

BZA MINUTES

JUNE 21, 2022

Members present: Jim Hufford, Bill Davis, Drew Cleveland, Tim Hart, Don Calhoun, Jon Peacock

Absent: Jason Hawley

Legal Representation: Jason Welch

Staff present: Randy Abel, Executive Director, Debra Johnting, Recording Secretary

Others present: Ed Thornburg, Ryan Burk, Brianna Schroeder

V. Chairman Davis: Let the record show today's date is June 21, 2022. The first thing is to approve the minutes from our last meeting which was May 17, 2022. Do I hear a motion?

J. Hufford: So moved.

D. Calhoun: I second.

V. Chairman Davis: All in favor say aye, opposed. Minutes approved as presented. First on the agenda tonight is for Ryan Burk, BZA2022-24-V, which is a variance. Ryan, if you'd like to come forward. Please state your name and address for the record.

R. Burk: Ryan Burk, 8256 East 250 South, Union City, Indiana.

V. Chairman Davis: Okay, Ryan, did you receive Article V, Conduct of hearings?

R. Burk: Yes.

V. Chairman Davis: And it was published in a timely manner, Deb?

D. Johnting: Yes.

V. Chairman Davis: Okay. Just for those, everybody involved in this room here tonight, basically we are going to allow you fifteen minutes to present your case. Hopefully this works. [Timer] And then after that we will have audience members that would like to come forward. Any speaking needs to be up here at this table, no background noises because this is all recorded. So, when you are done with your fifteen minutes, those of you that would like to speak in favor, to support this, please come forward, one at a time, you will have three minutes. And then after that is over, those opposing will have three minutes to come forward. And then we will have a five minute rebuttal. Jason, would you want to do yours now?

J. Welch: Bill asked me to just give a short summary of what the petition is, since this is a little bit out of the ordinary. So, basically what this is about is Ryan Burk has filed a petition for a variance with respect to some real estate located at 2593 South 500 East, Union City. That is zoned Ag Intensive at the current time. And he is requesting a variance to build two additional turkey barns there that are

closer to an existing residence than is permitted by the Unified Zoning Ordinance. And the reason it's a little different is back in 2015, Mr. Burk built two turkey barns at that time which were compliant with the current ordinance at that time. At that time there was just a 100 foot setback to a property line. So, he was compliant with those two at the time that they were built. Each of those prior turkey barns house about 5,500 birds according to the petition. Then in 2016 we adopted an amendment to the UZO, which added a Moderate Feeding Operation as a primary use. And also added additional setback distances from residences for all these Moderate Feeding Operations. They have defined a Moderate Feeding Operation as any existing or proposed confined operation or an expansion of an existing confined operation of which their livestock numbers exceed 500 fowl or ducks. So, that would be the case in this situation, there are over 500 turkeys that are going to be housed there. So, he's proposing to build two additional barns at that site, and those would each house 5,500 birds is my understanding so, using the calculations provided in the ordinance there would be a required setback of 870 feet to a residence if those birds are added. So, the next closest barn would have a required setback of 870 feet pursuant to the ordinance. The closest barn currently of the old barns is 351 feet from the residence at 5077 East Greenville Pike, and the other barn that is there currently, north of that barn is about 501 feet from the 5077 East Greenville Pike residence. So, those are well within inside the setback that would be required at this time. So, those are closer than they should be currently under the ordinance. But they are permitted because they are prior non-conforming structures. They were built legally at the time they were established so those can stay. But the new buildings would need to abide by the new setback which would be about 870 feet from the existing residence. So, he's requesting a variance to build these two new barns. And I believe according to the measurements that Randy has taken, one would be about 631 feet from the 5077 residence, and the other would be about 761 feet from that residence, if they were built as proposed. So, that's kind of an overview of what the situation is about. Does anybody have any questions about those things before we start?

