

MINUTES
WHITLEY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
May 26, 2020
7:30 P.M.

MEMBERS PRESENT

Sarah Lopez (electronic)
Danny Wilkinson
Doug Wright
Joe Wolf

MEMBERS ABSENT

Tim Denihan

STAFF

Nathan Bilger
Mark Cullnane

ATTORNEY

Sam Ladowski

AUDIENCE MEMBERS

Thirteen visitors signed the guest list at the May 26, 2020 regular meeting of the Whitley County Board of Zoning Appeals. The guest list is kept on the record.

CALL TO ORDER/ROLL CALL

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

CONSIDERATION OF PREVIOUS MEETING MINUTES

The minutes for the February 25, 2020 regular meeting were presented for approval. Mr. Wright made a motion to approve the minutes as presented. Mr. Wolf seconded the motion. Mr. Wilkinson called for a vote on the motion. The motion was approved by a roll call vote of 4-0.

ADMINISTRATION OF OATH

Approximately 8 guests were sworn in by Mr. Ladowski.

OLD BUSINESS

There was no old business.

PUBLIC HEALTH PRECAUTIONS RELATED TO COVID-19

Mr. Bilger stated the various public health precautions have been implemented due to COVID-19, including limiting meeting room capacity, social distancing, making masks and gloves available, webcasting the meeting, and providing electronic attendees an opportunity to submit questions. Also, the Commissioners Room was open for overflow seating, and that staff would provide time between cases for people to move between rooms.

NEW BUSINESS

20-W-VAR-2

Myron Green requested a variance of the required front yard and side yard setbacks at 2760 E. Colony Avenue, Columbia City. The property is located on the south side of E. Colony Avenue,

approximately 200' east of N. Fish Hatchery Road in Section 12 of Thorncreek Township, and is zoned LR, Lake Residential.

Mr. Bilger stated that this petition was originally scheduled to be heard at the Board's March meeting, but was delayed due to the cancellation of March and April meetings because of the public health precautions related to COVID-19.

Mr. Bilger reviewed the staff report. He stated that the carport was constructed prior to receiving a permit. He said that it has already received a release from the Health Department due to being too close to a well, and approval from the Drainage Board for encroaching into a legal drain easement.

Mr. Bilger presented a plot plan along with aerial images of the property and surrounding area. He discussed the existence of what staff believe to be are ingress-egress easements along the eastern, southern, and western boundaries of the property. He noted many properties in the LR zone have structures near the edge of pavement, but added that traffic counts are higher along Colony Avenue than many roads in the area. He discussed the review criteria that the Board must consider when making a determination.

Mr. Wilkinson asked the Board if it had questions for Mr. Bilger. Hearing none, he asked petitioner to discuss his petition.

Myron Green, 2871 E. Crescent Avenue, Columbia City, stated that he hired a contractor to construct the carport and that the contractor did not inform him that he would have to acquire a permit for it. He offered to present to the Board pictures that demonstrate the improvements that have been made to the property. Mr. Wilkinson asked members of the Board if they would like to look at the pictures. Hearing no requests to view the pictures, he stated that viewing the pictures would not be necessary.

Mr. Wilkinson asked the Board if it had any questions for Mr. Green. Hearing none, Mr. Wilkinson asked the public if it had any questions or comments regarding this petition. Mr. Bilger stated that no online attendees had submitted comments via electronic means. Hearing no comments from the public, Mr. Wilkinson closed the public hearing.

Mr. Wilkinson asked Mr. Bilger if the petitioner would be permitted to enclose the carport. Mr. Bilger stated that the carport could be enclosed as long as the building code allows it. He added that the current version of the building code would allow for the carport to be enclosed.

Mr. Wolf stated that he is concerned that the carport's setback from the edge of pavement along Colony Avenue may impede snow plowing by the Highway Department.

Mr. Wilkinson asked the Board if it had any additional questions. Hearing none, he asked if the Board wants to place a condition of approval that the carport may not be enclosed.

Ms. Lopez stated that she shared Mr. Wolf's concerns about the distance of the carport from the edge of pavement. She added that she supported a condition prohibiting the carport from being enclosed.

Ms. Lopez made a motion to approve 20-W-VAR-2 with the condition that the carport shall not be enclosed. Mr. Wolf seconded the motion. Mr. Wilkinson called for a vote on the motion. The motion was approved by a roll call vote of 4-0.

