

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY**

**MINUTES OF A PUBLIC HEARING**

DATE..... SEPTEMBER 26, 2018  
TIME..... 6:00 P.M.  
PLACE..... CO. OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE, IN 47901

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Gary Schroeder

**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 26th day of September 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**

Ed Butz moved to approve the minutes from the August 22, 2018 BZA public hearing. Steve Schreckengast seconded and the minutes were approved by unanimous voice vote.

**II. NEW BUSINESS**

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

**III. PUBLIC HEARING**

Ed Butz 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. Carl Griffin seconded and the motion carried by voice vote.

Steve Clevenger read the meeting procedures.

**1. BZA-1992--TBIRD DESIGN SERVICES CORP:**

Petitioner is requesting a special exception to expand a previously approved special exception for a fire station (SIC 9224) to serve Wea Township. This facility would operate 24 hours per day, 7 days a week in the AW and FP zone. (The proposed new construction is not in the Flood Plain.) The property is located at 1700 Wea School Road, Wea 21 (NE) 22-4. (UZO 3-2) CONTINUED FROM THE AUGUST BZA MEETING DUE TO A FAILURE TO MAIL THE NOTICE TO INTERESTED PARTIES

Ed Butz moved to hear and vote on **BZA-1992—TBIRD DESIGN SERVICES CORP.** Carl Griffin seconded.

Ryan O’Gara presented the zoning map, aerial photos of the site, and the site plan. The existing home on the land that was purchased for this expansion has been razed. He summarized the area zoning and land use patterns. He explained that the fire station is in the AW zone and the previous expansion was in the A zone. The proposed buildings, if approved, will be on land that has been certified above the Flood Plain. He said the fire station was built in the late 1960’s without local approvals or a building permit. No variances are required for this proposed expansion because this new special exception includes twice the amount of land will make the site more conforming. The *Metropolitan Transportation Plan for 2045* shows CR 500 South extending through this area to connect Concord Road with Wea School Road. This site is adjacent to the alignment for the proposed road extension and could impede the design of the road. The new building will have its own septic field and detention pond and the plan for the commercial septic has already been approved by the State Board of Health. The *Multi Hazard Mitigation Plan* identifies this as a critical site and having a high flooding potential. The building would be safe from flood water but transportation routes to and from the site would be impassible. Volunteers will have trouble getting to the fire station and emergency vehicles would have trouble leaving the site. He summarized the ballot items and said access to a critical facility cannot be compromised. He concluded with a recommendation of denial.

Joseph Bumbleburg, PO Box 1535, Lafayette, IN 47902, attorney representing the petitioner, said the Wea Township Trustee, the Wea Fire Chief, and the project engineer are all present tonight. He said this request is merely an add-on to the previous special exception that was granted in 2007. The station has been in service at this location since the 1960’s. Five variances were granted for the previous special exception but none are needed for this request. The proposed building will be used for auxiliary storage and not vehicles. Staff has not mentioned the *Wea Township Flood Mitigation Plan*. The *Plan* was presented to the Board in 2007 that covers this site and fire department use. The *Plan* is reviewed annually by the Tippecanoe County Emergency Management Administration and lays plans for what to do if the site floods. There is about a 1% chance the area will flood. We are also using something that might occur in the year 2045 as a standard but we all know we create wonderful plans for the future today that may never occur. We always talk about zoning cases not being precedential, but he thinks this case is the exception in that the previous special exception sets a precedent for this one.

