



**2-B Petition in Remonstrance for concerned citizens, by counsel, David Ambers for their Petition in Remonstrance of the Petition for Variance of Developmental Standards/Use Variance filed by Rick Moore and Lynn Moore. (This was continued until May 15th, 2018 at 6:00 p.m.)**

Dwayne Hogan asked if the legal work is still correct.

Attorney Biege said notices were given so future notices for the petitioner are not necessary.

Russell Millbranth said he's an attorney in Valparaiso Indiana, representing Rick & Lynn Moore respectively. Attorney Millbranth said in order to clarify certain things that were submitted after they came in to see him, he suggested strongly, and they agreed with him, that we file a new petition, or revised petition, which he has done this evening and they would like to withdraw this petition so that the new petition can be heard next month. Attorney Millbranth said that the new petition will address most of the issues that you have before you in the current petition, however they have clarified that so he hopes at least, and so does Rick & Lynn, a little bit better understanding of what is going to be accomplished and what they're trying to achieve with the request that they have made.

Attorney Millbranth said that they respectfully ask the members of the board if they could meet next month with the revised petition that he has provided. Attorney Millbranth said that if there are any questions that you wish to direct to him on behalf of Rick & Lynn, he will be more than happy to answer any questions that you have.

Attorney Biege told Russ since he's withdrawing the previous petition and filing a new one, he would suggest that we re-notice for next month.

Attorney Millbranth said that he's sending notice to the adjoining land owners that are abutting and adjoining the property so that they're properly notified of this hearing. Attorney Millbranth said that they will also place it in a newspaper of general.

Dwayne Hogan asked the pleasure of the board.

Attorney Biege said actually he thinks that he can withdraw as a matter of right.

Dwayne Hogan said petition number 1 as we have it today will be off.

Attorney Millbranth thanked the board and he said he appreciates that very much.

Attorney David Ambers as you are aware, he represents the concerned citizens of Clinton Township and they filed an objection to the previous petition. Attorney Ambers said since the last meeting, there has been substantial activity out there, and while he understands that petition is now withdrawn and there will be a new one, he would like to just indulge you for a couple of minutes with some information for you to consider.

Attorney Ambers said what he has given you first is the first document findings from the 2015 meeting. Attorney Ambers said that the importance of those findings is on page 2 you imposed certain conditions upon the petitioner, Mr. Moore, particularly compliance with the drawing that was Exhibit A to those findings. Attorney Ambers said it showed a back thirty-five (35') feet long with four (4) shooting ranges, and then the side wall coming back just beyond the dirt. Attorney Ambers said that if you look at the photographs that he has given you, yesterday there was a portable building placed there sixteen by thirty-two (16' x 32'), which is over a hundred and forty-four (144') square feet and as of 11:15 this morning they haven't applied for a building permit, and he really couldn't because this Special Exception did not include a building.

Attorney Ambers asked if that was red tagged today?

Annemarie Polan, Building Commissioner, said that it was red tagged today.

Dwayne Hogan asked when that building was placed there.

Attorney Ambers stated yesterday.

Dwayne Hogan said it wasn't there when he drove by.

Attorney Ambers said the second picture is just a closer up picture of that.

Attorney Ambers said what's important is the third (3) and fourth (4) pictures. If you look along the south property line, they built the wall beyond what was depicted on the 2015 findings and came up and wrapped it up to that building, again, without a building permit; without an expansion of the Special Exception, they just seem to be building whatever they wish as they wish, without obtaining permits until after the fact. Attorney Ambers said he doesn't know how a permit could be issued because it wasn't authorized under the Special Exception for that building.

Attorney Ambers said it appears to him, is they're using these continuances to build their gun range and then come back next month and ask for forgiveness. Attorney Ambers said that he would ask on behalf of his clients that the board order them to not construct any further improvements until this matter is heard in June, and quite frankly, given the extent of that back stop that was supposed to be thirty-five (35') feet, it appears to be over a one-hundred (100') feet long; they claimed four (4) shooting stalls and they have used as many as eight (8) at one time; they could probably accompany fifteen (15) to twenty (20). We think in addition to no further construction, there should be no further use of that property until you have a chance to review this matter in June. Attorney Ambers said he will answer any questions, if you have any questions.

