

Hamilton County Board of Zoning Appeals – South District
February 26, 2020

Mr. McMillan called the official meeting of the Hamilton County Board of Zoning Appeals – South District to order at 7:03 p.m.

Roll call: Adam Zeller, Becky Harger – alternate, Charlie McMillan, Jr., and David Musselman.
Absent: Jim Galloway and John Miller. *Also present:* Charles Kiphart, Director; Aaron Culp Legal Counsel; and Lynette Mosbaugh, Recording Secretary.

Declaration of Quorum: Mr. McMillan declared a quorum with three regular members and one alternate member present.

Communication or Reports: Nothing to present.

Approval of Minutes: Mr. McMillan stated that there was a grammatical error in the minutes of the November 13, 2019 meeting that was brought to our attention after we approved them. It was something minor but since Mrs. Burdett is not here to present that we will bring that up at the next meeting and fix the error.

Mr. McMillan asked for approval of the January 22, 2020 minutes.

Mr. Zeller moved to approve the January 22, 2020 minutes.

Mr. Musselman seconded.

With no comments or corrections... Mr. McMillan called for the vote. **4 yes votes... 0 no votes.** Minutes are approved.

Old Business: Nothing to present.

New Business: Mr. McMillan began with **SBZA-R.V.-0002-02-2020**. A requirement variance concerning replacing an existing single-wide mobile home of 1,450 sq. ft. in size with a new mobile home of 1,140 sq. ft. in size. The new mobile home will be 1 ft. +/- closer to the road than the existing mobile home. **Location: 12524 East 206th Street, Noblesville, IN.** Please state your name and address and tell us about your petition.

Brad Russell, of 6717 West 250 South, Tipton, Indiana, stated his name and address for the record. Our variance is over square footage and where it sits by the road. The old one is 1,450 sq. ft. and that's counting the porch in front of it and a room that was added on after it was put on the farm. Other than the front porch and the room addition, our new mobile home of 1,140 sq. ft. will actually be larger than the mobile home that it there right now.

Sarah Reel, of 6717 West 250 South, Tipton, Indiana, stated her name and address for the record. We would like to keep the manufactured home in the same spot that the existing one was. There is already a foundation for it and the runners will work for the new one. The existing one is a 14 by 70 and the new one is a 15 by 76 so it will hang over by about a foot. The new one will actually sit back further off the road because of where the porch is now, I think it's about 95 ft. off the road. The new one will be set 110 ft. +/- off the road.

Mr. McMillan asked if there was a vacant home on the property now. (2) How long has that home been vacant? (3) And he was in the home? (4) So, for clarification – the DNR is going to look at it and see if it has any historical value?

Ms. Reel answered, yes. There is a farmhouse back there. We took out a young farmers loan through the Farm Service Agency. They said they would have to do a report on it with DNR – Government Tribes to make sure there is no historical value. They said that it could take a couple of years. So to get us down here and get us started we should probably start with the mobile home. (2) My grandpa passed away nine years ago. (3) Yea. (4) Yea. The innards of that home are a wood frame home.

Mrs. Harger asked if that was before they would allow you to tear it down.

Ms. Reel answered, yes. Or even to renovate it. My grandparents were hoarders, so it has been a critter habitat for the past eight or nine years. It's not livable.

Mr. McMillan asked Mr. Kiphart for clarification on that. If it's a health hazard, regardless of any historical value...

Mr. Kiphart stated that he had not heard of that before.

Mr. Zeller stated that it may have something to do with their special type of loan as well.

Mr. Culp added, it may be a requirement to get financing.

Mr. Zeller asked how long they had owned the property.

Ms. Reel stated that they just bought her grandpa's farm on October 31, 2019. We are currently living in Tipton. We grow pumpkins and we bale hay. And all of that is in Hamilton County. It would just make a little more sense for us to move where we're operating at.

Mr. McMillan asked if there was storage of old farm equipment or something there at one time. (2) There are no environmental issues with any leakage or anything from the... (3) Mr. Kiphart, were you aware of that? (4) Currently there is no issues with the new junk ordinance that Hamilton County has that they are all in compliance or there's nothing outstanding or letters or anything issued to that property?

Ms. Reel answered, yes. We cleaned most of it up. Now we are just down to tearing down some of the buildings. (2) Correct. IDEM came up in 2016 when we started cleaning it up. They wrote it off and I think that is on record with the health department. When we bought it, they said there was a red flag on the property and asked if we knew what we were getting ourselves into. That is around the old farmhouse and those buildings in the middle part of the property on the east side.

(3) Mr. Kiphart stated that he was not aware that IDEM had been involved in it. I know that it had been cleaned up. (4) Not that I know of.

