

Floyd County Board of Zoning Appeals

Minutes

The regular meeting of the Floyd County Board of Zoning Appeals was held on **June 10, 2024 at 5PM** at the following address:

**Pineview Government Center Assembly Room 104
2524 Corydon Pike
New Albany, IN 47150**

ROLL CALL

Present: Larry Bibelhauser, Victor Unruh, Guy Heitkemper, Scott Whalen, Bill White

Absent: None

Other: Kristi Fox, Nick Creevy, Gabbrielle Adams

MINUTES

Minutes from the April 2024 regular BZA meeting

Motion: Approve

Moved by: Guy Heitkemper

Seconded by: Scott Whalen

Motion passed.

Minutes from May 2024 regular BZA meeting

Motion: Approve

Moved by: Victor Unruh

Seconded by: Scott Whalen

Motion passed.

Mr. Bibelhauser abstained from voting since he was absent at the May 2024 meeting.

OLD BUSINESS

Nick Creevy- Director of Building & Development. Asked the Board if agenda items 1-3 could be heard together but voted on separately.

Mr. White- Verified with Mr. Bowling (applicant) that he was okay with hearing all three agenda items together. Mr. Bowling agreed.

Agenda Item 1 – FC-04-24-13: Development Standards Variance – Request to build an accessory structure that will encroach the 60' front setback from Highway 11. David Bowling. 3801 Highway 11, Lanesville, IN 47136 (Parcel 22-01-02-300-022.000-001). Section 23, Township 3 South, Range 5 East.

Agenda Item 2 – FC-04-24-14: Development Standards Variance – Request to build an accessory structure that will encroach the 60' front setback from Smith Creek Road. David Bowling. 3801 Highway

11, Lanesville, IN 47136 (Parcel 22-01-02-300-022.000-001). Section 23, Township 3 South, Range 5 East.

Agenda Item 3 – FC-04-24-15: Development Standards Variance – Request to build an accessory structure located in front of the primary structure. David Bowling, 3801 Highway 11, Lanesville, IN 47136 (Parcel 22-01-02-300-022.000-001). Section 23, Township 3 South, Range 5 East.

Mr. Creevy- Read the Staff Report. Applicant is requesting three development standards to allow the construction of a detached garage on an existing concrete pad where a detached garage once stood. The drive connect to the north to Smith Creek Road. The location of the structure will be within the sixty foot front yard setback of Smith Creek Road and the sixty foot front yard setback of Highway 11. Additionally, the structure will be located in front of the primary residential structure. The lot is unusual being triangular shaped with road frontage on all sides. The lot is roughly 1.69 acres and is zoned agricultural residential requiring a sixty foot front yard setback which limits the size of the building envelope. Additionally, the site is served by septic with the lateral fields located at least partially in the building envelope. The lot is sloping away from Highway 11 and wooded along the north and west sides. Adjacent properties are all agricultural residential zoned with single family residential uses currently. *Staff Comments:* 1. The approval will & will not be injurious to the public health, safety, morals, and general welfare of the community. FC-04-24-15 (will not): An accessory structure in the front yard will not create a physical hazard or create confusion in service provision. FC-04-24-14 (will not): Encroaching the front yard setback on Smith Creek will not create a traffic hazard as there are adequate site distances in either directions on Smith Creek Road and the drive can be placed 100 feet from an intersection. FC-04-24-13 (will): Locating a drive within 60' of Highway 11 will create a traffic hazard as it is close to the intersection and could result in vehicles stopped for left hand turns in the traffic lane. Vehicles turning from Highway 11 will have limited space to stop and could cause stacking onto Highway 11. 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The location of the structure is consistent with historic structures on the property and will not impact the adjacent properties use. It will not create a nuisance to neighboring properties of any kind. The value of the property is expected to increase with the improvement which will have positive effect on neighboring properties. 3. The strict application of the terms of the zoning ordinance will and will not result in practical difficulties in the use of the property. FC-04-24-15 (will): Due to the shape and location of roads around the property, all sides have frontage. As a result, any accessory structure will be placed in front of the primary structure. FC-04-24-14 (will): Additionally, due to the shape and location of the roads as well as the existing septic system, there is limited locations where the accessory structure can be placed within the building envelope and not encroaching a setback. FC-04-24-13 (will not): The accessory structure could be placed away from Highway 11 and closer to the southwest (Smith Creek Road). 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. *Staff Recommendations:* Grant Variances for Accessory in Front Yard and Front Yard Setback Encroachment for Smith Creek, Deny Front Yard Setback encroachment for Highway 11. Driveway should be located to connect to Smith Creek Road at the southwest side of the lot at least 150 feet from intersections.

Mr. Heitkemper- Seeks to clarify how the staff recommended driveway will come through the property and if it would interfere with the septic system.

Mr. Creevy- States that the septic is on the other side of the property.

David Bowling- Applicant, 425 White Pine Blvd., New Albany. The concrete is 48' from Highway 11, and applicant had cleared out the brush to see Highway 11. Would cause practical difficulties to move 100' down the road.

Mr. White- asked if anyone would like to speak in favor. No one came forward. Asked if anyone would like to speak in opposition. No one came forward. Closed public comment.

Mr. Unruh- Reads ballots. Docket FC-04-24-13, after careful review the Board finds that: 1. Approval of the variance WILL be injurious to the public health, safety, morals, and general welfare of the community because: Locating a drive within 60' of Highway 11 will create a traffic hazard as it is close to the intersection and could result in vehicles stopped for left hand turns in the traffic lane. Vehicles turning from Hwy 11 will have limited space to stop and could cause stacking on Hwy 11. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: The location of the structure is consistent with historic structures on the property and will not impact the adjacent properties use. It will not create a nuisance to neighboring properties of any kind. The value of the property is expected to increase with the improvement which will have positive effect on neighboring properties. 3. The strict application of the terms of the zoning ordinance WILL NOT result in practical difficulties in the use of the property because: The accessory structure could be placed away from Highway 11 and closer to the southwest (Smith Creek Road). 4. The variance DOES NOT involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. The Board of Zoning Appeals hereby DENIES the Petitioner's Variance at the meeting held on the 10th day of June, 2024.