Dwayne Hogan asked if there are any questions, comments, or concerns of the board.

Attorney Biege said we're not talking a rescission, this would be a temporary suspension because there is an expansion, or violation of the conditions set forth in the previous findings.

Dwayne Hogan asked how long the dirt wall back is.

Attorney Ambers said that it appears to his client to be a one hundred (100') feet long. Attorney Ambers said he thinks he had other pictures that he filed with his last brief where they had an event out there that was on a website that is apparently renting this. Infinity Solutions out of Kouts is holding classes out there, and at that time, they had eight (8) stations set-up, which is twice what you approved and they weren't even using half of that back stop.

Board members speaking amongst themselves.

Dwayne Hogan asked if there is wiring and plumbing for this building.

Attorney Ambers said he doesn't know. Attorney Ambers said that his client advised him that it was set there. Attorney Ambers said that the only permit that they have obtained was in April, they obtained a permit to run electric service down a board to a pole. If you look at the photo there it's a pole with a light and board next to it. Attorney Ambers said he doesn't know the purpose of that, but he assumes that they're going to run extension cords, or a trench over to that building, which again, has not been authorized in your findings.

Attorney Ambers is up at the bench going over the site plan with the board members.

Attorney Ambers said that the retaining wall that they built on the Facebook page shows people during classes sitting in lawn chairs against that wall. Attorney Ambers said that has been built without a footing, or a permit, and they're just basically road construction barriers.

Attorney Ambers said with the spring and all the rain that we had and soft dirt, that wall could topple and fall down on the people sitting along the side of it. Attorney Ambers said that there just wasn't a lot of planning here and we would like to stop that until the board can reasonably hear this matter in June to determine what, if any, permits are necessary.

Earl Cunningham said Mr. President, he'd like to ask for permission for Anne to speak and address the board.

Annemarie Polan, Building Commissioner, said that we do not issue permits for walls such as that.

Dwayne Hogan asked if it's a Jersey barrier wall – nothing needed there.

Earl Cunningham asked attorney Biege lets move this from a gun issue and let's talk about if somebody came in and asked us for twelve by twenty-four (12' x 24') building and they got a Variance to build this building and we found out that they built a twenty-four by forty eight (24' x 48') building, what would be our position as a board.

Attorney Biege said it would be a violation of the variance and they would have to come back and ask for another variance. Attorney Biege said that we considered two months ago tearing a house down.

Attorney Ambers said Judge Stallbrink ordered one down in Long Beach a few years ago. Attorney Ambers said that people built an observation tower and that actually had a building permit from the City of Michigan City and the Court of Appeals upheld removing that structure that exceeded the height limit, even though they had a building permit.

Dwayne Hogan asked if there are any other questions, or concerns of the board.

Glen Minich said as far as the size of the back stop in his mind, we were looking for a minimum size. Glen said that he thinks the larger size is probably advantageous to everybody. Glen said he really doesn't think that there is really anything wrong with that.

Glen Minich said he guesses he did have one answer as to what this is for. Glen said in a preliminary – so the back stop is bigger than it was supposed to be, but we talked about four (4) shooting stalls, five by eight (5' x 8'), so you're talking about a structure that's twenty by eight (20'x8') feet for shooting stalls. Glen asked if that is what it's supposed to be.

Attorney Biege said that he doesn't think that structure is an issue. Attorney Biege said what's an issue is there a violation of the existing --- Attorney Biege said that he wants to add something and Mr. Ambers may disagree, but he's not sure if there is a permit required for the jersey barriers, we can discuss that later, but you said it was and you make your argument and he respects that, but he's not sure that is required.

Melissa Mullins Mischke said she thinks Annemarie said they don't issue building permits for Jersey barrier walls.

Earl Cunningham told Glen that he would agree with him one-hundred (100%) percent that the length of the back stop wall has no bearing, its additional safety. Earl said that's not the factor, it's going from four (4) shooting stalls to eight (8), that's like doubling the building size. Earl said that's in fact what they've done and that's what you're indicating, but they have gone from four (4) shooting stalls to eight (8). Earl said that's why he asked the question if we have a building built twice as big.

