

**HANCOCK COUNTY AREA PLAN COMMISSION
111 AMERICAN LEGION PLACE
GREENFIELD, IN 46140**

**BOARD OF ZONING APPEALS MINUTES
DATE: JANUARY 26, 2023 TIME: 6:30 P.M.**

PRESENT:

**JASON FAUCETT, PRESIDENT
BYRON HOLDEN, SECRETARY
MICHAEL LONG, VICE PRESIDENT
RENEE OLDHAM
KAYLA BROOKS, PLAN DIRECTOR
DARLA SMOAK, RECORDING SEC.
RHONDA COOK, ATTORNEY**

ABSENT:

EVAN MATLOCK

The January 26, 2023, meeting of the Hancock County Area Board of Zoning Appeals was brought to order by Mr. Byron Holden. Ms. Oldham moved to accept the previous month's minutes as received in the mail. Mr. Long seconded. Motion carried.

Mr. Holden said the first meeting in the new year requires election of officers. Mr. Long moved to nominate Mr. Jason Faucett as President. Ms. Oldham seconded. Motion carried. Mr. Faucett moved to nominate Mr. Long as Vice President. Ms. Oldham seconded. Motion carried. Mr. Long moved to nominate Ms. Oldham as Secretary, however, she declined the position. Mr. Long moved to nominate Mr. Holden as Secretary. Ms. Oldham seconded. Motion carried

Ms. Rhonda Cook, the Board's attorney, duly swore in all persons appearing before the Board of Zoning Appeals.

Mr. Holden moved to adjourn. Ms. Oldham seconded and the meeting was adjourned at 9:08 p.m..

ATTEST:

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JASON FAUCETT, PRESIDENT

BYRON HOLDEN, SECRETARY

**HANCOCK COUNTY AREA PLAN COMMISSION
111 AMERICAN LEGION PLACE, SUITE 146
GREENFIELD, IN 46140**

BOARD OF ZONING APPEALS MINUTES

Thursday, January 26, 2023

TIME: 6:30 PM

Beeson, Karen/Niemier 300 Plaza
6072, 6080, 6084, 6088 W 300 N Grfld
13 - 16 - 5

Commercial Community
Variance 22-2312
Buck Creek

Ms. Brooks presented a staff report with a neutral position. Mr. William Niemier, attorney, along with the engineer, Mr. Marcell Tworek, were present, representing the property owner, Karen Beeson Revokable Trust, to request variances to reduce the front setback from 50' to 40' to allow parking in the front setback and to reduce the landscape buffer from 20' to 11' for a proposed 10,313 s.f. building on 2.63 acres in the CC zone for a proposed restaurant and possible lease space for additional tenants. Mr. Tworek said last year he had almost all the state and county approvals for obtaining the building permit for this project except for Mr. Pool, County Highway Engineer. He said the county increased the size of the right of way along 300 North to 70' which then killed the project. Mr. Tworek said the property owners given up 15' of property along the front for the additional right of way and Mr. Pool reduced the right of way width to 65' from the required 70'. Mr. Niemier said when the roundabout was installed the size of the parcel was reduced tremendously to allow the county enough right of way to build the proper size of roundabout to accommodate the traffic flow. He said the property owner worked with Mr. Pool to give enough right of way allowance for the large round about. Mr. Tworek said there was negotiations with give and take between both parties. He said Mr. Pool and Mr. Dale, the previous Plan Director, agreed to support the variance request if the additional right of way was given to the County. Mr. Niemier said the walking path, park and 2 art sculptures will adorn the front of the lot and will be a unique feature to the intersection. He said the walking path will be an asphalt pathway from one side of the lot to the other side with anticipation for the continued connections as the area continues to grow. Mr. Niemier said the owner agreed to install a stub street to the north to provide the ability for connectivity to the north when new development occurs. He said no new development is planned on the lot to the north but to be a good neighbor they have agreed to install the stub street. Mr. Niemier said the original plan was to have a 10,313 s.f. building solely used for the restaurant, however, due to the cost of the development and the downturn in the economy with an uncertain market, they may need to sublet space to offset expenses. He said this will allow possibly 3 additional spaces for lease. He said the building size is not changing and will remain the same. Ms. Oldham said she understood the entire building would be used for a restaurant only. Mr. Niemier answered the lease space may or may not happen. He said it will depend on the market and demand for lease space. Ms. Oldham said she is very concerned that the added lease space will generate additional traffic. She said a restaurant has down time. She said the elementary school is across the street and the buses do not need the additional traffic congestion. Mr. Niemier said the requested changes to the site plan, the stub street and the added enhancements have made additional costs that they did not budget for in the original scope so the lease space would be used to offset those added expenses. Ms. Oldham said more tenant space increases the need for more parking and more signage. Mr. Long asked if they planned to advertise to pre-lease and build to suit or construct the building as proposed and lease the space, if needed. Mr. Niemier answered they plan to construct the building as proposed and lease space, if needed. Mr. Tworek said the Plan Commission granted approval of the development plan subject to approval of the requested variances. Mr. Long said the walking path and art sculptures are a nice addition to the intersection and will be a feature for the area. Mr. Tworek said the highway corridor overlay standards require two unique features be installed. Mr. Faucett asked for remonstrators, and none were present. There was no further discussion. Variance to reduce the front setback to 40': Four (4) approved and zero (0) denied, and Variance to reduce the landscape buffer to 11': Four (4) approved and zero (0) denied.

