

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

DATE..... March 23, 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
Kathy Lind
Jennifer Ewen
Eric Burns, Atty.
Amanda Esposito

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held in-person on the 23rd day of March 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 February 23, 2022 BZA public hearing. 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

Maureen McNamara stated the petitioner for **BZA-2073 JON SHEIDLER – LANDWORX ENGINEERING** has requested a continuance to the April 27, 2022 ABZA hearing. She stated **BZA-2072 TIM VALIANT** is ready to be heard this evening, and **BZA-2068 KOH AND COURTNEY KNOX** have submitted all their paperwork, but it is pending depending on our conversation before, and that conversation being a discussion regarding sign posting requirements for continued cases per the ABZA bylaws.

Eric Burns stated we had an issue come up about a sign posting for one of the cases to be heard this evening. The applicability and the way to interpret the bylaws is at issue. The question is once a person has posted the sign 10 days before the first time, do you have to do it again. In this case there was a continuance, and the question is does it have to be posted again. The bylaws are not as clear as they could be, and he is going to propose that they make some changes to the bylaws to make it more explicit. What we have this evening is an interpretation. He said it is his belief that it is unclear and because it is unclear it will be up to this Board when we get into the actual hearing of the case to make a determination

as to how to handle this this evening. This case has had two continuances and generally there can't be three continuances unless the Board determines and then there can be one additional, so that is one option the Board could take and vote on this evening, and that would be to continue this one final time and presumably there would be the posting done. The other option the Board could do is there is a procedure in our bylaws that say that if you fail to do what you're supposed to procedurally for example a sign that the Board could dismiss the case completely, or the Board could determine that there has been substantial compliance and that you would go forward and hear the case this evening and vote on the case as you generally would.

Steve Clevenger stated he would like to have a discussion here by the Board and input from the staff. There won't be any public comment at this time during the new business portion of this meeting. Once the case is on the floor we can go ahead and go through the normal process if a board member feels that we need to continue or dismiss the case based on what we have decided they can make that motion anytime during the public hearing portion.

APC staff Kathy Lind presented the BZA bylaws regarding the signage requirement on the screen. She stated the signs have to be posted; they have to be purchased at the office of the APC; they have to erect the sign on their property for 10 days prior to the meeting, and they need to turn in a sign posting affidavit. She said the petitioner did all of those things. The case was heard December 1st, and it was not voted on. The petitioner requested a continuance at that meeting. If someone would have asked her, she would have told the petitioner to keep their sign up on the property until the case is decided as a courtesy. She stated we don't require a second sign posting affidavit; we never have. That is staff's point of view.

Steve Clevenger stated he would like to add that we do not require a second signed affidavit which says that it was up 10 days prior to the first meeting. We don't require that the case be re-advertised if it's continued, so it is only 10 days before, and it is the same with the certified letters, and we also do not require the date on the sign be changed if the case is continued. The idea behind that is to get notice out to the public.

Gary Schroeder asked if 10 days before if staff goes out and notes if the sign is either posted or not posted.

Kathy Lind responded that is correct. During that 10-day period staff does drive by the site and make sure that the sign is posted.

Steve Clevenger stated hearing no further comment, we will continue with the agenda.

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 continue **BZA-2073 JON SHEIDLER – LANDWORX ENGINEERING** to the April 27, 2022 BZA meeting. Michelle Dennis seconded, and the motion carried by unanimous voice vote.

Gary Schroeder moved to hear and vote on **BZA-2068 KOH AND COURTNEY KNOX**. Michelle Dennis seconded.

BZA-2068 KOH AND COURTNEY KNOX:

Petitioners are requesting a special exception to permit an agricultural rental hall in the AW zone with a maximum capacity of 295 people. The proposed hours of operation are Monday through Thursday 8:00 AM to midnight and Friday through Sunday 8:00 AM to 2:00 AM with all outdoor activities ceasing at midnight. The property is located at 5124 Jackson Hwy, Shelby 08 (NE) 23-5 (UZO 3-2). With commitments and conditions. Continued from the February 23, 2022 hearing per petitioner's request. This is petitioners' final continuance.

