

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

**BOARD OF ZONING APPEALS MINUTES
DATE: FEBRUARY 23, 2023 TIME: 6:30 P.M.**

PRESENT:

ABSENT:

**JASON FAUCETT, PRESIDENT
MICHAEL LONG, VICE PRESIDENT
BYRON HOLDEN, SECRETARY
EVAN MATLOCK
(VACANT POSITION)
KAYLA BROOKS, EXECUTIVE DIRECTOR
DARLA SMOAK, RECORDING SEC.
RHONDA COOK, ATTORNEY**

The February 23, 2023, meeting of the Hancock County Area Board of Zoning Appeals was brought to order by President Mr. Jason Faucett. Mr. Holden moved to accept the previous month's minutes as received in the mail. Mr. Long seconded. Motion carried.

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

Mr. Long moved to adjourn. Mr. Matlock seconded, and the meeting was adjourned at 10:15 p.m..

ATTEST:

ATTEST:

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, February 23, 2023

TIME: 6:30 PM

Miller, Silvia Wright, Norman
6911 W Jennifer Dr. Grfld
36 - 16 - 5

Residential
Variances 22-2328
Buck Creek

Ms. Brooks presented a staff report with a recommendation to deny the petition. Mr. Silvia Miller, attorney, representing the petitioner, the late Mr. Norma Wright and along with his son, Mr. Michael Wright, was present to request approval of a variance to allow the fence to exceed 42" height in the front yard, a variance to waive the 50% transparency requirement in the front yard and to allow the structural side of the fence to face outward. Ms. Miller said the fence does not impede visibility or any air flow or obstruct the light, the fence is not in the right of way and the fence does not create a traffic hazard. Ms. Miller said the fence was installed to block the view of vehicles and commercial car carriers that frequent the neighbor's lot. She said the lot area between the fence and the neighbor's driveway has been filled in with rocks, however, it was a huge mud hole prior to the rocks. Ms. Miller said the petitioner agrees to withdraw the variance request to allow the structural side to face outward and he will agree to install the face boards on the neighbor's side of the fence to finish the fence with a shadow box style fence. She said the neighbor to Mr. Wright works for a car company and he is constantly bringing trailers with vehicles on them, or he has utility trailers parked in the driveway. She said the neighbor has turned the lot into a commercial operation. Ms. Miller said Mr. Wright installed the fence, in an attempt, to block the rocks and dirt and vehicle tracks. Mr. Faucett asked if the subdivision has a HOA? Ms. Miller answered no and said it is an old subdivision that has minimal covenants. Mr. Michael Wright said years ago when they purchased the home, they were given a list of things that can and cannot do on their property, but that list has been lost. Ms. Miller said she did not find any recorded covenants. Mr. Wright said the aerial is incorrect where the property line is shown, and it shows the fence is built right on the property line, but the fence is at least 6" off the property line. He said he has had to pick up a large number of rocks on his side of the property from the neighbor's driveway. Mr. Wright said the neighbor operates a business with many vehicles coming and going from the property. He said it has been a difficult transition since he has neighbors. Mr. Wright said the lot was vacant for 25 years before there was a home built next door. He said he is fearful that the condition of the neighbor's property will adversely affect his resale values. Mr. Wright said he plans to sell his property in the next couple of years to move to Montana. Mr. Faucett asked for remonstrators, and none were present. Mr. Matlock asked who will maintain the fence? Mr. Wright answered he will maintain the fence and said it will be on his property and belong to him. Ms. Miller said the fence will be like any fence with the property owner being responsible for all maintenance and repairs. Ms. Smoak said the Planning Department has received complaints going back and forth since 2016 from the neighbor dispute. There was no further discussion. One (1) approved (Matlock) and three (3) denied (Holden, Long, Faucett). Mr. Long moved Mr. Wright must comply within 30 days from the date of the meeting. Mr. Holden seconded. Motion carried.

