

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

DATE..... MARCH 28, 2018
TIME..... 6:00 P.M.
PLACE..... CO. OFFICE BLDG.
20 N. 3RD STREET
LAFAYETTE, IN 47901

MEMBERS PRESENT

Tom Andrew
Steve Clevenger
Steve Schreckengast
Carl Griffin
Gary Schroeder
Ed Butz
Frank Donaldson

MEMBERS ABSENT

STAFF PRESENT

Ryan O’Gara
Rabita Foley
Linda Underwood
Zach Williams, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 28th day of March 2018 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Steve Clevenger called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the February 28, 2018 BZA public hearing. Tom Andrew seconded and the minutes were approved by unanimous voice vote.

II. NEW BUSINESS

Ryan O’Gara said all cases are ready to be heard.

III. PUBLIC HEARING

Gary Schroeder moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Tom Andrew seconded and the motion carried by voice vote.

Steve Clevenger read the meeting procedures.

Rabita Foley welcomed new BZA member Frank Donaldson, City of Lafayette Appointee.

1. BZA-1976--CITATION HOMES, LLC:

Petitioner is requesting a variance to reduce the rear setback from US 231 to ~~35~~ 49.1 feet from the minimum requirement of 60 feet to construct a new single-family residence on an R1-zoned lot. The property is located at 2513 Yeoman Lane, West Lafayette, Wabash 11(SE) 23-5. (UZO 2-1-7)

Gary Schroeder moved to hear and vote on BZA-1976—CITATION HOMES, LLC. Tom Andrew seconded.

Due to a conflict of interest, Steve Schreckengast recused himself and left the room.

Rabita Foley presented the zoning map, aerial photos of the site, and the site plan. She said Wake Robin subdivision is in its final phase and the State purchased a total take of this platted lot from the developer to use as right-of-way for the new US 231, just east of this site. She said the lot meets most R1 development standards except for the rear setback. She referred to the site plan to show the building footprint could easily be modified to meet the ordinance requirements because the plan submitted for BZA-1977 could be constructed on this lot without the need for a variance. She summarized the ballot items and concluded with a recommendation of denial.

Christopher Shelmon, 250 Main Street, Suite 590, Lafayette, IN 47902, attorney representing the petitioner, pointed out that a large, 150' right-of-way (ROW) was taken to construct new US 231. He added that the highway is down a hill from this lot and there is a large buffer of trees at the property line. He referred to the site plan and said this house is proposed for the same location with the right-of-way take. He added that the house will have similar construction to others in the subdivision. A smaller house would be inconsistent with the neighborhood.

Rabita Foley read a letter of concern from:

Stephen Geheb, 2512 Yeoman Lane, West Lafayette, IN 47906

Steve Clevenger thinks a variance would not be needed if the plans did not call for a sunroom to be built in the rear of the house.

Christopher Shelmon said the neighbor to the south has similar construction. He then distributed a photo showing the woods behind the lots that block the highway.

Carl Griffin asked if the home on lot #87 was built before the highway and if a variance was granted after the ROW take.

Gary Schroeder said the house on lot #87 is legally conforming because of the "take".

Zach Williams said the house on lot #87 is legally non-conforming but can be rebuilt if damaged more than 50%.

Tom Andrew pointed out that no variance would be needed if not for the large right-of-way that was taken.

The Board voted by ballot 6 yes to 0 no to approve BZA-1976—CITATION HOMES, LLC.

2. BZA-1977--CITATION HOMES, LLC:

Petitioner is requesting the following variances to construct a new single-family residence on an R1-zoned lot:

1. To reduce the rear setback from US 231 to 9.5 feet from the minimum requirement of 60 feet (UZO 2-1-7)
2. *To increase the building coverage to 34% from the maximum allowed 30% (UZO 2-1-6) and*
3. To decrease the lot size to 7,532 sq. ft from the minimum requirement of 10,000 sq. ft. (UZO 2-1-4)

on the property located at 2505 Yeoman Lane, West Lafayette, Wabash 11 (SE) 23-5.

Gary Schroeder moved to hear and vote on **BZA-1977—CITATION HOMES, LLC.** Tom Andrew seconded.