Motion: FC-04-24-13 Denied

Moved by: Victor Unruh

Seconded by: Larry Bibelhauser

Motion passed.

Yes- Larry Bibelhauser, Victor Unruh, Bill White, Scott Whalen

No- Guy Heitkemper

Mr. Unruh- Reads ballots. Docket FC-04-24-14, after careful review the Board finds that: 1. Approval of the variance WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: Encroaching the front yard setback on Smith Creek will not create traffic hazard as there are adequate site distance in either direction on Smith Creek and the Drive can be placed 100' from an intersection. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: The location of the structure is consistent with historic structures on the property and will not impact the adjacent properties use. It will not create a nuisance to neighboring properties of any kind. The value of the property is expected to increase with the improvement which will have a positive effect on neighboring properties. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: Due to the shape and location of the roads as well as the existing septic system there is limited location where the accessory structure can be placed within the Building envelope not encroaching a setback. 4. The variance DOES NOT involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. The Board of Zoning Appeals hereby Grants the Petitioner's Variance at the meeting held on the 10th day of June, 2024. Approval by the Board is subject to the completion of the following conditions: Driveway should be located to connect to the Smith Creek Road at the Southwest side of the lot at least 150' from intersection.

Motion: FC-04-24-14 Approve with Conditions

Moved by: Victor Unruh

Seconded by: Larry Bibelhauser

Motion passed.

Mr. Unruh- Reads ballots. Docket FC-04-24-15, after careful review the Board finds that: 1. Approval of the variance WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: An accessory structure in the front yard will not create a physical hazard or create confusion in service provision. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: The location of the structure is consistent with historic structures on the property and will not impact the adjacent properties use. It will not create a nuisance to neighboring properties of any kind. The value of the property is expected to increase with the improvement which will have a positive effect on neighboring properties. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: Due to the shape and location of roads around the property, all sides have frontage. As a result, any structure will be placed in front of primary structure. 4. The variance DOES NOT involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. The Board of Zoning Appeals hereby Grants the Petitioner's Variance at the meeting held on the 10th day of June, 2024. Approval by the Board is subject to the completion of the following conditions: Driveway should be located to connect to the Smith Creek Road at the Southwest side of the lot at least 150' from intersection.

Motion: FC-04-24-15 Approve with Conditions

Moved by: Victor Unruh

Seconded by: Larry Bibelhauser

Motion passed.

NEW BUSINESS

Mr. White- asked Ms. Mumm (applicant) if she was okay with hearing agenda items 4-6 together. Ms. Mumm agreed.

Agenda Item 4 – FC-05-24-18: Development Standards Variance – Request to build a new home that will encroach the 60' front setback requirement. Rita H. Mumm. 1001 Canyon Road, New Albany, IN 47150 (Parcel 22-02-03-100-147.000-002). Section 31, Township 2 South, Range 6 East.

Agenda Item 5 – FC-05-24-19: Development Standards Variance – Request to build a new home that will encroach the 20' rear setback requirement. Rita H. Mumm. 1001 Canyon Road, New Albany, IN 47150 (Parcel 22-02-03-100-147.000-002). Section 31, Township 2 South, Range 6 East.

Agenda Item 6 – FC-05-24-20: Development Standards Variance – Request to build a new home on a steep slope that exceeds the 33% allowed and within 50' of the ridgeline buffer. Rita H. Mumm. 1001 Canyon Road, New Albany, IN 47150 (Parcel 22-02-03-100-147.000-002). Section 31, Township 2 South, Range 6 East.

Mr. Creevy- Read the Staff Report. Applicant is requesting 3 development standard variances for the construction of a single family dwelling in the Canyonlands neighborhood. The applicant is requesting a variance to allow less than the 60 foot minimum required setback for agricultural residential properties. The applicant is also requesting a variance to allow less than the 20 foot minimum required setback for a primary structure in the district. And third, the applicant is requesting a variance that prohibits construction on steep slopes (slopes greater than 33% and therefore near a ridgeline). The subject property is located at 1001 Canyon Road which is a lot in the Canyonlands neighborhood. The Canyonlands was a metes and bounds subdivision established prior to the current subdivision control ordinance and Zoning Ordinances first established in 2004 and 2006 respectively. The property is located at the end of Canyon Road and is the last lot in the neighborhood. The applicant has provided a geotechnical report for construction on the lot and has provided a topographic map with the area of slope equal to or less than 33% highlighted. Adjacent properties are: north is a vacant lot split by Canyon Road, East is a single family dwelling in the

