

Decatur County Board of Zoning Appeals Minutes
Decatur County Courthouse
150 Courthouse Square
Meeting Room

The regular scheduled meeting of the Decatur County Board of Zoning Appeals was convened at 6:30 p.m. on Wednesday, July 8, 2020 at the Decatur County Courthouse. The meeting was called to order by Paul Stone. Present at the meeting was Paul Stone, Jay Hatton, Gary Fisher and Joyce Brindley. Joining the meeting via Zoom is Melissa Scholl, BZA Attorney. Joining the meeting via phone is Janey Livingston. All 5 board members were present. Also attending the meeting was Melissa Scholl, BZA Attorney, Krista Duvall – Decatur County Area Plan Director and Debbie Martin – Administrative Assistant.

Paul Stone called the meeting to order and read the following; *to comply with Title VI of the Civil Rights Act of 1964, Decatur County requests that participants in this meeting complete a voluntary, anonymous survey that is available on the table in the back of the room.*

***Approval of minutes of the March 4, 2020 scheduled BZA meeting:** The minutes were approved as mailed.

*** BZA Petition 2020-6 – Brian Gard** is requesting a “**Variance**” in an A-1 zoning classification as provided in the Decatur County Zoning Ordinance Section # **945** from the required side setback of 30’ to 15’ to build a pole barn. The property is owned the petitioner and is located just south of 929 Barachel Lane, Greensburg in **Washington Township**.

Brian Gard: I am requesting a variance of 15’ versus the 30’ setback due to a slope in the land to construct a pole building. This would allow us to eliminate a lot of excavation. **Paul;** approx. how tall will that building be? **Brian;** probably a 12’ sidewall. **Joyce;** is the pole barn is just for storage? **Brian;** yes. **Jay;** how does the driveway work? **Brian;** we have an easement on the drive that comes off of Barachel Lane. We want to move 15’ closer to that driveway than what the setback would be. **Jay;** is there any room here (referencing a map) to do anything? **Brian;** not very easily no because we have the house and a garage and another full structure here. **Jay;** how far is your property line from this driveway? **Brian;** about 30’. **Jay;** where will your drive come in? **Brian;** pointed the area on the map, it will be a U-shaped driveway. **Jay;** I’ll share the map as soon as I get it all drawn. **Brian;** there is a lot of slope on this property. **Jay;** what size is the building? **Brian;** we are hoping to do a 30’x40’ or 30’x36’. **Joyce;** will you have electricity in this pole barn? **Brian;** not initially, we may add it later. **Janey;** is there any plumbing that will be in this building? **Brian;** no. **Paul;** is it a clear line of site from this proposed building to that house back the lane? **Brian;** no a clear line no, between Denise Ziegler’s house there is a row of evergreen trees. **Paul;** and will those remain in place? **Brian;** that is not on our property so I’m assuming so. **Paul;** the trees will not have to be removed to build a building? **Brian;** no. **Paul;** is there a home? **Brian;** there will be. **Jay;** we maintain those 30’ setbacks for a reason, we want people to be able to maintain their property line and to keep from infringing on your neighbors. On a 12’ sidewall you should be able to maintain the building.

Jay Hatton made a motion to vote on BZA 2020-6; Joyce Brindley seconded the motion with all 5 members present voting yes. **Paul;** your petition passes, stay in contact with the girls regarding your permit and inspections.

* **BZA Petition 2020-12** – **Terry Brown** is requesting a “**Conditional Use**” in an A-1 zoning classification as provided in the Decatur County Zoning Ordinance #935(2)(b) to buy and sell fire arms from his residence. The property is currently owned by the petitioner and is located at 1951 S CR 1050 W, Greensburg in **Clay Township**.

