

**MINUTES**  
**DEKALB COUNTY BOARD OF ZONING APPEALS**  
**Monday, March 13, 2017**

The Regular 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 Ruth Ann McNabb.

**ROLL CALL:**

**Members present:** James Stahl, Mike Kaufman, Tim Griffin & Ruth Ann McNabb

**Members absent:** Matt Bechdol

**Staff Present:** BZA Attorney David Kruse, Zoning Administrator Chris Gaumer, Assistant Director Dawn Mason and BZA Secretary Karen Bassett

**Public in Attendance:** Thompson Smith, Jesse Zehr, Elizabeth Zehr, Brandon Zehr, Joseph Zehr, James Zehr, Jerry Teders, Gary Botteron, Fred Feitler, M.A. Feitler

**ELECTION OF OFFICERS:**

Chris Gaumer recommended Karen Bassett as the Secretary for the Board of Zoning Appeals. Motion was made by James Stahl and seconded by Tim Griffin. Motion carried.

**APPROVAL OF MINUTES:**

Motion was made by Mike Kaufman and seconded by Tim Griffin to approve the minutes of January 9, 2017. Motion carried.

**NEW BUSINESS:**

For the information of the audience, Ruth McNabb introduced the members of the Board and Staff.

**PETITION NO. 17-03,** filed by James Zehr, Jesse Zehr & Joseph Zehr requesting a Use Variance to operate a cabinet shop. The property is located at the southwest corner of County Road 46A & County Road 45, Auburn, Indiana and is zoned A2, Agricultural.

Chris Gaumer, Zoning Administrator, read his report into the record and showed the site plan.

Attorney Thompson Smith on behalf of the Zehr family presented a background of the Zehr family and why they are requesting approval for the Use Variance. To get an understanding of what the Zehr family does, several doors from their cabinet shop were passed around to the board members.

Mr. Kaufman asked how much noise is generated to the outside.

Mr. Smith advised very little noise as everything is done inside, nothing outside. There is a dust collector on the back side of the building to block noise.

Mr. Kruse asked is they would have electricity on overhead lines.

Mr. Smith said no overhead line however they will have a generator house with a diesel generator. The exhaust will be on the back side and any noise will be in the back. They will generate their own electricity.

Mr. Gaumer stated there wouldn't be any outdoor storage either. It is all housed within the shop. The Zehr family could have gone through a re-zone for this as well, which if the board happened to deny this would be an option for them. However, re-zoning it would open it up to a floodgate of other uses that you may not want to see on this type of property, so this is the best way for them to get this use approved versus re-zoning it to a light industrial type of use.

Mr. Smith stated this particular site has a county drain going through it; it does have a railroad on the south side. So, between the railroad, the county drain, the narrowness of the property between 46A and the railroad, it is unlikely that the property would be developed for any kind of residential purposes.

Mr. Kaufman asked if there would be any painting or staining on site.

Mr. Smith said they do paint and stain on site and do the finish work. They do the whole process. Some are stained and polyurethane and some are glaze paint.

Mr. Kaufman said so there will be a paint booth inside this building.

Mr. Smith said yes, they have a state of the art paint booth in Grabil and they will have the same here.

Jerry Teders, Tri County Land Survey stated Mr. Stahl had asked about a business in that area and there is a storage unit about 2 miles west of there between 46A and the railroad.

Mr. Kruse asked Mr. Gaumer if this will look like a barn.

Mr. Gaumer said yes. The front will look a little more commercial than the rest, but it's going to look like a pole barn and currently there is nothing in the vicinity that would contradict this.

Mr. Kaufman said this particular site wouldn't be used for a residence.

Mr. Gaumer said he had talked to Mr. Smith about that and that with the Use Variance you have to show a hardship with the property and it would be very difficult for a subdivision or even a single family home to be built on this site with the current site conditions.

There were no other objectors.

The Chairman closed the public testimony.

Mr. Gaumer stated the Findings of Fact have been changed to what the UDO requires. In the past there have been 11 or 12 findings that the Board would look at for approval of a case. In the UDO there are only 5 findings for Use Variance. We want to be consistent with what the UDO has and if additional findings are needed for BZA cases, we need to add them in to the UDO as it being a finding. The State allows us to put additional findings on cases. We can add site specific findings, but in researching past cases, it was the same findings over and over and not consistent to what the UDO was or what site specific cases were. We want to follow what the UDO is.

Mr. Kruse said he would like a statement that the filing requirements have all been met and publication met. Mr. Gaumer said the reason he took that off is because if they are not being met they are not going to come forward. So if they have not filled out the application, not paid their fee, not sent the notifications then they can't come to the Board. Mr. Kruse said it's a jurisdictional thing. A lot of findings we worked out before under the old ordinance, but also under case law. It is something to recite that the application, publication and notices were all filed correctly.