APC staff Kathy Lind presented the zoning map, site plan, and aerial photos. She stated the petitioner's property is located on the north side of Jackson Highway. It is zoned AW. There is floodplain to the west and agricultural zoning to the east. It is about a quarter mile west of CR 475 W. She noted the 10-acre tract adjacent to the west is also owned by the petitioner. The closest houses to this property are on Thimbleweed Lane and Fox Lair Drive. There are also some homes across the street. She stated the site plan shows expanding the drive to 20' wide, and she is not sure if the County Highway is okay with this location commercial use. The parking does exceed what is required for this use. The existing house on the site plan is labeled guesthouse. She stated Section 3.1 of the UZO does authorize a special exception for this use and it is staff's opinion that the requirements and development standards for this use will be met. Granting the special exception will not subvert the general purposes if the necessary approvals are received. The necessary approvals include stated building approval, state board of health approval, county highway for the location of the driveway, and the county surveyor for drainage. Staff feels the ordinance can be met satisfactorily if the site plan is amended, and the following commitments and conditions are agreed to.

Commitments:

1. Limit the number of attendees to 295 people;
2. All amplified music must take place inside of the structure; only nonamplified music shall be permitted in the outside event area.

Conditions:

1. Change the hours of operation to 8am to 10:30pm Sunday through Thursday and 8am to midnight Fridays and Saturdays;
2. Approval from the County Highway Department for a commercial driveway;
3. Approval from the County Building Commissioner for building design approval and permit coordination;
4. Approval from the Indiana State Department of Health and the Tippecanoe County Health Department for an on-site sewage disposal system; and
5. Approval from the Tippecanoe County Surveyor's Office for onsite drainage.
6. Submit a revised site plan to show the locations of the proposed lighting along the drive, parking lot and on the buildings and to dimension the buildings and their setbacks. Any revisions to the site plan needed because of any of the above approvals must also be submitted.

Staff is recommending denial unless all of these conditions and commitments can be met, and then staff would recommend approval. She noted she has several letters in opposition to read into the record when it is time.

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

Koh Knox, 6731 Bottlebrush Lane, Naples, FL, stated he is the petitioner and regarding the Area Plan's recommendations for commitments as well as conditions, he is more than willing to oblige to this. He

stated the original sign was posted until some point the winter weather took it away, and since he doesn't reside at that house as his primary, he was not aware, and then when he interpreted the bylaws, he wasn't sure how to really take it, and he apologized for the confusion. In prior meetings there were discussions from opposition, and he thinks there may be a bit of confusion in terms of what they are trying to do with this property. He stated the term party barn was referenced many times, and they are not intending on a party barn hence why they are willing to cooperate with the hours. As he said in the initial meeting, his property is only utilized for a couple weeks out of the year. In the past, they have had parties as well as weddings, and at those, they have not experienced any of the problems he has heard brought up. The potential injury to public health, safety, and wellbeing, he is not sure how they would be creating a danger to the public. He understands that the driveway is very dangerous and that is why they need to work with the Highway Department. Koh stated he spoke with the Highway Department about this, and they actually have plans to put a barricade up to prevent people from going off the side of the road. They did confirm that in these incidents where people left the road, it was accidental, and most times people were not following the conditions of the speed limit. He is willing to work with the Highway Department for a commercial driveway and engineer a better entrance. There are some points that were brought-up in the previous meeting and he wants to respond to them. He stated although they don't reside here as their primary residence, they are still heavily engaged with the community. He wanted to share the property not only with others but with organizations too. There are different programs within the community that he would be willing to open-up the space to, and for probably no charge because it is a beautiful property, and they want people to utilize it versus it sitting empty. People said they are concerned about property values dropping in the area, and he has invested a significant amount of finances into this property, and even though they don't live here, the plans for the venue structure will also be a decent investment. He said he does some real estate on the side, and he feels this may increase the value of the neighboring properties. Guns won't be allowed to be fired at the wedding venue. Regarding light pollution, if lighting is not required by the UZO, then they don't need to add any lights. This plan is not a malignant function, and his intent is not to make a negative impact.

Steve Clevenger asked Koh if he purchased a new sign.

Koh Knox, 6731 Bottlebrush Lane, Naples, FL, said the old sign blew away, and he is unsure when it blew away. Once he heard it had blown away, he read the bylaws and he thought that they didn't need to because they had already done the notice and all of this prior. They did buy a new sign, and it was 9 or 10 days prior. They did put the sign back up.