V. Chairman Davis: Thank you Jason. Please in your own words let us know what you're wanting to do basically, and then we'll move on. And your time starts right now...[laughter]

R. Burk: Okay, as I said before I am Ryan Burk, I have a 40 acre farm in Union City. I went to Union City Community Schools and then graduated from Ball State University. Then moved home to join the family farm. My wife, Lindsey, works at Union City Schools Corporation and we have three children. I would like to build two additional turkey barns at my current location. We decided to diversify into livestock in 2015 and from the beginning we had planned on building four barns. I didn't have the means to build four barns in the beginning, but I did add some infrastructure there at the time between the driveways. A well with enough flow to supply four barns and a bigger, they call it an anti room, to have a water treatment system in there to supply water to those four barns. I did create a business plan and legally implement it seven years ago. During my time at Ball State I learned that no business plan is complete without plans for expansion. And that site was picked specifically because it met requirements for four barns. To add two more in the future is why that site was specifically picked. Like most people in the ag community, we hope that one of our three children will have a passion for ag, like I do, my dad, grandfather, great grandfather did and this expansion gives us a giant leg forward

in the right direction to give one of our kids that opportunity. So, we really hope that it wouldn't only provide for our family, but future generations to come.

B. Schroeder: My name is Brianna Schroeder, I am attorney at Janzen Schroeder Ag Law LLC and I am here to support Ryan tonight and hopefully answer questions as you have any as the night moves on. And I want to talk just real briefly about why this request for a variance meets all the requirements that you all have to be able to find legally in order to grant a variance. So, under your zoning ordinance basically it mirrors what Indiana code says so you don't have to, some places you have to juggle two sets of requirements, which is real fun, here you have the exact same so that makes some things easier. So, if you look at Article XVIII of your code, Indiana Code 36-7-4-918.5, they are mirror images. So the first thing you have to be able to decide, based on the facts, based on what you hear, is that the variance, "granting the variance would not be injurious of public health, safety, morals and general welfare of the community". So, first of all, in Indiana, livestock, poultry barns like this are not allowed to release any manure to any waters. IDEM, the Indiana Department of Environmental Management, and the office of Indiana State Chemist, OISC, both regulate that, they inspect, they issue violation letters, they fine you, they can shut you down. So, that is regulated and is not allowed to leave the site. There is no evidence that the existing barns, there is no violations, there's no problems that have existed with the existing barns, so that first element, you have facts before you that would allow you to make that finding. Number two, is that the use and value of the adjacent area will not be affected in a substantially adverse manner. So, we have to look at what we have now, which are two barns the nearest being 350 feet away from that subject property. That is the baseline that we're working from. The question becomes when adding two more barns farther away, in an ag intensive district that is designed specifically for confined feeding operations per the Zoning Ordinance and the per the Comp Plan, when adding those two additional barns create an adverse impact? And hopefully you've all gotten the letter I sent, I think Debra passed it on to you. I'd like to, I've got hard copies of some of the studies that we site to in that letter. That I will leave with you here today. But, primary uses in that Ag Intensive area specifically include things like commercial wind energy, barns, confinement operations, satellite manure storage facilities, and other large ag uses, that's the intended use of not only Ryan's property, but all of the adjacent property. That's the intended use the county has labeled that property for. The evidence by the Indiana Business Research Center, has sited two different studies, Kelly School of Business, Indiana Business Research Center have shown that confined feeding operations in rural areas, non-town homes actually show a slight uptick in property resale value. I'll admit that's different for an "in-town" home. But that's why places like Randolph County has zoning, separating those uses. So, the research based on Indiana sales, Indiana confinement operations shows an uptick in property values for homes in rural areas next to or near a confinement farm. The economic impact doesn't just extend to Ryan and his family as he talked about, turkey barns like he's building and like he has, also have a ripple effect. Because they're buying corn, they're buying input, they're producing, they're creating a bigger tax base for here in Randolph County. I grew up on the border of Allen and Adams County, up that way. And I can tell you that in Hoagland, Indiana, we don't have another GM Plant coming in. But what we do have is agriculture, and Indiana has that as an economic driver. This

