

**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 6:31 P.M. on Wednesday, May 4, 2016, at the Decatur County Courthouse. The meeting for the Decatur County Board of Zoning Appeals was called to order by Albert Armand. All 5 board members were present as well as Krista Duvall--Decatur County Area Plan Director, Kenny Buening – Decatur County Building Commissioner and Debbie Martin – Administrative Assistant.

A copy of the meeting agenda and registrar of attendance is attached to these minutes and incorporated by reference. With no additions or corrections the board unanimously approved the April 6, 2016 minutes as mailed.

***BZA Petition 2015-9—Leroy Kemp, Jr.** is requesting a **“Conditional Use”** in an A-1 zoning classification to own and operate a dog grooming business for a period of 5 years. This request would fall under Decatur County Zoning Ordinance Section Number 935 (2--a & b). The property is owned by the petitioner and is located at 2824 W. Co. Rd. 600 N., Greensburg, In. 47240 in Adams Township. This petition was tabled at the July 1, August 5, September 2, October, 7, November 4, December 2, 2015, January 6, February 3, March 2, and the April 4, 2016 meetings. Mr. Kemp is working with the State of Indiana for his commercial septic system.

Leroy Kemp updated the board on his petition, stated that he has received his Commercial Sewage System Approval from the State of Indiana as well as his septic permit from the Decatur County Board of Health.

Board comments and questions:

- Has anything changed in the business plan? Leroy stated that nothing has changed.
- So you will start operation as soon as the septic is in? Yes

With no other questions or comments Roger Krzyzanowski made a motion to vote on BZA Petition 2015-9; Joyce Brindley seconded the motion. All members present voted yes.

***BZA Petition 2016-7 – Kevin & Angela Gay** is requesting a **“Variance” from 30’ side setback to 3’** in an A-2 zoning classification to build a detached garage. This request falls under the Decatur County Zoning Ordinance Number 945 (5). The property is owned by the petitioner and is located at 7872 W CR 550 N, Greensburg, IN in Adams Township. This petition was tabled at the April 4, 2016 meeting.

Kevin and Angela Gay stated their desire to build a pole barn on their property and are requesting a side setback from 30’ to 5’.

Board comments and questions:

- The concrete pad is 32' wide east to west, is that correct? **Kevin;** Yes. **Board;** You want to access it through the 10' span between sidewalk and bldg., what keeps you from moving and accessing it from the other side? **Kevin;** The land on that part starts to drop off.
- **Board;** From the property line to the current concrete slab you have 61' is that correct? **Kevin;** Yes **Board;** I see you have chosen 32'x24'? **Kevin;** Yes. **Board;** So 32' from north to south. You are set on 24' wide building, you can't cut that down? **Kevin;** Yes, I have a storage issue and need the space.
- **Board;** Your request of 5' is better than the 3' from previous meeting but still is awfully close to the property line. **Kevin;** There is a fairly steep grade behind that and the back drops off steeper. **Board;** what if you would follow our lead and move the metal building closer to the back, it would line up with your sidewalk – what kind of elevation change would you think the northwest corner is and how much fill would there need to be? **Kevin;** It drops off and I would need 2'-3' of fill. It drops off very steep. **Board;** so 2' of fill you could move it, it would be 15' away from the property line. That would be ½ of what we ask. Do you understand completely what we are saying? **Kevin;** Yes. **Board;** Are you interested in moving that over to 15'? Basically 5' doesn't give anyone access to their property. If your neighbor puts in a fence, that would only give you 5' to maintain your property. You need at least 10'. **Kevin;** if I do that it would only leave me a 3' distance between my home and building. **Board;** Can you move it 5' more for 10' from the property line? **Kevin;** I don't have a lot of space and maintaining access to my backyard. **Board;** I know ideally it's not exactly what you want but it's not what we want either. You are too close to the line that would make it difficult to maintain. **Board;** You have a 10' access with your drawing, so if you were to move it over another 5' to give 10' access on the west side, ideally that would be the best scenario to keep it off the property line. Once you put a permanent structure there you cannot move it. I guess what we are asking if you can move it another 5' it looks more promising. **Kevin;** can we split the difference? **Board;** we are already splitting, and if you want to mow that area most decks are 6' wide and with only 5' you would not be able to maintain. **Kevin;** if I go 10' will it be approved? **Board;** we will have to vote on it but your chances are much better

Jay Hatton moved to vote on BZA Petition 2016-7 with the change of side setback from 30' to 10'; Roger Krzyzanowski seconded the motion. All members present voted yes.