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

Cindy Knox Sharp, 3274 Apple Lane, West Lafayette, IN, stated she is the mother of Koh, and she is a bit appalled after what she heard happened at the last meeting. She stated she was born and raised here. This is her hometown. This is her community. She has worked at Purdue for over 30 years. She wants to say to the people who think this is going to be a wild and crazy place that she lives a mile down the road, and to put personal attacks on this special exception was unnecessary.

Steve Clevenger asked for the letters of opposition to be read into the record.

Kathy Lind read a letter in opposition from the following:

Autumn Goodrum, 2716 N 475 W, West Lafayette, IN 47906

Kathy Lind read a letter in opposition from the following:

Vergene and Dale Miller, 2728 N 475 W, West Lafayette, IN 47906

Maureen McNamara read a letter in opposition from the following:

Danielle Gaylord, 4902 Thimbleweed Lane, West Lafayette, IN 47906

Maureen McNamara read a letter in opposition from the following:

James Farr, 4902 Thimbleweed Lane, West Lafayette, IN 47906

Maureen McNamara read a letter in opposition from the following:

Will and Lorretta Lewallen, 4946 Thimbleweed Lane, West Lafayette, IN 47906

Maureen McNamara noted she also has a petition with 36 signatures in opposition.

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

John Goodrum, 2716 N 475 W, West Lafayette, 47906, stated when a prior business was located at this property, he could hear the loud clank of the metal posts, and that is small compared to what he would hear from a gathering or event going on. Even if the music is inside of a building, it is going to be louder than what the building can hold in. There is a difference of having a family get together or wedding once in awhile opposed to 7 nights a week. When he finishes working his job during the day, he enjoys to go-home to peace and tranquility. He likes to go-home to something less stressful.

Andrea Langrish, 2934 Fox Lair Drive, West Lafayette, IN, stated the people who are opposed to the special exception are here because they are concerned about the safety, security, and the well being of their families, children, and neighbors. She is here tonight for her children and the children in the surrounding community. Koh and Courtney Knox are well aware that the driveway of the proposed party barn is a dangerous stretch of road that has been a site of multiple accidents and fatalities. The prospect of adding hundreds of cars with drivers who are unfamiliar with the road some of which may be driving intoxicated and speeding down that stretch of Jackson Highway from early morning to late at night terrifies us as parents because it significantly raises the risk for even more tragic deaths. It is an unacceptable risk to the safety of our children with the increased traffic beginning in the morning when busses are picking up our children to the afternoon and early evening when busses are dropping our kids off. With her research, she found that there are at least 18 bus stops and 35 children within a half mile or less of this proposed party barn. One stop is less than 150 feet west of the driveway and three of the bus stops are located within a span of 200 to 850 feet east of the blind curve, and one of those stops is for her son. She stated a Wabash Township Firefighter said he would be highly concerned about how 300 guests would exit the property while emergency vehicles tried to gain access if there were a fire, because there are no fire hydrants in the area. The fire department would have to shuttle in water due to the size of the venue and the potential of the fire spreading to the surrounding woods.

Scott Frankenberger, 2724 N 475 W, West Lafayette, IN, presented multiple slides and some slides showing the curvature of the road. He said there are no streetlights on this stretch of road, and at night, it is very difficult to see the driveway itself. He presented a slide showing measurements of speed, grade, and reaction time. The posted speed limit is 45 mph, but most people do not observe that speed. He stated that Jackson Highway is a secondary arterial, and it has regulations and standards. He said there is a regulation that stated that within a mile of a commercial entrance there can't be more than nine driveways. Jackson Highway's average daily traffic is almost 1300.

Peter Baker, 2900 Fox Lair Drive, West Lafayette, IN, stated his property is immediately adjacent to the Knox's property. For a special exception, there is a strong emphasis on not harming the neighbors. The Knox's have not provided any building or construction plans, noise reduction plans detailing how the

interior noise will not be heard outside. It is a big concern to all the neighbors, and it has not been addressed by staff in the conditions how the neighbors won't hear the noise. They also have not provided any management plans outlining who we could go to if there were any problems. As a proposed business, this will harm the neighbors in the area. He is concerned this will be a nuisance, and there is no way of addressing it if there are problems.

Michael Brzezinski, 4853 Thimbleweed Lane, West Lafayette, IN, stated the question boils down to does the business interests of one couple override the quality of life, safety concerns, and noise concerns of what historical evidence shows what event halls cause. An event hall is not a bad thing, but its location needs to be carefully considered. This is not the right location.