study, this is from the Kelly School of Business, talks about the ripple effect on employment in the area when a confinement barn goes in, particularly it breaks it out by region of the state and type of species. Obviously dairy barns are huge, they're going to have more employees. That's going to have a different set of issues. But it breaks it down, turkey farms, right around Ryan's size, creates eleven to twelve ripple effect jobs in the county. Finally, as Ryan mentioned, he moved his family back here. It's a great example. God's not making any more cornfields, or soil, or dirt, or property. So, for young families to stay put and get involved in agriculture, livestock farming is the number one way that they can do that. And this is a study put forth by Purdue, showing that livestock farming including poultry farms is one of the top ways to get young families to stay, prevent brain drain, get them to stay, put down roots and continue farming in the area. So, that all goes towards satisfying that second category that you need to be able to find in order to grant a variance under Indiana code and under your zoning ordinance. Number three is "the strict application of the zoning ordinance would result in practical difficulties in the use of the property". And your council, actually I would agree with, explained it fairly well, I don't know of a single other piece of property in Randolph County like this. That started building and everything they did was exactly within the zoning ordinance, the plan, everything fit, the existing ordinance at that time. Then, the ordinance changed, suddenly making the plans that had been there all along, difficult if not impossible to achieve without this variance. So, the point is the practical difficulty is that the plan, you know they've got the infrastructure already in place, the plan to build those two more barns is impossible without this variance or other zoning relief. There's not another property that I've been made aware of that fits that category. So, the first thing you'd look at when you're considering whether there's going to be practical difficulties, if you don't grant it, there's three elements and those are laid out in your zoning ordinance. The first one is that basically the physical shape, the surrounding would result in a practical difficulty. Obviously, based on this property the barns are already there, we're trying to build farther away from the house that we require a setback from, without the variance we can't build. So, it's impossible, not just a practical difficulty, it's impossible. Number two, the conditions would not be generally applicable to other property, as I said I don't know of another property that fits these really unique circumstances based on timing and location. Number three, the difficulty that exists here was not caused by Ryan because you guys can probably imagine because maybe you've seen it, somebody creates their own problem, creates their own difficulty and then comes in and says, help me! help me!. That's not what happened here. He purchased, bought, constructed the first two barns in accordance with the zoning ordinance in existence at that time. So, the difficulty was created when the ordinance changed, and created a big impact on his particular piece of property. So, as I have laid out in my letter I think you can also see that the Randolph County Comprehensive Plan supports granting this variance, the county sets out at numerous places in the Comp Plan that it intends to support the establishment and the development of confined feeding in AI, Ag Intensive spaces. And that rural residents should understand that confined feeding may develop nearby because that's the intended use of AI property. The Comp Plan recognizes that livestock farms are key economic resources for the county, and the Comp Plan kind of summarizes or concludes that that plan is intended to ensure that agricultural land is used for agricultural purposes at its maximum potential. So, the Comp Plan, as you guys know better than I do, is kind of guiding

document, it's not binding on you, but it does give us some guidance for where the county as a whole wants to go. So, for those reasons, we'd ask that you grant the variance from the setback distances. I'll note just to kind of put a pin in it, because you may see it in my letter, we've also made an argument that based on the legal non-conforming status of that property of that use being characterized as an MFO, we reserve the right to argue that we don't even need a variance, because we predate that change, in ordinance language. We're not making that argument right now, it is in the letter if you're interested in it. Tonight we're here to talk about the petition for the variance for the setback distances. So, we will wrap up there and answer any questions you have now or we can come back up later, however is better for you.

J. Welch: If you have questions now you can ask them now.

V. Chairman Davis: So, any questions by the board at this time?

B. Schroeder: [Passing out information] These are all links already in the letter you have and there are citations to them and I did bring some copies, not that I expect anybody to read through them tonight, but wanted to make sure if you didn't have access to those links that those were available to you.

V. Chairman Davis: Alright, no questions by the board, I would ask you guys to have a seat and any member in the audience that would like to come forward to give your view on this to support it? Alright, let the record show none came forward so this would be the opportunity where those opposed would have three minutes to present your point of view. Anyone in the audience who would like to speak at this time? Please state your name and address for the record.

W. Carter: I'm Wanda Carter, I live at 5077 East Greenville Pike. I'm opposed to more turkey barns being put there, there's just the smell, I have a lot more flies, and everything has just kind of went downhill. They mentioned that you could sell your property for way more than you bought it for or however she stated it and all I have heard is that my property would go down in value. That I should have sold it a long time ago. I know laws change and I don't have nothing against the law staying as it is that they shouldn't be built there, there isn't enough room. That's about all I have to say.