20-W-VAR-3

Micropulse, Inc. requested a variance to modify and relocate the required buffering landscaping for their IPM, Industrial Park/Manufacturing, zoned property. The property is located on the north side of E. State Road 14, approximately 1/5 mile west of S. 600 East in Section 03 of Jefferson Township.

Mr. Bilger stated that this petition was also delayed from the Board's cancelled March meeting and summarized the staff report. He stated that the IPM zoning requires a buffer yard to be installed in conjunction with an addition to its commercial building on the subject property. He stated that petitioner came before the Board in October 2019 to petition for a variance of the buffer yard standards and that petition, 19-W-VAR-19, was approved. This petition would further modify the buffering based on the adjacent property owners' desires. He reviewed the buffer yard standards, the proposed conditions, and the review criteria that the Board must consider when making a determination on the current petition.

Mr. Wilkinson asked the Board if it had questions for Mr. Bilger. Hearing none, he asked petitioner to discuss the petition.

Brian Emerick, 5865 E. State Road 14, Columbia City, stated that he is president of Micropulse, Inc. and that he spoke to his neighbors after the approval of 19-W-VAR-19 last October. He said that this revised plan reflects his neighbors' wishes.

Mr. Wilkinson asked the Board if it had any questions for Mr. Emerick. Hearing none, Mr. Wilkinson asked the public if it had any questions or comments regarding this petition. Mr. Bilger stated that no online attendees had submitted comments. Hearing no questions or comments from the public, Mr. Wilkinson closed the public hearing.

Mr. Wilkinson read the suggested conditions of staff and asked for a motion.

Mr. Wright made a motion to approve 20-W-VAR-3 with the following conditions:

1. The variance is granted as presented and per the submitted landscape plan.
2. Hazen Properties, LLC, owner of 5798 S. 600 East, and Kenneth and Barbara Emerick, owners of 5901 E. State Road 14, provide for the record a statement waiving the required buffering along their frontages with the petitioner's property.

Ms. Lopez seconded the motion. Mr. Wilkinson called for a vote on the motion. The motion was approved by a roll call vote of 4-0.

20-W-VAR-4

ASW, LLC requested a variance of the sign code to permit an electronic message center (EMC) at 2499 S. 600 East, Columbia City. The property is located on the southeast corner of East US 30 and S. 600 East in Section 23 of Union Township and is zoned IPM, Industrial Park/Manufacturing.

Mr. Bilger stated that this petition was delayed from the April meeting due to COVID-19. He summarized the staff report and aerial images along with a sign plan submitted by petitioner. ASW, LLC is the legal entity that is known as American Landmaster. The variance request is to place a single-sided pole sign with an EMC facing west along the eastbound lane of US 30. He added that staff feels that the request is generally supportable as the sign would meet all other requirements of the code were it not for the presence of the EMC. He suggested that the Board

could add a condition allowing the sign to be made into a double-sided EMC in the future. He reviewed the conditions suggested by staff.

Mr. Wilkinson asked the Board if it had questions for Mr. Bilger. Hearing none, he asked for the petitioner or its representative to discuss the petition.

Prior to petitioner's representative taking the podium, Mr. Ladowski administered an oath to three people who had entered the meeting room.

Mike Barnhill, 2499 S. 600 East, Columbia City, stated that he is the Director of Operations at American Landmaster. He stated that they are looking to upgrade marketing along US 30 to generate more traffic in the showroom. He stated that the current plan is to install a one-sided sign, but that they may be interested in turning it into a double-sided sign in the future. He said that there may be some landscaping placed around the base of the sign and added that he is not opposed to staff's suggested conditions of approval.

Mr. Wilkinson asked the Board if it had any questions for Mr. Barnhill. Hearing none, Mr. Wilkinson asked the public if it had any questions or comments regarding this petition.

Ronda Salge, 5465 N. 650 East, Churubusco, suggested to the Board that it edit staff's suggested condition number five to incorporate the content of conditions one through four, so that those conditions would apply to the potential second side of the sign.

Mr. Bilger clarified that he would interpret suggested condition number five to implicitly include the requirements found in conditions one through four, but that he understands Ms. Salge's recommendation.

Mr. Barnhill stated that he is not opposed to Ms. Salge's suggestion.

Mr. Wilkinson asked the public if it had additional questions or comments regarding this petition. Mr. Bilger stated that no online attendees had submitted comments. Hearing no more comments from the public, Mr. Wilkinson closed the public hearing.

