Board if it had corrections or additions to the minutes. Hearing none, Mr. Wilkinson called for a motion.

Ms. Lopez made a motion to approve the November 26, 2019 meeting minutes as presented. Mr. Wright seconded the motion. The motion passed by a vote of 3-0, with Mr. Wolf abstaining.

OATH TO WITNESSES

Approximately 13 guests were sworn in by Ms. Deckard.

OLD BUSINESS

There was no old business.

Prior to moving on to new business, Mr. Wilkinson reviewed the Board's rules of procedure.

NEW BUSINESS

20-W-SE-1

James and Kathleen Rowland requested a special exception approval to permit a secondary dwelling unit at 9675 W. River Road-92, North Manchester. The property is located on the south side of W. River Road-92, approximately 980' west of S. 950 West in Section 18 of Cleveland Township, and is zoned AG, Agricultural.

Mr. Bilger stated that this petition is a hybrid secondary dwelling and mobile home approval. It was not a clear cut secondary dwelling unit because the existing primary dwelling unit is currently uninhabitable and, typically, a secondary dwelling unit and primary dwelling unit are inhabited concurrently. Mr. Bilger stated that this petition is a hybrid because petitioner is unsure when he will be able to demolish and rebuild the existing home. Mr. Bilger stated that there is a longer than normal list of suggested conditions in order to resolve the differences between the two requests.

Mr. Bilger reviewed the staff report, discussed existing structures on the subject property, and presented aerials of the property and surrounding area. He discussed the review criteria and suggested conditions found in the staff report.

James Rowland, 9675 W. River Road-92, North Manchester, IN 46962, stated that he is requesting approval to place a mobile home on the subject concurrent with the existing home is because the existing home is uninhabitable due to the presence of mold. Mr. Rowland stated that he and his family are currently living in a one-bedroom apartment. Mr. Rowland described financial hardships that prevented him from being able to demolish the existing home and rebuild right away. Mr. Rowland stated that he has yet to find a mobile home that would be suitable for his family's needs. Mr. Rowland stated that he has received approval from the Health Department for septic and well permits.

Mr. Wilkinson asked Mr. Rowland if he built or purchased the existing dwelling. Mr. Rowland stated that he purchased the property in 1982. Mr. Wilkinson asked Mr. Rowland how long ago his family moved out the existing dwelling. Mr. Rowland stated that they moved out two years ago.

Mr. Bilger asked Mr. Rowland about his plans for the new home that will be built. Mr. Rowland stated that they intend to construct an approximately 1,400 square foot ranch style home on a basement with an attached two car garage.

Mr. Rowland stated that he has placed a 40' shipping container on the property for personal storage.

Mr. Wilkinson asked the Board if it had any questions for the petitioner. Hearing none, Mr. Wilkinson asked the public if it had any questions or comments for the petitioner. Hearing none, Mr. Wilkinson closed the public hearing.

Mr. Bilger asked Mr. Rowland if a three year expiration of the special exception would be enough time for him to demolish the existing dwelling and construct a new one. Mr. Rowland stated that that three years should be sufficient and added that they hope to break ground on the dwelling in May.

Mr. Wilkinson asked the Board if it had any other questions or comments. Hearing none, Mr. Wilkinson asked for a motion.

Mr. Wright made a motion to approve the petition with the following conditions:

1. The Special Exception is granted as presented.
2. The secondary dwelling unit shall be a Type II or III manufactured home, and shall be removed from the property within two months of the issuance of a Certificate of Occupancy for the new primary dwelling.
3. The Special Exception shall expire three (3) years from date of approval and the manufactured home be removed. Any proposed extension of the time period shall require a new Special Exception request.
4. Health Department review and approval of the septic system shall be required.
5. In addition to the requirements in the Zoning Code definition of "Secondary Dwelling Unit", the proposed dwelling and the existing dwelling shall not be used as an income-producing rental units.

Ms. Lopez seconded the motion. The motion passed by a vote of 4-0, with all attending members voting in favor.

20-W-SE-2

Jeffrey and Amy Pyle requested a special exception approval to permit a secondary dwelling unit at 6545 N. 900 East, Churubusco. The property is located on the west side of N. 900 East, approximately 1/5 mile south of E. 700 North in Section 1 of Smith Township, and is zoned AG, Agricultural.

Mr. Bilger reviewed the staff report including the review criteria and suggested conditions, discussed existing structures on the subject property, presented aerials of the property and surrounding area, and reviewed the floor plan for the proposed structure. Mr. Bilger stated that petitioner had stated to staff that a relative of petitioner would be living in the secondary dwelling unit, as required by the zoning code, but a specific relationship was not specified.

Jeff Pyle, 6545 N. 900 East, Churubusco, stated that he would like to construct an outbuilding that would include storage space and living quarters. Mr. Pyle stated that the floor plan may change and that the structure may decrease in size. Mr. Pyle stated that he would not be renting out the unit and that it would be for use by family members and loved ones.