Terry Brown: I am wanting to sell firearms out of my garage, I do not plan to put any outbuildings. There is no heavy foot traffic, no more than maybe one car extra. I don't plan on doing too much, this will mostly be to friends and family, maybe the public here and there. There will be no signage and I am not advertising for anything of that sort. **Paul;** you will have an FFL? **Terry;** yes. **Janey;** so most of your sales will be online? **Terry;** no, these will be picked up, they have to come and pick them up. There are forms to fill out. **Jay;** have you had past experience in this business? **Terry;** yes, when I was in Johnson County it was all private, nothing to the public. Now I run names and SS numbers. **Jay;** there will be no discharging on your property, no costumers will test or shoot on your property? **Terry;** no, I do not want that liability. **Joyce;** how far are you located from this road (referencing a map)? **Terry;** it's at least over 1000', we are quite a ways off the road. **Joyce;** have you contacted your neighbors? **Terry;** yes.

Jay; this conditional use, you will be required to come back before this board; Krista can we elect a 3-5 year or is the standard 5 years? **Krista;** you can decide how many years, up to 5. **Jay;** typically do a 5-year conditional use, that allows the neighbors a chance to see how you run it, or you don't keep your work, this allows the board to extend this and typically we do, people are typically honest and do a good job. **Paul;** as long as it's recorded in the record that there will be no discharging or testing with customers and things like that, I would propose that it be a 5 years but should that not be the case, if the neighbors have concerns, then we have some discussion opportunity with him. **Terry;** when my family come out, we shoot, is that ok? It is not a business deal with them, we shoot clay pigeons. **Jay;** yes, that is living in the country. We are talking about customers and you selling a firearm and then you wanting to move this on to tactical training on your property, setting up a gun range, those are the things that this is leaning toward that we are trying not to promote. **Paul;** also there is no clear definition or subjective number of shots but my advice would be to be a good neighbor, make it a situation that your neighbors don't come in here and complain that since they got that letter in the mail that there has been a lot of shooting occurring, things like that. Just be cognizant of their concerns. **Terry;** actually I went around and talked to them all, when I'm out shooting, I will let them know. There is one who works nights I call him to let him know.

Janey Livingston made a motion to vote on BZA 2020-12 with the stipulation that there be no customer firearm testing, firearm training or gun range at this location; Jay Hatton seconded the motion will all 5 members present voting yes. **Paul;** you have passed, thanks for following the process and coming in. Be a good neighbor and I'm sure come 5 years down the road should you like to renew this we shouldn't have any problems.

* **BZA Petition 2020-13** – **Andrew & Dolores Honeycutt** is requesting a “**Variance**” in an R-2 zoning classification as provided in the Decatur County Ordinance #1060 to the required 30' rear setback to a 15' rear setback to build a garage. The property is currently owned by the petitioners and is located at 209 S Lincoln St, Westport in **Sand Creek Township**.

Andrew Honeycutt: I want to move my woodworking equipment out of my garage into a 14'x32' building out back. I need the variance because there is not enough room. **Paul;** your neighbor to the back side of your lot, have you spoken to them? **Andrew;** yes. **Paul;** it looks like there is a fence back there, what is the approx. distance from your structure to their closest structure, do you have an

idea? **Andrew;** probably will be 20'-25', it's away from the easement. **Paul;** will this be a pole type structure? **Andrew;** stick frame and basically with electricity. I will have heat and air conditioning in there. **Joyce;** I sit on the Board of Westport, I know that you have come before us and we approved you to do this for the simple reason that in Westport it is so very hard for anyone to get a 30' distance between you and someone else, it's almost next to impossible. I personally know your neighbors and I know that they and you are a good neighbor. **Krista;** I received some letters from three adjoining property owners. Also, the agenda says 15' setback but it is actually an 18' setback request. **Gary;** is the side setback at 8'? **Paul;** what is the side setback requirement? **Krista;** it is 8', he meets that one. **Paul;** it appears you have appeased your neighbors, that is always good to have those conversations ahead of time. **Jay;** will you add a drive around to your door? **Andrew;** no.

Joyce Brindley made a motion to vote on BZA 2020-13; Jay Hatton seconded the motion with all 5 members present voting yes.

* **BZA Petition 2020-14** – **Nicolas Kohlman** is requesting a “**Permanent Special Exception**” in an A-1 zoning classification to build a pond on his property. This request falls under Decatur County Ordinance #2530. The property is currently owned by the petitioner and is located at 1017 W Main St, Westport in **Sand Creek Township**.