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

Agricultural
Spec Ex & Var 22-2317
Center

Ms. Brooks presented a staff report with favorable recommendations for the variance and special exception, subject to conditions of approval: 1) The special exception shall be limited to, and run with, the current owner(s). A recorded commitment allowing accessory dwelling only for the Upton's use shall be made, 2) Proof of an adequate septic system shall be required prior to occupancy. It shall be separated from the pasture by a fence so that the animals do not damage it, 3) A physician's letter shall be provided prior to issuance of the improvement location permit for the barn addition corroborating the medical need for the Upton's parent (mother), 4) The applicant shall seek and obtain annual occupancy permits, 5) Only the Upton's parent (mother) can occupy this dwelling unit under the special exception, 6) The BZA reserves the right to revoke the special exception at a public hearing if the accessory dwelling is demonstrated to constitute a public nuisance, 7) The 220-volt service shall be removed to eliminate a full-service kitchen if the dwelling is no longer needed for the Upton's parent (mother), 8) There shall be only one electrical and gas meter on the property, and 9) The accessory dwelling unit shall not have a separate address. Ms. Kristie Upton was present to request approval of a special exception to allow an accessory dwelling and a variance to allow the accessory dwelling to be detached on the ground floor of a barn addition for her mother. Ms. Upton said she lost her father in September 2019, and her mother turned 88 years old on this very day and she promised her father that she would take care of her mother. She said she intends to keep the promise she made her father. She said she would like to have her mother near by where she lives but yet allowing her mother to keep her independence. She said her parents moved to Hancock County in 1970 and her mother would like to remain in the county. Ms. Upton said her mother's health is starting to decline and she needs the supervision to make sure she is safe. She said they plan to add an addition onto the front of an existing barn that will be large enough to give her an open concept living space with a restroom that has a walk-in shower. Ms. Upton said she really does not need to have a full kitchen. Mr. Holden asked if the accessory dwelling was going to be attached to the barn with the kennel operating as a home occupation? Ms. Upton answered no, and said the accessory dwelling will be attached to the back barn behind the kennel. Ms. Linda White, along with her attorney, Ms. Silvia Miller, were present with concerns but not opposed to the accessory dwelling. Ms. Miller said the Upton's hold dog training sessions every Tuesday, Thursday and Saturday which causes a revolving door of traffic, people, and dogs. She said their concerns are about the operation of the home occupation and who polices the rules. Ms. White said she lives next door, to the East, and she understands that the Upton's home occupation approval allowed them to have a limited number of people and dogs at one certain time but said she can't count the number or track which dogs are allowed. Ms. White said she can report that the number of vehicles coming and going from the driveway can be a traffic hazard and is causing a traffic jam. Ms. White said she does not understand why Kristie would want to put her mother in the middle of a barn field surrounded by the kennel, with barking dog, and horses, in the corral, with people coming and going every Tuesday, Thursday and Saturday? She said if her mother is so ill, she does not need to be in the middle of all that nonsense with all the noise and congestion. She said typically when a person is ill and they need the extra care, that person should be close by for easy access. Ms. White said the traffic starts at 4:45 pm and continues to 8:15 pm. She said often there will be 2 to 3 vehicles in the driveway waiting to exit on to US 40 to go west or the vehicle will go across to the center lane of US 40 and another will follow, and they block US 40. Ms. White said with all the happenings at the Upton home, she does not feel that it will be a peaceful existence for the ailing parent with all the dogs barking and everything else. Mr. Long said the home occupation approval may be revoked at a public hearing if they are not complying with the conditions of approval. Ms. Upton said her home occupation is operating under the conditions of approval. She said they were granted approval to have classes on Tuesday, Thursday,

and Saturdays. She said having her mother at her property will allow her to continue to take care of her mother as she promised her father and keep operating her home occupation. She said their training classes have been an asset to the county. Ms. Upton said they are providing a needed service by training therapy dogs for the school systems, and they are operating as they were permitted to do. She said Ms. White is unhappy because she has a pending lawsuit against the White's and the Hancock County Health Department regarding the spillage of sewage from the White's property. Ms. Upton said the sewage spillage may be creating a health hazard that may prevent the accessory dwelling from being permitted due to a health risk. She is fearful that the sewage will be an issue when she applies for a septic permit. Ms. Brooks said the accessory dwelling will require a septic permit from the County Health Department and she will leave that review and approval to the experts in the County Health Department. Mr. Long moved, if approve, the petitioner must comply with staff conditions of approval 1-9. 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.

