

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

19-W-SE-2 **SPECIAL EXCEPTION**
Lisa & Christopher Johnston
6955 E. US 33

APRIL 23, 2019
AGENDA ITEM: 4

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural
Property area: 18.56 acres

The petitioners, owners of the property located at 6955 East US 33, are requesting special exception approval for a kennel use and associated traffic-generating home occupation.

The petitioner proposes to construct a 30'x50' accessory building that would include an interior space of up to 5'x40' for the purpose of breeding dogs. The request is to have up to 20 dogs on-site, but ideally they would have only 6-10 dogs. They are seeking approval for the additional number to account for potential future growth. Expected client traffic is about at most five vehicles per week.

Per the zoning code, a "place primarily for keeping of four (4) or more adult dogs" is defined as a kennel. Because the petitioners live on the property, a traffic-generating home occupation approval is also being sought. While kennels can be reviewed as a standalone use, the requirements for home occupations provide inherent standards for the property.

In the AG, Agricultural District, traffic-generating home occupations and kennels require a special exception approval through the Board of Zoning Appeals.

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 proposed breeding operation would occupy a portion of a proposed enclosed accessory building. While not described in the application, it seems reasonable that dogs would be let outside at some point. Whether the outdoor activity is related to the proposed breeding operation or only the normal keeping of dogs would not be apparent. If contemplated in the future, the construction of outdoor kennels or runs would be counter to this standard.

(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 1,546 square feet. The 200 square feet (gross) stated to be used for the home occupation constitutes 13% of the dwelling area. An area of up to 310± square feet would be permissible.

(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 proposed accessory structure should maintain the residential character of the property in the same manner that any accessory structure in an agricultural area would.

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

As stated in (2) above, the breeding operation would be kept to the proposed accessory structure. The primary visible changes would be related to the construction of the building, not the home occupation.

(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.

No plans for parking accommodation have been submitted. Given the low level of traffic, a driveway parking space should be sufficient.

(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. Of the standards, noise could feasibly be an issue if dogs are permitted to be outside for some time without supervision. Waste matter could also be an issue if not properly contained.

(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.

The use is not expected to have such tools or equipment.

(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.

As described, the petitioners would be the sole operators of the use.

(10) Signage

No plans for signage have been submitted.

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;

It is unlikely that this proposal will have any elements or conditions that may be particularly dangerous, injurious, or noxious to other properties, and should generally comply with performance standards. Noise of barking dogs may be a performance standard consideration, but the proposed use would mostly keep the dogs inside, thereby mitigating the noise. The breeds proposed to be bred—golden retrievers, poodles, labra-doodles—are larger varieties but are generally found to be non-aggressive dogs, although aggressiveness of a particular animal can be based on a number of factors, not just breed.

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 add an accessory building to the property that would likely be harmonious with the existing buildings, both on-site and adjacent.

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

Accessory buildings are common in the AG district, and the proposed structure should be comparable to those found elsewhere. Further, the proposed structure would be located away from the view of the public road, being screened by an existing wood line. So this would likely not change the existing aesthetics or environment of the neighborhood.

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

Access to the property would use the existing driveway. While no specific parking plan has been submitted, given the size of the property and low volume of traffic, it is not likely this use will create traffic congestion.

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

The proposal is a combination of two special exception uses already listed in the Zoning Ordinance. The Comprehensive Plan does not address Home Occupations specifically, but this proposal does not seem to conflict with its recommendations. Based on these facts, the above criteria, and any conditions the Board sees necessary, the proposal would preserve the purpose of the Ordinance.

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. There shall be no more than 20 dogs on the property as part of the Special Exception.
4. The general boarding of dogs is not permitted without revision of this Special Exception.

Date report prepared: April 12, 2019.

BOARD OF ZONING APPEALS ACTION

Motion:

By:

Second by:

<i>Vote:</i>	Deckard	Denihan	Lopez	Wilkinson	Wright
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					