

MINUTES
DEKALB COUNTY BOARD OF ZONING APPEALS
Monday, October 09, 2023

A Meeting of the DeKalb County Board of Zoning Appeals was called to order at 6:00 p.m. in the Commissioner's Court of the DeKalb County Courthouse by Chairperson, Frank Pulver.

ROLL CALL:

Members present: Jason Carnahan, Frank Pulver, Rory Walker, and Larry Williams

Members absent: Mary Diehl

Staff Present: BZA Attorney, Andrew Kruse, Director/Zoning Administrator, Chris Gaumer, and Secretary, Andrea Noll

Public in Attendance: Greg Hartman

APPROVAL OF MINUTES:

Motion was made by Jason Carnahan and Seconded by Rory Walker to approve the Minutes of September 11, 2023, as submitted. None opposed. Motion carried.

OLD BUSINESS:

None

NEW BUSINESS:

Petition #23-14 – Gregory and Jennifer Hartman and property owners Dylan and Katlin Straub requesting a Development Standards Variance to allow for a reduction to the required lot acreage for a proposed 2 lot subdivision. They are also requesting a Development Standards Variance to allow for a pond to be constructed between the property lines of the property owners with zero setbacks between the interior property lines. One of the proposed lots will be 1.66 net acres and 2 net acres is required. The required setback for a pond is 40 feet from all property lines. The property is located at 0650 County Road 27, Ashley, Indiana and is zoned A1, Conservation Agricultural.

Chris Gaumer read the Staff Report.

Frank Pulver inquired about the Shared Pond Agreement.

Mr. Gaumer briefly explained what the agreement encompasses.

Andrea Noll, Secretary read the Agreement for the members.

Andrew Kruse commended the Agreement, specifically addressing the mutual use of the entire pond is important. He referenced another case he previously had, where there was an argument over who owned what part of the pond. Mr. Kruse advised that the law states, absent of an agreement like this, you just own the part of the pond that's on your property.

Mr. Pulver commented on a potential change of ownership, and if the new owners want nothing to do with the pond.

Mr. Gaumer advised that the property owners have to work together and figure out a solution to any future pond issues. It will not be the responsibility of the Plan Commission or the Board of Zoning Appeals to mediate the responsibilities of the pond.

Jason Carnahan commented on the Shared Pond Agreement, stating that a realtor should be aware of an existing pond agreement. Mr. Gaumer stated that the Agreement will be recorded, and information will be on the plat.

Mr. Kruse advised that the recorded document would be visible to any future potential buyer.

Mr. Pulver inquired about the pond being larger on one property than the other. Mr. Gaumer stated that it was an approximate location, because of where the proposed homes will be built.

Rory Walker inquired about what the Board of Zoning Appeals members would be voting on.

Chris Gaumer advised that the BZA would be voting on a reduction of lot area for one of the lots to be 1.66 acres instead of the required 2 acres and on the pond to be located over the common property line in between the two proposed lots. Mr. Gaumer clarified that they would not be voting on the Shared Pond Agreement or on the split of the two lots.

Jason Carnahan inquired about the Health Department being okay with the lot being less than the required 2 net acres. He also asked if there was an existing septic system where the trailer used to be located on one of the lots.

Mr. Gaumer advised that they were okay with the proposed net acreage and that he could ask the petitioner when he comes to the podium.

Andrew Kruse asked if the right of way could be counted in the net acreage. Mr. Gaumer confirmed that it could not.

Larry Williams inquired about the drainage for the pond.

Mr. Gaumer explained that ponds have to get approved through the Plan Commission office as well as approval through the Surveyor's office. Also, the Surveyor's office is who takes care of the engineering aspect of the pond and will meet with the property owners on site to determine where the overflow is, any potential overflow into a county ditch or tile, and that the water has a safe way to exit if the pond were to overflow. He added that the maintenance responsibilities are up to the property owner.

Frank Pulver asked who furnishes the property owners with that type of information.