Glen Minich said that they really weren't presented with any pictures showing the shooting stalls. Glen said that we all heard evidence that there are more shooting stalls than were allowed.

Melissa Mullins Mischke said quite frankly, as much as that resembles the site that she visited in person, she doesn't have any contacts from his photographs to say they're from a particular

facebook page; a date on them. Melissa said she can't confirm if they're exactly the same spot that they visited, in her opinion.

Attorney Biege said at no point in these photographs does it indicate more than four (4) shooters actively shooting at once.

Board members going over the site plan.

Earl Cunningham said right now it's an alleged violation. Earl asked if we have the authority if we choose to keep them, make sure that we're restricting the four (4) shooting stations. Earl said that's what is in the original variance.

Attorney Biege said restriction remains, because that was in the original grant. Attorney Biege said any violation would be a variance.

Attorney Biege told Earl to clarify his question, if that berm is larger than what was presented, he doesn't necessarily think that's the issue because it could be considered as additional safety.

Earl Cunningham said that's what he said and that's exactly what his point is.

Melissa Mullins Mischke made a motion that operations at 9215 S. 900 W., Wanatah, Clinton Township for Rick & Lynn Moore cease on the property until the next meeting in June and no further improvements made to the property during that time.

Dwayne Hogan asked for a second.

Dwayne Hogan said motion dies for the lack of second.

Dwayne Hogan said he thinks the next meeting for BZA is June 19<sup>th</sup>, correct?

Annemarie Polan, Building Commissioner, stated correct.

Earl Cunningham made a motion that we continue the original variance with the stipulation that no more than four (4) shooting stations be used and no additional improvements be made until after the next meeting.

Glen Minich seconded, but the shooting stalls must be in place and be used. Glen said he doesn't see that in this picture.

Dwayne Hogan said he has a second. Dwayne Hogan asked if there are any questions, or concerns.

Greg Szybala asked if we're addressing in the motion as well this building being erected and put in place.

Dwayne Hogan said it has to stand still.

Dwayne Hogan asked if there are any other questions, or concerns.

Voting Aye: Dwayne Hogan, Glen Minich, Earl Cunningham and Greg Szybala.

Voting Nay: Melissa Mullins Mischke.

Motion carries 4-1.

**3. Petition for Use Variance for Sergio Cardenas** to have a maximum of six (6) horses on his property and adding water to a pole barn. This property is located at 4266 W. US Highway 20, La Porte, Springfield Twp., zoned B-2 on 10.59 acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

Sergio Cardenas, 4266 W. US Highway 20, La Porte.

Dwayne Hogan asked Mr. Cardenas what he would like to do this evening.

Mr. Cardenas said that he's asking for permission to have horses on his property for his boy.

Dwayne Hogan asked Mr. Cardenas if he's asking for six (6) horses.

Mr. Cardenas said maximum of six (6). Mr. Cardenas said he has two (2) horses there now.

Melissa Mullins Mischke asked Mr. Cardenas how long he has had the two (2) horses there.

Mr. Cardenas said one (1) month.

Glen Minich asked Mr. Cardenas if the barn on the property is what he's going to add water to. Glen asked if that's to house the horses during inclement weather.

Mr. Cardenas stated yes.

Dwayne Hogan asked Mr. Cardenas the purpose of having horses; just for your son to ride – is it a 4-H project.

Mr. Cardenas said that his son wanted to ride.

Dwayne Hogan asked Mr. Cardenas if he has water for them now.

Mr. Cardenas said that he brings water from his house. Mr. Cardenas said that he has a two-hundred seventy-five (275) gallon bucket.

Attorney Biege said under the code, he's here because of the zoning. Attorney Biege said he has plenty of property.

Dwayne Hogan said ten (10) acres.

Glen Minich said he seriously doubts if he's the only person that has animals in that B2 Zoning area.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 3.

Dwayne Hogan asked the pleasure of the board.

Melissa Mullins Mischke said that she just has a clarification. Melissa asked Mr. Cardenas if he's only asking for water in the barn.

Mr. Cardenas stated yes.

Melissa Mullins Mischke asked, no electric?

Mr. Cardenas said no electric.

