

Hamilton County Board of Zoning Appeals - North District
January 27, 2021

Mrs. Johnson called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 7:05 p.m.

Members Present: Frank Habig III, Gerald Kirby, Kristin Johnson, Ron Hall, and Tim Clark.
Also present: Charles Kiphart, Director; Aaron Culp, Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum: Mrs. Johnson declared a quorum with five out of five members present.

Guests: See sign-in sheet.

Communications/Reports: Nothing to present.

Approval of Minutes: ***Mrs. Johnson identified the minutes from December 9, 2020.***

Mr. Habig moved to approve.

Mr. Hall seconded.

With no comments or corrections... Mrs. Johnson called for the vote. ***5 yes votes... 0 no votes.***

Election of Officers: Mrs. Johnson identified the position of Chairman. Could I have a motion?

Mr. Hall nominated Mrs. Johnson to serve as Chairman of the board.

Mr. Habig seconded.

With no other nominations being made... Mrs. Johnson called for the vote. ***5 yes votes... 0 no votes.***

Mrs. Johnson identified the position of Vice Chairman.

Mr. Habig nominated Gerald Kirby.

Mr. Hall seconded.

With no further nominations being made... Mrs. Johnson called for the vote. ***5 yes votes... 0 no votes.***

Mrs. Johnson identified the position of Secretary.

Mr. Kirby nominated Linda Burdett.

Mr. Clark seconded

With no further nominations being made... Mrs. Johnson called for the vote. **5 yes votes... 0 no votes.**

Old Business: Mrs. Johnson began with **NBZA-L.U.V.-0014-12-2020** a Land Use Variance. It was tabled at the December meeting. Mrs. Johnson asked Mr. Culp for updates on this petition.

Mr. Culp stated that the petitioner is not here tonight. We had told him at the last meeting that we would try to arrange so he could participate by phone. I have put together, along with Mr. Kiphart and Mrs. Burdett, some possible commitments per the board's request, but I don't want to actually have a discussion on that without the petitioner here to hear what we're talking about. I would request that this be tabled until next month and we make certain he either participates or says go ahead without me being present.

Mr. Habig asked if he could be presented with some of these conditions that we're thinking about before we meet to see if he's in total agreement.

Mr. Culp stated that this was just put together today and he's not here. I want to give it to him in advance so he can look over it and tell us what he thinks about it.

Mr. Clark stated that there was something that he couldn't do anything until he got his permit from the DNR. Do you know if he's done anything towards that?

Mr. Culp stated that he didn't think we had had anymore communication from him.

Mr. Kiphart stated that he didn't think that the state would issue it until we do our part first.

Mr. Culp stated that the state was conditioning their approval on his getting zoning approval. We could approve it and once he has the approval then that should tell the state that it's ok for them to issue their permit. I didn't realize he wasn't going to be here until today. I don't think we have had any communication since he was last in front of the BZA.

Since he has already made his presentation, we could go forward without talking to him directly but based on the board's discussion I think it would be a good idea to have a dialogue and try to make certain that we're not imposing something that's completely undoable.

Mr. Habig moved to table NBZA-L.U.V.-0014-12-2020 for the February 24, 2021 meeting at 7:00 p.m.

Mr. Clark seconded.

With no further comments... Mrs. Johnson called for the vote. **5 yes votes... 0 no votes.**

New Business: Mrs. Johnson began with **NBZA-L.U.V.-0001-01-2021 a Land Use Variance.** This is concerning allowing a six guest bed and breakfast facility in an existing family residence. **Location: 22457 Springmill Road, Sheridan, Indiana.** Would you come forward, state your name and address, and tell us about your petition, please?

Jane Ellen Giles, of 22457 Springmill Road, Sheridan, Indiana, stated her name and address for the record. I have asked for a variance on my property. I've also asked Andy Wert to represent me so I'll let him take over.

Andrew Wert, a land use professional with Church, Church, Hittle & Antrim with offices at 2 North 9th Street, Noblesville, Indiana, stated his name, profession, employer and employer's address for the record. With me here tonight in addition to Mrs. Giles is Justin Hayes who is an associate attorney.

Our subject site is Mrs. Giles' residence. She built the home in 1993. The following year she was granted approval by this board to run a daycare home and that daycare has been in continuous operation since the 1994 approval.