Matthew Koehler, 4345 Wea Ridge Road, Lafayette, IN 47909, said he has been the Wea Township Trustee for the last 24 years. In 2007 they looked for the best possible place to build the fire station in 2007 and decided this is the best location because of the limitations of the roads that run to the east and west. These days it is difficult to find volunteers because of the extensive training and time commitment needed. It will be nice to have a new facility to attract and retain the volunteers that are saving the county millions by not having to pay the firefighters. The land behind the current fire station was purchased and the proposed new building will be used for safety training, extensive record storage, equipment storage, weight room, and locker area. There also will be expanded space in the “fire annex” for the required cleaning equipment. Everyone knows that Wea Creek is outside the station but his cell phone will tell him the level of the Wabash. He can also look at the historical crests of the Wabash and the 11<sup>th</sup> highest flood in recorded history (since 1858) was when he was a trustee and the road the fire station is on did not flood. He has a reasonable idea when it is time to get worried. *Wea Township Flood Mitigation Plan* maps out the lowest point of Wea School at the South 18<sup>th</sup> Street intersection and when it floods in front of Masons Ridge Subdivision he knows they have another 4’ before the water reaches the fire station. At that time the *Plan* was that half the trucks and equipment are taken to Mayflower Mill and the other half

are taken out to Woodland. There is a plan in place that makes sure the equipment gets to higher ground and the fire department remains in operation.

Tom Andrew asked how long it will take to move the equipment to higher ground in case of a flood.

Steve Jachim, 210 Buckingham Drive, Lafayette, IN 47909, Wea Township Fire Deputy Chief, said it would only take about an hour to move all the equipment out of the fire station.

Steve Clevenger asked staff about the planned route for the CR 500 South extension.

Ryan O’Gara said the extension is planned to run from Concord Road, north of the fire station, and connecting to Wea School Road.

The Board voted by ballot 6 yes to 0 no to approve **BZA-1992—TBIRD DESIGN SERVICES CORP.**

**2. BZA-1995--PINE LODGE COMPANY:**

Petitioner is requesting a special exception to use the existing single-family home, a long-term rental property, as a Transient Guest House (SIC 702) in an R2 zone. The property is located at 102 Appomattox Court in Kimberly Estates subdivision, Wabash 36 (SW) 24-5. (UZO 3-2) **WITH CONDITION AND COMMITMENT**

Ed Butz moved to hear and vote on BZA-1995—PINE LODGE COMPANY with Condition and Commitment. Carl Griffin seconded.

Rabita Foley presented the zoning map, aerial photos of the site, and front and rear photos of the site. She summarized the area zoning and land use patterns. She explained that the property is owned by a company that has several similar rental properties in the area. The owners would like to use this property as a transient guest rental because of multiple requests from Purdue parents and visitors. There are numerous hotels in the county but staff feels allowing a local business to diversify its service by permitting short-term rentals could provide a substitute space for visiting families. She summarized the ballot items and concluded with a recommendation of approval with the following commitment and condition:

**Commitment**

The single-family home shall be rented only to one family as defined in the UZO at any given time.

**Condition**

Following the recordation of the commitment, a permit to operate a Transient Rental House must be obtained from the County Building Commissioner.

Steve Schreckengast asked if this request is for an Airbnb.

Rabita Foley replied that Airbnb is one of the platforms where the petitioner can advertise this home for rent.

Wong Socrates Sow Ho, 1905 Abnaki Way, West Lafayette, IN 47906, petitioner, said he has 10 years of rental experience. Currently the rentals in the area catering to families are long-term rentals. His company provides short term rentals to Purdue professors, parents, and visiting families. Often people are looking to rent a house for 7 to 30 days. His company respects the law and that is why he is requesting this special exception for this property. Competition’s homes are usually listed on Craig’s List, Airbnb, and HomeAway but he does not plan to use those platforms. He plans to use more traditional listings as a vertical integration of the company’s services. He concurs with the staff report but objects to the commitment. The plan is to rent to single families, but it is hard to judge if the renters are a family with a short-term rental. He plans to put no more than six people in this house because that is what the insurance company requires. His objection is with the cost of compliance because it is difficult to record every single person who will be staying in the house.

Zach Williams stated that right now the Board will be voting on the special exception request with the condition and the commitment. He asked staff to clarify its position on the condition and commitment because it sounds like the petitioner is rejecting the commitment. We will also need clarification from the petitioner on whether or not he wants to move forward with the commitment or seeking approval without the commitment.

Steve Clevenger referred to the *Unified Zoning Ordinance* and said the definition of a family is as follows:  
“A family is one or more persons related by blood, marriage, or adoption and not more than two unrelated persons living as a single housekeeping unit”.  
He said that means you could have an unmarried couple or a family plus one additional unrelated person.