Mr. Zeller asked Ms. Reel how extensive did she plan to go to clean up the property compared to what it is now. (2) What did that look like? (3) Are you planning on tearing down all the old buildings?

Ms. Reel stated that they wanted to bring it back to what it looked like before her grandma and grandpa owned the place. (2) Clean. (3) We would like to keep using the big red pole barn. It's the fifth page – the site plan... we intend to keep 2, 3, and 4. Those are all still usable buildings. We would use them for farm purposes.

Mrs. Harger asked Ms. Reel if she saw the mobile home or modular home as a temporary place to live while they're fixing up the old farmhouse.

Ms. Reel stated that they will probably live there for 20 or 30 years. Something to get us started and down here.

Mr. McMillan asked Ms. Reel... so when you move the old trailer out the addition also goes as well. (2) Do we get into a square footage issue, Mr. Kiphart? We have an attachment here *All mobile homes must be located in an approved mobile home park except the following: and it's got... a mobile home which exists at a particular location at the time of the passage of this ordinance shall be allowed to remain in such location. Said mobile home may be replaced at the same location with a mobile home of equal or better condition and of equal or greater size.*

Ms. Reel answered, yes. And, the front porch.

(2) Mr. Kiphart stated that that is what they are asking the variance for.

Mrs. Harger asked if that still required a variance even though the ordinance is clear about being able to replace it. (2) Ok. It's a little bit smaller.

Mr. Kiphart stated that is was of equal or larger size. The other one was... my understanding was that the newer one was going to be a foot closer and you're saying it's going to be further away. (2) So it would need to be approved as presented unless you wanted to put any conditions on it.

Ms. Reel stated that the new one is 15 ft. but the one that is existing is 14 ft.

Mrs. Harger asked if the setback was an issue. What is the setback?

Mr. McMillan stated that it was replacing one so it doesn't...

Mrs. Harger added... so it's grandfathered in.

Mr. Kiphart stated that the location would be grandfathered.

Mr. Zeller stated that it would just be one foot closer because of the increased width. That's why its closer to the road than the other correct?

Ms. Reel answered, yes.

After minimal comments... Mr. McMillan opened the hearing to the public at 7:15 p.m. and invited anyone who wished to speak for or against the petition to please step forward. Please state your name and address.

Lynn Taylor, of 12568 East 206th Street, Noblesville, Indiana, stated his name and address for the record. I am the direct east adjoining property owner to this property. I would like to speak our behalf of these folks and give our support and approval of your approval of their request. We have lived out there almost 14 years. We've seen this property sit with a lot of issues with it and eventually it was cleaned up with the family's efforts. The family worked very hard to get that done. That property looks 1,000 per cent better than the day I moved out there. These kids have worked very hard at it. The plans that they have shown us for what they are going to do with it I think will do nothing but benefit those of us who live out there. I certainly would appreciate your approval for it.

With no one else stepping forward to address the board... Mr. McMillan closed the public portion of the hearing at 7:17 p.m. Can I get a motion please?

Mr. Zeller moved to approve SBZA-R.V.-0002-02-2020.

Mr. Musselman seconded.

Mr. Musselman stated that he thought it was a great improvement.

Mr. Zeller agreed. And I think it will be more visibly pleasing to the area and only add value. It sounds like they've got some family history as well. They are carrying on on their grandfather's ground and improving it, so I'm all for it.

Mr. McMillan stated that the only issue he had was the existing home and it's kind of gray for me still sitting there to maybe put a condition on it that it comes down...

Mr. Musselman stated that it sits clear on the other side of the property.

Mr. Zeller asked if taking down the old farmhouse was a part of the plan.

Ms. Reel answered, yes.

Mrs. Harger stated that she thought they were going to rehab the old house.

Mr. McMillan added... and then move out of the trailer?

Mrs. Harger answered, yea.

Mr. Zeller stated that he didn't take it that way.

Mr. McMillan asked Ms. Reel to step back up to the podium for another question for clarification.

Mrs. Harger stated that there is the trailer and the old farmhouse. On the map there are two number ones. Just north of the modular home there is a box that's labeled number one and there is a number one over here. So, which one is wrong?

Ms. Reel stated that was her mistake. The number one that is over by the 2, 3, and 4... that is the old farmhouse on the east side of the property. I would love to say that we're going to fix it up, but it has foundation issues, animals have been in it this long, and there is no septic system. It has a 40 ft. shallow well. So it would need a complete overhaul. I don't think it would be worth it.

Mr. Zeller stated to clarify... the only buildings on the property now are number 1 which is the old farmhouse, 2, 3, and 4 are farm building and then the current mobile home which you are going to replace with a new mobile home. (2) What are you planning on doing with that? (3) So, it's all good structures on those four buildings?