Canyonland neighborhood with a ravine between the structure and this building site, to the west is Corydon Pike and an AR property which has a Conditional Use for Specialty Trade (Amos, Truck Parking, FC-03-24-08), and to the South is an AR lot with a single family dwelling to the southwest. *Staff Comments:* 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. (FC-05-24-18 & FC-05-24-19 - Setbacks) The lot is located at the end of a cul-de-sac and located at the top of a ridge with steep slopes on the sides and rear. Locating a structure closer than the minimum setback requirements will not create a physical hazard to other properties or the public because other structures will not be able to be built near it due to the topography. (FC-05-24-20– Steep Slope) The applicant has provided a Geotechnical Report from a Certified Engineer that indicates the sloping hillside is underlain by shale that is subject to slope instability. The report offers a number of considerations for the stable construction on the site that should be followed. 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. (FC-05-24-18 & FC-05-24-19 - Setbacks) Due to the topography of the site and neighboring lots size and shapes, building nearer to the property lines in the front and rear will not inhibit the use of adjacent properties. The development of the subdivision lot with a single family dwelling will improve the value of the property and is anticipated to improve property value in the area. (FC-05-24-20 – Steep Slope) The construction of a dwelling following a Certified Geotechnical report on or near steep slopes will not impact the use and value of neighboring properties. Other properties in the subdivision are located on or near steep slopes. The dwelling will not be located in direct proximity to other downhill structures. 3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. (FC-05-24-18 & FC-05-24-19 - Setbacks) The lot dimensions and the steep slopes provide a limited building area for a single family dwelling. The lots were created prior to the modern Ordinances making conformity impractical and inconsistent with other properties in the subdivision. (FC-05-24-20 – Steep Slope) The Canyonland Neighborhood was divided prior to current regulations prohibiting building on or near steep slopes. Strict application would prohibit any building on the site that is not within the 50 foot minimum distance from a ridgeline. However, the property does have an area below the “ridgeline” slope of more than 33% sufficient to build a compliant structure. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. *Staff Recommendations:* Front and rear setbacks can be reduced with little to no impact on adjacent properties and would be necessary for maximizing the buildable area on the site. There is sufficient space on the property that is not on a ridgeline suitable for construction. A variance to allow construction near steep slope is required but construction on a steep slope should be limited. *Conditions:* Construction must follow the Geotechnical Report Provided. Observation by Certified Engineer required during construction as recommended in the report. A final statement or letter from the Engineer regarding compliances and safety of construction methodologies to be provided prior to Certificate of Occupancy. Provide an Affidavit to hold the Plan Commission, Board of Zoning Appeals, and the County harmless from any claims of damage due to the approval of the development. No development on the ridgeline, provide detailed slope calculation of building area with building permit application.

Mr. Creevy- Clarifies that there has never been a variance granted in the county for building on a steep slope. They do not have to adhere to the 50’ setback with these variances; they can build all the way up to, but not on, the ridgeline.

Mr. Unruh- Asks for clarification on what is defined as buildable area per the documents provided. Asks if the current site plan fits on the buildable area.

Mr. Creevy- States that no, it does fit right now, but they can get the variance now and then rework it to meet the requirements of the variances.

Rita Mumm- Applicant, 2809 East Stone Creek Blvd., Urbana, IL. States that there is a neighbor to the south that would be affected by not granting the rear setback variance. Says that the geotechnical report

indicated a very high bearing capacity of the land, higher than required for Floyd County standards, and there is bedrock below the surface. Notes that the structure steps down with the slope, and according to the geotech report there is no problem in laying the foundation that way as long as it is on bedrock. The foundation and drainage plan will be designed according to the geotech report and overseen by a structural engineer. Wonders why Canyonlands was not grandfathered into the 2006 ordinance, and how other neighbors have built homes on slopes steeper than her property.

Mr. Creevy- The subdivision was grandfathered in, has to meet standards of the zoning ordinance, not subdivision control ordinance. Other properties have received variances for being *near* a ridgeline, not *on* a ridgeline.

Mr. White- asked if anyone would like to speak in favor.

Judy Werst- 1016 Canyon Road. Is on the board of the Canyonlands subdivision, and states that they are all in favor of the development. There have been no problems with other structures built in that area.

Robin Ipsan- 1010 Canyon Road. States that every house on Canyon Road is on the ridgeline, and that all are in favor of the new home.

Andrew Mattingly- 1018 Canyon Road. Is satisfied with Ms. Mumm's level of detail in preparing the plans. Is not aware of any home that has had a problem with being situated on or near steep slopes.

Mr. White- asked if anyone would like to speak in opposition. No one came forward. Closed public comment.

Ms. Mumm- The way her property is located and how the house will be situated, the bottom of the hill that the house would potentially fall down is still her property. Does not think that the definition of ridgeline was so clear, so thinks the geotechnical report should be given more weight.

Mr. Bibelhauser- Reads ballots. Docket FC-05-24-18, after careful review the Board finds that: 1. The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: The lot is located at the end of a cul-de-sac and located at the top of a ridge with steep slopes on the sides and rear. Locating a structure closer than the minimum setback requirements will not create a physical hazard to other properties or the public because other structures will not be able to be built near it due to the topography. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner. Due to the topography of the site and neighboring lots size and shapes, building nearer to the property lines in the front and rear will not inhibit the use of adjacent properties. The development of the subdivision lot with a single family dwelling will improve the value of the property and is anticipated to improve property value in the area. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property. The lot dimensions and the steep slopes provide a limited building area for a single family dwelling. The lots were created prior to the modern Ordinances making conformity impractical and inconsistent with other properties in the subdivision. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. The Board of Zoning Appeals hereby GRANTS the Petitioner's Variance at the meeting held on the 10th day of June, 2024, thus reducing the front yard setback from 60' to 40'.

Motion: FC-05-24-18 Grants

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Motion passed.

Mr. Bibelhauser- Reads ballots. Docket FC-05-24-19, after careful review the Board finds that: 1. The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: The lot is located at the end of a cul-de-sac and located at the top of a ridge with steep slopes on the sides and rear. Locating a structure closer than the minimum setback requirements will not create a physical hazard to other properties or the public because other structures will not be able to be built near it due to the topography. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner. Due to the topography of the site and neighboring lots size and shapes, building nearer to the property lines in the front and rear will not inhibit the use of adjacent properties. The development of the subdivision lot with a single family dwelling will improve the value of the property and is anticipated to improve property value in the area. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property. The lot dimensions and the steep slopes provide a limited building area for a single family dwelling. The lots were created prior to the modern Ordinances making conformity impractical and inconsistent with other properties in the subdivision. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. The Board of Zoning Appeals hereby GRANTS the Petitioner's Variance at the meeting held on the 10th day of June, 2024, thus reducing the rear yard setback from 20' to 10'.