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 an accessory structure (existing barn) in the front yard in front of the house, and a neutral recommendation regarding lot frontage variance request, with the following comment: while 30' of road frontage is adequate width for a driveway, the BZA could require more, like 45'. Mr. Ryan Willhelm, along with his wife, Mrs. Christina Willhelm, was present to request approval of a variance to allow an existing barn to remain in the front yard of the proposed new home and a variance to reduce the required 125' road frontage to 30' from a proposed new dwelling that they plan to build for their retirement home. Mr. Willhelm said their daughter and son-in-law purchased acreage to the east and were approved for a minor subdivision and variances for a very similar proposal. He said the daughter's west property meets their east property line and connects for 25'. Mrs. Willhelm said they saw the subdivision proposed by their daughter and son in law and thought it was a great idea. She said they would like to build their retirement home on lot 3 and their daughter plans to build their home on their lot 3 which they will back up to each other so the grandkids will be able to walk from one home to the next without ever going out on the road. Mrs. Willhelm said lot 3 will be their forever home if they are able to build their retirement home. Mr. Willhelm said before the last month's BZA meeting, they instructed Mr. Gibson to continue the petition if there were neighbors that were present and opposed to the petition, to allow time for them to meet with the neighbors and discuss their concerns. Mrs. Willhelm said she met with neighbors, Mr. Jayson Combs and Mr. Estes. She said Mr. Estes owns the property to the south and has the horse barn that will be closest to lot 3 driveway. Ms. Willhelm said Mr. Estes expressed concerns about his privacy and about the style of home they intend to build. She said at the previous meeting Mr. Combs did say that the driveway would be too close to Mr. Estes' horses, however, Mr. Estes did not express any concerns and she said the horse barn will be 115' away from the driveway not 30' as stated previously. Ms. Willhelm said she met with Mr. Combs, and he stated he did not want to see homes out his window. She said Mr. Combs said he just wanted the area to remain rural to preserve his privacy and asked her why they just did not purchase a lot from their daughter instead of doing a subdivision. Ms. Willhelm said Mr. Combs said he was worried that the subdivision would adversely affect the property values of his home. She said she told him the homes would be custom built homes. Mr. Willhelm said they did not want to purchase a lot where they were in front of their children where they were in the direct view of everyone coming and going from the property. He said they feel it would be a much more comfortable situation for all to

have the lots backing up to each other giving the kids a large area in the center of the mile block to play without getting near the road. Mr. Holden asked if they plan to share the driveway for lots 1 & 2? Mr. Willhelm said Mr. Gibson explained the shared driveway agreement and the agreement will be part of the recorded plat. Mr. Jayson Combs, neighbor, was present and opposed to the petition. Mr. Combs said there are quite a number of lots in the area that are already platted and ready to build on and their daughter's lot has been approved. He said he feels they should build on one of the lots and leave the field alone. Mr. Combs said the animal barn to the south may be 115' away from the driveway but the animal field is much closer. He said last month there was talk from the Plan Commission Director about her dislike for flag shape lots and he says the plan or shape of the lot has not changed. Mr. Combs said the existing home on the property was remodeled a couple of years ago, so he asked why they just didn't remain in the house. He said Ms. Willhelm answered they did not remain in the house because they are getting older. He said she said the existing house is 2 story and they do not want to worry with stairs. Mr. Combs said he was concerned that more houses built in the area will decrease property values. He said he wants to see more farmland not houses in the area. He said he has always played by the book and followed standards. Mr. Combs said he did not ask for a variance when he was told no, he redid his plan to comply with the requirements. He said rules are made for a reason and variances should be only granted when it is a necessity. Mrs. Willhelm said they currently have 2 lots and are simply requesting to add one more lot to the rear for their home. She said they chose to replat the lots and want a private driveway for their own personal lot. She said the other 2 lots will share the driveway and a maintenance commitment agreement will be recorded during the platting process. Mrs. Willhelm they could technically build on the north lot right now, but they chose to replat to be able to offer a better lot lay out. Mr. Holden said 30' wide driveway is small, but the size is acceptable. Ms. Brooks suggested that 45' wide would be equivalent to a cul-de-sac size lot and said the additional width would allow for a utility's easement. Mr. Holden moved, if approved, the petitioner must record a shared driveway maintenance agreement for Lots 1 & 2 and the agreement must be shown on the recorded plat. Mr. Long seconded. Motion carried. There was no further discussion. Variance to allow an accessory building in the front yard in front of the house: three (3) approved (Holden, Long, Faucett) and one (1) denied (Matlock), and Variance to reduce the required 125' road frontage to 30': four (4) approved and zero (0) denied.