Ms. Reel added and the number one that is just north of the mobile home is a pole barn. (2) That will be agriculture use. We have hay equipment in there right now. (3) Yes.

Mr. McMillan asked Ms. Reel how long before they would know when they could make a decision on the house.

Ms. Reel stated that they told them it could take a year; it could take a couple of years.

Mrs. Harger stated that's unreasonable, isn't it?

Mr. Kiphart stated that he has never heard of it before. Nobody has had to go through that before that I know of.

Mr. Culp stated that those agencies can be slow at times when you're having a historic or other type of review. I have not dealt with them in this setting but if it's part of a financing agreement they may be subject to their rules.

Mrs. Harger asked if they were looking at it as if they were going to improve it.

Ms. Reel answered that they wanted to be sure if we improved it or if we tore it down there would be no historical value being hurt.

Mr. McMillan asked... the financial institutional.

Ms. Reel answered, yes. The Farm Service Agency they are a branch of the USDA.

Mr. Zeller stated that for that reason and with Mr. Musselman's point about it being back off the road... I wouldn't worry about a condition on it honestly. Personally, I don't think I'd worry about it on this particular deal. I would trust that if they deem it ok to tear down that they would surely tear it down and not keep it as an eyesore.

Mrs. Harger stated that it is kind of a problem. Assuming they continue to be the owners is one thing, but if we don't put a condition on it and it continues to be a vacant home that causes problems, then what recourse do we have to address it at that point?

Mr. Kiphart stated that normally things like that are handled if somebody calls in and complains about it at a certain time then we would go out and look at it and it sounds like it would not be a habitable dwelling therefore they would have to fix it or take it down.

Mr. Culp advised the board of one condition they might consider... that there can be no more than one residence on the property. So you don't wind up at some day if that home gets fixed up having two residences on one parcel.

Mr. Zeller moved to add a condition to SBZA-R.V.-0002-02-2020 to limit the amount of residences on this property to one residence.

Mr. McMillan called for the vote. **5 yes votes... 0 no votes.** Congratulations you're approved.

Mr. Kiphart advised the petitioners to be sure to get their demo permits and their new house permit.

Mr. McMillan continued with **SBZA-R.V.-0003-02-2020** a requirement variance. This is concerning not having to pave or curb the parking lot. The parking lot is proposed to be gravel.

Location: 13350 State Road 38 East, Noblesville, IN. Please step forward, state your name and address, and state your petition.

Alan Bilbrey, of 10684 Magenta Drive, Noblesville, stated his name and address for the record. The property is at 13350 State Road 38 East. I'm a small lawn care company. I bought this property because it's zoned commercial. I'm just trying to put a pole barn back there. I want to have parking for my guys. Mr. Kiphart said it should be paved. I want to go with gravel because of price and the parking will be in the back so it would just be a slab of concrete out in the middle of nowhere.

Mr. McMillan asked Mr. Bilbrey if he had had a contractor come out and inspect and locate the septic system. (2) We got some communication from the health department that there is an issue with... did you get this letter from the health department? (3) It's dated February 24, 2020. (4) We don't have a copy of that septic field, do we?

Mr. Bilbrey answered, yes. Mrs. Burdett had asked me for this, but I was out of town. This is the guys who did it. There is a big open spot on one side and me and the guys who are going to build it are going to put the road over this way because there is more room. There is already a road over here that's a little bit closer to the house. At first we were just going to put it over where it was. There is a thin layer of dirt and grass and we will take that off and go with what they had. (2) Yes. They asked for it to be marked. (3) I don't know. Mrs. Burdett sent me an email that said they had a concern about it going over the fingers. I had it drawn up one way where it went over the fingers and that was what I understood was their problem. So I moved it back to where it originally was where it doesn't go over the fingers at all. (4) I went to the health department and they said they didn't have any problems. And then they said... "oh wait. Let me look at this again." And they're like... "don't put it over the fingers." I re-did the map and put the road on there or my surveyor did, and just not over the fingers.

Mr. Kiphart showed Mr. Bilbrey a copy of the old system.

Mr. Bilbrey stated that the health department has this. When I went there the first time, they couldn't find it. I showed them this and then they found it.

Mr. McMillan stated that the communication from the health department which indicated that sometime between 1976 and 1985 aerial photography shows a dwelling change from a house trailer to a permanent structure. (2) per information – the unpermitted alterations were made in 1974 to the on-site septic system. So, it looks like the health department has some issues with the perk test, the fingers. Have you had communication with Mr. LeMaster at the health department? (3) I think there is a communication problem between the health department and this letter we have here. Usually what we see in a drawing is exactly where they are and where your building is going to be. We need to see in black and white exactly where everything is at. Would you have a problem if we tabled this until you got it figured out with the health

department? You can come back next month, and we can see the new drawings and this issue that they have with the property.