Motion: FC-05-24-19 Grants

Moved by: Larry Bibelhauser

Seconded by: Guy Heitkemper

Motion passed.

Mr. Bibelhauser- Reads ballots. Docket FC-05-24-20, after careful review the Board finds that: 1. The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community. The applicant provided a Geotechnical Report from a Certified Engineer that indicates the sloping hillside is underlain by shale that is subject to slope instability. The report offers a number of construction techniques for the construction of the proposed structure on this site that must be followed to provide a stable structure. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: The construction of a dwelling following a Certified Geotechnical report on or near steep slopes will not impact the use and value of neighboring properties. Other properties in the subdivision have had dwellings constructed on or near steep slopes. The dwelling will not be located in direct proximity to other downhill structures. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: The Canyonland Neighborhood was divided prior to current regulations prohibiting building on or near steep slopes. Strict application would prohibit any building on the site that is not within the 50 foot minimum distance from a ridgeline. However, the property does have an area below the "ridgeline" slope of more than 33% sufficient to build a compliant structure. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. The Board of Zoning Appeals hereby GRANTS the Petitioner's Variance at the meeting held on the 10th day of June, 2024. Approval by the Board is subject to the completion of the following conditions: 1. Construction must follow the Geotechnical Report provided. Inspection by a registered Engineer is required during construction as recommended in the report. A final report or letter and stamped from the Engineer regarding compliances and safety of construction methodologies must be provided prior to Certificate of Occupancy. 2. No development on the ridgeline, provide detailed slope calculation of building area with building permit application. Approval by the Board is subject to the following written commitments: 1. Provide an Affidavit to hold the BZA, Plan Commission, and the County harmless from any claims of damage due to the approval of the development.

Motion: FC-05-24-20 Grants with Conditions

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh
Motion passed.

Agenda Item 7 – FC-05-24-21: Special Exception – Request the use of an agricultural residentially zoned property for the use as a wedding and events venue. Amber Pedolzky. 8707 Schuler Road, Greenville, Indiana 47124 (Parcel 22-03-00-400-027.001-004). Section 04, Township 2 South, Range 5 East.

Mr. Creevy- Read the Staff Report. The applicant is requesting a Special Exception to operate a seasonal wedding and event venue in an Agricultural Residential Zone. The property is currently being used as a farm and has two historic barn structures. The property does not currently have wastewater facilities, the adjoining home is served by septic. The applicant proposes using mobile restrooms for initial two years then moving to septic/sewer. The proposal includes restoration of the historic barns, outdoor ceremonial area options, a future potential outdoor covered space, and parking areas. Adjacent Property: the property is encompassed to the east, west, and south by the 242+ acres Sam Shine Foundation property that received a Special Exception for a Learning/Recreation Center with Headquarter (FC-09-23-20). Across Shuler Road within the Town of Greenville's jurisdiction is a residentially suburban zoned property currently with a dwelling and farmland. *Staff Comments:* 1. The special exception will not be injurious to the public health, safety, morals, and general welfare of the community. Drainage will be approved by County Stormwater if needed. There is adequate sight distance in either direction of the proposed drive. Wastewater facilities will be approved by County Health Department. 2. The use and value of the area adjacent to the property subject to the special exception will not be affected in a substantially adverse manner. Adjacent properties to east, west, and south is in a conservation easement and cannot be further developed, use as a seasonal event venue will not impact conservation. 3. The need for the special exception does arise from some condition peculiar to the property involved. The property is surrounded on three sides by the Sam Shine Foundation property headquarters and conservancy which is over 242 acres and is in a conservation easement and cannot be developed, but is also near the Town of Greenville's denser development. The property was previously associated with larger tracts which required the barn space but are no longer needed. 4. The strict application of the terms of the Floyd County Zoning Ordinance will result in an unnecessary hardship in the use of the property. The proposed use is a relatively low impact use that relies on and maintains the rural character of the community and preserves historic structures. 5. The approval of the special exception will not contradict the goals and objectives of the Floyd County Comprehensive Plan. The proposed use is consistent with Smart Growth Principals of fostering distinctive, attractive communities with a strong sense of place by preserving rural character and the historic barns. Additionally, Greenville Township commercial development should be directed towards Galena and the Town of Greenville area. 6. The special exception will not adversely affect neighboring property. The seasonal use of the property for events will not create a nuisance to neighboring property because it is surrounded by a 242+ acre conservatory and a farm across Schuler Road. *Staff Recommendations:* 1. Hours of Operation 10:00am to 11:00pm Friday and Saturday, 10:00am to 9:00pm Sunday, April through November. 2. Detailed development plan to be approved by TRC showing site plan, landscape plan, signage and lighting plan. 3. Entrance/Exit drive to be paved. 4. Parking required at 2.5 guests per space. 5. Perimeter plantings along Right of Way required. 6. Mobile Restroom Facility to be approved by Floyd County Health Department. Two years from this approval owner shall install sewer if available or commercial septic if sewer is unavailable.

Mr. Unruh- Asks if a Development Plan is needed.

Mr. Creevy- Yes and the drainage plan will be determined by County Stormwater based off their site plan.

Johann Pedolzky- Applicant, 8707 Schuler Road. Received the farm years ago, wanted to renovate the barns and invest in them because they are unusable for farms. The family will still reside in the home.

Mr. Unruh- Asks if the catering would be done in house or by a licensed cater. Asks which structure was which on the site plan.

Mr. Pedolzky- It will be an outside catering company. Explained which structures were the barn and house.

Mr. White- Asks if anyone would like to speak in favor.

Danny Russell- 6102 Kaskaskia Drive. Believes this is a great opportunity to support a local business and bring some activity to that farm area.