Mr. Wilkinson asked the Board if it had questions for the petitioner.

Ms. Lopez asked petitioner to clarify to the Board who he is referring to when he says family members. Mr. Pyle stated that his children are getting older. Mr. Pyle asked how long the special exception lasts.

Mr. Wright asked what would happen to the unit when the children grow up and move to a different property. Mr. Pyle stated that he does not see his family moving from the property.

Mr. Wright asked if the structure would be a pole building or stick frame building. Mr. Pyle stated that it would be a stick frame building.

Mr. Wilkinson asked if the proposed dwelling unit would be using a separate well and septic system. Mr. Pyle stated that he has already received permits for a well and septic system dedicated for the proposed dwelling unit.

Mr. Wolf asked if the proposed dwelling unit would have separate utilities. Mr. Pyle confirmed that the proposed dwelling unit would have separate utilities. There was discussion about the dimensions of the proposed dwelling unit.

Mr. Wilkinson asked the public if there were any questions for the petitioner.

Bob Amber, 6683 N. 900 East, Churubusco, stated that he is opposed to this petition and asked the petitioner how old are his children, how soon will the structure be built, and for the names of the relatives who will be living in the proposed dwelling unit.

Mr. Pyle stated that his oldest child is 13 years old, that the timing of construction is currently uncertain, and that he would rather not disclose the names of those who will be living in the proposed dwelling unit.

Terry Papenbrock, 6790 N. 900 East, Churubusco, stated that he is opposed to this petition and that skepticism regarding Mr. Pyle's intentions grew when he placed a gate at the entrance to his driveway along N. 900 East. Mr. Papenbrock stated that he is concerned that the proposed dwelling unit would ultimately become a church instead of a secondary dwelling unit for relatives.

Mr. Pyle stated that he added the gate for the safety of himself and his family and that he and his wife have become interested in Christian scripture, but do not self-identify with an established

Christian denomination or sect. Mr. Pyle stated that the proposed dwelling unit would not be a church.

Terry Shively, 6595 N. 900 East, Churubusco, stated that a friend of Mr. Pyle contacted her about potentially acquiring two acres of her land and that she refused to sell part of her family's land. She stated that she is opposed to this petition and asked Mr. Pyle to identify the relatives who would be living in the proposed dwelling unit.

Mr. Wilkinson asked Mr. Pyle to directly address the request to identify the relatives who would be living in the proposed dwelling unit.

Mr. Pyle asked for clarification of who is considered a relative. Mr. Bilger stated that staff had researched the definition of "relative" as applied to this petition. He stated that based on state statute definitions, "relative" would be defined as anyone who is related by blood or marriage up to a second cousin.

Mr. Pyle stated that he and his wife's relatives are hostile to him and his wife.

Rhonda Salge, 5465 N. 650 East, Churubusco, asked Mr. Pyle if he intends to run a house church. Ms. Salge asked Mr. Pyle how many people attend his house church.

Mr. Pyle asked the Board if he is required to answer Ms. Salge's questions. Mr. Wilkinson asked Ms. Deckard if these questions were relevant to the petition.

Ms. Deckard stated that the petition is for a secondary dwelling unit and that, if the proposed dwelling unit is not used for the purposes of a secondary dwelling unit as defined by the zoning code, it would become an enforcement issue.

Ms. Salge further discussed house churches. She then asked Mr. Bilger how the Department reviews special exceptions for compliance. Mr. Bilger explained the Department's procedures for ensuring compliance.

Zach Gillenwater, 321 N. Line Street, Churubusco, stated that he is opposed to this petition and asked Mr. Pyle if the occupants of the proposed dwelling unit would be relatives as defined earlier by Planning Staff.

Mr. Pyle stated that things could change and that "loved ones" would be living there. Mr. Pyle did not identify the people who would be living in the proposed dwelling unit. Mr. Pyle stated that his family considers individuals not included in the previously discussed definition of "relative" to, in fact, be relatives. Mr. Pyle asked the Board if his religious rights were being infringed. Mr. Pyle asked the Board if it believes in a creator.

Ms. Deckard stated that there is an established definition of "relative." Mr. Bilger repeated that "relative" is defined as anyone who is related by blood or marriage up to second cousin.

Mr. Bilger clarified the difference between "family" and "relative" as used in the zoning code and stated that the code clearly states that the inhabitants of a secondary dwelling unit must be relatives of the inhabitants of the primary dwelling unit.

Mr. Wright asked Mr. Pyle if he has anybody lined up to live in the proposed dwelling unit in the next year or so.

Mr. Pyle stated that he does not even know if the building will be constructed.

Mr. Wright suggested to Mr. Pyle that he consider getting a permit to put up a building now, and then in the future, when he can clearly identify the relatives who will be living there, come back before the Board and request a special exception for a secondary dwelling unit.