Mr. Bilbrey answered, yes. (2) They wouldn't tell me who it was that had a problem so I would go and ask them "is this what you want" and they would go "I think so." Then I would get a letter from Mrs. Burdett asking that I mark it. Then I spend \$ 250.00 to mark it and then nothing. The Acme Guys marked it and said it is exactly like this. The way I understand it you have to have 300 linear feet of fingers and I have that. And you don't want to be over top of it, and I won't be.

(3) I don't have a problem with it. I don't know who to talk to. When I try to talk to someone over there... when I tried to talk to Mrs. Burdett about who I could talk to over there – she's like you can't talk to anybody. You have to call whoever... I went in there four or five times trying to figure out what they wanted so I could bring it to you today.

Mr. McMillan stated that he thought the issue Mrs. Burdett had was she needed a contractor to find the finger systems. I think that was the questions that she had. Obviously, Mr. LeMaster has a problem, or he wouldn't have sent us this letter. (2) I think you need to go see Mr. LeMaster and get this settled before you come here before us. I would like to give you 30 days and come back next month so you can get this figured out. (3) I think the overall issue for the gravel there is a drainage issue. When you put gravel there it changes the drainage of the property overall. I think this needs to be clarified before we go with gravel. I think you've got what Mrs. Burdett asked for which was to find where the septic field was. But on the health department's end there needs to be some clarification on this letter.

Mr. Bilbrey stated that he hadn't seen that letter. (2) I'm ok with that. Does me having gravel or not having gravel have to do with this? I can't get my permit yet, but can I get my variance? (3) Ok.

Mr. Kiphart asked Mr. Bilbrey which of the two drawings should the board be looking at.

Mr. McMillan stated that the drawing that was just presented to them was different from what they have.

Mr. Bilbrey stated that this is a little bit different.

Mrs. Harger stated that on Mr. LeMaster's letter ~~he~~ the second or third paragraph actually says ... "comparing the two proposed site drawings it appears that all that has been done is to electronically move the septic tank."

Mr. Bilbrey answered, yea. He's saying I just took it and moved it. There is just a big field over here. And over here it hugs the grove of trees. I didn't want to take the trees down because I like the trees but if that's what he wants that's what I'm going to do.

Mr. McMillan stated that we have to have all of that information. Does Mr. LeMaster have the letter from your contractor.

Mr. Bilbrey stated that he sent Mrs. Burdett that information today.

Mr. McMillan stated that the board should table this until Mr. Bilbrey has communication with Mr. LeMaster on this with the contractor's findings so that nothing is electronically moved so the communication from the health department to us is factual. We can't move forward until we know where the septic field is at and we are all comfortable with that.

Mr. Culp stated that to him it appears their concern is more than just the location. In reading this letter it says at some point the site was modified and they don't know if the system is sufficient.

Mr. Bilbrey stated that for a month or more he had been trying to find out who he needed to talk to about this issue and no one will tell me. (2) I talked to five or six nice ladies out there and they would all tell me... do this and it's ok, or this is what we're looking for and then it's ok. And I would go do that and Mr. LeMaster never got the information.

Mr. Kiphart stated that it is always Mr. LeMaster.

Mr. Culp advised Mr. McMillan that he would need a motion to table so he won't have to re-advertise. It will be tabled until our meeting on March 25, 2020 here at 7:00 p.m.

Mrs. Harger stated that she understands that this is frustrating. But it is all for your benefit. You don't want to put a parking lot on top of a finger system and then have a failure. And you won't have a building with restrooms that doesn't have... (2) You're using the building that was built as a house as an office now. And I assume that you have employees that are using the bathroom.

Mr. Bilbrey stated that the new building does not have restrooms. (2) I have one employee, part-time. We're just a small little lawn care company.

Mr. Zeller moved to table SBZA-R.V.-0003-02-2020 until the March 25th meeting at 7:00 p.m.

Mrs. Harger seconded.

With no further comments... Mr. McMillan called for the vote. **4 yes votes... 0 no votes.**

Mr. McMillan continued the meeting with **SBZA-R.V.-0004-02-2020** a requirement variance. This is concerning waiving the zoning ordinance requirement to apply for a yearly temporary road side sales use permit and a temporary sign permit. **Location: 12410 East 191st Street, Noblesville, Indiana.** Would you state your name and address, please?