Nicolas Kohlman: I want to build a pond on the west side of my house. **Paul;** tell us about the size and things like that. **Nicolas;** I think it is roughly 3.5 acres. I just want to put it in to fish with my family. **Paul;** the distance from the nearest structure? **Nicolas;** I don't have that here. I know it meets the questions in the paperwork that I filled out; I just don't have an exact number. **Paul;** who is building it? **Nicolas;** Ed Johannigman. **Jay;** did you also have to go before the Town of Westport? **Joyce;** this is actually not in the limits. **Paul;** approximately how deep do you believe it will be? **Nicolas;** 15' is what we are aiming for. **Paul;** does Westport Fire cover that area; do they have any interest in a draft basin? **Nicolas;** no, I talked to them and they said it was too far off the road, they were not interested. **Joyce;** can you see your house from the road? **Nicolas;** you can see if from Highway 3 at times, depends on the season. **Jay;** where the pond will go, what is there now, is it a lower area that is grown up? **Nicolas;** half of it is down in a holler, lays wet. **Jay;** it doesn't contain water now? **Nicolas;** no. **Paul;** have you spoken to any neighboring property owners? **Nicolas;** I spoke with the Andersons and Amy Henderson. **Audience;** I am concerned with runoff in my field. It all slopes down towards my field. **Paul;** where will this outlet? **Nicolas;** it will shoot the other way towards the south; it will benefit him because his property lays wet. When I dam this up it will keep his property dry. **Audience;** I can't see that because with the dam built up there will be water runoff. **Jay;** the dam will be closer to State Road 3, right? **Nicolas;** yes. **Jay;** that's the end that it will go on. The outlet for the pond. **Audience;** how high is this dam going to be, this is all my property and it all slants down hill.... **Jay;** toward that? **Audience;** no away from that. I was concerned with the water runoff; I have trouble with these ditches anyway in my field. **Joyce;** are you Mr. Callahan? **Callahan;** yes, I don't know if this dam will help me or not. **Paul;** I'm trying to understand, your concern is that he will raise this elevation which will create more runoff onto you? **Callahan;** right. **Paul;** I can't imagine building a pond and not sloping it towards the water to catch the runoff. According to this approx. 4 acres of drainage and the pond will be how big? **Nicolas;** 3.5 acres is what I'm aiming for. **Nicolas;** all of the surface area of the holler is draining towards him now and when I dam it up, the surface area of that holler will drain the other way. **Callahan;** he will be 100' from my fence line? **Nicolas;** yes, whatever the paperwork says that I have to be that I filled out. The questionnaire says what you can and cannot do. Mr. Johannigman knows all about that as well because he has built several ponds. **Jay;** read part of the questionnaire. **Callahan;** my house sits down here, I own this too (referencing a map), I don't know how close he will be to that. **Paul;** describe this elevation here. **Callahan;** it just slopes down towards me. **Joyce;** behind the part where the trailer is, is there a big