Bajwa, Rauandeep Dwain, M
2804 N 700 W Grfld
23 - 16 - 5

Industrial General
Special Exception 22-2260
Buck Creek

Ms. Brooks said the petition must be continued due to improper advertising. Mr. Holden moved to continue the petition to the March hearing. Mr. Matlock seconded. Motion carried. Continued to March 30, 2023, due to improper advertising.

Arthur, A Jacob
6464 N Main St. Wilkinson
36 - 17 - 7

Residential
Variance 23-2341
Brown

Ms. Brooks presented a staff report. Mr. Jake Arthur was present to request a variance to allow a swimming pool to be constructed in the front yard on a corner lot. Mr. Arthur said the proposed swimming pool will be behind the face of the house facing Main Street. He said his home faces Main Street in Willow Branch and if he was not on a corner lot a person would think the pool was in the side yard of his home. Mr. Arthur said the yard has a steady slope, so the pool is being constructed in the best location to avoid the septic system. He said the septic system is behind the house next to the shed with finger system running north/ south. Mr. Long said the most important thing for him is that the pool does not appear to be in front of the house when the lot is looked at. Mr. Faucett asked for

remonstrators; and none were present. Mr. Faucett asked will the pool have a deck around it? Mr. Arthur answered not at the current time. Mr. Long asked what the size of the pool will be? Mr. Arthur answered 24' round pool is proposed. Mr. Long asked if the measurements for the pool location were from the lot line or the centerline of the street. Mr. Arthur answered he was instructed by Plan Commission staff to measure from the centerlines of the roads. Ms. Brooks said she was measuring from the apparent lot line. Mr. Long moved, if approved, the petitioner must measure the pool a minimum of 85' from the centerline of Main Street and 120' from the centerline of 650 North. There was no further discussion. Four (4) approved and zero (0) denied.

Chapman, Jeffrey
66 N. 350 W Grfld
4 - 15 - 6

Commercial Neighborhood
Variance 23-2342
Sugar Creek

Ms. Brooks presented a staff report with a favorable recommendation for the variance to reduce the required front yard setback for a proposed front porch; subject to the following condition: 1) The porch shall not be enclosed. Mr. Jeffrey Chapman was present to request a variance to reduce the required front yard setback to 69.9' vs. the required 85' for a front porch. Mr. Chapman said the porch is needed to help shield his daughters from the weather while they wait for the bus. He said he has twin disabled daughters and they have been using the pole barn for an area to wait for the bus but in increment weather it is difficult to get to the barn. Mr. Chapman said his daughters will remain living with them, so they want to make things as easy as possible for the girls. He said one of the girls is sensitive to sun so the porch will give her a safe place to sit. He said the porch will also improve the look of the home. Ms. Amanda Kent, neighbor to the north, was present and opposed to the variance request. She said all the homes on the street are in a line along the street. She said the pole barn Mr. Chapman built has obstructed her view and she is home all day due to a disability. Ms. Kent said there are cameras on Mr. Chapman's barn that are pointing into her windows invading her privacy. She said the cameras are looking into her rear yard and her advocate told her that the cameras are invading her right to privacy. Ms. Kent said she is asking the board to deny the request and she wants the camera removed. Mr. Paul Kidwell, Ms. Kent's father, was present and said he is not opposed to the variance request for the proposed porch, but he wants the camera removed from the barn. He said the camera, pointed at her bedroom, upsets Amanda and she lives alone so she is very uncomfortable. Mr. Kidwell said the barn location blocked the view and the camera invaded the privacy of Ms. Kent. Mr. Chapman said the camera is not pointed at Ms. Kent's bedroom or her at her home. He said the camera is pointed in the direction needed to provide protection for his home. Mr. Chapman they are only improving their property and providing a comfortable home for their disabled twins. He said they do not intend to upset anyone. He said they do not wish to upset Ms. Kent and they do wish to be good neighbors while providing a safe home with security for his family. Mr. Long moved, if approved, the porch shall not be enclosed. Mr. Holden seconded. Motion carried. There was no further discussion. Four (4) approved and zero (0) denied.

