

**WHITLEY COUNTY BOARD OF ZONING APPEALS  
STAFF REPORT**

**19-W-VAR-1**    **VARIANCE/SPECIAL EXCEPTION**  
**19-W-SE-1**    Stan and Randee Sue Reiff  
4560 W. State Road 205

**MARCH 26, 2019**  
**AGENDA ITEM: 1**

**SUMMARY OF PROPOSAL**

Current zoning: AG, Agricultural  
Property area: 91± acres (overall area owned)

The petitioners, owners and residents of the subject property, are requesting approval to operate a seasonal reception facility in a barn at 4560 West State Road 205. It is proposed as a traffic-generating home occupation, which requires a special exception. However, the proposed floor area to be used for the home occupation exceeds the maximum permissible under the code, and a parking adjustment is requested, which necessitate variance requests as well.

As proposed, the petitioners' existing 120± year-old bank barn would be used as a wedding reception venue. The barn is 40'x80' in size, with only the main floor being used for the venue, so the area would total 3,200 sq. ft. Per the building code, the occupant load of the venue would be roughly 210. The petitioners are also aware of the need to obtain state building commission review and approval since the structure would be a public building.

Receptions would be held only during the warm season, as the barn is unheated. The petitioners have discussed a limitation on the number of receptions held per year, and this could be part of the Board's discussion.

Access would be provided using the existing gravel driveway onto SR 205. Parking would be provided using the lawn area to the north of the barn and around the pond.

Restrooms would be provided using portable facilities, provided by the client. Refuse would also be the obligation of the client. The petitioners would provide only the event space—all catering, DJs, tables, chairs, decorations, and other accessories would be provided by the client.

No signage nor external changes to the barn or grounds are proposed at this time.

**HOME OCCUPATION STANDARDS**

The requirements of §10.9 Special Exception Standards and §5.14 Home Occupation Standards of the zoning code apply. The following is discussion of applicable standards listed in §5.14(A).

**(2) Home occupations shall be entirely operated from an enclosed, four-walled structure, provided that all doors shall be kept closed during use of the structure.**

The barn is compliant with this standard, if the barn doors are kept closed. Use of the grounds for ceremonies, photography, or other purposes may not be. The Board should identify what parts of the use, if any, may be incidental and conducted outside the barn.

**(3) Such use shall not occupy a total floor area greater than 20% of the principal structure.**

Based on the assessor records, the petitioners' dwelling has a total finished floor area of 4,462 square feet. The 3,200 square feet (gross) to be used for the home occupation constitutes 72% of the dwelling area. Being that the use would fully occupy the main floor of a historic barn, which often were constructed larger than the accompanying dwelling, this is not surprising. It does necessitate a variance request.

**(4) The use of the property for an accessory home occupation shall be clearly incidental and subordinate to its principal uses as a residence by its occupants, and shall not dominate or cause variations in the residential character of the property, principal structure, or surrounding neighborhood.**

The petitioners have stated that the proposed use, while large in area, would not constitute a significant part of the usage of their property as a residence or farm. The Board should strive to ensure this incidental and secondary nature by looking at size and frequency of events, and other factors that may contribute to a commercial scale or intensity.

As proposed, the outward appearance would not be changed and so the venue would be indistinguishable on most days. However, during the time of being occupied as a reception venue, the use may not appear incidental due to the volume of guests on-site. The code does not address well how to treat uses that are seasonal, temporary, or inconsistent in their operation, so the Board should give consideration as to the time factor should be looked at.

**(5) There shall be no visible evidence of the home occupation...**

As stated in (4) above, there would be no outward changes to the property, including signage, except for the day of the venue being used, at which point, vehicles, decorations, etc. may be visible. Again, the intermittent nature of the usage could be given consideration.