Francis Gaylord, 2021 Klondike Road, West Lafayette, IN, stated she has been in opposition of this. She knows the property in the Fox Lair Drive area will go downhill. Expansion is good, but you are taking the prosperity away from those that own those properties.

Steve Clevenger asked for the petitioner's rebuttal.

Koh Knox, 6731 Bottlebrush Lane, Naples, FL, stated he values opinions and emotions; they are important factors as humans, but he hopes logic can prevail and a decision can be made in terms of what the UZO, other regulatory groups, and boards have set forth as standards to help maintain function. He said the use of the word party barn is excessive. He would not want to live next to a party barn. The details on this are not finite because He wanted to follow the appropriate steps of making sure that this special exception could be approved before coming up with plans, details, and a management team. His intent was an organized event center. He agrees with the danger of Jackson Highway. He stated there are tankers that haul waste from farms, and they come through continuously. These tankers are moving at 60 mph on a two-lane road; that is dangerous. No one has ever been harmed coming or going from parties at this property. He stated they are willing to comply with all of the conditions and requirements set-forth as a recommendation from the APC staff. He will follow details from the Highway Department and anyone else necessary to make sure he is in compliance.

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

Gary Schroeder moved to amend his motion to hear and vote on **BZA-2068** to include the commitments and conditions recommended by the APC staff. Michelle Dennis seconded, and the motion carried by unanimous voice vote.

Steve Clevenger noted the motion is amended to include the commitments and conditions.

Gary Schroeder moved to hear and vote on **BZA-2068** this evening. Michelle Dennis seconded, and the motion carried by unanimous voice vote.

Steve Clevenger wanted to speak on a few points. He stated that part of Jackson Highway is dangerous, but that is not necessarily unique to this petition. It is something that should be brought up to the County Commissioners and the County Highway Department to see if something can be done. He stated that they don't control that safety aspect of it; it is something they consider, but whether it passes or not it would be a good idea to work with the proper county officials to try and improve the safety of that portion of Jackson Highway. His biggest concern will all agricultural rental halls is the noise and the number of people that are surrounded by that property, and whether or not they will be affected by that noise.

Steve Clevenger called for a vote on a ballot.

Attorney Eric Burns collected the ballots and noted the Board voted by ballot 1-Yes to 5-No to deny the special exception for **BZA-2068 KOH AND COURTNEY KNOX.**

Yes-Vote
Ed Butz

No-Vote
Steve Clevenger
Gary Schroeder

Michelle Dennis
Tom Andrew
Robert Novak

Steve Clevenger noted the special exception for **BZA-2068** has been denied.

Gary Schroeder moved to hear and vote on **BZA-2072 TIM VALIANT**. Michelle Dennis seconded.

BZA-2072 TIM VALIANT:

Petitioner is requesting a parking variance to allow 16 spaces (10 standard, 1 handicapped and 5 compact) instead of the minimum required 46 spaces for Kona Ice of Tippecanoe County's truck storage facility and one additional tenant in an NB zone. The property is located at 10 S 550 E, Perry 30 (NW) 23-3 (UZO 4-6-3).

APC staff Maureen McNamara presented the zoning map, site plan, and aerial photos. She stated petitioner Tim Valiant owner and operator of Kona Ice is requesting a parking variance that would allow 16 spaces which includes 10 standard, 1 handicapped, and 5 compact spaces instead of the required 46 standard spaces for proposed building located at the south west corner of SR 26 E and CR 550 E. Kona Ice plans to use the site for storage of its seven trucks and other business equipment. The proposed building would have an additional 1800 square foot space for an unknown future user. The 1.5 acre tract of land was rezoned in 2019 from A to NB with a commitment that prohibited several uses including but not limited to automotive dealers and repairs, restaurants, convenience stores, and liquor stores, so those types of uses would not be seen here. Land adjacent to the south and the west is zoned agricultural; land to the east is zoned AW; land to the north is zoned R1. The site is currently unimproved. Single family homes join on the west and south sides as well as to the north. SR 26 is classified as a rural primary arterial and CR 550 is a rural local road per the adopted Thoroughfare Plan. A Type B bufferyard measuring 20 feet in width is shown along the western and southern property lines where this NB zoned property abuts A zone land. Sewer and water public utilities will serve the site. Staff calculated the required parking to the best of their ability with the given information by the petitioner. Employees would drive to the site, park their vehicle, and leave in a Kona Ice truck. They would return at the end of the day and pick-up their personal vehicle. Not much happening at the site other than an exchange of vehicles. The petitioner stated 8 employees would be the max amount that would be present. Staff calculated the minimum relief to be 18 spaces, and the petitioner's site plan shows a total of 16 spaces. Only 10 of those spaces are the standard size of 9' x 18'. There will be 1 handicap space, and 5 compact spaces that are 8' x 16'. APC staff determined the following:

Regarding the ballot items:

1. The Area Plan Commission at its March 16, 2022 meeting determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community. Because no customers would come to the business, a reduced parking standard for this site would have no negative impact on public health and safety.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. A reduced parking standard for these 1.5 acres of commercial land will have no impact on the use and value of surrounding properties because a nonstore retailer will generate less traffic than most retail businesses; only employees of Kona Ice will visit the site.
4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. The parking standard for nonstore retailers, where no

customers will be present, is not adequately addressed in the ordinance.

5. Strict application of the terms of the zoning ordinance **WILL** result in an unusual or unnecessary hardship as defined in the zoning ordinance. Requiring 36 (out of 46) parking spaces for a business that will never have customers is excessive.

5a. The hardship involved **IS NOT** self-imposed or solely based on a perceived reduction of or restriction on economic gain because petitioners have designed their site to accommodate their business which does not cater to the general public.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship. Minimum relief would be for 18 spaces, 8 of which would be used by Kona Ice and 10 of which would be used by the future tenant.

Staff calculated the minimum relief to be 18 spaces and they failed to provide that, so that is the main reasons why staff is recommending denial.

Gary Schroeder asked where the Kona Ice trucks would be parked.

Maureen McNamara responded the Kona Ice trucks would be parked indoors; there won't be any trucks parked outside.

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

Tim Valiant, 226 N Wilmington Lane, Lafayette, IN, stated they just need fewer parking spaces than what is needed. It is possible in the future they may expand and use the extra space, but at this time they don't need it, so he may lease it out. He offered to answer any questions.

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

Arvid Olson, 951 Percheron Place, Lafayette, IN, stated he lives within a mile of this location. He is the Director of Development for Faith Ministries. They knew commercial development would be coming, and they were prepared for that. They are welcoming a locally developed and owned family business that is actively committed to charitable support and is a good neighbor. They are welcome.

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

Jeff Fassnacht, 6932 E 300 N, Lafayette, IN, stated he owns the house to the west. He is worried about what could be right across from his house since it is unknown. If it is used for parking, lights will shine into his home every day. He doesn't want parking upfront along SR 26.

Steve Clevenger asked if for the petitioner's rebuttal.

Tim Valiant, 226 N Wilmington Lane, Lafayette, IN, stated he would not want lights shining in his home either, so that is why they designed the building as it is on this property. It would minimize the use of headlights being pointed at any houses. He read a voicemail from the neighbor directly north and she's all for new businesses. She said we won't bother her, and she does not oppose. They are being cognizant of neighbors.

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

Gary Schroeder asked if the parking variance was granted for his business and his business ceases to operate, does the parking variance continue onto the next user.

Maureen McNamara stated parking groups are based on the square footage of the building, so if the building were to change, parking would have to be readdressed. It may depend on the number of employees or it may depend on the square footage it depends on the classification of the business.

Kathy Lind stated she thinks this parking variance if granted would apply for future businesses that were non-retail establishments.

Steve Clevenger asked if the new business needed more parking, they would have to come back for another parking variance.

Kathy Lind responded correct.

Gary Schroeder stated his concern is the unknown. He asked the petitioner if he leased to someone who needed more parking spaces, is there a plan to add more.

Tim Valiant, 226 N Wilmington Lane, Lafayette, IN, responded he doesn't think he would least to someone that would require more parking spaces. He would want to make sure it fit in one of the classifications that would take fewer spaces and that would be short term. Long term he believes they will end up using that whole space themselves.

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 parking variance for **BZA-2072 TIM VALIANT.**

Yes-Vote

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

No-Vote

Steve Clevenger noted the parking variance for **BZA-2072** 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 8:02 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 extending to the right from the end of the name.

David Hittle
Executive Director