***BZA Petition 2016-9 – Darrell & Darla Bockover** are requesting a **“Conditional Use”** in an A-1 zoning classification to operate a small resale shop in a 12'x24' portable building on their property for a period of 5 years. This request would fall under the Decatur County Zoning Ordinance Section Number 935 (2). The property is owned by the petitioner and is located at 2122 W CR 1000 S, Westport, IN in Sand Creek Township.

Darla Bockover explained that they would like to open a small resale shop located at her residence. Operate 2-3 days a week, 6 hours a day or by appointment. We will be closed Jan-Feb, items sold would consist of small resale items, collectibles and home décor. The building is setting on a large cement pad so we would be interested in selling wooden outdoor furniture seasonally.

- Parking, do you have plenty of parking? I've been by there and the building looks nice. **Darla;** yes. **Board;** And what about signs? **Darla;** we don't have any now. We want to put one up. **Board;** you would have to get a permit for that when you do it.
- Will your septic handle this business? **Darla;** there will be no water to the building, only electric. We will not provide a public restroom, if needed they can use our home.
- And it is portable? **Darla;** yes. **Krista** stated that the building would have to be anchored due to it having electricity. **Darla** stated that it would be anchored.

Steven Dudley made a motion to vote on BZA Petition 2016-9 with the condition that the building be tied down due to having electricity; Roger Krzyzanowski seconded the motion. There were 4 members voting in favor of the petition and 1 member voting no.

***BZA Petition 2016-10 – Tim Lienhoop** is requesting a **“Variance”** to the side set back from 30' to 20' to build a 30'x50' detached garage on his property. This request falls under the Decatur County Zoning Ordinance Section Number 945 (5). The property is currently owned by the Lienhoop Family Irrevocable Trust and is located at 9532 W CR 850 S, Westport, IN in Jackson Township.

Tim Lienhoop addressed the board with his petition. He stated that he needs to put the garage in the requested location due to his well being to the north, the existing well was to the east so I cannot put it there. With the property line at the center of the driveway I need the extra 10'. So I need the side set back variance to be 20' instead of the 30'.

Board comments and questions:

- Is the garage going to be 50' east to west and 30' north to south? **Tim;** yes.
- Is this section deeded off of the trust? **Tim;** yes
- Your access doors will be facing where? **Tim;** towards the south.
- **Board;** is this advertised as 10', the papers say 20'? In our lineup is says 30' to 20' but you are needing 10'? **Tim;** I need 10' of the thirty on my side. **Board;** So you will be 20' total off the property line? **Tim;** yes.
- **Audience;** I own the adjoining property and I have no issue with this at all. This last real estate transaction has not occurred yet but should in the next 2-3 weeks.

Jay Hatton made a motion to vote on BZA Petition 2016-10, Steve Dudley seconded. All members present voted yes.

***BZA Petition 2016-11 – Steve & Katherine Schmidt** are requesting a **“Variance”** to the side set back from 50' to 5' to build a 42'x88' storage building on their property in an I-1 zoning classification. This request falls under the Decatur County Zoning Ordinance Section Number 1214 (1). The property is owned by the petitioners and is located at 1408 W Washington Street, Greensburg, IN in Washington Township.

Steve Schmidt represented the petition. Stated he would be putting up a Morton building and would like a variance of 5' instead of 50'. There are guy wires coming off Indiana Assembly side and I want to keep my building on that side of the guy wires.