Mr. Gaumer recommends approval on this petition.

Motion was made by Tim Griffin and seconded by James Stahl to adopt the following Findings of Fact and grant approval on Petition No. 17-03 with conditions. Motion carried.

#### Jurisdictional Findings

1. The applicant has complied with the rules and regulations of the Board of Zoning Appeals in filing appropriate forms and reports requested, including:
  - a. Application completed
  - b. Legal notice published in The Star
  - c. Certified mail notices sent to appropriate parties
  - d. Letters from the County Board of Health dated 1/20/17, Highway Dept. dated 2/23/17 and Surveyor dated 12/21/16

#### Findings of Fact

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

No, the proposed development will not be sided or built to be injurious to the community. Also, see the DeKalb County Board of Health letter dated 1/20/17, Highway Dept., letter dated 2/23/17, Surveyor letter dated 12/21/16 and Staff Report.
2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?
 

No, the proposed business will not affect the overall look of the property or surrounding properties.
3. Does the need arise from some condition peculiar to the property involved?
 

Yes, the property has a county drain on it and to the south is a busy railway. It is highly unlikely that the property would be developed for residential use. A variance is needed to avoid undue hardship and denial would infringe on reasonable use of the property. Further the applicant is Amish. Amish beliefs, religion and culture are furthered by this variance, so close to where the families live and work in proximity to their residence. The shop will appear like a large barn. A variance is best use of the lot. Due to the configuration of the lot and site, it is not a likely place for residence. The family has been in business for 24 years.
4. Will the strict application of the Unified Development Ordinance result in an unnecessary hardship if applied to the property for which the variance is sought?
 

See #3 above.
5. Will the approval interfere substantially with policies of the Comprehensive Plan?
 

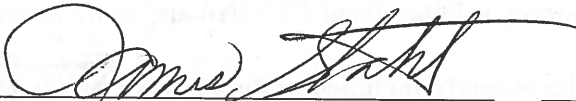
No, the proposed project does not interfere as the proposed use will not be intense enough to cause additional problems with surrounding properties or County roads, etc.

Conditions of Approval

The Zoning Administrator recommends approval subject to the following conditions:

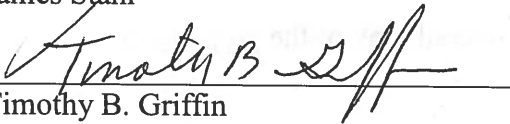
1. The Board retains continuing jurisdiction of this Use Variance to assure compliance with all terms and conditions and/or impose additional conditions deemed necessary for health and safety.
2. Comply with any applicable Environmental Standards as required in Article 5, 5.11; EN-01, in the Unified Development Ordinance.
3. No offsite drainage crossing over said real estate should be obstructed by any development on this site.
4. Must comply with the letters provided by the Health Dept., Highway Dept., & Surveyor/Drainage Board, as required.
5. Zoning Administrator shall determine when conditions are met.
6. No signage or lighting proposed.
7. No outside storage – inside storage only

It is therefore, the decision of the board that the Use Variance is hereby granted approval on this 13<sup>th</sup> day of March 2017, subject to any conditions and/or commitments stated in the minutes of the Board.

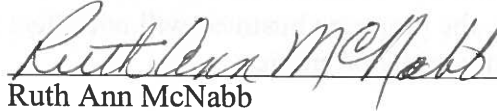


James Stahl

Mike Kaufman



Timothy B. Griffin



Ruth Ann McNabb

PETITION NO. 17-04, Withdrew.

PETITION NO. 17-05, filed by Brian Rayburn – Application incomplete - notification of Public Hearing not sent to adjoining land owners, as required.

PETITION NO. 17-06, filed by Gary & Prisilla Botteron requesting a Variance from Developmental Standards to allow for the subdivision of additional lots from the parent parcel of which only allows 3 splits are allowed by Ordinance. The property is located off County Road 68, Auburn, Indiana and is zoned A2, Agricultural.

Chris Gaumer, Zoning Administrator, read his report into the record and showed the site plan.

Jerry Teders from Tri-County Land Survey spoke on behalf of the Botteron family. The homestead parcel is all the way to the west; the original farm home, barn, silo, etc. Lot 1 is Mr. Botteron's and was divided in 1997; Lot 2 was divided out in 2009; Lot 3 divided out last year. What would remain would be Lot 3, Lot 4, Lot 5. Lot 3 is 9.14 acres, Lot 4 is 9.14 acres, Lot 5 is 9.19 acres and Lot 6 is 14 acres. All the area has been planted in trees about 10 years ago.

Mr. Griffin asked if Lot 3 is where the house will be going.

Mr. Teders said yes, it was split off last year.