Upton Brian & Kristie
4945 E US 40 Grfld
35 - 16 - 7

Agricultural
Spec Ex & Var 22-2217
Center

Ms. Brooks stated the petitioner's representative was present to request that the petition be continued to February due to improper advertising. She stated the petition was continued from December due to improper advertisement. Ms. Brooks said the petitioner is entitled to one continuance; any additional continuances must be approved by the board. Mr. Faucett asked why the petition was continued last month and this month? Ms. Brooks answered in December no notice was sent to the neighbors or to the newspaper and this month the notice was sent to the neighbors but was not to the newspaper. Mr. Ed Walters was present to represent the petitioner. Mr. Holden moved to continue the petition to February. Ms. Oldham seconded. Motion carried. There was no further discussion. Continued to February 23, 2023, due to improper advertising.

Rosado, Emmanuel Mt. Comfort Plaza -
2767 - 2805 N 600 W Grfld
24 - 15 - 5

Industrial Business Park
Variance 22-2323
Buck Creek

Ms. Brooks stated the petitioner has requested to withdraw the petition. Mr. Holden moved to withdraw the petition as requested by petitioner. Ms. Oldham seconded. Motion carried. Petition was withdrawn.

Hurt, Cathryn
5409 W Stonehaven Ln N. Pal.
19 - 15 - 6

Residential
Spec Ex & Var 22-2330
Sugar Creek

Ms. Brooks presented a staff report with a favorable recommendation and staff condition of approval: 1) Petitioner must obtain the change of use permit, if approved. Ms. Cathryn Hurt was present to request a special exception to request an accessory dwelling and a variance to allow the accessory dwelling in an existing detached workshop. She said she has lived on the property in the home for over 30 years and she loves her home. Ms. Hurt said she lost her husband a year and half ago and she has been struggling to keep up with the yard and maintenance of home and yard. She said the plan is for her son and family move into the main home and they will convert the detached garage to her a home. Ms. Hurt said she loves her son and family and wants to be around them; however, she does not want to live with them. She said she wants to have her own space and the garage is the perfect size of space. Mr. Faucett asked if the plan was to add a kitchen and a bathroom to the garage? Ms. Hurt answered yes, and said the garage already has 220 amp electric because her husband had a woodworking shop in the garage. Mr. Holden said adding the additional living space will add a load onto the septic system. Ms. Hurt said she talked with the Health Department and the home has an existing 4 finger septic system that can accommodate the additional load. She said she had the septic system cleaned out last spring for the first time in 30 years. Mr. Holden said the County Health Department will ensure the septic can handle the additional load when the improvement location permit is obtained. Mr. Holden said, if approved, the kitchen stove must be removed from an accessory dwelling when no longer needed. Ms. Hurt said staff did warn her that could be a condition of approval, however, she said the family would like to possibly keep the living space for a special needs granddaughter when she does not need the space any longer. Mr. Long informed Ms. Hurt that the family would need to come back to this board for approval of the person planning to occupy the space. He said the approval is for the petitioner only which prevents the structure from becoming a rental unit. Mr. Faucett asked for remonstrators; and none were present. Mr. Long moved, if approved, the petitioner must comply with staff condition of approval: 1) Petitioner must obtain an improvement location permit for the change of use, and added 2) Petitioner must obtain annual

occupancy permits, and 3) When the structure is no longer needed by Ms. Cathryn Hurt the kitchen must be removed and the structure must be converted back to a garage. Ms. Oldham seconded. Motion carried. There was no further discussion. Special Exception: Four (4) approved and zero (0) denied. Variance: Four (4) approved and zero (0) denied.