Attorney Biege said he doesn't need a variance for electric.

Dwayne Hogan asked if there are any other concerns.

Earl Cunningham asked attorney Biege in light there are no remonstrators with two (2) horses, could we do two (2) horses for a year, four (4) horses for a year and six (6) horses. Earl said that if there is some point and time if the neighbors say there is an issue; Earl said he's thinking if he was living there, or he has a business and there's only two (2) horses, and then it becomes six (6) horses, there might be some remonstrators here.

Melissa Mullins Mischke told Earl wouldn't they have received notice that there are six (6) horses.

Earl Cunningham said he understands that and it says on the sheet that there is a maximum of six (6) ---

Melissa Mullins Mischke said that the only issue was the zoning and he could have more than six (6) horses on ten (10) acres of property.



Earl Cunningham said he has plenty of property. Earl said that all of the businesses in the neighborhood were contacted and nobody's here.

Glen Minich asked Mr. Cardenas where he resides. Glen asked Mr. Cardenas if he has a home near the property.

Mr. Cardenas stated no.

Glen Minich said the horses will be there by themselves without supervision of you.

Mr. Cardenas stated yes.

Earl Cunningham asked Mr. Cardenas how far is his home from the barn.

Mr. Cardenas said about five (5) miles.

Dwayne Hogan asked Mr. Cardenas if he goes there every day.

Mr. Cardenas said every day.

Glen Minich made a motion that the petition for Use Variance for Sergio Cardenas to have a maximum of six (6) horses on his property and to add water to a pole building be accepted on property located at 4266 W. US Highway 20, La Porte, Springfield Twp., zoned B-2 on ten point five nine (10.59) acres.

Greg Szybala seconded.

Dwayne Hogan asked if there are any questions, concerns, or clarifications.

All approved. Motion carries 5-0.

**4. Petition for Variance of Developmental Standards for James and Jami Erdmann** to build a home on five point six five (5.65) acres without the minimum requirement of two-hundred (200') feet road frontage and has a recorded ingress/egress easement. This property is located at 309 Murray Road, La Porte, entrance between 299 and 323 E. Murray Road, La Porte, Kankakee Twp., zoned Agricultural on 5.65 acres.

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

My name is James Erdmann and he's with his wife, Jami Erdmann and they're residing at 5757 W. 800 S., Union Mills.

Dwayne Hogan asked Mr. Erdmann what he would like to do this evening.

Mrs. Erdmann said that they purchased the property in December of 2017. Mrs. Erdmann said that it's a little over five (5) acres --- five point seven six five (5.765) to be exact. Mrs. Erdmann said it sits on the back end of Range Wood Subdivision and it's accessed by a private driveway. Mrs. Erdmann said that there is an existing residence at the end of the private drive from the people that they bought the property from.

Melissa Mullins Mischke asked Mrs. Erdmann if she has a copy of the plat for the subdivision with her by any chance.

Attorney Biege said that this is not within the subdivision, it's outside of the subdivision, so they're tapping into a lot in the subdivision.

Attorney Biege asked Mr. & Mrs. Erdmann who they bought this parcel from.

Mr. Erdmann said Terry Scholl.

Attorney Biege asked if Terry Scholl split this.

Mrs. Erdmann stated yes.

Attorney Biege asked if Terry Scholl is maintaining ownership of the lot that's in the subdivision.

Mr. Erdmann stated yes.

Mrs. Erdmann said and the lot east of them.

Mrs. Erdmann said that they bought the parcel with the garage and the additional acreage.

Attorney Biege asked if there is a home on that now.

Mr. Erdmann stated no.

Attorney Biege asked Mr. & Mrs. Erdmann when they bought this lot.

Mrs. Erdmann said in December of 2017.

Attorney Biege asked Mr. & Mrs. Erdmann if they know when he split this.

Mr. Erdmann said as far as he was told it was on the market for about a year.

Mrs. Erdmann said his listing agent was La Porte County Realty, Bryon Eigenmann. Mrs. Erdmann said that the seller had a survey done --- Hendricks did the survey work and they have a legal description with the easement that was drafted by an attorney and filed and then they discovered they had this issue.