Steve Schreckengast said he heard the petitioner say that record keeping would be cost prohibitive. He asked if there is a formal record keeping requirement on who the renters are.

Rabita Foley replied that Tippecanoe County does not require any record keeping on the renters. The only requirement is a building permit from the Building Commissioner.

Wong Socrates Sow Ho said he will have to come up with some internal guidelines to ensure we are renting to families.

Steve Clevenger asked staff if you cannot have more than three unrelated people in a long-term rental.

Wong Socrates Sow Ho said it is expensive to run background checks on renters.

Zach Williams said the motion on the floor is to approve the special exception request with the commitment. He asked staff if it could give the Board a recommendation on this request without the commitment.

Rabita Foley said staff cannot recommend approval without the commitment.

Zach Williams informed the petitioner that the Board will vote on the request with the commitment. He asked the petitioner if he wants the Board to go ahead and vote on his request with the commitment.

Carl Griffin asked if the petitioner could ask the Board to vote on the special exception without the commitment. The Board could then make a motion to amend the motion on the floor to vote on the request without the commitment, even though staff is not recommending approval without the commitment.

Zach Williams said he would be willing to allow that but with the caveat that staff has not had the chance to look at the issue and properly brief the Board. In that situation he thinks it would make sense to continue this case to give staff time to look at the request without the commitment.

Steve Schreckengast asked staff if they have discussed why they believe the commitment is needed and why the petitioner does not want it.

Rabita Foley replied that staff discussed the issue with Mike Wolf, Tippecanoe County Building Commissioner and he is the primary reason the commitment was added. The Building Commissioner has objections to the number of people who could potentially rent the home. The structure was designed, constructed, inspected, and approved as a single-family residence. Mike Wolf wants to ensure the safety of those staying in the house.

Steve Clevenger said right now we are limiting renting the home to a family and by definition that allows up to two unrelated persons. The short-term or long-term rental is still defined by a unit that can only have up to three unrelated people. That means the home cannot be rented to six unrelated people and there is not much of a difference between the two.

Rabita Foley thinks the petitioner is talking about something that is not related to our ordinance but rather to his business model/operation.

Wong Socrates Sow Ho said he is not concerned about the cost of compliance but he does not want to deal with the record keeping that will be required.

Steve Clevenger thinks that will have to be done anyway because of the three, unrelated people versus the two, unrelated people. He said the family issue is part of the commitment but our ordinance only allows so many people in a house that are unrelated. He added that with a family you can have more people in the home.

Zach Williams said when a case like this is brought to the Board for consideration it is based on the understanding that the petitioner has agreed to the commitment. He thinks that is where the disconnect is. The case has been briefed and a motion with the understanding that the petitioner was agreeable to the commitment.

Steve Schreckengast wants to make it clear that staff will probably not change its mind on the commitment even if the Board continues this case.

Rabita Foley concurred. Staff will stay with the Building Commissioner's recommendation.

Zach Williams added that it is important from the Building Commissioner's perspective because it potentially creates code violation issues down the road when you have a home that is no longer a single-family home under state building codes because of the number of unrelated people inside the home. He asked the petitioner if he is willing to go forward with the request with the commitment even though he does not like the commitment.

Wong Socrates Sow Ho said he is willing to go forward with the commitment.

Zach Williams asked the petitioner if he will record and abide by the commitment if the request is approved.

Wong Socrates Sow Ho said he would record the commitment and abide by it.

Rabita Foley read a letter of opposition from:

Wayne Williams, 52 Appomattox Court, West Lafayette, IN 47906

Larry Day, 102 Appomattox Court, West Lafayette, IN 47906, said the exterior of the home has not been kept up for a long time. The grass has not been mowed and the yard is overrun with weeds. He said homes that are not kept up affect the values of the other homes in the area.

Steve Schreckengast asked Larry Day if he is an adjacent neighbor or across the street.

Larry Day replied that he lives at the end of the street.