V. Chairman Davis: Okay, thank you. Anyone else in the audience that would like to speak?

T. Thornburg: My name is Tim Thornburg, 5406 East Greenville Pike. My property does not directly butt up against Ryan's but there is a short distance between us. Absolutely nothing personal against Mr. Burk, it's just the odor of course, and we get these, they're called litter beetles, we've had them checked, from poultry litter, they invade our house, it just makes it almost unbearable at times. And we occasionally get a dead turkey carcass in our yard, wild animals I guess. I grew up with livestock, I've had livestock myself, and I get it and I understand, he wants to expand, it's not that he couldn't build somewhere else I think. And I understand the infrastructure part of it too. That's all I have to say.

V. Chairman Davis: Thank you.

B. Thornburg: 5337 East 250 South, about 1,100 feet from the turkey barns, they are about 1,100 feet to the west of me so we get quite a bit of the effect. My wife Cheryl and I built our home and have

lived there for 38 years, and the new barn will set directly west of our house, and we've noticed the increase of flies and bugs and coyotes and we can hear fans run and even hear the turkeys. When it's high humidity the odor travels and lingers, especially if there's not much breeze, it's pretty ripe at times. We like doing things out in the yard and entertaining family and gardening and yard work, we still hang clothes on the line. We planted two hundred pine trees, to the west of our house, but things don't grow very fast. To help as a barrier. We put in central air, and having also some concern, it might not be a huge deal but the runoff from the roofs and stuff because it makes more runoff to travel across the adjoining farms. So, I appreciate the opportunity.

V. Chairman Davis: Anyone else?

A. Chalfant: Mr. Chairman, I was talking to Bob back here when you gave the opportunity for people to speak in support?

V. Chairman Davis: Right, let me see is there anyone else that would like to speak opposing this? Before we get back to you.

J. Thornburg: John Thornburg, I live at 1649 South 500 East. I am here more in sympathy with Wanda and Bill and Tim. I am also concerned with the water shed off of those barn's roofs where it's gonna go, it's gonna go across the next farm and it goes across ours and we get a pretty good gully from it. It seems like a building of this size might need a retention pond. I don't know whether that's in the rules or not. But, it's not affecting me personally much, other than the turkey feathers. So, I am here in favor with the ones that have got objections to it.

V. Chairman Davis: Thank you John, anyone else that would like to speak opposing it?

J. Peacock: Clarification, Ed, we've had water issues. That the water from those new barns, have you checked on where the water would go?

E. Thornburg: Unless they re-landscape that area, the water will go...

J. Welch: Ed, could you come up to the table so we could make a record here, in case they have some questions for you?

E. Thornburg: Ed Thornburg, 623 South 400 East, I live a long ways away from them. Also, I am County Surveyor. In reference to your question about that. If they don't do substantial re-landscaping, water will shed towards the two culverts and shed towards your family's farm. And of course then it will proceed on down towards the ditch. In answer to the retention issue, in 2006 the Commissioners voted, actually the Drainage Board voted to exempt ag buildings from storm water retention. The reason being, the majority of the time, the property that these buildings go on is large enough normally to absorb the excess water before it causes any problems with the neighbors. If you have three commercial buildings in a row you get a lot of water. Basically you will shed five times the water on an acre of impervious surface, roofs and driveways, five times as much of it runs off as runs off the regular crop ground. Once you hit saturation it all runs off at the same speed. But the reason they, that was before me, the reason they exempted those buildings was because of the concern of waterborne

disease, mosquitos and standing stagnant water around livestock is just not a positive thing. And that was the reason you don't have retention ponds around these barns. Normally, you get self-contained on the property. It's slightly unique that this property's got a little more difficulty in that way. Basically, anything can be fixed. These properties are approximately two and a half miles from where, there's a county tile 1,200 feet away roughly, no, 1,500 feet away. But that dumps into an open ditch approximately two and a half miles away. Rough calculations the water off of all that, to bring everything back to being completely equal would only require upsizing the tile one size. You'd be going from a fifteen to an eighteen inch tile that would more than cover it. Basically a little sweat work, a little tile work, and you'd get this pretty well under control. The places where this has been an issue, the property owners have made it work out between them. I've always thought it was interesting that they voted to go this way. And everybody would rather deal with water than deal with sick livestock. That's the reason for that.