Rabita Foley said Variance request #2 was withdrawn because the submitted site plan meets the 30% building coverage requirement. She then presented the zoning map, aerial photos of the site, and site plan. She said INDOT purchased more than half of Lot #83 and #84 in Wake Robin Subdivision to construct US 231 and a paved trail immediately east of this site. Petitioner then combined the unusable portions of the lots by recording an Exemption E deed to create this site. The UZO explicitly states that self-imposed situations include the purchase of land with actual or constructive knowledge that, for reasons other than physical characteristics of the property, the development standards of the R1 zone will inhibit the desired improvement. Self-imposed situations based on perceived reduction of or restriction on economic gain cannot be considered a hardship. She summarized the ballot items and concluded with a recommendation of denial for both requests.

Christopher Shelmon, 250 Main Street, Suite 590, Lafayette, IN 47902, attorney representing the petitioner, said this request is similar to the previous one but in this case the front and side setbacks will be similar to others in the neighborhood. Only the homeowner will be impacted by this sub-standard lot because his/her back yard will be very small. Approving these requests will allow the petitioner to finish off the street and use the lot.

Jim Markstone, 2508 Yeoman Lane, West Lafayette, IN 47906, said his home is across the street and two houses down from this proposed lot. He is concerned because the lot size is supposed to be 10,000 sq. ft. but will only be 7,500 sq. ft. if the requests are approved. The proposed setback is only 9' when it should be 60' and that is a huge difference. Petitioner's representative said granting the variances would not create a hardship in the community because everything will look the same from the front but he is concerned about his property values. A smaller lot with a smaller house can decrease property values in the surrounding area. He knows the developer wants to make a profit but he bought the lot knowing that he could not conform to the rules. He had no problem with the first request (**BZA-1976**) because the home will fit with the existing house on lot #85 but he does not think the home on this lot will have the same property value as others in the neighborhood because of the way the lot is set up with the small back yard.

Tyler Tatlock, 2500 Yeoman Lane, West Lafayette, IN 47906, said his home is across the street from this site. Mr. Schreckengast visited the neighbors Monday to explain his plans. He asked the neighbors not to come to the meeting and speak against the requests. Mr. Schreckengast said he only plans to build one house and it will not be on the small property across the street from his home and that the house would be moved up to between 6' and 9' from the sidewalk because the future homeowners want a larger back yard. He does not trust the petitioner and is not sure there will be a 25' setback.

Christopher Shelmon said the Tatlock home is directly across the street from the skinny triangle portion of the lot but so he thinks Mr. Tatlock is a bit confused. The lots were combined and only one house will be built on the newly created lot in the widest part of the triangle. Citation Homes promised the neighborhood that it would finish out the subdivision. He referred to the plans to point out that the home that will be built on this lot will be 2500 sq. ft. and constructed with a 25' setback. No variance has been requested to reduce the front setback. He added that without the "take" the home would have been built in the same spot and not on the hill.

Carl Griffin asked if a home can be built with less than a 25' setback.

Rabita Foley said if these requests are approved petitioner must build according to the site plan that was submitted with the variance requests and presented here tonight.

Carl Griffin asked the size of the lot before the ROW take.

Christopher Shelmon said the lot was at least 10,000 sq. ft.

Carl Griffin asked if a home could be built on the triangle portion of the lot before the "take".

Christopher Shelmon said the triangle portion of the lot met the R1 development standards before the "take".

Carl Griffin asked what would happen to this lot if the variances are not granted.

Christopher Shelmon thinks upkeep would fall to the HOA. He assumes the lot will be mowed but there will still be utility stuff in the front yard.

Gary Schroeder pointed out that the house shown on the site plan is similar in size to the home to be built on lot #86. He then clarified a point he made during the previous case on the home on lot #87 that was built prior to the take. The home was referred to as a non-conforming structure after the "take" that could be rebuilt if destroyed. He said *UZO 5-1-6* says "however, any conforming structure made a non-conforming structure by a governmental taking or a grant of right-of-way shall be considered conforming within the context of the ordinance". The home on Lot #85 is a conforming structure even though the lot no longer meets the R1 standards due to a "take".

Zach Williams concurred and added that the home cannot be made more non-conforming.

Gary Schroeder said the ordinance also states that "any non-conforming structure that is made conforming cannot be made non-conforming". He thinks that is an issue for another discussion.