Dwayne Hogan asked Mrs. Erdmann how much frontage they have.

Melissa Mullins Mischke said that there is no road frontage.

Board members speaking amongst themselves.

Earl Cunningham told Mr. & Mrs. Erdmann that they have no frontage on a county road.

Greg Szybla asked if Murray is a county road.

Annemarie Polan, Building Commissioner, said it's a subdivision.

Melissa Mullins Mischke said leading from Murray up to 311 is not a county road.

Dwayne Hogan said it's private.

Melissa Mullins Mischke said that she has so many questions right now that she doesn't know where to start. Melissa said she's not sure how Mr. Scholl was able to split a parcel without no road frontage, knowing that became an unbuildable parcel, and no access to it with a parcel for egress/ingress that he still owns attached to the north of it.

Mrs. Erdmann said should this not have been disclosed, or at least an awareness on behalf of the listing agent and the County Surveyor?

Attorney Biege told Mrs. & Mrs. Erdmann that he thinks they need to talk to a lawyer.

Mrs. Erdmann asked if they're saying that we may have purchased a lot that they can't build upon.

Attorney Biege said subject to the board's decision, but yeah, we have some problems here. Attorney Biege said that you have a locked lot; you have zero road frontage on a private road. Attorney Biege said that he hasn't seen the easement agreement, but there are some significant issues here.

Earl Cunningham said what realistically should happen here based on his real estate experience from years ago, the sale should have been contingent upon the permitting process. Earl said that doesn't mean it can't be reversed, but that's what should have happened. Earl asked if they have a contingency that the sale is only contingent upon getting permits.

Attorney Biege asked Mr. & Mrs. Erdmann if they closed in December, done, end of story.

Mr. & Mrs. Erdmann stated yes.

Mr. Erdmann said what's written in there is the rights of egress/ingress.

Attorney Biege asked the Erdmann's if they have an easement.

Glen Minich said that it looks like a fantastic road. Glen said nobody builds a private road like that with two lanes. Glen said he doesn't know what the substructure is, but it doesn't have any cracks in it. Glen said that road would have to be put into the county inventory and then there wouldn't be a subsequent problem. Glen said he doesn't know how that happens.

Attorney Biege said that it has to have the same base and specifications.

Attorney Biege said we're only talking about access and road frontage.

Glen Minich said that they weren't presented any evidence with the recorded easement, and that would make a difference too.

Earl Cunningham told Mr. & Mrs. Erdmann that he would suggest that they ask for a continuance until next month.

Attorney Biege told Mr. & Mrs. Erdmann maybe a lawyer when they come back next month to help them.

Attorney Biege told Mr. & Mrs. Erdmann that a lawyer will know what to bring. Attorney Biege said what they're looking for is the history of how this lot was split, and he doesn't know when it occurred, but this split should have not occurred. Attorney Biege said that if they have a better understanding of how the lot was split, conformation of the easement is appropriate and how this came about, the board would have a better basis on which to make its decision. Attorney Biege said that they need evidence if they are going to grant it or deny it; they need to have evidence to justify their decision. Attorney Biege said that this is really a unique circumstance, and you're not just asking for water in your barn.

Mrs. Erdmann asked if they should ask the seller to attend as well.

Attorney Biege you can, but he thinks that a lawyer helping you would be the first step and help you develop what evidence you want to present to the board.

Earl Cunningham asked attorney Biege if it would also be worthwhile for them to contact the County Highway to get an inspection of the roadway.

Attorney Biege said absolutely.

Earl Cunningham told the Erdmanns' that would help them tremendously if they knew the roadway could be accepted into the inventory.

Attorney Biege said that if it's accepted in inventory, you don't need a variance at all.

Melissa Mullins Mischke made a motion that we table the Petition for Variance of Developmental Standards for James & Jami Erdmann for their property between 299 and 323 E. Murray, La Porte, Kankakee Twp. until the June 19<sup>th</sup> meeting.

Earl Cunningham seconded.

Dwayne Hogan asked the Erdmanns' if that gives them enough time to do it by next month.

Mrs. Erdmann stated yes.

Attorney Biege told the Erdmanns' that he's the county attorney and if they have any problems they could call him. Attorney Biege said he can't help with the zoning issues, but he can help whether that road comes into the inventory, or not.