- What is Greensburg set back on this? **Krista** 50'
- Do you know how far those guy wires are from north to south? **Steve** 85', but I want my building on this side of the guy wires.
- Your building is going to be 42' wide? **Steve**; yes and the guy wires come down about 60'.
- **Board**; This is pretty much a square area. You are wanting a variance to the set back because of the guy wire. Is there a reason the guy wire is your determining factor? **Steve**; I just don't want to put it out there another 50'-60', the guy wire will still be in my way. **Board**; Is the guy wire on your property? **Steve**; yes. **Board**; You can't change the orientation in the building? **Steve**; I really don't want to. **Board**; What is the acreage? **Steve**; 1.6 acres. **Board**; If we vote on a 5' variance then your neighbor in the future may want to do the same thing and a 5' distance is just too short. And your limiting factor on the guy wire is why? And the guy wire will not prevent you from moving your building? **Steve**; I don't want to lose property if I don't have to, so I don't want to move my building. **Board**; You feel if you meet our 50' setback that it would cost you too much property, is that basically what you are saying? And there's no reason that you cannot move the building to meet the 50' setback is so you won't lose the property? **Steve**; yes. **Board**; Are you offering anything above the 5' requested set back? How far can you go? **Steve**; I'm willing to go 15'-20'. **Board**; I'm just trying to get this clear in my mind, you bought an I-1 lot and you knew what the required setbacks are for the lot, now you are asking us to do this and saying that it is so valuable that you want to use the lower setback so that you have this abundant lot. I just wanted to make sure that I understood this. **Steve**; Well, John put a building up and placed it on the other side of my property, so I decided to move mine to this side. **Board**; Is there something in the future where you will be turning semis around in there, just to state that you don't want to lose that ground will not suffice. **Steve**; If I decide to put another building up then I would have to lose another 50'. **Board**; To say that you don't want to lose the property so I can do what I want to, it still doesn't give you nor the property to the south the leeway to be able to maneuver that thing. If he decides to put up a fence you only have 5' area along that side and in case of a burning building the fire department needs to access that side of the property so from a safety standpoint that is a problem. Probably not a very good reason to say that you don't want to lose property when you have 223' to the north. **Board**; I think if you consider moving it so you don't lose what you wanted but to be able to be closer to the rules it would be alright.
- **Board**; We want you to know that if we vote this down that it will be 1 year before you can apply again. **Steve**; That isn't going to happen, I'm going to put a building up, I've already gone through the state and it cost me \$5000. **Board**; we are just advising you that maybe if you could move it further away from that fence line. Can you do 30' from the building to the property line? **Steve**; I can do 30'.

Roger Krzyzanowski made motion to vote on BZA Petition 2016-11 stating that the side setback be 30' and not 5' from the original 50' set back; Steven Dudley seconded the motion. There were 4 members voting yes and 1 member voting no.

***BZA Petition 2016-12 Greensburg Soy Processors, LLC, Charles Fogg** is requesting a **“Variance”** to the front set back from 70' to 25' to build a 25'x161' attached porch on his property in an I-1 zoning classification. This request falls under the Decatur County Zoning Ordinance Section Number 1214 (1). The property is owned by the petitioner and is located at 1115 W Main Street, Greensburg, IN in Washington Township.

Charles Fogg stated that he wants to add a covered porch for eye appeal and to take care of his customers to be able to load them out of the rain. There is currently an easement which includes an emergency lane. There is blacktop so the drainage is ok.

Board; Is there a fence? **Charles;** yes. **Board;** is it going to remain fenced? **Charles;** yes. The 25' past the edge of the building and additional 12' for the emergency lane on top of that? **Charles;** yes. **Board;** will that be a post structure, corner post all the way down one side so they can channel down through there. You are not going to elevate that are you, just post? **Charles;** at this time no elevation. **Board;** So you will not be placing a concrete structure there now? **Charles;** at this time there is not but maybe in the future. **Board;** so that means you are putting a concrete structure **Charles;** I cannot project 5-10-15 years in the future of the growth of my business. **Board;** So we can put in here that you are not going to elevate this? **Charles;** I'd rather you not say that. **Board;** I'm just stating my intent. **Board;** so for current customer access, are you going to access from each end or from side by the road? **Charles;** they will travel east and west. **Board;** clarified the area between the building to the easement of the highway and the emergency lane along the building was sufficient enough. **Charles;** stated that he did not see this impeding on the city in the future even if they wanted to add lanes to the current road. **Board;** why wouldn't you put in on the other side? **Charles;** because I'm putting in a truck scale on the other side.

