

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

DATE.....April 27, 2022
TIME.....6:00 P.M.
PLACE..... COUNTY OFFICE BUILDING
20 N. 3RD STREET
LAFAYETTE, IN 47901

This meeting was held in-person, with no virtual option.

MEMBERS PRESENT

Steve Clevenger
Ed Butz
Gary Schroeder
Michelle Dennis
Tom Andrew
Robert Novak

MEMBERS ABSENT

Jen Dekker

STAFF PRESENT

Maureen McNamara
Ryan O’Gara
Jennifer Ewen
Eric Burns, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held in-person on the 27th day of April 2022 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

Steve Clevenger called the meeting to order at 6:00 PM.

Attorney, Eric Burns, called the roll to establish members present.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes from the March 23, 2022 BZA public hearing as submitted.
Michelle Dennis seconded.

Steve Clevenger asked if there were any comments or corrections. There were none. The minutes, as submitted, were approved by unanimous voice vote.

II. NEW BUSINESS

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

III. PUBLIC HEARING

Steve Clevenger read the meeting procedures.

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. Michelle Dennis seconded, and the motion carried by unanimous voice vote.

Gary Schroeder moved to hear and vote on **BZA-2073 JON SHEIDLER – LANDWORX ENGINEERING**. Michelle Dennis seconded.

BZA-2073 JON SHEIDLER – LANDWORX ENGINEERING:

Petitioner is requesting the following variances for a proposed Arby's restaurant with drive-thru in an HB zone:

1. To allow a 38' side setback instead of the minimum required 60' side setback along a primary arterial road (UZO 2-18-17) and
2. To allow a 20' bufferyard along the adjacent property zoned R2 to the east instead of the minimum required 30' (UZO 4-9-3-a).

The site is located at 6001 SR 43 N, Lot 1 in Arora Minor Subdivision in the Town of Battle Ground, Tippecanoe 22 (SW) 24-4. With Conditions.

APC staff Maureen McNamara presented the zoning map, site plan, and aerial photos. She stated the property is currently vacant apart from a small pet cemetery on the north end of the site. If approved, the property will house an Arby's restaurant with indoor seating for 40 and a two lane drive-thru. The site is zoned HB (Highway Business) and has been since 2008 when it was rezoned from R2 with the intention of housing a gas station and a convenience store that both were never built. The zoning pattern in this area is mostly commercial; it is serving the I-65 exit. Both sides of SR 43 are zoned HB, and there is one GB. The lot to the east of the site is zoned R2 as-is some of the other lots along County Road 600, and the 14-acre property to the north is zoned R1. The pet cemetery along the north end of the site was approved through a special exception in 1993. The neighboring parcel to the east is a single-family home that was built in 1970, and the R1 acreage to the north is unimproved, but it appears to be row crops currently. SR 43 is classified as a rural primary with a 60' setback, and CR 600 N is a rural secondary with a 40' setback. The site plan does show new access points that are moved slightly to the north from the existing access points. The petitioner has all the required parking. They show 28 parking spots, and they are only required to have 27 spots. Sewer and water do not serve the site, but it is in the service area for the Town of Battle Ground. The petitioner is working with the Town to get service to the property. There are two things she would like to address because an addendum came-out since the last meeting; first being that on their site plan they show a bufferyard of 30' to the north where it abuts the R1 zone, but per UZO 4-9-5 (a) the petitioner is actually responsible for providing half of the required 30' bufferyard since the adjacent property is unimproved, and the other item being that staff met with petitioners regarding the pet cemetery and agreed upon a license which essentially gives the interested parties of the pet cemetery the right to access the property. Staff does support the license as-is. Staff is recommending approval of both variances with the following conditions:

1. A revised site plan showing the required 15' bufferyard to the north with consideration for the existing headstones.
2. Prior to the building permit issuance, petitioner shall record an Access License agreed upon by petitioner and APC staff (see attached draft, was received 04/21/2022 and needs to still be reviewed by APC attorney before hearing on 04/27/2022).

She stated she received a petition with 13 signatures in opposition.

Steve Clevenger called for the petitioner or the petitioner's representative.

Marianne Mitton Owen, Stuart & Branigin LLP, 300 Main Street, Lafayette, stated she is here on behalf of John Sheidler of Landworx Engineering. She stated the staff's report describes their request very well and provides a positive recommendation for both of the requested variances. A special factor with this request is the pet cemetery, and as noted, they developed a license that works for a five-year period that protects this area and shall maintain it with the option of extending that period of time for an additional five years. This will be noted by a plaque that will be in that area to allow persons who have pets in the cemetery to view the request and contact the parties shown on the particular plaque. She offered to answer any questions, and respectively requested approval of both the variances.