Mr. Gaumer replied that the Surveyor's office does, and the property owners have to obtain a permit from the Surveyor's office before his office would release a permit for the pond.

Mr. Kruse commented on the engineering aspects of a pond.

Rory Walker commented on the size of the lot, as it pertains to the septic system.

Mr. Gaumer advised of a new law this year states the Health Department has to approve someone's discharge of waste, adding that the county requires two net acres, excluding right of ways and easements and that the Plan Commission amended the Unified Development Ordinance's lot requirement from one acre to two acres because of the Health Department's Ordinance of being two acres with two sets of soil borings. Mr. Gaumer stated that as of July 2023, Indiana law changed to state that the Health Department cannot exclude someone from discharging waste, by lot acreage, number of soil samples they need, etc.

Mr. Kruse verified that we had a stand-alone provision of two acres that's not necessarily contingent on a septic system or not.

Mr. Gaumer summarized that, if they should need a new septic system, state law currently states that the Health Department must approve a type of discharge for waste.

Mr. Kruse, Mr. Williams, and Mr. Carnahan all commented on the types of septic systems allowed in Indiana.

Mr. Pulver invited the Petitioner to speak.

Greg Hartman approached the podium to address questions from the board. He explained that the northern part of the land previously had a trailer and silo and that all of it has been demolished and the land has been leveled. He also stated that there is currently a well that they believe is usable and the previous septic system could possibly be used, but they haven't run the tests yet. So, they gave them a separate site to build a separate septic system if needed.

Mr. Kruse clarified that the separate site was located on the 1.66-acre northern lot.

Greg Hartman shared that the PERC Test showed that the soil is fantastic as far as drainage and no mound system is required for either lot. He also stated that a potential pond is years down the road and that there is a ditch that elevates to the road, so there would be no overflow of pond water onto the roadway.

Rory Walker inquired about any county tiles being present.

Mr. Hartman wasn't sure but stated that there was an old farmer's tile, nonregulated, that was installed a long time ago that runs diagonally across the property. He summarized that because the right of way dedication requirement is large, they couldn't evenly split the 5-acre lot.

Frank Pulver confirmed with Mr. Hartman that the PERC Test did come back with a conventional septic system for both lots.

Mr. Pulver and Mr. Walker both commented on the absence of a county tile.

Chris Gaumer affirmed that there are no county regulated drains, or they would have been shown on the provided aerial map.

Jason Carnahan commented on the drainage of potential pond overflow.

Mr. Pulver clarified with Mr. Gaumer that the drainage is not our issue to be concerned with.

Mr. Walker inquired about the direction of the drainage and the proximity of the location to the Ashley Town Sewer with Mr. Hartman.

Mr. Carnahan advised that there is a county drain to the east of the property on the other side of the road that runs north and south.

Mr. Hartman clarified that they're more concerned about getting the land divided into two lots rather than the installation of a pond.

Mr. Pulver determined there were no further questions from board members or the public, so he closed the public portion of the hearing.

Mr. Kruse went through the Findings for this petition with the board.

JURISDICTIONAL FINDINGS:

1. Application completed and filed on **September 7, 2023**.
2. Legal notice published in The Star on **September 26, 2023**, with the publisher's affidavit and receipt received.
3. Certificate of mailing notices were sent, and receipts have been given to staff.
4. Letter from the County Board of Health, dated **September 25, 2023**.
5. Letter from the County Highway Department, dated **September 13, 2023**.
6. Letter from the Soil & Water Conservation District, dated **September 8, 2023**.
7. Letter from the County Surveyor or Drainage Board, dated **September 22, 2023**.
8. Letter from the DeKalb County Airport Authority, **not applicable**.

FINDINGS OF FACT:

1. Will the approval of the variance request be injurious to the public health, safety, morals, and general welfare of the community?