Mr. Wilkinson read the suggested conditions of staff and asked for a motion.

Mr. Wolf made a motion to approve 20-W-VAR-4 with the following conditions:

1. The sign shall not appear to flash, undulate, pulse, or portray explosions, fireworks, flashes of light or blinking or chasing lights.
2. Electronic messages may not change more rapidly than once every one and one-half (1.5) seconds.
3. Electronic messages may not require more than ten (10) seconds to display in its entirety.
4. The sign shall have a sensor or other device that automatically determines the ambient illumination and be programmed to automatically dim according to ambient light conditions.
5. This variance may allow for a two-sided EMC sign in the future, if the applicant desires to do so. The second side of the EMC must adhere to conditions one (1) through four (4) found above.

Mr. Wright seconded the motion. Mr. Wilkinson called for a vote on the motion. The motion was approved by a roll call vote of 4-0.

20-W-APP-1

Moreland, Inc. requested an administrative appeal that the issuance of Improvement Location Permit (ILP) 20-W-LP-35 and Building Permit 20-10235 do not conform with the conditions of 19-W-SE-10. The property is located on the west side of S. 700 East approximately ¼ mile north of SR 114, in Section 35 of Jefferson Township.

Mr. Bilger stated that this petition was also originally scheduled for the April meeting and delayed due to COVID-19.

Mr. Bilger stated that this petition is an administrative appeal of the issuance an ILP and building permit for the construction of a telecommunications tower on S. 700 East. The Board approved a special exception in November 2019, 19-W-SE-10, to allow for construction of the tower, which included conditions of approval. He stated that the Board's responsibilities concerning an administrative appeal include reviewing the action and making a determination; the determination could be to affirm, modify, or rescind the decision to issue the ILP and building permit.

He reviewed the staff report, including the timeline of the special exception approval, issuance of an ILP and building permit, and administrative appeal.

He reviewed documents submitted by the tower owner related to condition number two of the approval of 19-W-SE-10: "Petitioner shall provide to Planning Staff the Federal Aviation Administration (FAA) letter concerning FAA regulations."

He reviewed the time limits for appeal of the special exception decision made by the Board and for the issuance of an ILP and building permit by staff. He stated that the Board approved 19-W-SE-10 on November 26, 2019 and that the 30-day appeal period of this approval expired in December. Staff stated to the tower owner in February that the FAA documentation would be sufficient. He stated that staff issued permits 20-W-LP-35 and 20-10235 on February 25, 2020 and that the 30-day appeal period of the issuance of these permits expired on March 26, 2020. He said that the time for appealing 19-W-SE-10 and its conditions has passed, thus the Board is charged with reviewing only the decision to issue the permits.

Rob Krueger, 200 E. Main Street, Suite 1000, Fort Wayne, stated that he is representing the appellant, Moreland, Inc. Mr. Krueger said that he received a forwarded email from Mr. Bilger on February 6, 2020 that stated "FYI" in the body. He contended that this did not constitute an explicit statement that condition number two of the approval of 19-W-SE-10 had been satisfied. He stated that the documents submitted by the tower owner to demonstrate fulfillment of this condition only considered the potential impact on Fort Wayne International Airport (FWA) and did not consider the potential impact on his client's private airport, Gerig's Field. He said that condition number two of 19-W-SE-10 can never be met because the FAA does not consider private airfields when assessing the potential impact of tall structures on airspace. He said that since the condition can never be met, the ILP and building permit should never have been issued.

Mr. Krueger reviewed a document from FAA to his client concerning Gerig's Field, dated February 14, 2001.

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

Mr. Wilkinson asked Mr. Krueger if the FAA is aware of Gerig's Field. Mr. Krueger stated that the FAA is aware of Gerig's Field and that it is on the Chicago Sectional Chart, but that the FAA only considers public airfields when assessing the potential impact of tall structures.

Mr. Wolf asked Mr. Krueger if the FAA makes determinations of the impact on air safety of tall structures for private airfields or only for public airfields. Mr. Krueger stated that the FAA only makes such determinations for public airfields.

Mr. Wilkinson asked Mr. Krueger why it was not suggested to the Board when 19-W-SE-10 was heard that the tower be moved to some other location on the property. Mr. Krueger stated that he was not at the hearing in November 2019, but that he is under the impression that Mr. Gerig did suggest a different location for the tower at that hearing.