Daryl Russell, of 12290 East 191st Street, Noblesville, Indiana, stated his name and address for the record. This is my wife, Laura. We are requesting to have a permanent seasonal ag sales permit and sign. Russell Farms has been open since 2002. Every year we have had to apply for a temporary six month seasonal ag permit and sign permit asking for permission to operate our agri-business, our Pumpkin Patch. It is now 2020 and Russell Farms has been established as a permanent part of the Noblesville community now. We educate over 6,000 school kids through the year and 2,500 chaperones through the weekdays. Most schools are scheduling a year ahead. We schedule all year long. We have many family reunions, church outings, birthday parties, and just family friends that visit the farm each year. We provide a safe farm atmosphere where everyone can have fun and be part of the diminishing farm culture.

We hire neighbors; local middle school, high school, and college kids; retired teachers; bus drivers; stay-at-home parents; and farmers. We teach the kids proper work ethics. Respect for others in the work place. And most all come back to work for us for several years and use us as a reference when they get their jobs.

The Department of Labor and Migrant and Seasonal Farm Workers program under Title I of the Workforce, after 2014, allows seniors in high school and freshmen in college the opportunity to apply for a two year scholarship when working at our farm.

We donate to as many non-profit organizations as we can when asked each year. We have several restaurant owners that contact us each year and thank us for bringing so many people into the community during the fall. Many go to eat dinner at the restaurants here.

A lot of people think we just plant pumpkins and open but from the time we get everything stored away for the winter from the previous year, we're already working on the next year. Painting, staffing, planning educational activities. We try to keep the Pumpkin Patch fresh, teaching agriculture. We like to tell kids that food doesn't come from a grocery store.

Our own kids are now adults and have been working on the farm all of their lives. They have full-time jobs now. They plan on continuing Russell Farms. We're going to be here for a long time.

We just ask tonight that you allow us to have a permanent ag sale permit and sign permit, so we don't have to ask permission each year.

Mr. McMillan asked Mr. Russell if he had a set date of when that goes up and comes down.

Mrs. Russell stated that they were asking to have the six month ag sales from May 10th to November 10th. That's what we've been doing all these years. The Pumpkin Patch is actually just open for five weeks. The last week of September and all of October. However, we have several kids that are working with us and a lot live in Fishers and all so we would like to have the sign up...

Mr. Russell stated that a lot of schools and groups come out and they want to know where we're at and they think we are out in the boonies.

Mrs. Russell stated that they have a lot of people, teachers that drive by just to see what we have.

Mr. McMillan asked how much they have paid over the years. Do you know?

Mrs. Russell stated that they have paid \$ 1,849.00 total. I have the breakdown if you want.

Mr. Musselman asked if they were staying with the same size sign.

Mr. Russell answered, everything will be the same. We're just trying to eliminate getting the temporary sign and permit each year.

Mr. McMillan asked the Russells if they had any plans of selling this in the future or anytime soon. (2) Probably with that change this would fall under a land use variance and right now you do not have one. Is that correct? (3) But it's also a business since you're running a business out of it.

Mr. Russell answered, no way. (2) We're a farm.

Mrs. Harger asked why it was not an agri-business re-zone. That's what it sounds like to me.

Mr. Kiphart stated that he believes that they have been operating it since before zoning came in. So as long as they operate the Pumpkin Patch the same way as they have been... I know you said you have family parties and stuff out there... but you're not leasing out any of the building commercially? (2) So basically, it hasn't changed in all those years so they were grandfathered in but based on the way the sign permit and the ag use is they have to get yearly permits unless you agree to issue one for each and I will.

Mr. & Mrs. Russell both answered, no.

Mrs. Harger stated that maybe it would be cheaper just to go ahead and re-zone and not have to buy a permit every year.

Mr. Kiphart stated that they were asking to get one permit that says they can have a sign out there from this time to this time, and they can continue to operate the Pumpkin Patch as it's been operated from this period to this period. And then they can put up their sign every year and won't have to come in and get permits every year.

Mr. Zeller asked if they can't have their sign up 365 days a year. Is that what you're saying? If we do allow this, it would only be from...

Mr. McMillan added... May 10th to November 10th.

Mr. Zeller continued – but they don't have to come ask for it every year. That's what we're approving.

Mr. Kiphart answered, correct.

Mrs. Harger asked about the temporary ag permit. Is that what's called roadside sales? (2) What you're doing is so much more than roadside sales. You don't have a wagon out there selling tomatoes. The public goes way back to your back property line.

Mr. Kiphart answered, yes. That's what it falls under. (2) If they came in now to do that they would need either a commercial ag zone, which we have, or a land use variance. But they have been out there so long, and I don't think they want to go through all the paperwork of a land use variance or a re-zone.

Mr. Culp added, and this use is grandfathered. This is for the roadside and signage requirements.

Mr. Zeller asked what the price difference was in doing it once and...