Steven Dudley made a motion to vote on BZA Petition 2016-12, Jay Hatton seconded. All members present voted yes.

***BZA Petition 2016-13 – Jimmie & Pamela Owens** are requesting a **“Variance”** to the rear set back from 20' to 6' to build a detached garage on their property in an R-4 zoning classification. This request falls under the Decatur County Zoning Ordinance Section Number 1060. The property is owned by the petitioners and is located at 12482 S St. Rd. 3 in Westport, IN in Jackson Township.

Jimmie Owens stated that his existing garage had burned down in January and he built on the same spot and put a 10' Lean-to which is attached on the back side. I thought the contractor got a permit and the contractor thought I got the permit. So the lean to sets just 6' off of the rear property line.

Board; Is the lean to enclosed? **Jimmie;** yes but it has no floor. **Board;** What is behind the garage? **Jimmie;** there is a privacy fence up around the back and side. **Board;** so if we took the lean to off it would still be too close to the property line? **Krista;** yes. **Board;** Are there any neighbors in the audience to speak to this? No one spoke up. How big is the lean to? **Jimmie;** 10' wide. **Board;** what size was the building that you built? **Jimmie;** the same size. **Board;** and you constructed it on the old concrete after it burned, and then you proceeded to put a lean to on the back side which made it too close to the rear property line. **Jimmie;** I thought it was a 6' variance. **Board;** so if we take the lean to off then you are 17' out of the 20' and you would need a small variance of 3'. **Board;** it's a problem when things go this way because no one wants to tell you to tear down your building. Then things like this, if approved, become a habit and then everyone builds a building without a permit. You said the lean to was roof only no sides? **Jimmie;** there is metal on the sides and the roof is attached. **Board;** does the water run off on neighbor's property? **Jimmie;** no. **Board;** so if we put the lean to on runners, is that possible? As long as it's not attached to the garage. A lot of people think that when you build on an existing structure that they can add on to the size. How do you feel about putting it on runners? **Jimmie;** I don't really want to, but if that's what I need to do then I will. **Board;** is it an option for you? **Jimmie;** if I

have to then I will do it. It will take a lot of work, but I can tear it down and put it on runners. **Board;** just like the others earlier, we can vote and if we vote no, then there are complications with that. But if you tell us you are going to remove the lean to or do something else with it then it might be better for you. That's where we are. **Board;** is your contractor aware that this building was in violation of our ordinance and he understands it too? **Board;** I would like to hear you say that that is something that you would like to do, to request a variance from 20' to 17'. Your contractor should be able to help out with this. **Board;** so you are saying that you will take the 10' off and request a variance of 17' to be in compliance with our ordinance and that's what you are asking for? **Jimmie;** yes.

Jay Hatton made a motion to vote on BZA Petition 2016-13 with a rear set back variance of 17' and to remove the 10' lean to, place it on runners as a separate detached structure, Roger Krzyzanowski seconded the motion. All members present voted yes.

***BZA Petition 2016-14 - Wendall & Margaret Tinsley** are requesting the following:

The petitioners are requesting a **“Permanent Special Exception”** as provided in the Decatur County Zoning Ordinance Section Number 1930.

The petitioners are requesting a **“Variance”** to the rear set back from 250' to 40' and a side set back from 250' to 30' to build a personal use “kennel” in an A-2 zoning classification and a **“Variance”** to the nearest dwelling set back of 660' to 625'. This falls under the Decatur County Zoning Ordinance Section Number 1940. This property is owned by the petitioners and is located at 915 W Kentucky Ave, Westport, IN in Sand Creek Township.

Wendall Tinsley and Joyce Sword, council for the Tinsley's, represented this petition. Ms. Sword stated that the Tinsley's have the English Bulldogs for personal showing. They do not sell, just show. We have completed our survey and the septic is approved. Per the topography of the land the location that we need to place the building is the best place to put it. We want to keep it as close to the residence as possible. We will be 625' from the closest neighbor Mr. Roy Saylor instead of the 660' requirement.