Yes ()* No (X)

The reduction to the lot acreage to be less than 2 acres and the reductions to the setbacks for the pond will not be injurious to the public. The creation of 2 new buildable lots and the pond

location will provide fun and educational development for both property owners' families as well as added value to both properties.

2. Will the use and value of the area adjacent to the property included in the variance request be affected in a substantially adverse manner?

Yes () * No (X)

The reductions to the lot acreage and creation of 2 new buildable lots and the addition of the pond will increase the property values.

3. Will the strict application of the terms of the Unified Development Ordinance result in practical difficulties in the use of the property?

Yes (X) No () *

The existing acreage, excluding the dedicated right of way, does not allow for 2 buildable lots that would meet or exceed the minimum lot acreage. The property owners also wish to share one pond with it being on both properties. With the size of the proposed pond, the setback requirements for each owner to have their own would result in a minimal sized pond. The property owners have an agreement that will be recorded if the Variance is approved for the cost/expenses, maintenance fees, and responsibilities agreed upon. They have written into the agreement contingencies if there should be a change in ownership, etc.


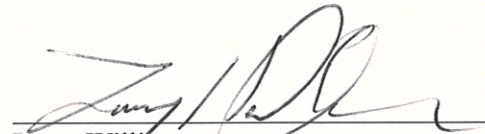
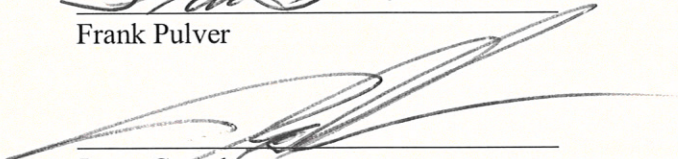

Conditions of Approval:

1. The Board retains continuing jurisdiction of this Development Standards Variance to assure compliance with all terms and conditions and/or impose additional conditions deemed necessary for health and safety.
2. A Variance to allow the reduction of lot acreage is approved.
3. A Variance to allow this pond to be created and split between the two properties is approved.
4. Provide proof of the recorded Shared Pond Agreement to the Zoning Administrator prior to proposed subdivision being docketed for the Plat Committee. The document number and a description of the agreement shall be put on the proposed plat, reviewed, and approved by the Zoning Administrator & Plat Committee. Staff shall work with the petitioner on the language for this condition.
5. Comply with any applicable Environmental Standards as required in Article 5, 5.11; EN-01, in the Unified Development Ordinance.
6. No offsite drainage crossing over said real estate should be obstructed by any development on this site.
7. No Certificate of Occupancy or Certificate of Completion shall be issued until the applicant files written evidence of compliance with any conditions of the DeKalb County Board of Health, DeKalb County Highway Dept., DeKalb County Drainage Board or DeKalb County Surveyor, DeKalb County Airport, DeKalb County Soil & Water Conservation, or other agency as applicable. And further, where applicable, file written evidence of compliance with Federal or State agencies where identified in the findings or conditions. The Zoning Administrator to determine when conditions have been met.

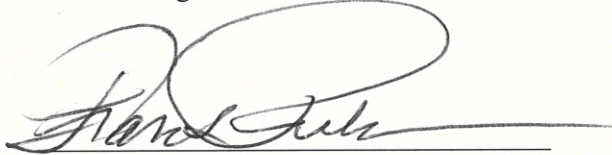
IT IS, THEREFORE, THE DECISION OF THE BOARD OF ZONING APPEALS THAT THIS DEVELOPMENT STANDARDS VARIANCE, PETITION #23-14, IS HEREBY GRANTED APPROVAL ON THIS 9TH DAY OF OCTOBER 2023.

Motion made by Jason Carnahan, Seconded by Larry Williams.

Vote tally: Yes: 4 No: 0


Frank Pulver
Larry Williams
Jason Carnahan
Rory Walker**ADJOURNMENT**

There being no further business to come before the board, the meeting was adjourned at 6:27 p.m.


Frank Pulver, Chairperson
Andrea Noll, Secretary