Mr. Kiphart stated that it would be the same price it would just be a full-time permit and not a temporary. They are just getting it one time from now on.

Mrs. Harger asked for clarification that it was for the sign and not the activity that they need a permit for. (2) Do they need an activity permit? (3) So they can legally do what it is they're doing without an activity permit? (4) So the roadside sales is the permit that they have to have to do what they're doing? (5) I know there is state legislation that keeps people from coming after farmers if they're injured on their property. There was a really nice piece of legislation that came in about 10 years ago to protect agri-tourism ventures. But there could be a creative way to come after them if what they're doing is called "roadside sales." That's what they're permitted to do is "roadside sales" when in fact they're doing a full-blown wagon ride, petting zoo, all kinds of ways for people to get hurt and a good lawyer could say "well, all they're permitted to do is sell pumpkins alongside the road." (6) But I'm concerned on their behalf that they do have a footing there to stand on if they were to be challenged in court.

Mr. Kiphart stated that it was both. (5) The permit is going to state more than that. It's going to mention the Pumpkin Patch. It's going to mention the activities that they have been doing for the last number of years. (6) Their use will be defined.

(2) Mr. Culp explained that it was for the roadside sales not for the rest of the activity and for the sign. (3) No. (4) Yes.

Mr. Culp stated that this is only in the context of zoning because they are grandfathered in from zoning, but they have to go through whatever else is required with their insurers and licensing

agencies and everyone else. This is an artificial rule that only exists in this context that we have to deal with.

With no further comments from the board... Mr. McMillan opened the hearing to the public at 8:01 p.m. and invited anyone who wished to speak for or against the petition to please step forward. And with no one stepping forward to address the board... Mr. McMillan closed the public portion of the hearing at 8:01 p.m.

Mr. Musselman made a motion to approve SBZA-R.V.-0004-02-2020.

Mr. Zeller seconded.

Mr. Musselman stated that he didn't have a problem with it whatsoever.

Mr. McMillan and Mr. Zeller both agreed.

Mr. Zeller stated that it has ran for so many years that it makes perfect sense.

Mr. McMillan stated that they spent a lot of 4-H time out there.

With no further comments from the board... Mr. McMillan called for the vote. *Unable to hear the fourth voice voting yes and the "no" vote was not called for. In speaking with Charlie McMillan and Becky Harger both stated that she was the fourth yes vote. 4 yes votes.* Congratulations, you've been approved. Thank you for what you do out there.

Mr. McMillan continued with **SBZA-R.V.-0005-02-2020** a requirement variance. A suspension of the rules of procedure is required. Was there an issue with the notification in the paper?

Mr. Kiphart answered, The Times, I believe.

Mr. Culp stated that our requirement is 20 days and the state statute is 10 days. And they had more than 10 days. With unanimous consent you can suspend the rules and allow them to go forward because they met the certified letter deadline and the sign was in the yard. It was just that one issue. You just need to ask if there is any objection to moving forward.

With a consensus of the board... Mr. McMillan continued. This is concerning allowing for 38.89 acres of real estate to be divided into three parcels for building purposes. Each parcel will have not less than 10 acres and have direct access to Prairie Baptist Road. **Location: 18647 Prairie Baptist Road, Noblesville, Indiana.** Could you please state your name?

Steve Hardin, an attorney with Faegre, Baker and Daniels in Hamilton County, stated his name and employer for the record. I am representing Mr. Smith. Mrs. Smith passed away. This

property has been in the extended family for about 75 years. Mr. & Mrs. Smith acquired the property in 1999. Mr. Smith now lives in an assisted living facility and he is requesting this variance to allow the remaining 38. +/- acres to be divided into three parcels. Outlined in red is where the parcel is located on Prairie Baptist Road. The Smiths conveyed a 1.1 acre parcel and the county has an ordinance that says that you're able to do that with a 40 acre site, but the remaining acreage has to remain at least 37 acres unless the board grants a variance. They could go through the plat approval process. This is consistent with the surrounding development. The property to the immediate east is a 40 acre tract of land that has been parceled into four different lots for four different homesteads. We had a neighbors' meeting last week and invited all the neighbors that received a notice to meet at the Durbin Elementary School. A total of four people – Mrs. Conrad who owns the acreage immediately to the north attended with her daughter and son-in-law, and also Mr. Sigman. They just had some questions about what was going to happen. Are these for homesteads vs commercial development or some type of higher density development? We explained that this was just for the three additional homesteads here. They didn't have any concerns or complaints. We also didn't receive any letters or comments from anybody that had concerns or questions. We checked with Mr. Kiphart and he hadn't heard anything from anyone. So we would respectfully request your approval tonight and would be happy to answer any questions that you have. Thank you so much.