hill? I don't understand how that lake would go towards that hill. **Callahan;** I'm concerned about this field here. **Jay;** but you won't be damming up any dirt any closer to him, you won't be making an earthen dyke and raising that water level where it could run toward him. **Nicolas;** we are just taking it down to meet the 15' depth. **Jay;** so instead of running toward him it will be directed towards State Road 3. **Nicolas;** all that water that went into the holler will go across State Road 3, there are 2 hollers there. The second holler will stay the same, he will get half as much water as he used to get. **Jay;** if he doesn't raise the pond up.... **Callahan;** is he going to have enough runoff to fill the pond? I talked to Scott Sanders and he said he didn't think there would be enough runoff there. **Paul;** if he doesn't then it should have almost no bearing then from creating an excessive runoff towards you. **Callahan;** if it gets bad enough that it washes my ground more that what it is now, then what will I do then? **Jay;** well you are protected because our county has a drainage ordinance to protect property owners, he cannot change any course of water and add on you, he can take it a way, our ordinance is enforceable in this office, you can call the office and they will come out and take a look. We don't want to cause problems here, if there is tile and damages it, he has to take care of it. He cannot interfere with the natural flow of water. We have successfully built a lot of ponds. **Callahan;** if this helps my property, I'm fine but if it makes it worse, the pond is there. **Jay;** you have a legitimate complaint but I'm here to tell you that you have to find some comfort that we have ordinances that will make this work the right way and he will not be able to add any more water to your property. If he takes it a way then it's a win win. **Callahan;** what about our wells? I have a well along that fence line, will that affect a well? **Paul;** a pond should put groundwater pressure on, it shouldn't take groundwater away from anything. **Joyce;** do you use the well that you are talking about? **Callahan;** yes. **Laurel Fry;** I'm worried that the water from the pond will rise quick enough to come across the road and flood my property and erosion. I know as rain comes in it will take some in, I'm worried about a pond rising quickly and coming out the overflow. **Paul;** by design a body of water is a retention mechanism, essentially that overflow, if you get a 25 year rain, that pond should incrementally raise and should absorb let's say 20,000 gallons of water, it would raise the pond level up and retain it until it evaporated or if it was at the overflow pipe, that pipe would meter that so if anything, a heavy rain would be slowed by a body of water, does that make sense? **Laurel;** yes and I know a pond is not always going to be full, you are saying the pipe, as long as its not a huge pipe that I should be in good shape? **Paul;** well, almost even, regardless of the size of the pipe, because it will be designed with a spillway as well, but unless the dam would fail, I don't see any other than... the pond slows the flow of water because the water level of that pond has to raise before it outlets water. Often times retention ponds are installed for that reason to absorb a high rate of water and then slowly allow it to leave. **Joyce;** do you live on Highway 3? **Laurel;** yes. **Joyce;** and how far is it from the pond to Highway 3? **Nicolas;** I'd say at least 100'. **Paul;** I would encourage you to ease Mr. Callahan's concerns that you all try to bring any of that, as much as possible to bring that water towards the pond. Obviously, you cannot push additional water onto him, that would be affecting the natural flow of it. I think that would help appease his concerns as well. **Callahan;** how far does that have to be from a fence line? **Paul;** 30' from a property line.

Gary Fischer made a motion to vote on BZA 2020-14: Janey Livingston seconded the motion with all 5 members present voting yes.

***Conditional Use Discussion – Tim Callahan BZA 2015-22 - 7336 W CR 300 S, Greensburg, IN 47240**

Krista Duvall: A little over 4 years ago they came before the BZA and asked for a conditional use to run a business out of their home, they were going to build a house on that corner lot. They have other property down in North Vernon, they would grow vegetables, bring them here and sell them out of