Mr. Gaumer said if these are to be buildable lots, they either have to go through this process or a re-zone and it would be hard pressed for me to recommend an approval on a re-zone when I don't think that is the intent.

Mr. Kruse asked what is the requirement now and what is Mr. Botteron asking a variance from. Mr. Teders said to split the other 3 lots out.

Mr. Gaumer said in the UDO under that zoning district, for a minor subdivision they are only allowed 3 plus parent parcel, so Mr. Botteron wants 6 plus the parent.

Mr. Kruse asked what the hardship would be in not permitting this.

Mr. Teders said Mr. Botteron is counting on this to be part of his retirement.

Mr. Gaumer said a variance doesn't require you to look at hardships, but they are not small lot subdivisions; are over 5 acre lots. Some neighbors are here who were concerned they would become a conventional subdivision with cul-de-sacs, but I reassured them under this zoning district and what they are coming for today doesn't allow that type of subdivision. They can only build one single family home per lot.

Mr. Teders said the way the lots are configured now, each of them have enough side distance to approved for a driveway, but for example on Lot 4, they couldn't put one on the west side, it would have to be on the east side. Lot 6 has some constraints with site distance also, so there wouldn't be enough room for another lot.

Mr. Kaufman asked if this will be a case where first we do a variance to permit this and then they have to come to the Plan Commission.

Mr. Gaumer said correct. This is approving them to request additional lots for subdivision from the Plan Commission.

M.A. Feitler spoke regarding the Botteron petition. She stated they are neighbors to the east of the and her concern was someone might buy the 14 acre lot and would put in 7 homes. She is satisfied that this cannot happen.

There were no other objectors.

The Chairman closed the public testimony.

Mr. Gaumer recommends his approval on this petition.

Motion was made by Mike Kaufman and seconded by James Stahl to adopt the following Findings of Fact and grant approval on Petition No. 17-06 with conditions. Motion carried.

#### Jurisdictional Findings

The applicant has complied with the rules and regulations of the Board of Zoning Appeals in filing appropriate forms and reports requested, including:

- a. Application completed
- b. Legal notice published in The Star
- c. Certified mail notices sent to appropriate parties
- d. Letter from the DeKalb County Survey dated 3/09/17

Findings of Fact

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

No, the proposed lot will not be injurious to the community. Also see DeKalb County surveyor's letter dated 03/09/17. New sites are compatible with the use.

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

No, the use of the property will be single-family residential. The surrounding properties are similar in nature & use. Will improve the value.

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

Yes, the additional splits are required to create additional building sites. It would be underutilized land not to permit this variance. The lots are each over 9 acres. It's undeveloped land and is not useable for farm land or any other reasonable use under the circumstances.

Conditions of Approval


The Zoning Administrator recommends approval subject to the following conditions:

- 1. The Board retains continuing jurisdiction of this Variance from Developmental Standards to assure compliance with all terms and conditions and/or impose additional conditions deemed necessary for health and safety.
- 2. Comply with any applicable Environmental Standards as required in Article 5, 5.11; EN-01, in the Unified Development Ordinance.
- 3. No offsite drainage crossing over said real estate should be obstructed by any development on this site.
- 4. Zoning Administrator shall determine when conditions are met.
- 5. The applicant still needs to obtain the Plan Commission approval for any development of the lots.

Commitments of Approval

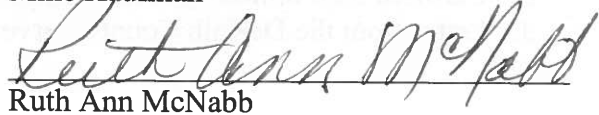
- 1. That only these three (3) splits are allowed with this approval.

It is therefore, the decision of the Board that this Variance from Developmental Standards is hereby granted approval on this the 13<sup>th</sup> day of March, 2017, subject to any conditions and/or commitments stated in the minutes of this Board.

  
James Stahl

Mike Kaufman

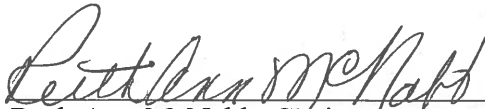
  
Timothy B. Griffin

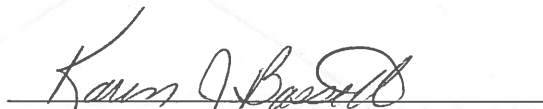
  
Ruth Ann McNabb

**REPORTS:**

Approve the By-Laws of the DeKalb County Board of Zoning Appeals.  
Motion for approval was made by Tim Griffin. Mike Kaufman seconded. Motion Carried.

There being no further business to come before the board the meeting was adjourned at 7:04 P.M.

  
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Ruth Ann McNabb, Chairperson

  
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Karen J. Bassett, Secretary

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