Mr. White- asked if anyone would like to speak in opposition. No one came forward. Closed public comment.

Mr. Bibelhauser- Reads the ballot. Docket FC-05-24-21, after careful review the Board finds that: 1. The special exception WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: the drainage will be approved by County Stormwater as needed. There is adequate sight distance in either direction of the proposed drive. Wastewater facilities will be approved by County Health Department. 2. The use and value of the area adjacent to the property subject to the special exception WILL NOT be affected in a substantially adverse manner because: the adjacent properties to east, west, and south is in a conservation easement and cannot be further developed, use as a seasonal event venue will not impact conservation. 3. The need for the special exception DOES arise from some condition peculiar to the property involved because: The property is surrounded on three sides by the Sam Shine Foundation property headquarters and conservancy which is over 242 acres and is in a conservation easement and cannot be developed, but is also near the Town of Greenville's denser development. The property was previously associated with larger tracts which required the barn space but are no longer needed. 4. The strict application of the terms of the Floyd County Zoning Ordinance WILL result in an unnecessary hardship in the use of the property because: of the surrounding tract being a conservancy and growth of the Town of Greenville the future use for this property has changed. In addition, the proposed use is relatively low impact use that relies on and maintains the rural character of the community and preserves historic structures. 5. The approval of the special exception WILL NOT contradict the goals and objectives of the Floyd County Comprehensive Plan because: The proposed use is consistent with Smart Growth Principals of fostering distinctive, attractive communities with a strong sense of place by preserving rural character and the historic barns. Additionally, Greenville Township commercial development should be directed towards Galena and the Town of Greenville area. 6. The special exception WILL NOT adversely affect neighboring property because: the seasonal use of the property for events will not create a nuisance to neighboring property because it is surrounded by a 242+ acre conservatory and a farm across Schuler Road. The Board of Zoning Appeals hereby GRANTS the Petitioner's Special Exception at the meeting held on the 10th day of June, 2024. Approval by the Board is subject to the completion of the following conditions: 1. Hours of Operation 10:00am to 11:00pm Friday and Saturday, 10:00am to 9:00pm Sunday, April 1st through November 30th. 2. A detailed development plan that includes a site plan, drainage plan, landscape plan, and signage, lighting plan shall be submitted to and approved by TRC. 3. Entrance/Exit drive must be paved. 4. Parking required at 2.5 guests per space. 5. Perimeter plantings along Right of Way is required. 6. Mobile Restroom Facility to be approved by Floyd County Health Department. Two years from this approval owner shall install sewer if available or commercial septic if sewer is unavailable.

Motion: Approve with Conditions

Moved by: Larry Bibelhauser

Seconded by: Guy Heitkemper

Motion passed.

Mr. White- asked the Applicants if they were okay with hearing agenda items 8-11 together. The Applicants agreed.

Agenda Item 8 – FC-05-24-22: Development Standards Variance – Requesting to not connect to sanitary sewers and use a commercial septic system instead. Rock N C Farm; Deon Carr. 7010 Highway 150, Greenville, IN 47124 (Parcel 22-03-01-000-035.000-004). Section 10, Township 2 South, Range 5 East.

Agenda Item 9 – FC-05-24-23: Development Standards Variance – Requesting to only have less than the minimum required 38 parking spaces. Rock N C Farm; Deon Carr. 7010 Highway 150, Greenville, IN 47124 (Parcel 22-03-01-000-035.000-004). Section 10, Township 2 South, Range 5 East.

Agenda Item 10 – FC-05-24-24: Development Standards Variance – Requesting to not install pedestrian amenities (sidewalks). Rock N C Farm; Deon Carr. 7010 Highway 150, Greenville, IN 47124 (Parcel 22-03-01-000-035.000-004). Section 10, Township 2 South, Range 5 East.

Agenda Item 11 – FC-05-24-25: Development Standards Variance – Requesting to use metal building material (siding) for more than the maximum 20% allowed. Rock N C Farm; Deon Carr. 7010 Highway 150, Greenville, IN 47124 (Parcel 22-03-01-000-035.000-004). Section 10, Township 2 South, Range 5 East.

Mr. Creevy- Read the Staff Report. Applicant is requesting 4 development standard variances related to the construction of a restaurant known as Carrs BBQ in a neighborhood commercial district. (FC-05-24-22 – Septic – FCZO 4.39) Request to use commercial septic system instead of required connection to sanitary sewer. (FC-05-24-23 – Parking – FCZO Appendix B) Requesting less than the required 38 parking spaces. (FC-05-24-24 – Pedestrian Amenities – FCZO 5.51) Requesting not to install required sidewalk along Norman Perkins Way. (FC-05-24-25 – Building Material – FCZO 5.65-G) Requesting to use metal building material (siding) beyond the 20% maximum. The property has historically been used as a commercial location for a greenhouse and later was the location of an ice cream stand. Adjacent properties are all zoned neighborhood commercial. The Highlander Fire Protection District has a department to the north and west of the subject property. The Galena Digital Library is located to the east across Norman Perkins Way. To the south across State Highway 150 are duplex residences and a commercial office. *Staff Comments:* 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. (FC-05-24-22 - Septic) Wastewater will be approved by the State Department of Health. (FC-05-24-23 - Parking) Parking space dimensions and location are compliant with standards and will not create a physical hazard/conflict to other traffic or pedestrians. (FC-05-24-24 – Pedestrian Amenities) Will be injurious. Dedicated sidewalks enhance safety for pedestrians. Proximity to public amenities such as the Digital Library increase the likelihood of pedestrian traffic. Eliminating sidewalks would create a potential safety hazard. (FC-05-24-25 – Building Material) Alternative building materials, metal siding, is an established building material in many areas and can be used safely to building codes. 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. (FC-05-24-22 - Septic) There is no sewer in the vicinity adjacent properties also utilize septic. The septic system will require an easement on an adjoining property which must be approved by the owner. (FC-05-24-23 - Parking) Reduced on-site parking will not inhibit the use of adjacent properties as there will still be parking available on site. The development of the site with an allowed use is expected to increase property value in the area. (FC-05-24-24 – Pedestrian Amenities) There are no sidewalks in the vicinity currently. (FC-05-24-25 – Building Material) While there is another building in the area with metal façade the majority of the structures in the area have allowable materials. Increasing non-compliant building materials will have detrimental effects to the aesthetic quality of the area and will result in adverse impacts to value as opposed to compliant materials. 3. The strict application of the terms of the zoning ordinance will result in practical difficulties