Hood, Adrian
646 S. 600 W N.Pal
1 - 15 - 5

Commercial Regional
Spec Ex & Vars 23- 2343
Sugar Creek

Ms. Brooks presented a staff report with a favorable recommendation for the special exception to allow a lumber yard and variances to waive the landscape buffer yard requirement and the paved parking requirements. Mr. Adrian Hood said this was his 4th time he has been before a county board to for the proposal, however, the use has not changed for the past 10 years he has been using the property. He said he purchased the property 10 years ago and grandma lived in the house, but she is not longer living in the house, so he plans to rent the home. Mr. Hood said when he purchased the

property, he thought it was zoned for what he was doing because the neighbors on the north and south sides were operating similar commercial businesses. He said when he received the notice of violation, he was shocked. He said he has filed every petition that staff directed him to do. Mr. Hood said in his opinion what he is doing is no different from what any other county farmer is doing. He said trees from the farm are brought in on a large truck and are processed and taken off the property on that same truck. Mr. Hood said he and the neighbor to the south share the barn yard space. He said his neighbors have been operating their businesses far longer than he has. He said the driveway surface is asphalt to the barn yard then it becomes gravel surface. Mr. Faucett asked for remonstrators, and none were present. Ms. Brooks said the Town of Cumberland did call to inquire about the petition, however, they did not express any concerns or opposition. Mr. Hood asked if the approval of the petitions could run with him and his heirs? He said he has 3 children, and they will inherit property. Mr. Holden said the variances will run with the commercial zoned area of the property. Mr. Long moved, if approved, the special exception approval will apply to Mr. Hood and his heirs only and the variances would apply to the commercial zoned portion of the lot. Mr. Holden seconded. Motion carried. There was no further discussion. Special Exception: four (4) approved and zero (0) denied. Variance to waive the landscape buffer yard requirement: three (3) approved (Long, Faucett, Matlock) and one (1) denied (Holden); and Variance to waive the paved parking requirement: three (3) approved (Long, Faucett, Matlock) and one (1) denied (Holden).

Wright, Casey
3441 W 1000 N Ft.Ville
17 - 17 - 6

Industrial General
Variance 23-2350
Vernon

Mr. Holden recused himself from the discussion and voting of the petition. Ms. Brooks presented a staff report with an unfavorable recommendation for the variance to waive the paved parking requirement. Ms. Brooks said the petitioner plans to install a ninja warrior/ gymnastic recreation facility on the site in the IG zone. She said the location is just outside of Fortville jurisdiction. Ms. Brooks said there was a horse stables operating with a single-family dwelling and the home will continue as a single-family dwelling. She said the driveway will be widened with fresh gravel for two-way traffic. Ms. Brooks said the petitioners have agreed to install a shelter house for an outdoor park like setting. She said the site plan shows handicap parking and with handicap parking a gravel surface is not a good idea. Ms. Brooks said there should be paved parking in all public serving areas especially in the handicap parking areas. She said the board could consider phasing the pavement installation. Mr. Andrew Wert, land use professional with a law office and along with and representing, Mr. Tatum Schuetz, owner of Rice Gymnastics. Mr. Wert said Mr. Schuetz and Rice Gymnastics owns 6 locations with a variety of outdoor activities offered at the locations. He said they purchased the 30.57 acres property with a single-family home and two horse barns. He said this camp will be called Rice 360 Movement Academy at the Ranch, so they want the image to maintain the rustic feel. Mr. Wert said the plan is to renovate the larger barn with 17,800 sf for indoor lessons and camps area and they will offer both indoor and outdoor space for camps. He said the smaller horse barn will be relocated further to the east on the property. Mr. Wert said they plan to construct a nice shelter house to enhance the outdoor activity area for outdoor camps. He said they plan to pave the 6 handicap spots, but they do not plan to pave the entire remaining 64 spaces. Mr. Wert said there is an existing paved driveway entrance that will remain, and they may install concrete for the 6 handicap spots on the south edge of the pond. He said they feel leaving the gravel will give less of a commercial feel and allow the rustic atmosphere and look remain while leaving the ranch character. Mr. Long asked was the single-family dwelling in use? Mr. Wert answered yes, and said it is a rental property. Mr. Faucett asked if there were horses on the property and if the barns are currently in use? Mr. Wert answered no, and said the horses have been removed and the barn are being not being used until they are renovated. Mr. Faucett asked if the pastures were in use? Mr. Wert answered no, and