Steve Clevenger asked about the plans for lot #85.

Christopher Shelmon said there are plans to build a home on lot #85 and added that a variance was granted for this lot in 2011.

Jen Decker, 325 South Earl Avenue, Suite 4, Lafayette, IN 47904, said if these two variances are approved the houses on lots #86, 85, and 84/83 will be constructed at the same time.

Ed Butz recognized Jim Markstone.

Jim Markstone does not think it should make a difference now that the road has been built. The area left over after the "take" is significantly less than the minimum lot area required by the ordinance for an R1 lot on sanitary sewer. If the road was never built a home could be constructed on both lots but the road has been built. The developer knew the combined lot did not meet the R1 standards when he purchased the lots. He thinks we should care about what happened and not just with what happened in the past. He just does not understand how the process works.

Zach Williams explained that the Board is basing its decision on everything that has been heard today and whether the variances requested are appropriate for this point in time and lot.

Carl Griffin said the Board serves as a jury of its peers, those in the audience tonight and those that live in the subdivision. Situations are brought to the Board where a lot or house does not exactly meet the established standards, rules, and guidelines. APC staff gives the Board its opinion of what a petitioner can do to follow the rules and guidelines. If the rules and guidelines are followed for everybody without a jury of the peers looking at the things the rules do not take the differences into consideration. He has been on the Board many years and has seen reasonable and unreasonable requests that do not fit the ordinance requirements. The Board looks for something reasonable to make an exception or grant a variance. Sufficient evidence must be presented to show the request is reasonable and good for the community.

Jim Markstone said petitioner's representative hinted that this lot would be an eyesore if a home is not built on it but that is not the case. The neighbors and HOA have planted trees along the back property line, kept the yard maintained. The electrical box in front of this property only services the pump station for US 231 and will remain where it is.

Zach Williams explained that there are two requests and each one will be voted on separate ballot. The second ballot says it is a ballot for Variance #2 but that is not the case because Variance #2 was withdrawn because it was not needed. He asked the Board to mark the second ballot Variance #3.

The Board voted by ballot 6 yes to 0 no to approve **BZA-1977—CITATION HOMES, LLC, Variance #1,**

The Board voted by ballot 6 yes to 0 no to approve **BZA-1977—CITATION HOMES, LLC, Variance #3.**

Steve Schreckengast rejoined the meeting.

3. BZA-1978--CLINE MAC LIMITED LIABILITY:

Petitioner is requesting a parking variance to reduce the number of parking spaces to 65 from the minimum requirement of 100 spaces to renovate an existing retail structure on an NB-zoned lot. The property is located at 350 Sagamore Parkway West, West Lafayette, Wabash 07 (NE) 23-4 (UZO 4-6-8)

Gary Schroeder moved to hear and vote on **BZA-1978—CLINE MAC LIMITED LIABILITY.** Tom Andrew seconded.

Rabita Foley presented the zoning map, aerial photos of the site, photos of the site, and site plan, showing the retail structure formerly housing Cline's Designs and Tuesday Morning that petitioner plans to renovate. Petitioner has stated the southernmost half of the building will be an O'Reilly's Auto Parts store, private/commercial use in the middle, and a renal clinic in the rear. She clarified by saying the parking standard is based on the uses and the assumption that the third tenant will be a use with a similar parking requirement. She then highlighted other uses in the area. She explained that petitioner and West Lafayette staff have met and agreed on the types and numbers of plants that will be used where NB zoning abuts R1 zoning and also on the location of the plantings. She went on to say the site does not meet the 20% required greenspace but the West Lafayette Engineers Office has agreed to allow the petitioner to provide additional greenspace to make it closer to conformity. According to petitioner's site plan, staff believes there is sufficient space for additional parking within the existing blacktop if it is restriped and reconfigured. She concluded with a recommendation of denial.

Christopher Shelmon, 250 Main Street, Suite 590, Lafayette, IN 47902, attorney representing the petitioner, said there are already two potential clients for the site and explained that this building is decades old and built with decades old parking standards. He added that previously there were two similar uses and parking was never a problem. He and his client have worked with West Lafayette staff to increase the greenspace on the property and add a bufferyard along the back of the property and along the West Lafayette Trail that runs along the eastern portion of the property. It has been proven over the years that the existing property layout works.

