

**PORTER COUNTY BOARD OF ZONING APPEALS**  
**Regular Meeting Minutes**  
**January 18, 2017**

The regular meeting of the Porter County Board of Zoning Appeals was held at 5:30 p.m. on Wednesday, January 18, 2017 in the Porter County Administrative Center, 155 Indiana Avenue, Suite 205, Valparaiso, Indiana. Debbie Cook presided.

Members present were: Marvin Brickner, Michael Young, Luther Williams, and Debbie Cook. Also present were Attorney Scott McClure, Kristy Marasco, Monica Gee, citizens, and representatives of the press.

**ELECTION OF OFFICERS:**

Chairperson: Michael Young made a motion to elect Debbie Cook Chairperson of the BZA. Marvin Brickner seconded the motion. A voice vote was taken and unanimously carried.

Vice-Chairperson: Michael Young made a motion to elect Marvin Brickner Vice-Chairperson of the BZA. Luther Williams seconded the motion. A voice vote was taken and unanimously carried.

**MINUTES:**

Michael Young made a motion to approve the December 21, 2016, meeting minutes as submitted. Marvin Brickner seconded the motion, which carried on a unanimous voice vote.

**COORESPONDENCE:**

None.

**NEW BUSINESS:**

**DV-16-0083** – Petition filed by Jonathan Garza and Stephanie Knopic, 118 East Main Street, in Union Township, in the R1, Low Density Single-family Residential District. Petitioner is seeking a Developmental Standards Variance to allow an increase in the maximum fence height from 3 feet to 6 feet in the front yard. Kristy Marasco stated that a staff report was provided to Members for their review prior to the meeting and the notes from Joey Larr, Code Enforcement. Mr. Jonathan Garza presented.

Mr. Garza stated that he put up a 6' chain link fence in front of the property. He explained the reason for needing the variance is for his live stock (ducks and geese) to preventing them from flying out, prevent predators from getting in the yard and for his dog. They are currently unable to use their back yard do to positive soil testing for arsenic and heavy metal poisoning; they had 9 birds die in the span of four months. They believe the source is from the feces pile on the south side of their property line. He believes that they are grandfathered in because they have an existing 6' fence on their property in which they are just continuing; the fence they put up is not a stand alone, they are reestablishing pasture lane because the birds were previously kept in the front and the fence was taken down because it was in disrepair.

The height of the road is another issue; the grade on the top of the asphalt to the grade of their lawn is a 2 ½ foot difference. He has a petition signed by 72 people stating that they do not have a problem with the County allowing the fence to remain as is. As to the fence and character of the neighborhood in the area, they have stacks of pictures of fences that are anywhere from 4 feet to 6 feet (submitted pictures).

Atty. McClure stated that one of the issues that will come up is the site line; he asked Mr. Garza to address if he thinks the fence is causing any site line issues on the road at the intersection.

Mr. Garza replied, because of the elevation of the road the higher the fence becomes less and less of an issue when approaching the intersection. The fence is set back a foot further into the property line which creates a greater easement between the fence and the actual road. When pulling up to the intersection, the telephone pole at the intersection provides more of a visual barrier than their fence.

Atty. McClure asked Mr. Garza to explain in greater detail what the fence has to do with his religion.

Mr. Garza replied that going back to the feces pile at the south end of his property, in the Torah's it states that you cannot pray (inaudible) in the presence, where you can see or smell feces whether it is human or animal because it is offensive to God.

Q: What is the chain link fence doing in regards to their parish?

A: It allows us to use the front end of our property. We are able to do outdoors things on the other side of our house where the house provides a visual and physical barrier from the smell.

Q: Does the chain link fence have the inserts in it or is it an open chain link?

A: It is an open chain link fence at this time.

Q: How long has the fence been up?

A: We put it up on September 17, 2016.

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the board while at the same time the petitioner will take notes and respond at one time.

Atty. McClure stated that for the record there were a couple of letters that were turned in from neighbors that could not come but wanted to remonstrate. He passed them down to be read by the Board and made them part of the record.