Gannon, Tim
2353 S Richman Dr. N. Pal.
13 - 15 - 5

Residential
Variance 23-2332
Sugar Creek

Ms. Brooks presented a staff report with a recommendation to deny with a suggestion that Mr. Gannon redesign the porch to comply with the setback requirement. Mr. Tim Gannon, the builder representing the property owners, Adam & Shay Persohn, was present to request a variance to reduce the required 15' side yard setback to 10' for a proposed covered porch over an existing patio. Mr. Gannon said the owners want to cover an existing patio to shade the north side of their home in hot months. He said the property owners host many family parties, events, and functions and the covered porch will be an asset to their home. Mr. Gannon said there is an existing egress window pit for the basement and the existing concrete patio that is within the setback requirement. He said the covered porch will not be any closer to the property line than what's existing. Mr. Holden asked if 10' setback measured to the overhang or the post holding the roof structure? Mr. Gannon answered 10' is measured to the posts. Mr. Holden pointed out that the overhang is where the setback is measured from. Mr. Gannon said he will move the posts and ensure that the overhang meets the 10' setback, if approved. He said the neighbors on both sides of the property and the HOA have given their consent. Mr. Gannon read a letter from Phillip and Lauren Guest, the neighbors on the south side (closest to project), giving their consent. Mr. Gannon said the homeowner is not interested in redesigning the porch. He said the homeowner's interior layout makes the exterior patio with covered porch an extension of the living space. Mr. Faucett asked for remonstrators; and none were present. Mr. Long moved, if approved, the 5' reduction and 10' setback is measured to the overhang fascia board at the eve of the roof. Mr. Holden seconded. Motion carried. There was no further discussion. Four (4) approved and zero (0) denied.

Ratnayake, Chelsea
850 S Morristown Pike Grfld
4 - 15 - 7

Residential
Spec Ex & Var 23-2333
Center

Ms. Brooks presented a staff report with recommendation to approve, as presented. Ms. Chelsea Ratnayake was present to request a special exception to allow a home occupation for a Pilates Studio and a variance to allow the home occupation to operate in a detached structure on approximately 1-acre zoned R2.5. She said she has been an instructor for about 7 years, mostly at hospital and other medical facilities. She said she will be servicing one person at a time. Ms. Ratnayake said she will have 4 to 5 customers a day with about 20 hours a week. She said she plans to convert an old workshop behind her house into the studio. Mr. Faucett said oftentimes a commercial state design release is required when you convert a residential structure to a commercial use. Ms. Ratnayake said she discussed the plan with Mr. Scott Williams, County Building Official, and he said a commercial design release would not be required due to the size of the structure. Mr. Faucett said the typical home occupation does not have customers regularly visiting the site. Mr. Faucett said the walking path to the workshop should be clearly marked and be safe for passage. He asked if the customers would be walking through the grass? Ms. Ratnayake answered there will be walking path made with pavers or a sidewalk to the studio. She said the studio will not have a restroom and they only plan to install walls. She said the classes will be only 45 minutes long so no need for a restroom. Mr. Long asked Ms. Ratnayake what the scope of work was when she discussed the project with Mr. Williams? Ms. Ratnayake answered she discussed the entire project, as presented, to the Planning staff and was

directed by staff on the next steps. She said the studio will have 2 means of exit with a service door and a garage door. Mr. Faucett asked for remonstrators; and none were present. Ms. Brooks said she received an email from a neighbor who was concerned about traffic and the business use lowering property values. Mr. Holden said with home occupations the staff conditions of approval usually have the hours of operation and number of clients the operation was limited too. Ms. Ratnayake answered she commits to normal business hours of 8:00 am to 5:00 pm Monday to Friday with a maximum of 20 clients per week. Mr. Long moved, if approved, 1) The petitioner must obtain an improvement location permit for the change of use, 2) The petitioner must obtain an annual occupancy permit, and 3) Hours of operation limited to business hours, as stated. Mr. Holden seconded. Motion carried. There was no further discussion. Special Exception: Four (4) approved and zero (0) denied and Variance: Four (4) approved and zero (0) denied.