Mr. Pyle stated that he does have people in mind to live in the proposed dwelling unit and that, in the future, they may be relatives. Mr. Pyle stated that he may need to retain a lawyer because he thinks that his religious freedoms are being infringed.

Mr. Gillenwater asked the Board if it could require Mr. Pyle to state who would be living in the proposed dwelling unit.

Mr. Wilkinson stated that Staff and Legal Counsel have stated that the inhabitants of the secondary dwelling unit would need to be relatives of the inhabitants of the primary dwelling unit.

Mr. Wright stated that it does not appear Mr. Pyle has any relatives who would be moving into the proposed dwelling unit.

Mr. Wilkinson asked members of the public if anyone wished to make a general statement concerning the petition.

Ted Shively, 6595 N. 900 East, Churubusco, stated that he is opposed to this petition and recounted the things that his family had to do when they requested a special exception to allow his relatives to live in a secondary dwelling unit on his property.

Mr. Amber stated that he is opposed to this petition and that the main problem is that Mr. Pyle refuses to identify who would be living in the proposed dwelling unit.

Nancy Gillenwater, 321 N. Line Street, Churubusco, stated that she is opposed to this petition and speculated that the people who would be living in the proposed dwelling unit are not relatives of Mr. Pyle and his wife.

Ms. Salge discussed the importance of faith and stated that she is opposed to this petition.

Mr. Papenbrock stated that he is opposed to this petition and hopes that the Board denies this petition.

Mr. Wilkinson asked if there were any other members of the public who wanted to make a general statement. Hearing none, Mr. Wilkinson asked Mr. Pyle if he wanted to rebut any of the comments made by the public.

Mr. Pyle stated that he and his family are not religious but stressed the importance of the Bible to him and his family. Mr. Pyle stated that this is a form of persecution and that his religious rights are being infringed. Mr. Pyle summarized sections of the Bible and stated that there is an eternal family that may or may not include blood relatives. Mr. Pyle stated that we are all truly related

and that a creator defines our true family. Mr. Pyle stated that to be holy means to be set apart, and that the subject property is dedicated to the Messiah. Mr. Pyle stated that he is being persecuted because of his beliefs. Mr. Pyle stated that the proposed dwelling unit may be for future relatives or it may be for his eldest son.

Mr. Pyle asked the Board and Legal Counsel if his religious freedoms were being infringed. Ms. Deckard stated that Mr. Pyle always has the right to retain an attorney.

Mr. Bilger clarified for the Board that this petition was brought to staff as a request for a special exception for a secondary dwelling unit. Mr. Bilger stated that Mr. Pyle does have other options for recourse, one of which Mr. Wright suggested, and another would be to apply for a subdivision. Mr. Bilger stated that a request for a subdivision would be a feasible option, as it would allow Mr. Pyle to split off land from the subject property that could be made available for sale. Mr. Bilger stated that Mr. Pyle could apply for a building permit for a structure that did not include all the required components of a dwelling unit.

Mr. Pyle stated that he understands he has other options.

Mr. Wilkinson asked the Board if it had any questions of the petitioner. Hearing none, Mr. Wilkinson asked the Board for discussion of the petition.

Mr. Wright stated that he is in favor of making a motion to deny the petition. Mr. Wilkinson questioned whether a motion could be made to deny a petition. Mr. Bilger clarified the Board's rules for making a motion.

Mr. Bilger, Ms. Deckard, and the Board discussed the petition and Mr. Pyle's options in the event that the petition is denied.

Mr. Wright made a motion to deny the petition. Ms. Lopez seconded the motion.

Mr. Wilkinson asked for any further discussion from the Board.

Mr. Wolf stated that Mr. Pyle's options have been made clear. He stated that he understands the importance of faith, but that the Board must follow the law.

Hearing no other discussion, Mr. Wilkinson called for a vote. The motion passed by a vote of 4-0, with all attending members voting in favor of the motion.

Mr. Pyle asked Planning Staff and Legal Counsel regarding his options at this point. Mr. Bilger and Ms. Deckard explained to Mr. Pyle his options at this point.

OTHER BUSINESS

Mr. Bilger discussed the County's RFQ for updates to the County's Comprehensive Plan. He added that he expects to receive approximately five or six submissions.

Mr. Bilger stated that Mr. Wright has volunteered to be the Plan Commission's representative on the Steering Committee. Mr. Bilger discussed the Steering Committee and asked if any members of Board would be interested in being the Board's representative on the Steering Committee. Mr. Wilkinson volunteered to be the Board's representative on the Steering Committee.

Mr. Bilger stated that changes to the zoning code, discussed during summer and fall 2019, would be put on hold until the Comprehensive Plan update is completed.

There was no other business.

ADJOURNMENT

Mr. Wilkinson adjourned the meeting at 9:04 p.m.