in the use of the property. (FC-05-24-22 - Septic) There is no septic in the vicinity which would prevent any Neighborhood Commercial development. (FC-05-24-23 - Parking) The limited size of the lot along with the minimum parking standards would prohibit a majority of potential “by-right” uses. (FC-05-24-24 – Pedestrian Amenities) Will not result. There is adequate space to install sidewalks on the site without prohibiting the use as proposed. (FC-05-24-25 – Building Material) Will not result. Compliant building materials can be used consistent with fire code standards such as hardy board that will not inhibit the proposed use of the property. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. *Staff Recommendations:* (FC-05-24-22 - Septic) - Approval of Commercial Septic System by Health Department required. Prior to obtaining building permit provide a copy of the septic area easement. (FC-05-24-23 - Parking) – None. (FC-05-24-24 – Pedestrian Amenities) (FC-05-24-25 – Building Material) - Variances to Pedestrian Amenities and Building Material should not be approved as these will create either unsafe conditions or are not needed to prevent practical difficulties in the use of the property.

Tom Jones- Representing applicant, 2395 West Water Treatment Road, Salem. Notes that they are dealing with a .58 acre lot, so adding a 5’ sidewalk is going to remove a significant amount of width from their lot and will remove two parking lots. Also notes that the Highway 150 intersection has no pedestrian signals or crosswalk. Septic has been approved by health department and has an easement.

Mr. White- Asks about the septic easement and if it was granted by the fire district.

Mr. Jones- Affirms that yes, the fire district has granted it.

Mr. Heitkemper- Asks about the type of metal siding, if it was like barn siding.

Mr. Jones- It initially was, but some has been changed to hardy siding on the front to give variation to the structure, and they have reduced the amount of metal.

Mr. Unruh- Asks where the hardy board siding will be.

Mr. Jones- Points it out on the plans.

Mr. White- asked if anyone would like to speak in favor.

Kenny Koetter- 3622 Eagles Trace. Will be helping build the restaurant. Wants to emphasize what Carr has gone through in the process of getting this restaurant to work. Initially he would not have wanted to build a restaurant on this lot if the original building had not burned down.

Randy Koetter- 533 Louis Smith Road. The lot has been vacant for 5 years, and it would be good for the community to have a use for that lot.

Courtney Luckett- 7600 Pete Andres Road. States that Mr. Carr will do everything possible to not let the business fail.

Chris Welch- 3806 Dogwood Road. States that the aesthetics of the building are no different from other buildings along the road, and that this building will help keep the area looking nice.

Jason Carr- 9548 South State Road 335, Pekin. Brother of applicant. Drives 150 every day, and thinks there is a strong lack of restaurants now on that corridor. Believes that allowing the restaurant will be great for the community.

Mr. Creevy- Asks for a point of clarity from the Engineer on the sidewalk width and parking spots.

Mr. Jones- States that the area in question where a sidewalk might go is part of the landscape buffer. Further discussion on how the sidewalk would lead to the removal of two parking spaces.

Mr. Creevy- Believes that the sidewalk should take priority over two parking spaces. Thinks that part of the landscape buffer can be made smaller if needed.

Mr. Unruh- Thinks that a smaller dumpster could be chosen to save space as well. Confirms that the sidewalk will be kept.

Mr. Bibelhauser- Asks if he is still not compliant on the amount of metal used for the structure.

Mr. Creevy- Confirms that no, he is not.

Mr. White- asked if anyone was in opposition. No one came forward. Closed public comment.

Adam Carr- Applicant, 7655 Pete Andres Road. Wants to add that the original plan and the revised plans are more than adequate in quality for the area. Does not want to go out of town, wants to keep his business local and in this area. Regarding the sidewalk, states that there is a drainage ditch on the Norman Perkins side, so pedestrians will have to come through the main entrance. Also points out that there has been a gas station across the street that has been vacant for 25 years, and thinks that discussion regarding the aesthetics of his building does not make sense with that.

Mr. Bibelhauser- Reads the ballot. FC-05-24-22, after careful review the Board finds that: 1. The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: the wastewater system will be approved by the State Department of Health. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: There isn't a public sewer system in the vicinity, adjacent properties also utilize septic. The septic system will require an easement on an adjoining property which must be approved by the owner of the adjacent property. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: There isn't a septic system in the vicinity which would prevent any Neighborhood Commercial development. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. There is not an airstrip in the vicinity. The Board of Zoning Appeals hereby GRANTS the Petitioner's Variance at the meeting held on the 10th day of June, 2024. Approval by the Board is subject to the completion of the following conditions: 1. Applicant must obtain approval for a Commercial Septic System from the Health Department. 2. Prior to obtaining building permit the Applicant shall provide a copy of the septic area easement.

Motion: FC-05-24-22 Approve with conditions

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Motion passed.