Wright, Allen
9304 N 50 W Fortville
14 - 17 - 6

Agricultural
Variance 23-2334
Vernon

Ms. Brooks presented a staff report with a recommendation to approve, as presented. Mr. Tim Elliott, along with property owner, Mr. Charles Erickson, were present to request a variance to allow an accessory structure (barn) to be constructed in the front yard in front of the house on a corner lot. Mr. Elliott said the petitioner, Mr. Wright, is the builder and was unable to attend the hearing. He said he built the home and lives next door to the property on the south side. Mr. Long asked if the barn will be used for livestock? Mr. Erickson answered no, and said the barn will be used for personal agricultural uses. He said he may have a couple of chickens but not livestock. Mr. Faucett asked for remonstrators, and none were present. Mr. Faucett asked what the exterior materials of the barn will be, and will the colors match the house? Mr. Erickson answered the exterior will have metal siding and roof and will be charcoal/ grey to match the accents the house. Mr. Holden asked will the barn have gutters and downspouts? Mr. Erickson answered yes. Mr. Holden said the downspouts should be directed away from the neighbor's property. There was no further discussion. Four (4) approved and zero (0) denied.

Willhelm, Ryan
5039 S 600 W N. Pal.
31 - 15 - 6

Residential
Variance 23-2336
Sugar Creek

Ms. Brooks presented a staff report with a favorable recommendation for the variance to allow the accessory building in the front yard in front of the house, however, staff position was neutral regarding variance request to reduce the required 125' lot frontage to 30', with the following comment: If the board is going to continue to approve this type of development, the board needs to establish standards that will allow it with certain limitations so that it is no longer a common variance request. Ms. Brooks said a neighbor called the office to remonstrate against the increase in congestion and traffic, if approved. She said the BZA has a long history of approving this type of development with the flag lots, however, the continued approval of this type of development in the area surrounding New Palestine is generally not recommended. She said it will prohibit the future extension of planned neighborhoods and village center type development as well as future street connections near downtown New Palestine as called for in the comprehensive plan. Ms. Brooks said the jurisdiction of New Palestine is very close to the property. She said the property is zoned R1.0 which is supposed to serve as medium zone that transitions from agricultural to the denser subdivisions and village centers that may someday be annexed into New Palestine in the R2.5 zones. Mr. Long asked Ms. Brooks to explain how the flag shape lots restrict future growth. Ms. Brooks said the long narrow lots or flag shaped lots require 3:1 exceptions from the plat committee which results with a long narrow driveway serving one home where a public street in the R2.5 zoning provides the

ability for connectivity if designed correctly. She said this particular area is expanding quickly with plans from the town to develop their lot on U.S. 52 and expand town center to the south. Ms. Brooks said if this property was adjacent to the New Palestine owned lots, she would be contacting New Palestine to suggest annexation. She said if the board wishes to continue to allow the less than required road frontage lots, then she feels that it should be dealt with by ordinance to prevent the need for a variance. Mr. Faucett said a city square layout will not fit or work for a 10-acre parcel. Ms. Brooks answered she understands that a city square cannot be developed on a 10-acre parcel but flag lots are an issue and she feels there should be standards so a variance is not required. Mr. Long said code requires a minimum of 10 acres with 125' of road frontage for one home. He said the Plan Commission does not necessarily want to allow the flag shaped lots; however, they often evolve over time to accommodate the wishes and needs of the petitioner. Mr. Long said in the future petitioners could be encouraged to have one shared drive that is wider with a wider easement provided for access and utilities. Mr. Holden said the market is hot and the demand for the larger lots is vast. He said the property owner may be wanting to take advantage of the market and yield a profit off farm ground that is doing nothing for them. Mr. Mike Gibson, representing the petitioners, Ryan & Christina Willhelm, was present to request a variance to reduce the required 125' of road frontage to 30' and a variance to allow an accessory building in the front yard in front of the proposed new home. He said a 3:1 depth to width exception must be approved by the plat committee during the platting of the 3-lot minor subdivision. He said the Willhelms have lived in New Palestine area for over 35 years, and they raised their 3 children and they have 4 grandchildren with the 5th on the way with all residing in the county and they would like to subdivide the property to build their retirement home on lot 3. Mr. Holden said the plat committee prefers a wider road frontage so that there is sufficient room to accommodate the utilities. Mr. Gibson said the flag shape lots have been an issue for over 30 years and years ago were an absolute no go, but times have changed. Mr. Gibson said the county then thought, to prevent the unkept back portions of lots from occurring, they thought the stacking for the lots was a better option. He said in the past, the myth was that flag lots have areas that are uncared for and not maintained at the rear, however, this property owner wishes to build his new home toward the rear of the parcel with the existing barn being in front of the home. Mr. Gibson said ten acres of yard is a lot for a person to maintain but the market is showing that the demand is for 2 to 4 acres for a home which is more manageable. He said the property owners' plan is to build a home on lot 3, however, it may never come to fruition. Mr. Gibson said if the owner does build a home on lot 3, he does not wish to share a driveway with lot 2. He said he met with county highway representative to ensure that they would support a shared driveway for the 2 lots and the driveway to lot 3 because without their favor there would be no chance of installing a driveway on lot 3. Mr. Gibson said the plan is to share the driveway for lot 1 & 2 and if lot 3 is developed it would have its own driveway. He said just north and east of the property, the parcel connects with Heighway Estates which is the same layout as proposed. Mr. Gibson said Heighway Estates is owned by the petitioner's daughter and son in law and they have watched the approval process and were mirroring the layout design. He said if they build on lot 3 their lot will back up to the Heighway Estates lot and their daughter's home. Mr. Gibson said the hardship is the two lots combined have only 308' lot width so to develop the parcel into three lots a variance would be necessary. He said flag lots are common practice in the county. He said he can provide examples of many of the same types of development, as is proposed, that have been approved. Mr. Gibson said the project is adjacent to Heighway Estates which the proposed layout is a mirror image of that project. He said they are only requesting to add one lot. Mr. Holden asked if the existing driveway would extend on to lot 3 to provide access to the existing barn? Mr. Gibson answered no, and said the intention is for lot 3 to have its own driveway. Mr. Jayson Combs, neighbor living two parcels north of site, was present and opposed to the subdivision. Mr. Combs said the area is growing very quickly and he is fearful that the area will become congested. He asked what is going to stop all the growth? He said he moved to the country to live in the country. Mr.