All approved. Motion carries 5-0.

**5. Petition for Variance of Developmental Standards for United Steelworkers** to construct a building seventy by twenty (70'x20') feet with a side setback of seven (7') feet instead of the minimum requirement of thirty (30') feet. This property is located at 7071 East State Road 2, New Carlisle, Wills Twp., zoned Agricultural on .995 acres

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address for the record.

William Laszlo, 1739 Ridge Road, Munster, Indiana.

Dwayne Hogan asked Mr. Laszlo what he would like to do this evening.

Mr. Laszlo said the reason they need this variance is in order to fit this seventy by twenty (70'x20') building in there. He's the contractor that they asked to put the building up and they need a variance on the distance from thirty (30') feet to seven (7') feet to the property line where this building has to go.

Mr. Laszlo said they can't put it on the other side because there is a septic field and well and the other side a severe hill that goes down. Mr. Laszlo said the only thing that's within thirty (30') feet on that property line on the other side is a telephone switching building and there's nobody living there, they just switch equipment in there.

Mr. Laszlo said they sent out all the required return addresses to the people surrounding this and had all of them returned except the return from the phone company.

Dwayne Hogan asked if this is going to be used as an educational center.

Mr. Laszlo stated yes and it's going to be used as a training building. Mr. Laszlo said the main building is more of a classroom type building and this building will be where they wire things, some carpentry, and things of that nature. Mr. Laszlo said that it's an all steel building and it will have a slab concrete floor and electrical power. Mr. Laszlo said it will probably only be used in the summer.

Dwayne Hogan said it's to be used by the United Steel Workers he takes it.

Mr. Laszlo stated yes; United Steel Workers only.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 5

Dwayne Hogan asked if there are further questions, or concerns of the board.

Earl Cunningham said by his site observation, it appeared to him that what they're doing there is outstanding and we need training, there's no questions about that. Earl said with the additional building he would have some concern about the parking. Earl asked Mr. Laszlo if they're going to have enough parking for the additional students involved.

Mr. Laszlo said on the left side of the main building, there is enough parking for everybody for the class that's using the building and also, up north of that, there's plenty of parking for everybody that would use the building. Mr. Laszlo said that they're going to have to remove an electrical line because it would be underneath the building and they're going to put that forty-eight (48") inches underground; it will be in conduit and covered with red concrete. Mr. Laszlo said it will be perfectly safe and nobody could possibly cut into it.

Board members speaking amongst themselves.

Melissa Mullins Mischke made a motion to approve the Petition for Variance of Developmental Standards for the United Steel Workers to construct a building seventy by twenty (70'x20') feet with a side setback of seven (7') feet instead of the required thirty (30') feet for the property located at 7071 East State Road 2, New Carlisle.

Earl Cunningham seconded.

Dwayne Hogan asked if there are any questions, or concerns.

All approved. Motion carries 5-0.

**6. Petition for Variance of Developmental Standards for Jason & Jenny Kazen** for placement of an Amish style pole barn to operate an ice cream station. Variance of Developmental Standards was previously granted on December 20<sup>th</sup>, 2016 to operate a hot dog stand and storing boat trailers daily.

Attorney Biege said typically we get back the green certified mail card that's signed and addressed. Attorney Biege said we don't have that in this case, we have the paid receipts. Attorney Biege said the paid receipts do not have the names on them, however they do have the city and state, fortunately each adjoining property owner lives in a different City and State. Attorney Biege said although we don't have our norm, he thinks we have enough to show that an attempt was made to give notice.

Dwayne Hogan asked for name and address for record.

Jason Kazen and his wife Jenny Kazen at 7849 E. South Hudson Avenue, New Carlisle.

Dwayne Hogan asked Mr. Kazen what he would like to do this evening.

Mr. Kazen said that they want to put up twenty by fourteen (20' x14') pole style barn and renovate to an ice cream shack for seasonal, six (6) months of the year.

Melissa Mullins Mischke asked Mr. Kazen if that structure is there currently.

Mr. Kazen said it's there currently.

Melissa Mullins Mischke asked Annemarie if they got a permit for that structure that's currently there.