Mr. McMillan asked Mr. Kiphart about the communication with the property at the 18665 Prairie Baptist Road that 1.1 acres that's notched out on there from the health department. Why did we get communication? (2) About the septic on that property? (3) Why is Mr. LeMaster concerned of the septic issue? The fingers don't extend into tract 1, do they?

Mr. Kiphart stated that it was information related to the request. (2) Yes.

(3) Mr. Musselman stated that they might.

Mr. McMillan asked Mr. Hardin if he was clear on the health department. (2) Is there some type of a business there?

Mr. Hardin stated that that's the first that he had heard of it, sir.

(2) Mr. Musselman stated that he does window tinting.

Mr. Kiphart stated that that was illegal.

Mr. McMillan stated that there was a dumpster there. (2) But obviously the property is a concern with the septic issue, and I was trying to figure out why we have that in our packet.

Mr. Kiphart stated that that doesn't have anything to do with it tonight. (2) One thing that we do is... we send out these variance applications to all the county agencies and the state highway. They have the opportunity to comment and so that's what he's doing.

Mrs. Harger stated that he says that the absorption field was not able to be accurately located due to its depth.

Mr. McMillan added... that it was discussed on site and via historical aerial photography that tract 1 supported an ag / animal operation in the 50s and 60s. Any dug or driven wells that were on the property should be properly abandoned when this property is developed. So, is there a wellhead on there as well or do they know?

Mr. Musselman stated that there is a silo and an old building in that woods where the original farmstead was.

Mrs. Harger stated that there could be a well anywhere. I think he is just saying "if you know of a well or find a well then it can't be used going forward. It needs to be capped."

Mr. McMillan stated that he felt that needed to be addressed.

Mr. Kiphart stated that in the second paragraph... I have no idea what he's talking about. He did get information from our office on this project.

Mrs. Harger suggested that maybe he was expecting to see buildings.

Mr. Culp stated that it appears that he wrote this in anticipation of an application that hadn't come in yet. So he was trying to guess where it was headed before he actually had it. As Mr. Kiphart said, if there is going to be buildings, they're going to have to get permits through the health department...

Mr. McMillan added... which would address all the issues of a wellhead or septic.

Mrs. Harger stated that it still could be that the fingers for the existing house extend beyond the property line as it was sold to them in 2010. We don't know. At your neighbor meeting, did any of those people write a letter or give something in writing as to their support?

Mr. Hardin stated that it was very casual. It was in the cafeteria of Durbin Elementary. We had these same exhibits up. They asked a few questions and it only lasted 15 or 20 minutes.

With no further questions from the board... Mr. McMillan opened the hearing to the public at 8:14 p.m. and invited anyone who wished to speak for or against the petition to please step forward. And with no one stepping forward to address the board... Mr. McMillan closed the public portion of the hearing at 8:15 p.m. May I have a motion, please?

Mr. Zeller moved to approve SBZA-R.V.-0005-02-2020.

Mrs. Harger seconded.

Mr. Musselman stated that he had a problem. This is good farm ground and I really don't care to see it divided myself. There are several 10 acre parcels out there already that people can build on that haven't been sold. I just have a problem with dividing good farm ground up.

Mr. McMillan added... or the worst of an evil – to eventually expand out there and put up 300 apartments.

Mr. Culp stated that that would require additional variances.

Mrs. Harger stated that although there is nobody here protesting, the neighborhood saying that they don't want to see this happen even though there is nobody here doing this I feel like as a board we speak for the farm ground. We speak for the rural atmosphere we want to retain and in as many areas as we can. My problem is it is the same owner who has already exercised the provision to take that one plus acre segment out. To layer the subdivision on top of that privilege that they already exercised defeats the purpose. When you're presented with... do I want to sell this property by segmenting one acre off or do I want to look down the road a little bit and subdivide it. To me it's an either or and I think they already made their choice.

Mr. Hardin stated that the board is correct. They made a choice nine or ten years ago and carved off the one acre. If they hadn't done that, they would have the right just like anybody would with 40 acres to divide that into four lots of 10 acres. The right the property owner has is to be able to divide without having to go through the subdivision or plat approval process. That was what I was hearing from some of the neighbors that showed up. They were happy that this wasn't being proposed for a subdivision where you would have three acre lots, more happening, and different streets going through there. They were happy it was going to be homesteads similar to what else was out there. What they could have done is four homesteads on 40 acres. We're not asking for five lots or six lots or anything like that. It is assisting somebody who is elderly. The property has probably been in the family a long time. He's in assisted living and trying to do something that would fit with the character that's out there. They would be prepared as a condition of the approval as that is all there is. It would just be these three parcels that are more than 10 acres and there would only be one home on each one at most.