Steve Clevenger asked if anyone wished to speak in favor of this petition.

Fred Miley, 1322 S 28th Street, Lafayette, stated his wife has animals in this pet cemetery, and he has been taking care of the cemetery for the past 20 years on his own. He just wants clarification on where visitors for cemetery will be able to park. Regarding the license, he wanted to know if after five years, will he need to re-apply for another five years.

Steve Clevenger asked for the petition in opposition be read into the record.

Maureen read the petition in opposition signed by the following:

Marsha Kuebler, 6230 SR 43 N, West Lafayette, IN 47906

Kurt Kuebler, 6230 SR 43 N, West Lafayette, IN 47906

Joan Bauer, 6100 SR 43 N, West Lafayette, IN 47906

John Bauer, 6100 SR 43 N, West Lafayette, IN 47906

Fernando Ramirez, 2112 E 600 N, West Lafayette, IN 47906

Denise Hays, 2030 E 600 N, West Lafayette, IN 47906

Dennis Hardebeck, 1836 E 600 N, West Lafayette, IN 47906

Richard Meister, 1853 E 600 N, West Lafayette, IN 47906

Marilynn Dammon, 6237 SR 43 N, West Lafayette, IN 47906

Pedro Rolon Espinoza, 2026 E 600 N, West Lafayette, IN 47906

Kristin Dell, 2307 E 600 N, West Lafayette, IN 47906

Connie Stemick, 2305 E 600 N, West Lafayette, IN 47906

Stephen Lipps, 1734 E 600 N, West Lafayette, IN 47906

Steve Clevenger asked if anyone wished to speak in opposition of this petition.

Pedro Esoinoza, 2026 E 600 N, West Lafayette, IN 47906, stated he lives next to this business and his concern is his yard. He has two children that like to play in the yard, and now there will be a lot of people around, and you can't trust people; they think a lot of different things. Another concern is the traffic and how it will affect the busses. The smell and the light from Arby's concerns him also.

Gary Schroeder moved to amend his motion to hear and vote on **BZA-2073** to include the conditions recommended by the APC staff. Michelle Dennis seconded, and the motion carried by unanimous voice vote.

Steve Clevenger asked for the petitioner's rebuttal.

Marianne Mitton Owen, Stuart & Branigin LLP, 300 Main Street, Lafayette, stated there will be parking available on the Arby's site for anyone visiting the pet cemetery. She stated this lot is an HB zoned lot, and there are many different uses that are permitted in this type of zone, and this is just one of the many. She stated they are respectfully requesting approval of the variances with the conditions.

Steve Clevenger asked if the Board had any questions or comments.

Steve Clevenger stated essentially the license for the pet cemetery is good for five years, and an interested party could ask for an additional five-year extension which is a total of 10 years, so what happens to the cemetery after that 10-year period.

Marianne Mitton Owen, Stuart & Branigin LLP, 300 Main Street, Lafayette, stated after that 10-year period, the cemetery becomes a usable piece of ground by the Arby's owners.

Steve Clevenger asked what happens to the remains and the headstones that are there.

Marianne Mitton Owen, Stuart & Branigin LLP, 300 Main Street, Lafayette, responded the persons who have entered their pets there may choose to remove them, and the persons who own the property may choose to remove them as well.

Steve Clevenger stated he doesn't remember the details of the special exception for the pet cemetery, but he is interested to know what the contracts were that were signed with the people buying or leasing those plots of land and what they are expecting of that site or what they were told.

Ryan O'Gara responded the original special exception didn't contemplate the platting of plots, and he doesn't believe there were legal descriptions created and plots created like a human cemetery, so there is extensively nothing to vacate. By his recollection, it had an area for expansion in the original special exception that was never utilized, and he believes it is maintained by the people who have connections with the property.

Eric Burns stated there are several issues, and it is an unusual situation. There is no legal requirement for the developer to do anything. They are before this Board asking for variances which they want to do what is right in regard to this. In Indiana if you are going to protect real estate to keep something from happening to it, you have to record something in the chain of title. In Indiana, it is the notice of statute. With this there is no such filing, so, in the law, there is no restriction on the ability of the owners to use the land.

Marianne Mitton Owen, Stuart & Branigin LLP, 300 Main Street, Lafayette, stated as far as for the maintenance going forward, that is something Arby's is going to take on.

Fred Miley, 1322 S 28th Street, Lafayette, stated back in 1995, they bought six plots, and they were \$700 for each one. There was not a contract that he is aware of. He asked if he would be notified after 5 years to extend the contract.

Eric Burns responded the contract state to provide written notice to the company before the end of the initial five-year period. There will be a sign by the cemetery for who you would contact.

Steve Clevenger called for a vote on a ballot.

