

The Pendleton Board of Zoning Appeals met on January 16, 2018 at 7:00pm at the Pendleton Town Hall, 100 W State Street, Pendleton, Indiana. The meeting was called to order by Tammy Bowman at 7pm. Board Members present were Tim Pritchard, Matt Roberts, Tim Swartz and Tammy Bowman. A quorum was established with four of five members present. Representing the Town were Zoning Administrator Kayla Hassett Town Manager Tim McClintick and Town Legal Representative Brad Dick. Minutes of the December 19, 2017, meeting were approved.

Others in attendance include Tim and Amy Thompson of 11158 Beardsley Way Fishers, Angela Sutton of 5231 W SR 132 Pendleton, Mike and Carol Hanna of 5115 W SR 132 Pendleton, Robert and Suzanne Walker of 319 Old SR 132 Pendleton, Brian and Angie Brown of 5111 W SR 132 Pendleton, Ken and Jeannine McNamara of 307 Old SR 132 Pendleton and Lynn Lawyer (Mr. Huntzinger's Representative)

ELECTION OF OFFICERS

NOMINATED BY TIM SWARTZ, SECONDED BY MATTHEW ROBERTS TO ELECT TAMMY BOWMAN AS CHAIRMAN. MOTION CARRIED.

NOMINATED BY TIM PRITCHARD, SECONDED BY TAMMY BOWMAN TO ELECT MATT ROBERTS AS VICE CHAIRMAN. MOTION CARRIED.

OLD BUSINESS - None

NEW BUSINESS

V01162018-01 314 Old State Road 132 – Pole Barn – Petitioner Tim Thompson

Kayla Hassett Presentation (on Google Drive) which included the application, vicinity map, enlarged property map, overhead drawing of property with house and proposed barn and a rendering of the barn the Thompsons have in mind. 48 x 64 Pole Barn with 16' Walls, so this is a size and height variance. Barn will not be visible from the road.

STAFF FINDINGS

Zoning Ordinance

158.04.03 Bulk Requirements for Accessory Structures reviewed:

- A. Area (1,200 Square Feet)
- B. Setbacks
- C. Height (15')

Unidentified individual spoke from his seat that he lived across the street and believes it is a great idea. No one spoke in opposition.

Staff Recommendations
Approve as presented.

**MOVED BY TIM PRITCHARD AND SECONDED BY TIM SWARTZ, TO
APPROVE V01162018-01 AS PRESENTED. MOTION CARRIED.**

APPEAL A01162018-01 Huntzinger-Brown Access

Hassett reviewed how the Town Ordinance reads regarding Appeals, noting the BZA may reverse or affirm, wholly or partly, or may modify the order or final decision as, in its opinion ought to be made in the premises.

Hassett Presentation included a plat that shows a cut out on Old 132, so from Tim Thompson's house and across 69, the first county road is across from where this driveway would come out. S 525 W. Warren Huntzinger would like to create this division of land in order to provide Brian Brown with a parcel from this he could access his property which is a legal non-conforming lot which does not have road frontage. Hassett indicated that she could not approve this lot, as a staff member, because it does not meet the minimum requirements of the bulk matrix in agricultural zone.

STAFF FINDINGS

Included in the Presentation were the Bulk Matrix Lot Requirements for Land Zoned Agricultural, along with the Unified Development Code Section 152 Lot and Easement Definitions. Adding that because Huntzinger identifies the "cut-out" separately in a survey, wishes to have it recorded and transferred to Brown, the Town equates "cut-out" to "lot", therefore compares it to the minimum requirements for a Lot in the agricultural zoning district: at least 40 acres and at least 500 feet wide.

Planning Department staff would not give a favorable recommendation to the BZA or Plan commission for the creation of this lot or any associated variances.

The intent of the "cut-out" fits the definition of "easement" as provided in the Code. The Town does not regulate easements or the creation of them. That would be between Huntzinger and Brown attorneys to make sure that an easement was created and recorded that is enforceable following the sale of either parcel of land.

Town Attorney clarified that the Board can either Affirm the decision not to sign it because this lot does not comply with the zoning ordinance, you could Reverse that decision, or you could Modify it in some way, though in this situation it appears you can either vote for Kayla to sign the form or not sign the form, that would allow the plat to be recorded at County Auditor.

Roberts suggested that if we don't sign, there is still opportunity to have access to that lot through an easement. Attorney advised that adjoining property owners can negotiate easements among themselves and not involve the BZA.