said the septic is being installed in one of the pastures and the others are intended to be used as part of the area that creates a backyard camp area. Mr. Long asked why they could not pave the parking area? Mr. Schuetz said once the purchased the property the horses were moved off the property. He said all the fencing has been removed. Mr. Schuetz said there will not be any type of horse activities on the property. Mr. Faucett said he has not heard a reason or a practical difficulty for not paving the parking area and asked was there a storm water concern or issue? Mr. Schuetz answered they really want to maintain the rustic feel and character. He said in addition to utilizing the existing gravel they would have to add another layer to it. Mr. Schuetz said the interior of the barn is exposed beam with the open look of a barn and they would like for the exterior to keep the rustic look and feel. He said the existing driveway is paved and they would extend the pavement the width and length of the driveway and not add gravel to widen as previously stated. He said they want the project to look professional with a rustic character. Mr. Schuetz said the handicap parking spaces will be concrete to go along with the sidewalks. He said they are only requesting the parking area to remain gravel. Mr. Schuetz said the parking spaces will meet or exceed the ADA standards. Ms. Brooks asked the anticipated number of kids onsite at one time? Mr. Schuetz answered the plan to start in phases with the first phase being half the building with approximately 50 kids per class. Mr. Faucett asked how long was class time? Mr. Schuetz answered class is 55 minutes long, however, the gymnastic camps can last all day long. Mr. Long asked how they determined the number of parking spaces? Mr. Schuetz answered he measured the existing gravel area and calculated the spots from the size. Ms. Brooks said she has not calculated the amount of required parking spots. She said she is opposed to completely waiving the pavement requirement. She suggested that if the board was inclined, they might consider allowing the pavement to be installed in phases. Mr. Schuetz said their standards are that the gravel driveway must support the largest size of fire truck that operates. He said the intent is to maintain the rustic feel of the ranch and to advertise the barn in the field for summer camp at the ranch with ninja type of events. Ms. Brooks asked if the cost to install the pavement was a factor in requesting the variance? Mr. Schuetz answered not really. He said the request is really about the character and overall, the feel of the camp and how they want their image to be perceived.

OTHER BUSINESS:

- 1) BZA Membership- Ms. Brooks said the Plan Commission membership is being discussed and changes are being made. She said the BZA membership is still being discussed. Ms. Brooks said the meeting will be on March 7, 2023, with Commissioners, to hopefully resolve the membership conflict. There was no further discussion.

ZONING VIOLATIONS:

- 1) James and Elizabeth Williams – clean-up of property – that hearing date has been set for March 13, 2023 at 1:30. Ms. Brooks said she will attend the hearing along with Mr. Morelock.
- 2) Leslie Frady – pod in the driveway – Complaint was filed on 12/14 and service by the Sheriff was given on 12/20/22. Ms. Cook said if we have not heard anything back from her and the pod is still there, we can proceed with a Motion for Default Judgment.
- 3) Molly Martinez – chickens in Shirley – Mrs. Smoak said she was able to verify that the chickens are still on site. Ms. Cooks said the attorney’s staff has prepared the documents for filing with the court and the documents are waiting Mr. Morelock’s review and signature. She said that case will be filed with the court early next week.