Attorney Eric Burns collected the ballots and noted the Board voted 6-Yes to 0-No to grant Variance #1.

Variance #1	<u>Yes-Vote</u>	<u>No-Vote</u>
	Steve Clevenger	

Robert Novak
Gary Schroeder
Ed Butz
Michelle Dennis
Tom Andrew

Attorney Eric Burns collected the ballots and noted the Board voted 6-Yes to 0-No to grant Variance #2.

Variance #2	<u>Yes-Vote</u>	<u>No-Vote</u>
	Steve Clevenger	
	Robert Novak	
	Gary Schroeder	
	Ed Butz	
	Michelle Dennis	
	Tom Andrew	

Steve Clevenger noted Variance #1 and Variance #2 for **BZA-2073** both have been granted.

Gary Schroeder moved to hear and vote on **BZA-2074 ANDREW HEBER – HEBER REAL ESTATE, LLC.** Michelle Dennis seconded.

BZA-2074 ANDREW HEBER – HEBER REAL ESTATE, LLC:

Petitioner is requesting a special exception to use an existing single-family home as a Transient Guest House (as defined in the ordinance) in an R1B zone for a maximum of 6 guests. The proposed hours of operation are 24 hours a day, seven days per week. The property is located just east of US 231, specifically at 525 Schroeder Court, Lafayette, Wea 06 (NW) 22-4 (UZO 3-2). With Condition.

APC staff Maureen McNamara presented the zoning map, site plan, and aerial photos. She stated the property is zoned R1B as-is all surrounding properties. Northeast of this site there is some R2 and R3 zoning. There have not been any recent rezones or ABZA cases in this neighborhood. The home was built in 1996 as a single-family residence according to the Building Commissioners records. The entire neighborhood is single family homes. Schroeder Court is a local road, and the neighborhood's access is off of Old Romney Road. There is no access from US Hwy 231. The lot has a two-car attached garage and a driveway with capacity to park four vehicles which is adequate parking for the max of six guests. The house rules provided by the petitioner prohibits street parking. City utilities serve the site. Petitioner is seeking a special exception to use this existing home as a transient guesthouse. That means there would not be an on-site owner; however, Linda Sigler, a local property manager, will work with the property owner to oversee the property and be available for guests and neighbors. The main concerns are traffic and noise; however, the petitioner is limiting the number of guests to six, and they have the addition of house rules. There won't be any signage needed, and it will look just like a single-family home. If this request is granted, the petitioner is required to apply for a permit from the Lafayette City Engineer to operate the transient guest house. Staff is recommending approval of this special exception with the following condition:

1. A permit to operate a Transient Guest House must be obtained from the Lafayette City Engineer's office.

She offered to answer any questions.

Steve Clevenger called for the petitioner or the petitioner's representative.

Linda Sigler, 1916 Starks Circle, Lafayette, stated she is representing Andrew Heber, and she has been a property manager for 16 years. She has managed an Airbnb in Lafayette, Monticello, and two in Indianapolis. They are very strict on their house rules. All the neighbors have her phone number, and she made it clear that she is available for phone calls. There are three exterior cameras which she monitors.

Steve Clevenger asked if anyone wished to speak in favor of this petition. There was no response.

Steve Clevenger asked if anyone wished to speak in opposition of this petition. There was no response.

Steve Clevenger asked if the Board had any questions or comments.

Steve Clevenger asked staff if the maximum of six guests is limited by the petition or does there need to be a condition.

Maureen McNamara responded the petitioner included that in their request; they said a maximum of six guests.

Steve Clevenger asked if the house rules that were presented are part of the petition or can they be changed.

Maureen McNamara responded they were part of the petition.

Michelle Dennis asked if the special exception with the condition is granted and Andrew decides to sell this property, will the conditions then transfer to whoever buys the property, and they could also have a transient guest house at this location.

Steve Clevenger responded correct. It goes with the land and anything that applies to this would apply to anyone in the future.

Steve Clevenger called for a vote on a ballot.

Attorney Eric Burns collected the ballots and noted the Board voted by ballot 6-Yes to 0-No in favor to grant the special exception for **BZA-2074 ANDREW HEBER – HEBER REAL ESTATE, LLC.**

Yes-Vote

Steve Clevenger
Gary Schroeder
Ed Butz
Michelle Dennis
Tom Andrew
Robert Novak

No-Vote

Steve Clevenger noted the special exception for **BZA-2074** has been granted.

Gary Schroeder moved to hear and vote on **BZA-2075 TIPPECANOE COUNTY COMMISSIONERS.**
Robert Novak seconded.