Mr. Zeller asked why they wanted to subdivide it. Why don't they just sell it on its own in one chunk? (2) But that's the country though.

Mr. Hardin stated that it's harder to find somebody who wants to buy.

Mr. Musselman added... it's more money.

Jerry Holman stated his name for the record. I am the listing realtor on this property. I would like to hear your question again.

Mr. Zeller asked, why are you wanting to divide it when you could just sell it as one parcel?

Mr. Holman stated that it was up for sale for nine months and we didn't have a sale on it. We had buyers coming in saying that they would like to buy lessor acres, so we got one at 15 and one at 11 right now and the remaining is 13. Also, as he (*meaning the attorney*) pointed out the owner is an older gentleman living in assisted living and we're trying to get a return that's a little higher by dividing it up as opposed to selling it as farmland.

Mr. Culp advised the board that as the BZA it was their job to apply the ordinance and then determine whether or not they meet the requirements for a variance. You can only take into consideration the ordinance and what's presented. You can make inferences, but we need to stick to what has actually been presented tonight. The BZA does not speak for the farmers or for any group other than as judge and jury who is evaluating the evidence here. So it comes down to these three findings. That the approval will not be injurious to the public health, that it won't affect the adjacent property, and that the strict application of the zoning ordinance creates an unnecessary hardship. So the decision needs to be rooted in yes or no to those three items.

Mrs. Harger stated that she can define the general welfare of the community as retaining some rural atmosphere and to rationalize that there are smaller lots adjacent to the property to me is even more reason to keep this intact and not just break everything up into small places. Everybody wants to live in the county and when they all get out there its not the country anymore. I live out there, but I could say no in good conscience to question number one.

Question number two – the use and value of the area adjacent to the property will not be affected in any substantially adverse manner. I know they're not going to put hazardous waste on their neighbor but... I do think the more things that get built up the more it doesn't feel like the country anymore. And it can adversely affect other property owners making it difficult for those who want to farm to be able to farm, to be able to get their equipment down the road, to be able to use the chemicals they need to do to grow healthy crops and good yields and not have people who are just living in a residential situation register complaints to where the farmers can't do their job.

Mr. Hardin stated that in listening to you Mrs. Harger, when you were suggesting that the absence of people being here may demonstrate that they're not objecting but would it be helpful to hear from people who live nearby that they're in support of, that they're ok with the variance? We didn't anticipate this reaction after we had met with the neighbors and thought that things were ok and that this didn't seem like that dramatic of a request. We appreciate your comments and concerns. So what we would ask is maybe if we could table this tonight? Let us go back and talk to the neighbors and ask them if they would be willing to submit letters in support of this so we could demonstrate that the nearby neighbors are in support of it which is what we thought that they were. I'm hearing that at least two people are not being supportive, and we need to have more than that.

Mrs. Harger stated that it would help her to see something in writing especially when we've had bad weather this evening and we don't know if maybe there is somebody who would have come

out that did not. There is another difficulty here because we're not talking to the actual land owner. We are several layers away from them, there is a power of attorney, and then there is a lawyer. Sometimes it makes it harder for me to grasp.

Mr. Hardin stated that he (*the property owner*) was in assisted living out of state. Maybe we can get a video or something from him. We want to be responsive to what you're asking.

Mr. Zeller moved to table SBZA-R.V.-0005-02-2020 until the March 25, 2020 BZA meeting at 7:00 p.m.

Mr. Musselman seconded.

With no further comments from the board... Mr. McMillan called for the vote. **4 yes votes... 0 no votes.**

Director's Report: No report.

Legal Counsel Report: No report.

Mr. Kiphart stated that the comprehensive plan update meetings out in the township are coming up. The first one is tomorrow in Adams Township. This is a good chance for you to find out what the people out there are thinking. How important is protection of ag land in the rural areas? Once the comprehensive plan is done again, we'll probably be considering some changes to our zoning ordinance and is what we're doing now still good for the next ten years?

Mr. McMillan stated that the Wayne Township meeting was March 24, 2020. Just because you don't live in that township, they'll be listening, and you will have an opportunity to speak. The facts and figures are really interesting. I think it is at 6:30 p.m. The Adams Township meeting is tomorrow night in the Sheridan Community Center at 6:30 p.m.

With nothing further to come before the board... **Mr. McMillan asked for a motion to adjourn.**

Mrs. Harger made a motion to adjourn.

Mr. Zeller seconded.

With no further comments... Mr. McMillan called for the vote. **4 yes votes... 0 no votes.** Meeting adjourned at 8:32 p.m.

Charlie McMillan, Jr. Chairman

Date

Lynette Mosbaugh, Recording Secretary

Date

Linda Burdett, Transcribing Secretary

Date