Ms. Kathy Garza, 707 Napoleon Street, Valparaiso, she is in favor of the fence.

Mr. Ed Garza, 707, Napoleon Street, Valparaiso, he is in favor for the fence.

Mr. William Hughes, 101 Cottage Avenue, Wheeler, he has pictures of the road coming on to Main Street, it's a safety issue and it is hard to see. When the sun is shining, you cannot see thru the chain link fence from the east. His concern is for his family's safety.

Ms. Kristen Hughes, 101 Cottage Avenue, Wheeler, she showed more pictures of the fence and of the back yard. She stated, she was almost hit 2 or 3 times trying to pull out because she could not see (showed a picture of the red truck). She is concerned about safety. The feces pile that Mr. Garza is talking about is a compost pile that is in her back yard from her cows. She stated that they have been tested and they do not have arsenic.

Ms. Betty Harvey, 122 East Main Street, Wheeler, her concern is with safety issue.

Ms. Shayne Cheek, 121 East Main Street, Wheeler, her concern is that it's an eye sore. Their geese were always kept in the back, there was no problem. Since they have been in the front, her next door neighbors have gotten sick, they have a lot of allergies and feathers are all over their yard in the summer from blowing. She is opposed as to having the fence that high.

Mr. Garza's rebuttal:

- he has a picture of his wife while she is sitting in her Mustang, (submitted pictures) which shows you can see sufficiently up the road where it's not an issue
- showed a picture of himself standing on the road to show the height difference
- he mentioned an incident that happened 3 ½ years ago where a pit bull got into their yard
- there is a on-going legal issue between the Hughes's and himself, he has had to sue them in small claims; on Tuesday the Hughes's filled two small claims lawsuits against his wife and himself

The public hearing was closed and questions/comments were heard from the Members.

Mr. Young's concern is with the height of the fence in the front yard.

Mr. Brickner's concern is with the mess in the front yard. He counted 26 birds.

Mr. Garza replied that there are 31 birds.

Mr. Brickner stated that there is no grass, the front yard is completely mud and there is a big pond on one side of the house. To him it's something they should have in the back yard and certainly does not belong in the front yard. There is a safety problem, coming out of Capitol you cannot see to the west until you are almost on the road. He does not know why they did it without a permit or a variance to begin with. It is bad planning on their part.

Mr. William's concern is with the front yard. It's a mud hole and looks like all the drainage goes there and seemed to him, that the birds were standing in wet feces. He is concerned about the safety of the people using the roads and that it's a health hazard; it is not a healthy situation. He emphasizes as for them wanting to raise the animals, but having 31 birds on less than an acre maybe a little too much.

Motion: Marvin Brickner made a motion to deny Case DV-16-0083 with the provision that there will be 60 days to remove the fence from the front yard and the birds are put somewhere else. Discussion if 60 days would be enough time being that it is January. Marvin Brickner changed to 90 days, until spring. Michael Young seconded the motion. A ballot vote was taken and unanimously carried 4-0.

**DV-16-0088** – Petition filed by Thomas Mack, 620 East 600 North, Washington Township, in the A1, General Agriculture District. Petitioner is seeking a Development Standards Variance to allow an increase in the maximum structure height from 20 feet to 23 feet 6 inches for a proposed addition to an existing accessory structure. Kristy Marasco stated that as presented in the staff report, the existing accessory structure was put up in 2001 and they are requesting to add to it, keeping the roof line the same; there is no issue with having room, it's just for the height. Mr. Dan Cosentino, with Morton Buildings, presented. Mr. Thomas Mack was also present. Mr. Cosentino explained that Mr. Mack has purchased a new camper. As to the size of the existing accessory structure and for the new addition to match, to allow them to put a 12' overhead door; they are requesting a variance for the height as for Mr. Mack could park his camper inside and not leave it outside.

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the BZA while at the same time the petitioner will take notes and respond at one time. No one spoke therefore the public hearing was closed and questions/comments were heard from the Members.

Mr. Brickner asked how big this property is.  
Mr. Consentino replied it is 5 acres.