Mr. Huntzinger's representative address the Board, noting that there is an easement there which was in place before Huntzinger purchased it. The problem is that the drive and where the easement is granted is not the same place. Lynn went on to clarify that the best resolution would be to have it surveyed and grant Mr. Brown the actual property so he can get to and from his property, setting the driveway where it actually is.

Mike Hanna addressed the Board and provided history on this "lot" and provided clarification on the neighboring properties that utilize the easement to 132.

The Browns addressed the Board advising that they simply wanted to straighten things up between Huntzingers property and theirs.

Sutton asked Brown if there was a concern that Huntzinger would prohibit Brown from access. Brown doesn't believe Huntzinger can deny that access.

Bowman asked Staff about future potential land use. Hassett shared there is a well-established residential neighborhood in this area that needs to be served as far as access. This area appears to be a bit of a rats nest and this might present a good opportunity to maybe fix some of the survey issues out here. Perhaps we could get some kind of agreement where we could get a parcel to reach 132 to provide road access for Mr. Brown, in addition re-plot, so instead of having two very narrow parcels next to each other, potentially, and this would require a Variance, take out a parcel line and get these lines a little more close to conforming by giving them some more width. Perhaps right now is the time to take care of some of these survey issues rather than create another potential issue. Hassett would be interested in seeing some other options, which would need to go to Plan Commission and the BZA for a Variance.

Hassett added that in the past Mr. Huntzinger was able to take plats to the county to have them recorded without going through a platting process at the Town level, mainly because that was prior to when this area was in town. Now the county won't record a subdivision like this without a signed paper from Planning saying that it complies with our Ordinance.

MOVED BY TIM SWARTZ, SECONDED BY TIM PRITCHARD, TO REVERSE THE DECISION AND GRANT APPEAL A01162018-01 AS PRESENTED. MOTION CARRIED.

Attorney noted that for Finding of Fact, it needs to be noted why the decision was made. Swartz indicated that the definition of a Lot does not apply to this instance and that was the point he wanted to make. Roberts added that, because this Appeal would not fix the

current rats nest, steps need to be made to do that, not add to the problem. Swartz added that this would move it to the next step so it can be resolved.

Town Attorney clarified the next step would be Hassett signing the document and it would be a recorded Lot as we move into the future. Adding that if the board Affirms Hassett's decision tonight, then the potential next steps would be to go to the Plan Commission and ask that this parcel be subdivided out of the larger parcel, then apply for a Variance to have a Lot created that does not comply with the current Town Ordinance.

Several Board members shared they felt their vote to Reverse would take this to the next step of the Plan Commission and Variance requirement. Town Attorney confirmed that by Affirming Hassett's determination it would then allow the petitioner to go to the Town Council and then apply for a Variance, etc.

Pritchard added that he felt it was the decision of the Board to fix it. Affirm Hassett's determination, not Reverse it. Bowman added that fixing it would make it recordable, saleable, and leave knowing that it needs attention in the future.

MOVED BY TIM SWARTZ, SECONDED BY MATT ROBERTS, TO RESCIND PRIOR VOTE TO REVERSE THE DECISION NOT TO SIGN THE COUNTY DOCUMENT. MOTION CARRIED.

MOVED BY TIM SWARTZ, TO AFFIRM THE DECISION NOT TO SIGN THE COUNTY DOCUMENT, WITH THE UNDERSTANDING THE PETITIONER HAS THE RIGHT TO GO THROUGH THE VARIANCE REQUEST PROCESS.

Angie Brown indicated that they came in for a meeting to discuss this. The reason it was approached as an Appeal was because that is how we were told it should be, not a Variance. McClintick shared they were advised to do it as an easement. Brown advised that Huntzinger doesn't want to own it anymore because he can't put crops and she went on to ask if it gets submitted as a Variance, is it sellable. Hassett said it would be a Variance on our Lot standards, if it passes the BZA and Plan Commission, it would need to go through a subdivision platting process, then it would be a Lot and sellable.

TIM SWARTZ'S MOTION TO AFFIRM THE DECISION NOT TO SIGN THE COUNTY DOCUMENT WAS SECONDED BY TIM PRICHARD. MOTION CARRIED WITH A VOTE OF 3 TO 1.

Next meeting is scheduled for February 20, 2017.

Meeting adjourned at 8:03pm.

Kate Edwards
Planning Clerk

Town of Pendleton