Mr. Bibelhauser- Reads the ballot. FC-05-24-23, after careful review the Board finds that: 1. The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: the parking space dimensions and location are compliant with standards and will not create a physical hazard/conflict to other traffic or pedestrians. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: The reduction from 38 to 20 on site parking spaces will not inhibit the use of adjacent properties as there will still be ample parking on site for this operation. The development of the site with this allowed use is expected to increase

property value in the area. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: The limited size of the lot along with the minimum parking standards would prohibit a majority of potential “by-right” uses. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. The Board of Zoning Appeals hereby GRANTS the Petitioner’s Variance at the meeting held on the 10th day of June, 2024.

Motion: FC-05-24-23 Approve

Moved by: Larry Bibelhauser

Seconded by: Guy Heitkemper

Motion passed.

Mr. Bibelhauser- Reads the ballot. FC-05-24-24, after careful review the Board finds that: 1. The approval WILL be injurious to the public health, safety, morals, and general welfare of the community because: Dedicated sidewalks enhance safety for pedestrians. Proximity to public amenities such as the Digital Library increase the likelihood of pedestrian traffic. Eliminating sidewalks would create a potential safety hazard. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: There are no sidewalks in the vicinity currently. 3. The strict application of the terms of the zoning ordinance WILL NOT result in practical difficulties in the use of the property because: There is adequate space to install sidewalks on the site without prohibiting the use as proposed. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. The Board of Zoning Appeals hereby Denies the Petitioner’s Variance at the meeting held on the 10th day of June, 2024.

Motion: FC-05-24-24 Denied

Moved by: Larry Bibelhauser

Seconded by: Victor Unruh

Motion passed.

Yes- Larry Bibelhauser, Victor Unruh, Bill White, Guy Heitkemper

No- Scott Whalen

Mr. Bibelhauser- Reads the ballot. FC-05-24-25, after careful review the Board finds that: 1. The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: Alternative building materials, metal siding, is an established building material in many areas and can be used safely to building codes. 2. The use and value of the area adjacent to the property included in the variance WILL be affected in a substantially adverse manner because: While there is another building in the area with metal façade the majority of the structures in the area have allowable materials. Increasing non-compliant building materials will have a detrimental effects to the aesthetics, quality of the area and result in adverse impacts to value as opposed to compliant materials. 3. The strict application of the terms of the zoning ordinance WILL NOT result in practical difficulties in the use of the property because: Compliant building materials can be used consistent with fire code standards such as hardy board that will not inhibit the proposed use of the property. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. The Board of Zoning Appeals hereby Denies the Petitioner’s Variance at the meeting held on the 10th day of June, 2024.

Motion: FC-05-24-25 Deny

Moved by: Larry Bibelhauser

Seconded by: Guy Heitkemper

Yes- Larry Bibelhauser, Guy Heitkemper

No- Scott Whalen, Bill White, Victor Unruh

Mr. Whalen- Unsure what percentage of the building is metal now

Mr. Creevy- Does not have a percentage, just knows that it is more than 20%.

Mr. Unruh- Does the ordinance state that the 20% maximum for metal include all sides of the building?

Mr. Creevy- It only includes sides visible from the right of way, but all sides are visible.

Mr. Bibelhauser- Suggests excluding the rear of the building from the 20% maximum.

Ms. Fox- Clarifies that the board must vote before amending the ballot and voting for approval.

Mr. Unruh- Reads amended ballot. FC-05-24-25, after careful review the Board finds that: 1. The approval WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: Alternative building materials, metal siding, is an established building material in many areas and can be used safely to building codes. 2. The use and value of the area adjacent to the property included in the variance WILL NOT be affected in a substantially adverse manner because: While there is another building in the area with metal façade the majority of the structures in the area have allowable materials. 3. The strict application of the terms of the zoning ordinance WILL result in practical difficulties in the use of the property because: Compliant building materials can be used consistent with fire code standards. 4. The variance does not involve a structure that is near an airstrip and regulated under Indiana Code 8-21-10. The Board of Zoning Appeals hereby GRANTS the Petitioner's Variance at the meeting held on the 10th day of June, 2024. Approval by the Board is subject to the completion of the following conditions: 1. Rear of building will be excluded from 20% cal for metal. 2. 20% shall for the front and sides of building.

Motion: FC-05-24-25 Approve with Conditions

Moved by: Victor Unruh

Seconded by: Scott Whalen

Motion passed.

Yes- Victor Unruh, Bill White, Scott Whalen, Guy Heitkemper

No- Larry Bibelhauser

Agenda Item 12 – FC-05-24-27: Conditional Use - Requesting to use the existing home as a short-term vacation rental. Josh & Kimberly Walker. 980 Nance Lane, Lanesville, IN 47136 (Parcel 22-02-00-200-150.000-002). Section 10, Township 3 South, Range 5 East.

Mr. Creevy- Read the Staff Report. Applicant is requesting the Conditional Use of a Rural Residentially zoned property for the use as a short term vacation rental. It is located approximately 500 plus feet from Nance Lane right of way via a shared drive. The applicant has submitted for a commercial septic system approval with the State Department of Health. The owner also owns the adjacent property as their residence. All adjacent properties are also zoned Rural Residential. Adjacent properties are large (minimum of 3 acres) lots and are heavily wooded. *Staff Comments:* 1. The conditional use will not be injurious to the public health, safety, morals, and general welfare of the community because: The property is an existing residential dwelling and the use will not be substantially different than a single family residential use. The access drive is established and the use will not generate significantly different traffic. Septic will be approved by the Health Department. 2. The use and value of the area adjacent to the property will not be adversely affected because: The property is remote and the use will not be substantially different in character than a single family use. 3. The need for the conditional use does result from any conditions, unusual, or peculiar to the property itself because: The site is located on and surrounded by larger residential lots in a heavily wooded and sloping area. 4. Strict application of the terms of the Floyd County Zoning Ordinance will result in an unnecessary hardship in the use of the property because: The proposed use is a conditional use described in the Zoning Ordinance and requires approval. 5. Approval of the conditional

use will not contradict the goals and objectives of the Floyd County Comprehensive Plan because: The use will support locally owned business growth and is similar in character to a rural residential single family use. *Staff Recommendations:* 1. Approval of Septic System by Health Department Required. 2. The approval is for this owner only, and not to run with the land.