Motion: Michael Young made a motion to approve Case DV-16-0088. Luther Williams seconded the motion. A ballot vote was taken and unanimously carried 4-0.

**DV-16-0089** – Petition filed by Nardo Builders, 3 Switch Drive, in Liberty Township, in the R1, Low Density Single-family Residential District. Petitioner is seeking Developmental Standard Variance to allow for a five (5) foot fence to remain in the front yard on a corner lot parcel. Nick Scalise, with Nardo Builders, presented. We place the fence there because of a mature tree that came on the property line and because of the owner's child. The owner was concerned about the safety and wanted to keep it at 5'. It does not come anywhere near the corner of the intersection and it does not abstract anything with traffic

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the Board, while at the same time the petitioner will take notes and respond at one time. No one spoke, therefore, the public hearing was closed and questions/comments were heard from the Members.

Mr. Young stated that he normally does not like fences in the front yard, he thinks this one adds to the esthetics to the area.

Mr. Brickner asked what the reason is for heaving a 6' fence.  
Mr. Scalise replied that it is 5'. The paneling was premade and they bought sections. As a developer, they want to keep it all consistent, which they did thru the entire community. This particular lot is on a corner and because of the location of the tree.  
Mr. Brickner asked if the owner knew of the ordinance against having a fence over 4' and asked Mr. Scalise if he is asking for the variance for the owner.  
Mr. Scalise replied that they (Nardo Builders) installed it.

Atty. McClure asked if the fence that they are asking for is up.  
Mr. Scalise replied that it is up and done.

Ms. Marasco confirmed that the fence is on a utility and drainage easement.

Atty. McClure advised the Board that assuming they approve the fence, he asks that they make as part of the motion that the owner(s) sign a waiver which basically says that at any time, anybody (Storm Water, right-of-way) has to go in for some reason, the fence being in the way, the fence will be taken down at the owner's expense. (The motion would be contingent upon it.)

Motion: Marvin Brickner made a motion to approve Case DV-16-0089 with the stipulation as to getting a building permit for the fence and as to having the Hold Harmless Agreement signed and recorded. Michael Young seconded the motion. A ballot vote was taken and the motion carried 3-1 (Cook).

**DV-16-0090** – Petition filed by John Phillips, 4904 Lynn Lane, in Center Township, in the R1, Low Density Single-family Residential District. Petitioner requests a Development Standards Variance to allow reduction in the minimum side yard setback of 10 feet to be at 2 feet and allow reduction in the minimum rear yard setback from 15 feet to be at 8 feet, for a proposed (768 square feet) accessory structure. Kristy Marasco stated that the petitioner has a detached garage, this proposed structure is not putting him over the square footage, and he would like to place a shed in the back yard. In this area the yards are not that big. The petitioner did change the size of it to come down and he is requesting reduction in the side yard setbacks. Mr. John Phillips presented.

Mr. Phillips stated that he did work with the staff and he stayed under 770 (under the 1300 square feet total). He is working with Fieldstone Enterprises and Yoder, they are not permanent structures and there is no foundation. They actually wheel them into position and are custom built to match the home. The reason they need to put it in that location is to stay away from the septic field. The Health Department requirement is to maintain a minimum of 10 feet to the nearest lateral. By positioning the building in the corner as shown on the plans, they can achieve that objective.

Public Hearing: Debbie Cook asked if any of the public would like to speak in favor of or in opposition of this petition. Debbie Cook also asked that the public address their questions to the BZA while at the same time the petitioner will take notes and respond at one time.

Mr. Brickner asked if he had any of his neighbors complaining about it.  
Mr. Phillips replied, No.

Motion: Marvin Bricker made a motion to approve Case DV-16-0090 as proposed. Michael Young seconded the motion. A ballot vote was taken and the motion unanimously carried 4-0.

**STAFF ITEMS:**

None.

**ADJOURNMENT:**

The January 18, 2017 regular Porter County Board of Zoning Appeals meeting adjourned at 6:22 p.m.

---

Debbie Kerr-Cook, President

---

Attest: Kristy Marasco, Assistant Director