V. Chairman Davis: Thank you, Ed. I don't know who threw this out there but maybe for the whole group here, what Ed just said, if we could, to address the water flow issue, would both parties be acceptable if it was an easy fix to update the tile? Is that fair to say that? I mean if that would be a fix to solve the problem?

J. Welch: That's not really before the board at this time. It's just the variance.

V. Chairman Davis: Okay, any other questions by the board at this time?

J. Peacock: I have another question, is there any other place, Ryan, that these barns could go?

R. Burk7: There is only one other place and it's difficult in itself, I just bought my Grandpa Lamb's farm and it's down, south of you on that 110 acres, there is not one single place on that 110 acres. The 72 acres at my house, I would have to swap ground with dad to make them fit there. The only other place is down by South Salem, which is more populated and a church there. Is the only other property I own that we could build on.

R. Abel: Why would you have to swap the 72 acres?

R. Burk: Because of the setbacks for the houses and the county tiles.

R. Abel: To what house?

R. Burk: For the 72 at my house? Ed looked it up in his office.

E. Thornburg: The challenge for him is, where his buildings are, is at the east side of his parcel. Those buildings need to run east to west to work properly and if you moved them to the west, then he'll run into the setbacks of the what is that next road over west of you?

R. Burk: Well, there's Wymer's house and then the ditch, were the setbacks. So, the only way that would work at my house is dad and I would have to swap sections of ground.

R. Abel: I thought I looked at that farm and there was plenty of room. The nearest house is your house isn't it?

R. Burk: No.

R. Abel: Who's is it?

R. Burk: Wymers. Ed looked it up.

E. Thornburg: Yeah, we looked it up.

R. Abel: It's on 227?

R. Burk: Yeah.

E. Thornburg: Yeah. And the houses that are near to that, I'll be honest, personally I like that site, because the houses affected are upwind, and I mean you've got a long run to the east with, that's just not going to be a lot of issue there. But, he has to swap or buy some ground to make that happen.

R. Abel: Okay.

V. Chairman Davis: Does that answer your question Jon? Or are you still thinking?

J. Welch: Have those other options been fully explored?

R. Burk: Yes.

J. Welch: And there are other viable options?

R. Burk: One, and I understand by the regulations it's a viable option but to me it's much less so in that area. But I understand that the regulations are what they are.

R. Abel: I will state for clarity that the statement was made that there's no other CAFO's in the county that would meet this requirement and there are several MFO's in the county that meet this exact situation and we have actually issued confinement composting building permits for those areas as well. I think if you look at my comments in the statements I stated that due to state law changing they want these compost buildings on site now, instead of a regional one where the biosecurity is an issue. That we have had to issue several of these under this MFO setback thing to other CAFO's in the county. Several of them.

V. Chairman Davis: Still thinking, or are you...okay. I think at this time anyone who would like to, the last opportunity to speak for?

J. Welch: And then they'll have five minutes.

A. Chalfant: Board, I apologize for my appearance, I just came from a swim meet. So, hopefully you're going to take enough time to where I don't have to go back and do the parent relay. So, we'll go that way. Board, chairman, Aaron Chalfant, 6616 North County Road 500 West, Winchester, Indiana.

V. Chairman Davis: Thank you.

A. Chalfant: I am here in support of Ryan Burk, and the hog barns, and his family. And I do believe that the precedence has already been set, back in possibly 2009, your predecessor, there was a moratorium imposed. And myself, Gary Foulke, Jason Chamberlain, we were already permitted. And we had to go in front of the county as far as a lawsuit to get that moratorium, which was illegal, overturned. And I think we're coming up against some other legal actions, I am sure the lady back here can go into more detail. But, I don't want to see another lawsuit against the county from a livestock facility to the county. And we're talking about a generational family farm that's been around...four generations? We're looking at number four back there? I've got a boy that's a year older than Reed, and we are within a decade of these boys playing a very active roll back here in these barns, and that's what we want to do. We want to create a passion to love livestock, poultry, land and that's what we're trying to do. And we're trying to expand the family farm. And, we see these roads and infrastructure breaking down and they were built for straight trucks and small equipment two generations ago. And we need to come up to speed with the times because the industry is going to constantly change and we need to change with it. And I will really impress upon you to adopt those changes. Otherwise we're going to be left. There's enough Buckeyes buying enough ground in Randolph County that's going to bring their big equipment over and do what they want anyway. Let's keep this ground in the hands of Randolph County farm boys as much as we can. I'm putting my support with the Burks and I kindly ask you to do the same.