Annemarie Polan, Building Commissioner, stated yes.

Earl Cunningham said the issue is whether you turn that building into an ice cream shack. Earl told Mr. Kazen that he already got permission to have the building.

Mr. Kazen said he didn't have the permit yet. Mr. Kazen said when he bought it he honestly didn't know he needed a permit and he does apologize about that. Mr. Kazen said when he did find out, he went right to the building department.

Dwayne Hogan asked Mr. Kazen when it was placed there.

Mr. Kazen said about two and a half weeks ago. Mr. Kazen said he's done nothing to it; he put some caution tape up and just left it alone.

Mr. Kazen said that they're asking to just put electric in it for the ice cream machines and that will also be portable. Mr. Kazen said that when the season is over they will put it in the back of the property.

Dwayne Hogan asked Mr. Kazen if he's going to have water and electric in this building.

Mr. Kazen stated yes.

Melissa Mullins Mischke asked Mr. Kazen if he's still going to use port-a-potties for his customers.

Mr. Kazen stated yes.

Attorney Biege said the Petition was for a Developmental Standards and that would cover the barn. Attorney Biege said he doesn't see where we have a Petition for Variance of Use, which would be selling ice cream. Attorney Biege said that there would be no notice of a request for Variance of Use for the ice cream. Attorney Biege said that this would be subject to interpretation because both are written in the petition.

Board members speaking amongst themselves.

Attorney Biege said that if you choose to accept that as filed, the notice of publication given, just include that in the motion.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 6.

Attorney Andrew Voltz said he's with Howes and Howes. Attorney Voltz said that their office has represented Jenny & Jason Kazen on numerous occasions for various issues. Attorney Voltz said that they approached him back in 2016, he believes when the original petition was filed in order to allow for the use of the property and the mobile hot dog stand. Attorney Voltz said that has now morphed into a pretty substantial business venture and they're seeking approval to place this mobile food trailer for purposes of the ice cream, in addition to the other trailer that is used for the sale of the hot dogs.

Attorney Voltz said ultimately what their goal is here, if the board would so decide to grant this variance, is then to come back to this board to allow for a rezoning of the property from R1B, what is now, back to the way it was twenty (20) years ago when it was commercial. Attorney Voltz said in doing so that would then allow his clients to be in a position where they could continue to make additions to their business without having to come back before the board every year if they decide they want to move from just selling hot dogs and selling ice cream. Attorney Voltz said that is the ultimate goal here is moving forward.



Attorney Voltz said with notice having already been sent out and the petition having already been filed, he didn't know if the timing was for him to intervene, but he just wanted to make the board aware what their ultimate goals are.

Attorney Voltz said to be quite candid, they have developed quite the following as far as what they're doing out there with food and refreshments and they're really looking forward to the upcoming Memorial Day number one, but they have done substantial business out of the hot dog stand in the nineteen (19) days that they've been open, and by substantial business, he doesn't want to throw around any numbers, but he's talking substantial business. Attorney Voltz said that they're very serious about making this an ongoing enterprise and he thinks that it would be appropriate in the future to be in the position to then petition this board to rezone that property back to commercial that it already was.

Melissa Mullins Mischke said that she would prefer that the Plan Commission get petitioned for a rezoning and alleviate the request from us.

Earl Cunningham said last summer on a beautiful summer evening he stopped by there and actually visited for a few minutes because he had to stand in line to get a hot dog. Earl said that there was a real nice crowd and the tables were filled. Earl said that it was clean and neat.

Dwayne Hogan asked the pleasure of the board.

Earl Cunningham made a motion that we approve the petition for Jason & Jenny Kazen on real estate located at 8310 E. 700 N., New Carlisle, Indiana. Property is designated R1B and petitioners want the placement of an Amish style pole barn to operate an ice cream station, with a minimum of one (1) year and move this to a new designation.

Greg Szybala seconded.

Dwayne Hogan asked if there are any questions, or clarifications needed here.

Attorney Biege said if he could clarify the motion. Attorney Biege said so you want to grant the variance for developmental standards, as well as a variance for use for the sale of the ice cream?

Earl Cunningham stated correct.

Dwayne Hogan asked if there are any other questions, or concerns.