**(6) Parking generated...shall be provided off-street and in conformance with the Zoning Ordinance. The conducting of the home occupation shall in no way result in the parking of any motorized vehicle...overnight or longer.**

Parking is proposed to be on-site, away from SR 205, and no vehicles would remain overnight. Depending on the usage of occupant load or square footage, 53-64 spaces would be required. The proposed parking area should be of adequate size to accommodate this number. The proposal is to use a lawn area for parking, while the Zoning Ordinance requires that any parking areas be paved. This necessitates a variance request as well.

**(7) The home occupation shall comply with the requirements of the General Performance standards of Chapter 2...**

Performance standards are now listed in §5.7, and the proposed use would likely be compliant with the standards. Noise may be an issue if the sound system volume is high enough to become objectionable to surrounding properties or the road.

**(8) The use of any tool or equipment powered by electricity, gasoline or diesel engine, or high pressure gas shall not be used before 8:00 A.M. or after 8:00 P.M. on any day.**

Wedding receptions typically do last after 8 P.M., but do not typically include gas or electric tools. Electric "equipment" might be argued to include DJ equipment or sound systems, but even so, such equipment would be located inside the structure. The Board should clarify what "equipment" is intended to be regulated by this time frame requirement.

**(9) Persons who are not residents of the dwelling...and who are engaged as employees, subcontractors, independent contractors, or otherwise in the home occupation, shall not exceed two.**

The petitioners would be the operators of the venue, with all activities being conducted by the clients or the clients' contractors, which may fall into the definition of being a "subcontractor." This number of hired persons on-site during a reception should be reviewed by the Board and possibly could result in another variance request.

**(10) Signage**

No permanent signage is proposed, so the sign standards should be met. Temporary, "day-of" signage for directional purposes may be used.

**VARIANCE REVIEW CRITERIA**

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

**1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;**

The proposed area variance will not likely be injurious to the public health, safety, and morals. Historic barns such as this one were often constructed larger than the dwelling itself. To fully utilize the entire floor area of such a barn for a home occupation use might be no different than using it for agricultural purposes, as long as the use remains incidental and accessory to the primary use. A low frequency venue may be appropriately incidental, while higher frequency events would shift the use to being a full commercial use. Public safety is affected by the occupancy of the barn, but should be adequately mitigated by the required review and approval by the state building commission prior to opening. The general welfare may be injured by degrading the effectiveness of the zoning ordinance if there is not a specific difficulty for this property.

If the use is maintained at a low frequency, the variance to permit an unpaved paving area would not be injurious, as it permits the property to retain its residential appearance. However, higher frequency parking would likely damage the yard, causing aesthetic problems that impact home occupation standard #5 and injury to the general welfare.

The number of subcontractors on-site should be evaluated by the Board and an interpretation made on the proposed scenario. The intent of regulating the number of employees is to have a specific limit on the scale of the use, but the use's scale may also be limited by other means. So the effect of a variance on this criterion is indefinite until determination on the other variance and special exception criteria.

**2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and**

The use of the area adjacent to the property is not likely to be impacted by these variances, due to the separation of 1000' or more between the use location and the surrounding residential properties. However, if traffic congestion is created by this use, and it is not mitigated by way of the special exception, it could have an adverse impact.

Home occupations are designed to have no effect on the use or value of surrounding area. The value of the area may be affected if the proposed use is obvious, frequent, or otherwise fails on the various performance standards of the home occupation and special exception. Increasing the scale or frequency of the use would increase the likelihood of an effect that is substantially adverse.

- 3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.**

The proposed use of the entire historic barn for a home occupation use, and the resultant excessive floor area, could be a practical difficulty due to the size of the historic barn and desire to utilize the space and character of the barn.

Whether the floor area difficulty is self-imposed should be scrutinized by the Board. If compliant with the code, about a third of the barn floor area (900± sq. ft.) could be utilized for the use, which is a difficulty for the petitioner's desired use. However, proposing the use at all may be viewed as a self-imposition.

Strict application of the parking code regarding the parking area is a practical difficulty, due to the somewhat contradictory intentions of the home occupation requirements for compliance with the parking code, but also requiring no visible evidence of the home occupation. This could be a difficulty even for an otherwise fully compliant home occupation that results in a paved parking lot being required for its use, since construction of a parking lot is visible evidence of the use. That said, unpaved areas used for parking can become visible blemishes on a property if the parking is intensely or frequently used or poorly maintained.