V. Chairman Davis: Thank you.

A. Chalfant: Thank you.

V. Chairman Davis; So, do we want to give those opposed an opportunity?

J. Welch: I think according to the procedure the petitioners would now have five minutes to speak.

V. Chairman Davis: Okay, Ryan, would you guys like to come forward?

B. Schroeder: Hey guys, I just wanted to address a couple of the things, I tried to take notes, so I am probably going to bounce around here a little bit. But a couple of points that I think are worth making here, and I've been in a lot of counties in Indiana, dealing with livestock issues. And to me it's always really important when you see that the county has carved out and set up a specific zoning district for confined feeding and highlighted that as being a goal, an intended use of that zone. Some call it ag production, some call it ag three, they call it different things. Here it is ag intensive. So that is where livestock is intended to be. People who have houses in ag intensive are put on notice that there's going to be confinement structures built there in AI property. There was some discussion about the drainage and the landscaping and again, this will help, Ryan actually already has plans to bring in more dirt to do some re-landscaping. And in fact actually has already put in some additional tile to address any possible issues with runoff from an impervious structure, or an impervious roof there. So, he's been thinking ahead and has already plans for the dirt, and has already put in additional drainage tile there. And then I want to come back to the issue tonight, because we are here for a variance, it's not the big

question, which I am sure you guys have had to grapple with, and the APC has had to grapple with, do we want livestock? Do we want animals and barns here in Randolph County? It's not that big question. It's a very, very small specific question. Not this big general issue, but rather the specific question is whether adding two barns just north of two barns that already exist, meet the requirements for a variance to be issued. And as I have laid out I think they do. So, we're not working from scratch where this is no barns exist. We already have two barns, that's not going to change. So, the question becomes one of increments, does adding two barns cause any problems when there's already two barns there? And it doesn't. We've addressed water, run-off, landscaping, the infrastructure is already in place. It's in the place where the county has said, "build your livestock structures here." And as we have laid out what makes sense I think a special case is that it started, and the plans and the construction all started fully in accordance with the ordinance set forth by the county at that point in time. And it's only been the subsequent change in the ordinance that has brought us to have to be here tonight. So, we're happy to answer any questions, or address any other issues that you guys have in your minds. We also want to be respectful of everyone's time.

V. Chairman Davis: I don't have any questions, does the board have any further questions?

J. Peacock: I have a comment. If this does not get approved tonight, I want you to know that I hope you find another way to build the barns.

R. Burk: Okay.

J. Peacock: Okay, but I hope there would be another place to build the barns. Because it's iffy.

R. Burk: Okay.

R. Abel: I have one other comment, I know in my recommendations I stated that the current, and I guess we call it the CAFO Ordinance was developed over years and years and years of farmers and individuals about the county. And from that came about for these plans for the CAFO Ordinance. I would agree that the Comprehensive Plan definitely sets aside ag intensive for these types of operations. But it sets it apart with the restrictions of the UZO. With the animal units. And the animal units is something that I don't think we should be messing with, it was done with a lot of study, of course I wasn't here at the time, so I can't tell you what all the research that went into that. But I know it was years of research that came about with these animal units. And that is to protect the neighbors from the odors, from the smells, from the whatever it is, the health, safety and welfare of these intensive agricultural uses. And over the years it has proven very effective. I think you can go and question different realtors and auctioneers in the county and they will agree that as long as these setbacks have been maintained in this county, this is approved to protect property values of the neighboring residences. Now, I don't know what these studies show from Purdue and other places. I know we've had other studies and if you get down into them and you look at the distances and they are set up according to animal units or other specified distances according probably to the number of animals and the size of the operation. So, as the Director, I would say we're going to see a lot of influx of variances if we start messing with these animal units. And that's why I say they were put in place