Combs said he does not want to see a house as his view from his rear windows. He said in 2007, he was shut down by the County Highway Department when he wanted to install a driveway for his home on the south side of his parcel, so he moved his driveway location to the other side of the lot at the request of County Highway. Mr. Combs said a couple of years later his neighbor was granted a driveway permit from County Highway near the same location as he was denied. He said the proposed driveway will be 30' from a barn with livestock of the neighbor on the south side. He said there is a clay field tile that runs diagonally from his barn to the area for lot 3. Mr. Combs said he is worried about the poor run off and poor drainage in the area. He asked where the existing septic field was located on the site and if the new septic fields have been planned? Mr. Combs said the existing home is currently being remodeled even though it was completely remodeled not too long ago. He said the current property is serving one home and is working just fine and it makes a nice property. He said the parcels are being divided and sold all over the county and he does not like it and he would like to see a halt put to the growth. Mr. Combs said he thinks one driveway access would be better for the area. Mr. Combs said he wants to be a good neighbor. Mr. Faucett told Mr. Combs that he could see a major subdivision be developed across the street from him and asked what would stop that from occurring? Mr. Faucett said the area is fast growing and growth should be expected. Mr. Long asked Mr. Combs why he could not install the driveway where he proposed in 2007? Mr. Combs answered because he was not far enough away from his neighbor to the south. Ms. Oldham asked where the livestock will be that Mr. Combs was referring to? Mr. Combs answered in the barn to the south of the proposed driveway. Mr. Combs said last summer he installed corrugated piping around his barn to relieve drainage problems connecting with the clay field tile that appears to be broken. Mr. Gibson said he and the Willhelms want to be good neighbors and are willing to continue the petition to meet with the neighbors to resolve their concerns. He said the property is zoned R1.0 and they could do as many as 5 or 6 lots per code with a major subdivision proposal but they do not wish to do that. He said they are only wanting to add one lot to what they currently have for a retirement home. Mr. Gibson asked for a continuance to allow time for him to work with the neighbors to relieve their concerns and to address any drainage issues and concerns of the field tile. He asked for time to meet with Mr. Combs and neighbor to the south. He said they could install some type of screening. He said the existing septic is behind the house. He said future soil borings will determine where new septic systems will be installed. Mr. Gibson said they want to be good neighbors and try to relieve any concerns. Mr. Holden moved to continue the petition to February, as requested. Ms. Oldham seconded. Motion carried. Continued to February 23, 2023.

OTHER BUSINESS:

1. Election of Officers- See above.
2. Confidentiality and Conflict of Interest Forms- Board members signed the forms.