The strict application of the code regarding the number of employees may or may not be a practical difficulty, depending on the Board's interpretation of the code.

#### **SPECIAL EXCEPTION REVIEW CRITERIA**

Indiana Code §36-7-4-918.2 and Section 10.9(A) of the Zoning Code authorize the Board to review special exceptions and state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

- 1. The special exception shall not involve any elements or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards;**

If the petitioners receive approval from the state building commission for the barn to be occupied by the public, it is unlikely that this proposal will have any elements or conditions that may be particularly dangerous, injurious, or noxious to other properties or persons. As discussed above, it should generally comply with performance standards, with the possible exception of noise.

- 2. The special exception shall be sited, or oriented and landscaped to produce a harmonious relationship of building and grounds to adjacent buildings and properties;**

The proposed special exception would not make any apparent modifications to the existing structure, other than the parking area. So there would be no significant change to the relationship of building and grounds to adjacent buildings and properties.

- 3. The special exception shall produce a total visual impression and environment that is consistent with the environment of the neighborhood;**

The use would have vehicles parked, and attendees on site while in operation, which might be

consistent with the environment of the neighborhood if done without high frequency, as other occasional large events do occur in residential areas. For example, birthday or graduation parties, auctions, and potlucks can bring together similar numbers of people without any regulation, sometimes with resulting problems. The Board must determine if the proposed use is sufficiently infrequent or intermittent to be consistent with the area.

**4. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and**

The single-lane access point onto SR 205 could create traffic congestion if numerous vehicles are stacked on the highway waiting to turn onto the property. The highway is low volume for being a state road, but even so, the nature of wedding receptions usually means the arrival of many vehicles at one time. Since there is no turn lane on SR 205, the possibility of congestion could occur in either direction, although left turns from the eastbound lane would be the most likely to back up. However, such congestion is likely to dissipate quickly. Methods to mitigate this situation should be implemented when and if congestion occurs.

Additionally, INDOT may have requirements for the driveway access and permitting if they consider the use to be a significant change.

**5. The special exception shall preserve the purpose of this Ordinance.**

Home Occupation (traffic-generating) is a listed special exception of the AG district. Generally, the above criteria cover most of the purposes stated in the ordinance. However, since this is an unconventional home occupation use, more detailed review of this criterion by the Board may be warranted. The purpose of the Ordinance is stated in §1.4 and is attached for reference.

**SUGGESTED CONDITIONS**

If the Board moves to grant the special exception, the following are suggested conditions of the approval:

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 Indiana Building Commission must issue a design release for the remodeling of the barn to be used by the public.
4. No events that occur primarily outside shall be permitted under this special exception.
5. All event activities—for example, ceremonies, dining, music, etc.—must occur within the barn, with the barn door closed. An exception is made for photography of small groups elsewhere on the property.
6. Events of any type are limited to no more than two per month from May to September, inclusive. No more than one event per calendar week is permitted.
7. Event activities must conclude by 10 P.M., and the venue vacated within a reasonable time thereafter. No event activities will occur before 8 A.M.
8. No permanent signage is permitted. Temporary directional signs, not to exceed 18"x24" each, may be placed on the property on the day of an event.
9. No additional employees are to be hired by the petitioner to operate this facility.
10. The parking area must be kept in good condition and generally grassy. No gravel access drives or parking are permitted to be installed in the parking area. Provisions for ADA parking spaces are excepted.
11. The Health Department must approve the restroom facility concept and other related issues.
12. The access onto SR 205 must be reviewed by INDOT and is subject to their rules and requirements.

13. To avoid congestion, the petitioner must implement an effective traffic management plan.

Date report prepared: 3/21/19

**BOARD OF ZONING APPEALS ACTION**

Motion:

By:

Second by:

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**Vote: Deckard Denihan Lopez Wilkinson Wright**

<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					