Voting Aye: Dwayne Hogan, Earl Cunningham, Glen Minich and Greg Szybala.

Voting Nay: Melissa Mullins Mischke.

Motion carries 4-1.

**7. Petition for a Variance Use for Thomas F. Brown (Fee Owner and Jeremiah L. Ashe (Petitioner), by counsel, Dave Ambers to maintain a three (3) unit apartment on property which is zoned R1B. This is located at 5734 W. Schultz Road, La Porte, Center, zoned R1B.**

Attorney Biege said notice is adequate.

Dwayne Hogan asked for name and address.

David Ambers, Attorney at Law, 609 Michigan Avenue and he's here on half of the petitioner to request a variance for a three (3) unit apartment building. Attorney Ambers said he has with him, Mr. Brown the current owner of the property and he's in the process of selling it.

Attorney Ambers said Mr. Brown bought this in 2002 as a three (3) unit building as far as anybody could see. Attorney Ambers said before that previous owner had it as a three (3) unit, nobody ever realized. Attorney Ambers said he looked into the old code and it was zoned R-2 before the new code came in, so now it's become an issue for the sale of that property. Attorney Ambers said that they need to get permission to have the three (3) unit that's been there as a nonconforming use for an unknown number of years.

Attorney Ambers said the property is on 1.3387 acres so there is plenty of room there and it's behind what use to be used as a commercial building and simply as a mistake since Mr. Brown bought it in 2002 and never knew it was improperly zoned.

Earl Cunningham said that only came up in 2016 because the assessor started charging on a three (3) unit.

Attorney Ambers said he thinks the reason it came up was in the appraisal process for the buyer. Attorney Ambers said the appraiser was the actual one who caught it, so there's a difference in value on that property, whether it's a three (3) unit, or a two (2) unit. Attorney Ambers said that threw up a red flag.

Dwayne Hogan asked attorney Ambers if he's going to keep it as a three (3) unit.

Attorney Ambers stated yes.

Dwayne Hogan asked as a contingency upon this to sell.

Earl Cunningham asked how long has the current resident been there.

Mr. Brown said sixteen (16) years.

Earl Cunningham asked if that's all three (3) units.

Mr. Brown said that the three units have been there since he purchased it.

Attorney Ambers said he thinks he's asking how long each individual tenant has been there.

Mr. Brown said that the current tenants that are there, some of them have been there a couple of years, some of them four (4) years and one of them six (6) years.

Earl Cunningham said so it's no short term tenants.

Mr. Brown stated no.

Dwayne Hogan asked if there are any remonstrators here this evening for Petition No. 7.

Dwayne Hogan asked if there are further questions of the board.

Board members speaking amongst themselves.

Attorney Biege said he wants to clarify. Attorney Biege said that Anne brought this to me to look at. Attorney Biege said if they had proof or confined proof that this was a three (3) unit use, then it would automatically grandfather, but there's nothing in writing anywhere, otherwise that wouldn't be coming up in front of you. Attorney Biege said there's nothing there to show.

Attorney Ambers said in 2002 they have the listing information that show it's a three (3) unit in 2002, but nothing that's ever been to a board.

Mr. Brown said he has the original appraisal too when he purchased it in 2002, so he has the disclosure.

Attorney Biege said that's not enough to show us when the code change occurred, or the zone map change occurred.

Dwayne Hogan asked the pleasure of the board.

Melissa Mullins Mischke made a motion to approve the petition for Use Variance for Thomas F. Brown and Jeremiah L. Ashe, by counsel Dave Ambers to maintain a three (3) unit apartment on the property, which is zoned R1B located at 5734 W. Schultz Road, La Porte, Indiana.

Glen Minich seconded.

Dwayne Hogan asked if there are any questions, or concerns.

All approved. Motion carries 5-0.

Dwayne Hogan asked if there is any new business.

Melissa Mullins Mischke made a motion to adjourn.

Glen Minich seconded.

All approved. Motion carries 5-0.

There being no further business before the Board of Zoning Appeals, meeting adjourned at 7:15 p.m.

  
Melissa Mullins Mischke, Vice President

  
Annemarie Polan, Recording Secretary