after years of study in order to preserve these property values and be able to put these in without any hearings. So, technically in a lot of counties you have to have a hearing, or you have to have a rezoning any time you put these CAFOs in. Randolph County has done, not only with CAFOs, but with wind turbines, with solar, with radio antennas. The county has taken to backing it, if you meet these criteria, you walk in my office you take out a permit and you're done. No hearings. So simple. So, that's why we really haven't really seen hardly any setback requests for any of these types of uses. And, I mean, that includes almost any of those uses that we have where you don't have to have a hearing for.

V. Chairman Davis: Randy, I would agree with what you said, but I also go back to, it's not his fault. To me, I don't understand why it's not grandfathered in, so to say. You had your plan, you did what you were supposed to, I don't fault you for that.

B. Schroeder: Can I just make a really brief response that I don't want us to lose here. I respect, and I have met your Director before and I respect his opinion greatly. He pointed out that these distances have protected residences. Well, the distance here, granting the variance, isn't going to change the distance. That first barn is there, 351 feet. It's there. That's not going to change. So, the setback distance, we're not looking to encroach any further than what is already there. In fact, it is farther away from the house. So, in terms of the distances that are set up to protect residences, the distance here would not change. In fact, it would be farther away than the currently existing barns. So, I just want to make sure that we don't lose that in our valid discussion here.

V. Chairman Davis: And I know too, and Jon I've got to ask you, do you see this as being a conflict of interest with your parents farm it looks like it appears to the north?

J. Peacock: I called Jason to ask him that this morning. And I am still not completely sure.

B. Schroeder: Jason, from a legal perspective, and I'm only saying this because I have been, I'll admit I have been burned on it as an attorney. If there's a question of conflict, we have to raise this here and now or we give up our right to do that in the future before any court.

J. Welch: I understand.

B. Schroeder: So, I do want to make sure that if there is a conflict, that anyone feels conflicted out, or potentially conflicted out, if they need to recuse themselves that that is done, so that Mr. Burk gets a fair and impartial hearing. I am not suggesting, I don't know where your parents farm is, I just, that is a big legal issue that the court of appeals has made very clear that if I don't say that right here, right now we give up the right to ever say it again. So, I do want to bring that up.

J. Welch: I understand.

V. Chairman Davis: So, what do we want to do?

J. Welch: Jon and I discussed that issue.

V. Chairman Davis: Okay.

J. Welch: And I told him what the standard was, and it was up to him to decide whether or not that he believed that his situation fit into that standard where he needed to abstain from voting.

V. Chairman Davis: Okay. So, now the case is presented, do we want to...we've got new procedures here so we're kind of the guinea pigs here. Excuse me, but...Now's the time that we need to move forward with the vote?

J. Welch: That would be up to the, you can entertain a motion.

D. Calhoun: I'd like to make a motion to grant the variance.

D. Cleveland: I second.

V. Chairman Davis: All in favor? Opposed? Deb, roll call.

D. Johnting: Don Calhoun, yes, Jim Hufford, yes, Jason Hawley is absent, Bill Davis, yes, Tim Hart, no, Jon Peacock, I'll recuse myself. So, is that abstention? Okay. And Drew Cleveland, yes. By a vote of four yes, one absent, one no, one abstention, motion is approved.

V. Chairman Davis: Good luck.

R. Burk: Thank you.

V. Chairman Davis: Do we have any old business? You are welcome to stick around but please as you leave will you keep in mind we're still conducting a meeting, thank you. Any old business that needs to be discussed at this time? Okay, any new business? Do we have anything for next month?

D. Johnting: Not yet, but we have another week.

V. Chairman Davis: Report of officers and committees, is that anything?


D. Johnting: No.

V. Chairman Davis: Motion for adjournment?

J. Hufford: So moved.

D. Calhoun: I second.

V. Chairman Davis: We are adjourned.



Jason Hawley, Chairman



Debra Johnting, Recording Secretary

Bill Davis, Vice Chairman