their garage. There was a lot of concern from the neighbors, they were going to build something nice, it's a nice neighborhood. The neighbors were concerned about the added traffic and lights, people coming in and out. This year they opened up Hillbilly Corner, it's like a little roadside stand, they not only have vegetables but they have knick knacks and other things. The house was never built. The neighbors are concerned, there is traffic in and out and they are opening different hours of day and night, sometimes they have a box for you to leave your money on the honor system. **Paul;** does a conditional use require that a home be on that parcel? I'm assuming that they would have been contacted if it was expiring. **Krista;** yes. **Paul;** and were they notified that to continue this that they would need to come back to request a continuance of this? **Krista;** yes. **Paul;** and no response? **Krista;** they came in a couple of times to discuss this and they were thinking about going ahead and building the house, they never came back, the conditional use expires the end of the year. **Jay;** the lot was rezoned from A1 to A2, correct? **Krista;** yes. They wanted to make sure they could build their home and sell their vegetables. **Paul;** so this is on the agenda because there is no home..... **Krista;** because there are no home and surrounding property owners are concerned and unhappy with the traffic and the fact that.... **Joyce;** is there a retail license? **Krista;** no. **Melissa;** under the conditional use language of our current ordinance it says that it is to be operated entirely by the owner and family that reside on the premises. That is not happening, now there is the option for roadside retail stands that sell produce and related items for a limited period of time for a season. I don't know if this is seasonal. **Joyce;** it is seasonal. **Krista;** she is also having some classes, invites people to come out, they put together a little planter. There is a temporary building. **Jay;** it's a portable building. **Joyce;** I know that they don't do that in the winter, they do it in the summer because they come to the farmers market. I have stopped there and it's very nice but I noticed there is not retail license. I'm concerned if someone got hurt there, who would be responsible for that. **Krista;** one of the neighbors was concerned, at some point she said, I don't know for a fact, that they put in a pop machine and there were people stopping there all hours of the day and night. I was told that she went over on more than one occasion and unplugged it so that the lights weren't shining in her front window, I don't know if it was from the pop machine or the cars. We have had more than one complaint so I thought we needed to talk about it. **Joyce;** I think the house that is quite a ways, actually. **Janice Sebastian;** I have never been on that property, I don't know Joyce but I don't like looking at it from my front window, I don't like porta potties for one thing and weeds are about 2' tall around two big logs that they put around the driveway. They call it Hillbilly Corner, that's a bit much for me and my neighbors, he could have called it Callahan's Corner and been a little classy with it. What my main concern is, the property values, I have a nice home, almost 5 acres of ground and if I put it up for sale today, I'm not sure someone would buy it because of all the junk across the road. They are only there probably 60 days out of the year and I have to look at that 365 days a year. I don't know the lady who works there, I have been told it is his fiancé, his daughter was supposed to live in there and would be the only one who could work there. That didn't happen. I have people turning around in my driveway when they are busy, there are trucks with trailers sitting on the road, right behind my driveway. A dump truck took gravel to them this spring, he pulled into my driveway to work on his truck, why he didn't just stay in their driveway, I don't know. I didn't appreciate that either. I have people coming up to my door, I had a lady tonight that knocked on my front door and wanted to know if they were open, they were over there in a truck. I told her I have nothing to do with it. (inaudible)..... Callahan's, but I do have a problem with that shed sitting there 365 days a year when it's not even supposed to be there. I think it brings everyone's property values down on this road, and we have nice homes. I did never go on that property. **Jay;** this is why we have conditional uses. **Paul;** thank you for being present and voicing your concerns. So this expires at the end of this year, correct? **Krista;** yes. **Paul;** I think my recommendation on moving forward with this, I hear all of her concerns, I think they are legitimate,

like Jay mentioned, this is exactly why it's a conditional use, we can review how it was used and how they performed. My opinion about aggressiveness in stopping this at this point sounds like we would be splitting some hairs on whether this is a road side stand/seasonal versus being in violation because there is no home based on the terminology. My opinion would be that we send Mr. Callahan the property owner, a summary some of the bullet points of the neighbors' concerns and give him the opportunity to reconcile some of that, and if the opportunity should he choose to renew this conditional use, Ms. Sebastian will have the opportunity to discuss whether those were improved upon and let that play out in how the voting goes, should he choose to renew that, is my opinion. **Jay;** I support that. **Joyce;** I agree with you too, I don't think that this is an eye sore, I don't like anything that looks terrible. It is bothering her and I understand that. I do know also that is it seasonal because they do come to the farmers market. I don't understand why they are not doing what they said they were going to do by building a house. **Janie;** I think that is what bothers me is you get a conditional use, get approved and you don't follow through. **Joyce;** they paid to have that little building put there, think about that. **Paul;** lets summarize these concerns and bullet point them, send a letter and see if they are approved upon. **Joyce;** I know her neighbors, did the other neighbors complain too? **Krista;** I don't know, we don't take names when someone calls in a complaint, we just try to go out and look at it and make sure it's not just a spat. We felt like she had legitimate concerns. **Jay;** I appreciate you taking the first step to do this and bring this before the board, I think it's your job and I think you did a good job by presenting it to us. I appreciate that. **Joyce;** I like it that you see things where a lot of times we don't.

With no other business to be brought before the board the meeting was adjourned at 7:35 p.m.

Decatur County Board of Zoning Appeal

Secretary, Gary Fischer

Decatur County Area Plan Commission

ATTEST:

Paul Stone, President Decatur County Board of Zoning Appeals