Mr. Wilkinson asked Mr. Bilger if FAA is required to make a determination for private airfields such as Gerig's Field. Mr. Bilger stated that staff's understanding at the time was that FAA was not required to provide a determination because of the height (199') of the proposed tower.

Mr. Krueger stated that it is his understanding that notice was not required because the proposed tower is far enough away from the closest public airport. Mr. Krueger went on to say that the Board's own findings of fact called for a determination from FAA for Gerig's Field.

Larry Gerig, 6049 E. State Road 114-92, Roanoke, stated that he strongly objects to the tower being placed close to the end of one of the runways for Gerig's Field. He stated that the airfield is located on property he owns and that the proposed telecommunications tower creates a safety hazard for pilots departing from and arriving. He stated that the tower owner did not submit a letter from FAA concerning FAA regulations, as required by condition number two of the approval of 19-W-SE-10, until after the 30-day appeal period of the Board's decision had expired. Mr. Gerig asked the Board to rescind the decision to issue the ILP and building permit or to rehear the special exception.

Mr. Gerig, Mr. Wilkinson, and Mr. Wolf discussed the contents of the FAA letter relative to what was discussed at the November 2019 meeting. Mr. Gerig stated that it was his understanding that the tower owner was to provide a letter from FAA pertinent to Gerig's Field, but that they submitted a letter from FAA pertinent to FWA.

Fred Vandeman, 10680 S. 700 East, Roanoke, Indiana, stated that he was at the November Board meeting. He asserted that remonstrators discussed the location of the tower and proposed alternatives at that meeting, but the tower owners expressed no interest in moving the tower to any of the proposed alternative locations. He stated that the FAA does not regulate private airfields and presented information concerning departures from and arrivals to Gerig's Field in relation to the location of the tower as permitted.

Mr. Vandeman and the Board discussed FAA policy on providing determinations for private airfields. Mr. Vandeman stated that he was uncertain what the tower owner could provide to the Board to fulfill condition number two of 19-W-SE-10 as FAA does not provide determinations for private airfields. He added that the letter provided applies to FWA and not Gerig's Field and argued that the letter, as such, does not fulfill condition number two of 19-W-SE-10.

Rhonda Salge, 5465 N. 650 East, Churubusco, stated that she is neutral on this issue. She and Mr. Bilger discussed Gerig's Field in relation to the current County Zoning Ordinance. She stated that it was constructed prior to adoption of the current Ordinance and that, if constructed today, would require a special exception. Mr. Bilger clarified that it was a special exception use

even under the prior code, but neither the original field nor an expansion were ever granted a special exception. Ms. Salge and Mr. Bilger discussed zoning regulations pertinent to private airfields in the County. She stated that improving cell coverage was an important objective to many residents in unincorporated parts of the County.

Matt Price, 10 W. Market Street, Indianapolis, Indiana, representative of the tower owner, reviewed condition number two of 19-W-SE-10 and issuance of the ILP and building permit for the tower. He stated that this appeal is of the issuance of the permit, not satisfaction of condition number two of 19-W-SE-10, and that consideration of whether that condition was satisfied is outside the scope of this appeal. He stated that the scope is limited to an investigation of whether staff made a mistake by issuing the ILP and building permit and whether the permit itself has some error. He encouraged the Board to keep this in mind when making a determination on this appeal and requested that it affirm the issuance of the ILP and building permit.

Mr. Wilkinson asked the Board if it had any questions for Mr. Price. Hearing none, he asked the public if it had additional questions or comments regarding this petition. Mr. Bilger stated that no online attendees had submitted comments. Hearing no further questions or comments from the public, Mr. Wilkinson closed the public hearing.

Mr. Wilkinson and Mr. Bilger reviewed the Board's responsibility to make a determination affirming, modifying, or rescinding the decision to issue the ILP and building permit.

Mr. Wright made a motion to affirm the issuance of ILP 20-W-LP-35 and Building Permit 20-10235. Mr. Wolf seconded the motion. Mr. Wilkinson called for a vote on the motion. The motion was approved by a roll call vote of 4-0.

OTHER BUSINESS

Mr. Bilger reviewed the rules for electronic participation during meetings under the current executive orders regarding the COVID-19 pandemic and compared them to the rules that had been in place prior to the issuance of said orders. He stated the Board might consider taking action to set rules for electronic participation after the orders expire.

ADJOURNMENT

Mr. Wilkinson adjourned the meeting at 9:00 p.m.