Steve Schreckengast asked Larry Day if he is okay with the use but concerned about the current condition of the home.

Larry Day said that is correct. The home has not been maintained in over a year and it is going downhill.

Wong Socrates Sow Ho said he has made over \$2000 worth of renovations to the home in over six months. He agrees that minimum exterior upkeep was done during the renovations but he plans to take care of the exterior when it is ready for renters.

Carl Griffin said the motion is with the commitment and the Board will be voting on the request with the commitment even though the commitment is not specifically referred to on the BZA ballot.

Zach Williams said staff's comments on the ballot items in the staff report state that the request is not subverting the general purposes of the ordinance. The request is with the commitment and the Board would have to specifically remove the commitment for it not to be part of the request.

Carl Griffin informed the neighbors that they have avenues to pursue through Tippecanoe County to put pressure on any homeowner to meet the standards for lawn upkeep etc. regardless of the use status of a house or what is going on inside the house with regard to upkeep.

Steve Schreckengast agreed with Carl Griffin about other avenues being available in county ordinance with regard to weeds and yard height. He wants the petitioner to know he would not be able to support this request without the condition and commitment. He is glad the petitioner is willing to accept the commitment.

The Board voted by ballot 6 yes to 0 no to approve **BZA-1995—PINE LODGE COMPANY with Condition and Commitment.**

**3. BZA-1996--MURTAUGH LAW LLC:**

Petitioner is requesting a variance to reduce the street setback to 5.5' from the minimum requirement of 25' from Garden Street to construct an outbuilding and fence to install a swimming pool. The existing home is on an R1 zoned lot in the Oakhurst Addition. The property is located at 1701 Sheridan Road, West Lafayette, Wabash 18 (NW) 23-4 (UZO 2-1-7)

Ed Butz moved to hear and vote on BZA-1996—MURTAUGH LAW LLC. Carl Griffin seconded.

Rabita Foley presented the zoning map, aerial photos as well as photos of the site, and the site plan. She summarized the area zoning and land use patterns. She said for many years a smaller, single-family home with no garage occupied this site. That structure was razed some time in 2015 and a larger home with attached garage was built on the site. The lot exceeds the UZO requirement for R1 zoned lots and the maximum lot coverage and minimum vegetative coverage requirements can also be met. She referred to the site plan to show how the lot narrows in the back and cannot accommodate the pool house. Staff feels all the setbacks could be met by reducing the size of the pool and pool house and positioning them closer to the rear of the home. She summarized the ballot items and concluded with a recommendation of denial.

Reid Murtaugh, 3595 Sagamore Parkway, Suite 1, Lafayette, IN 47904, petitioner, pointed out that the proposed pool is smaller than average and he disagrees with staff that this is not a hardship. After careful consideration it was determined that this is the only place to put the pool that is away from the trees and gets maximum sun. The pool house cannot be moved because it needs to be near the pool. The pool house will be ½ storage and ½ roofed patio area. The home owners do not want the pool house closer to the home and there is nowhere on the lot where the pool house could be constructed without a variance. He pointed out that the rear lot line is only 45' long. He feels the pool and pool house will be considerable improvements.

Carl Griffin pointed out that the pool is considered a permanent structure and it would not make a difference if the pool and pool house switched locations.

Rabita Foley concurred because the pool is a structure so it has to meet all the setback requirements.

Steve Schreckengast said the addition of the pool house will not impact the adjacent property owners because there have not been any objections raised. West Lafayette also has not raised any objections. He said he drove by the site today.

Steve Clevenger said the pool house is not in a place where it would obstruct views because of the unique shape of the lot.

The Board voted by ballot 6 yes to 0 no to approve **BZA-1996—MURTAUGH LAW LLC.**

**V. ADMINISTRATIVE MATTERS**

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**

Ed Butz moved for adjournment. Carl Griffin seconded.

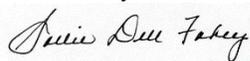
The meeting adjourned at 7:15p.m.

Respectfully submitted,



Linda Underwood  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Executive Director