Steve Clevenger assumes the ordinance does not require a bufferyard or a variance would have been requested.

Rabita Foley said a bufferyard is required by the ordinance.

Steve Clevenger asked why a bufferyard variance was not requested.

Christopher Shelmon said currently the lot is non-conforming but the petitioner is installing a bufferyard that will make the property less non-conforming.

Steve Clevenger said a variance is needed to install a smaller bufferyard than what the ordinance requires.

Christopher Shelmon explained that the use is not changing.

Rabita Foley added that the footprint of the building is not changing and the building will be repaired and rehabbed.

Chad Spitznagle, 222 North Chauncey, West Lafayette, IN 47906, West Lafayette Engineer's Office, said the petitioner has worked closely with West Lafayette's Landscape Administrator and the need for a variance was discussed. It was decided a bufferyard variance was not needed with the improvements along the park area along the east side and the addition of a better bufferyard on the north side.

Rabita Foley added that currently our ordinance does not require evergreen bufferyards along the property line but the petitioner is willing to install more planting than what is needed to buffer the neighborhood behind this site from commercial noise.

Carl Griffin asked how parking will work if the 3rd tenant space is rented.

Zach Williams explained that the parking for the 3rd tenant space will be determined by the use. If the use requires more parking than the first two tenants, petitioner will need to apply for another parking variance.

Christopher Shelmon said the parking requirement for the current tenants was used to determine the parking needed if all three tenants have the same parking requirement. Some uses require less parking spaces.

Carl Griffin asked how this request provides only the minimum relief.

Christopher Shelmon replied that adding additional parking means less greenspace and bufferyard. He believes the greenspace and bufferyard will provide a greater benefit to West Lafayette than providing additional parking that is not needed. He added that the building would need to be torn down and made smaller to provide the required parking.

Steve Clevenger said the parking on the "street parking lot planting plan" is different than the parking shown on the front page in the packet.

Christopher Shelmon explained that the first page shows existing conditions and the second page shows the end result if the variance is granted.

The Board voted by ballot 7 yes to 0 no to approve **BZA-1978—CLINE MAC LIMITED LIABILITY**.

4. BZA-1979--HORVATH TOWERS V, LLC:

Petitioner is requesting a special exception to allow a primary communications tower (SIC 48) in the A zone. The unmanned cell tower will operate 24 hours per day, 7 days per week at 3805 South 18th Street in Wea 09 (SW) 22-4. (UZO 3-2)

Ryan O'Gara said petitioner's representative for **BZA-1979** has requested a continuance to the April 25th meeting. The petitioner would like to offer an explanation for the continuance for the Board and the audience.

Gary Schroeder moved to continue **BZA-1979—HORVATH TOWERS V, LLC** to the April 25, 2018 Board of Zoning Appeals public hearing. Tom Andrew seconded.

Elizabeth Bentz-Williams, 320 North Meridian, Suite 1100, Indianapolis, IN 46204, land use planner representing the petitioner, said she and the petitioner have had conversations with Jerry Reynolds this evening. She believes the best course of action for the Board to be able to make its best possible decision is to postpone this request for a month. The postponement will give her and her client the opportunity to meet with the neighborhood and the City of Lafayette and share information outside of the public hearing forum. That will encourage dialog and exchange in the hope of flushing out some of the questions and concerns.

Jerry Reynolds, 20 North 6th Street, Lafayette, IN 47901, Councilman representing Lafayette District 1, said he concurs with the request for a continuance. He believes there has been a lack of communication

and the city did not receive all the information. Many of the neighbors have a lot of questions and he thinks a lot of the issues can be resolved prior to the hearing.

The motion on the floor was approved by unanimous voice vote.

V. ADMINISTRATIVE MATTERS

None

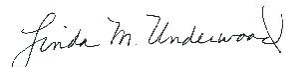
Steve Clevenger stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

VI. ADJOURNMENT

Gary Schroeder moved for adjournment. Tom Andrew seconded.

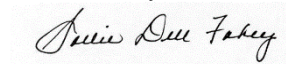
The meeting adjourned at 7:20 p.m.

Respectfully submitted,



Linda Underwood
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director