BZA-2075 TIPPECANOE COUNTY COMMISSIONERS:

Petitioner is requesting a special exception to expand a previously approved special exception (BZA-1473) for a correctional facility (SIC 9223) and a redesign of the building approved under the special exception heard in October 2021 (BZA-2066) operating 24 hours a day, seven days a week, on property located at 2800 North Ninth Street Road, Fairfield, Longlois Reserve, (W1/2) 23-4.

APC staff Ryan O’Gara presented the zoning map, site plan, and aerial photos. He stated petitioner we heard this case in October of last year for an expansion of a correctional facility. He noted nothing materially has changed with this petition. There are 94 parking spaces which exceeds the required

amount. City utilities are available to serve the site. Basically, there is a reduction in the profile of the building; it is going from an originally planned two-story to a single-story facility. Staff is recommending approval.

Steve Clevenger called for the petitioner or the petitioner's representative.

Tom Murtaugh, 20 N 3rd Street, Lafayette, stated this project went to bid, and in this particular market, it came in over bid, so they had to scale the project back. They went from a two-story project to a one-story with a reduction in square feet, so this is the new site plan that they are going with. It is confirmed that the bids are good, and they are ready to go. He offered to answer any questions.

Steve Clevenger asked if anyone wished to speak in favor of this petition. There was no response.

Steve Clevenger asked if anyone wished to speak in opposition of this petition. There was no response.

Steve Clevenger asked if the Board had any questions or comments. There were none.

Steve Clevenger called for a vote on a ballot.

Attorney Eric Burns collected the ballots and noted the Board voted by ballot 6-Yes to 0-No in favor to grant the special exception for **BZA-2075 TIPPECANOE COUNTY COMMISSIONERS.**

Yes-Vote

Steve Clevenger
Gary Schroeder
Ed Butz
Michelle Dennis
Tom Andrew
Robert Novak

No-Vote

Steve Clevenger noted the special exception for **BZA-2075** has been granted.

Gary Schroeder moved to hear and vote on **BZA-2076 AMY GAETA.** Michelle Dennis seconded.

BZA-2076 AMY GAETA:

Petitioner is requesting a special exception to allow an indoor soccer (futsal) field (SIC 7999) operating 24 hours per day, seven days a week, on property located at 160 N. 36th Street, Lafayette, Fairfield 22 (SE) 23-4.

APC staff Ryan O'Gara presented the zoning map, site plan, and aerial photos. He stated this site is on the east side of Lafayette. He stated there are restaurants and retailers in this area. All sorts of general business development, and a lot of light industrial. There is not any residential or multi-family immediately adjacent to this site. An indoor sports facility is what is being proposed. The site plan has 28 parking spaces including 2 accessible, and this is acceptable to the City Engineering. City utilities are available to serve the site. There is no buffering necessary given all of the adjacent zones. The site plan with the existing building and the addition will be almost 3000 square feet. The hours of operation are 24 hours a day and 7 days a week. All the activities will take place inside, so the noise won't be an issue. Staff is recommending approval.

Steve Clevenger called for the petitioner or the petitioner's representative.

Amy Gaeta, 2350 Sagamore Parkway N, Lafayette, stated she is asking for a special exception to do an indoor soccer field. She feels this project would be very good for the community. They would have

recreational soccer games and do training throughout the week. They will clean-up the place and make it a safe place for families to bring their children to come and play. She offered to answer any questions.

Steve Clevenger asked if anyone wished to speak in favor of this petition. There was no response.

Steve Clevenger asked if anyone wished to speak in opposition of this petition. There was no response.

Steve Clevenger asked if the Board had any questions or comments.

Robert Novak asked if the special exception is granted, is it limited to athletic activities. Could birthday parties, concerts, or anything else take place inside.

Ryan O'Gara stated the petition is what this approval is for, so they could not exceed what they are asking for now without another special exception. The SIC code that this would fall under does allow other things, but they are limiting themselves to this specific use.

Steve Clevenger called for a vote on a ballot.

Attorney Eric Burns collected the ballots and noted the Board voted by ballot 6-Yes to 0-No in favor to grant the special exception for **BZA-2076 AMY GAETA.**

Yes-Vote

Steve Clevenger
Gary Schroeder
Ed Butz
Michelle Dennis
Tom Andrew
Robert Novak

No-Vote

Steve Clevenger noted the special exception for **BZA-2076** has been granted.

IV. ADMINISTRATIVE MATTERS

None.

V. ADJOURNMENT

Steve Clevenger stated 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.

Gary Schroeder moved for adjournment.

The meeting adjourned at 7:20 P.M.

Respectfully submitted,

Jennifer Ewen
Recording Secretary

Reviewed by,

A handwritten signature in black ink, appearing to read "D. Hittle", with a horizontal line underneath.

David Hittle
Executive Director