Josh & Kimberly Walker- Applicants, 980 Nance Lane. Ms. Walker is a stay-at-home mother, and when they came into possession of the property in question they held it to prevent development there. Being allowed to use it as a rental would give them some income to pay for both mortgages and to help raise her children. Has spoken with neighbors, and is willing to put up signs to mark property lines. Will not be using the barn on the property for the rental. Current plan is for weekends only, but hopes to eventually make it a full-time home, but will still live in the adjoining property.

Mr. Unruh- Wants to clarify if it will be used for weekends only forever or not.

Mr. Whalen- Clarifies how long a short-term rental is.

Ms. Walker- Short-term maximum would be 30 days.

Mr. White- asked if anyone would like to speak in favor. No one came forward. Asked if anyone would like to speak in opposition.

Lora Clark- 6887 Corydon Ridge Road. Questions what the conditional use would entail, and why it is required. States that the applicants have used all the properties of neighbors in recent years, and is concerned that guests might do the same. Wants the property surveyed and fenced off. Also worried about guns being fired frequently, and worries that guests might do the same with guns or with four wheeling that is on other property's trails. Neighbors worry that there will be misuse by others on their properties.

Mr. Bibelhauser- Clarifies where Ms. Clark's property is in relation to applicants.

Ms. Clark- States that her property is adjacent to the applicants, and asks about the meaning of "park" on the proposed plan.

Joyce Bickley- 6933 Corydon Ridge Road. Partially behind applicants. Describes how the applicant had cut trees on her property down to make a four-wheeler trail, and worries that applicants' guests will also go on others' property. Also has concerns about use of guns by the residents.

Kathy Denison- 936 Nance Lane. Echoes concerns about crossing property lines, and wants to establish a means for resolving problems in the future.

Karen Voorhees- 6008 Rachel Court. Her main concern is that opening up short-term rentals will change the nature of the rural residential zone to one with more activity and people coming and going. Also does not want to hear gunshots so frequently.

Michael Miller- 7033 Corydon Ridge Road. Asks if this will open a door for commercial zoning and development. Wants to make sure that they cannot sell the land for commercial development.

Ms. Fox- Affirms that they are not asking for a zoning change.

Mr. White- Closed public comment.

Mr. Walker- States that he is willing to do surveys to mark the property lines, but would prefer not to put up a fence because of the high cost.

Ms. Walker- States they are willing to put up signs at property limits.

Mr. Walker- States that they have friends from time-to-time, and that they have taken safety precautions when shooting to keep neighbors safe. The ATVs are for personal use and would not be available to guests. Does not think that others would be able to tell if people coming for rentals were friends or not.

Ms. Walker- No shooting will be allowed by guests, and only walking will be allowed on trails. No parties will be allowed, and no commercial is opening up. Only wants it to be a place for people to vacation and enjoy the scenery. Will be removing gun range and ATVs from rental to ensure that guests do not think they can use them. Is trying to fix problems to make sure there are no issues with property trails.

Mr. Heitkemper- Asks if there will be mandated quiet hours, or if there is an ordinance for that.

Mr. Unruh- Thinks that no activity after 10pm is reasonable. Asks about smoke alarms, fire extinguishers, and wants to know if there is an agency besides them that they need approval for.

Mr. Walker- States that they already have smoke alarms and fire precautions, and that they have insurance as well. Does not believe there is any other agency they need approval from.

Mr. Bibelhauser- Reads ballot. Docket FC-05-24-27, Petitioner's Josh & Kimberly Walker. After careful review the Board finds that: 1. The conditional use WILL NOT be injurious to the public health, safety, morals, and general welfare of the community because: The property is an existing residential dwelling and the use will not be substantially different than a single family residential use. The access drive is established and the use will not generate significantly different traffic. The septic system requires approval by the Health Department. 2. The use and value of the area adjacent to the property WILL NOT be adversely affected because: The property is remote and the use will not be substantially different in character than a single family use. 3. The need for the conditional use DOES result from any conditions, unusual, or peculiar to the property itself because: The site is located on and surrounded by larger residential lots in a heavily wooded and sloping area. 4. Strict application of the terms of the Floyd County Zoning Ordinance WILL result in an unnecessary hardship in the use of the property because: The proposed use is a conditional use described in the Zoning Ordinance and requires approval. 5. Approval of the conditional use WILL NOT contradict the goals and objectives of the Floyd County Comprehensive Plan because: The use will support locally owned business growth and is similar in character to a rural residential single family use. The Board of Zoning Appeals hereby GRANTS the Petitioner's Conditional Use at the meeting held on the 10th day of June, 2024. Approval by the Board is subject to the completion of the following conditions: 1. Approval of Septic System by Health Department Required. 2. This Conditional Use expires once the current owner sells the property. 3. Provide signage to identify property lines and trails as identified by a registered land surveyor. 4. No ATV activates by the renter/guest. 5. No firearms at any time by the renter/guest. 6. Quiet time begins at 10:00pm.

Mr. Heitkemper- Would like to add a condition to mark the trails as well as the property lines.

Mr. Creevy- States that staff can provide assistance in marking trails.

Mr. Bibelhauser- Restates condition 3: Signage must be provided to identify property lines and trails as identified by a registered land surveyor.

Motion: Approve with Amended Conditions

Moved by: Larry Bibelhauser
Seconded by: Victor Unruh
Motion passed.

Motion: To Adjourn
Moved by: Guy Heitkemper
Seconded by: Scott Whalen
Motion passed.

Adopted this 8th day of July, 2024.


Chairperson


Attest