Board; can you give us an idea of the size of the building. **Wendall;** 50' x 80'. **Board;** what is the maximum number of dogs total? **Wendall;** 12. **Board;** so 12 would be the maximum and will they be inside or outside? **Wendall;** yes 12 would be the max, and the dogs will spend most of their time inside. English Bulldogs are not tolerant to the cold so therefore they need to be kept indoors. Their only outdoor exposure is when they are being walked. **Board;** so when they are outside being exercised someone will be with them? **Wendall;** yes. **Board;** So the fenced in area will be where? **Wendall;** about 200' from the east and 100-125' from the south. **Board;** so the house itself sits approximately how far from the building? **Wendall;** about 200'. **Board;** So will the only dogs you have be the English Bulldogs, they won't be loud coon dogs? I want to be absolutely clear. **Wendall;** only the English Bulldogs. **Board;** I see on the floor plan a bird room, what is that for? **Wendall;** My wife has a couple of parrots. **Board;** So you are not raising parrots? **Wendall;** no. **Board;** This “permanent special exception”, what happens when the property changes hands? **Krista;** it stays with the property. **Board;** so what if the next owners don't have English Bulldogs, we have a property for sale with a “permanent special exemption” for a kennel. **Board;** and we cannot make that a non-transferrable? Without having our attorney present we cannot be sure of this. **Joyce;** your ordinance is very different than others I have seen, and it's not friendly but it's your ordinance. The Tinsley's have followed every stipulation put in front of them to

satisfy your ordinance. What we are asking for on the set back is not a lot and won't affect the health of the public and will not reduce the property values in the area. We are not asking for anything more than what the ordinance calls for, we have not built the building like the one before us so I think we fit. Your ordinance states that if you want to have 3 dogs then you have to do this and you don't have any other criteria. So the question on the "permanent special exception" transferring if the property is sold is a legitimate question. We are abiding by the ordinance, we think that what we are doing is going to be fine. We have done what your ordinance required of us.

Audience; Are you taking out some of the trees along the property? **Wendall;** yes, a couple. **Audience;** I plan to live in my home the rest of my life and my concern is if my trees fall on your building, I'm responsible. I'm also concerned that when the property transfers what will happen then and I am concerned over the drainage.

Board; The ordinance requires this and not everyone will take the effort that you will take. Also, when you do decide to leave, then "permanent special exception" is still there so whoever puts it back in, then they can bring in the coon dogs. **Joyce;** I appreciate that but it is your ordinance creates the problem for people who want to do it right. **Board;** we agree with you, and as time goes on when we use this ordinance, we find that there are problems and we have to go back and change them, this one we have to work through. Our attorney is not here so we are running short on advice. We don't want to put an undue burden on the petitioner they have taken a lot of time to do this. We often ask petitioners to ask for conditions, so would you Wendall Tinsley object to making the request for the "permanent special exception" conditional on the fact that it will not transfer with the property? **Joyce;** that's fine. **Board;** then we can enter that into our permanent records that makes the "permanent special exception" permanent to you but not to the property. **Board;** I appreciate that but the fact of the matter is that if this was not a kennel these setbacks would be appropriate to put a building there. **Audience;** but I don't want one of my trees to fall on their building. **Board;** but if it were not a kennel they would be meeting the required setbacks from your property line. I appreciate the fact that you don't want your trees to fall on their building either but the reason they needed the variance is because it's a kennel.

Steven Dudley made a motion to vote on BZA Petition 2016-14 with a contingency that it **WILL NOT** transfer with the property; Joyce Brindley seconded the motion. All members present voted yes.

With no other business to discuss the meeting was adjourned at 7:50 p.m.

Respectfully submitted by Debbie Martin, Administrative Assistant.

Decatur County Board of Zoning Appeal

Secretary, Roger Krzyzanowski
Decatur County Area Plan Commission

ATTEST:

President, Albert Armand
Decatur County Board of Zoning Appeals