She now has plans pending the approval from the appropriate authorities to close the daycare and open a bed and breakfast establishment. It is still pretty isolated out there. Very idyllic setting, well-tended lawn with a pond in the back yard. They actually have two donkeys that reside here. In fact, we've come up with the name "Donkey Trod Acres" for the pending bed and breakfast.

We have a sign that we would like to post. It doesn't really reference the business, but it identifies the property.

We just think there's a solid market out there. We're offering a quiet, rural getaway experience. It is still within easy travel distance of other Hamilton County attractions – Grand Park for example.

As far as improvements are concerned, we really don't anticipate any. At the current daycare we feel there is plenty of off-street parking. With a maximum of six guests it is unlikely there will be more than three extra vehicles on the property at any one time.

The septic field has been functioning fine all these years with the daycare operation.

We heard from the surveyor's office, the soil and water conservation, the health department, and the highway department all support it. As a result of their feedback we are offering the following commitments should the variance of use be approved: (1) the existing daycare will close when the bed and breakfast starts up. (2) No more than six guests at one time. (3) The owner will continue to reside at the residence. (4) A commercial drive permit will be applied for and any recommended improvements to the existing drive will be implemented. (5) We will follow the Indiana Department of Health's change of use approval process with regard to the septic system. In fact, we have already been in touch with Brian Baker to start that inspection procedure.

We are excited to present this to you and welcome your positive feedback. This is really a less intensive use than the current daycare operation. It is a great way to showcase our beautiful county and all it has to offer. That concludes my formal presentation and I welcome any questions you might have.

Mr. Habig asked where the jurisdictional line falls from the town of Sheridan.

Mrs. Giles answered, directly across the street.

Mr. Hall asked if there was anything particular about the home and the way it is designed or constructed that makes it difficult for a single family property.

Mr. Wert stated that it will continue to be a single family property as well as a bed and breakfast. I believe there is a separate kitchen downstairs.

Mrs. Giles stated there was a kitchen, one and a half baths, bedroom spaces, sitting areas, and laundry facility.

Mr. Hall stated that this could be used as a separate living area.

Mrs. Giles answered, it absolutely could. That's not what I'm wanting.

Mrs. Johnson stated that it basically has two full living areas in the home, right.

Mrs. Giles answered, it does. The daycare is totally self-sufficient.

Mr. Habig asked how many children she had there at a time.

Mrs. Giles stated that right now she has 12 children.

Mr. Hall asked if the daycare use was only on one level of the home. (2) And that is on ground level? (3) The bed and breakfast use would be on ground level and the first floor, both, or just ground level? (4) So really the only change of use is going to apply to the ground level? (5) Which is set up different from a normal residence because it could be separately used as a residence.

Mrs. Giles answered, absolutely. (2) Yes. (3) Strictly ground level only. Where I live now will continue to be my residence. (4) Yes. (5) It is totally self-sufficient.

Mr. Wert asked Mrs. Giles if she anticipated any remodeling.

Mrs. Giles answered, yes. Not adding rooms. Just replacing flooring. The kitchen has already been updated except for the countertops. Replacing some woodwork.

Mr. Habig asked Mrs. Giles how much time she thought their guests were going to spend on the property. Aren't they usually coming in for some other... (2) Do you plan on increasing your herd of donkeys?

Mrs. Giles answered, another event. A winery festival, the Grand Park facility, a concert where they can just Uber back and forth. (2) Keeping the numbers about the same.

With no further questions from the board... Mrs. Johnson opened the hearing to the public at 7:19 p.m. and invited anyone who wished to speak for or against the petition to please step forward.

And with no one from the public stepping forward to address the board... Mrs. Johnson closed the public portion of the hearing at 7:20 p.m. Any motions?

Mr. Hall moved to approve it conditioned upon the five conditions presented by the petitioner which were: (1) it would be limited to six guests; (2) the property would remain owner occupied; (3) that it would be subject to a commercial driveway permit as per the Hamilton County Highway Department; (4) subject to the Indiana Department of Health's approval for change of use for the septic system; (5) the existing daycare closes; (6) a manure management plan that's approved by the soil and water; (7) the expiration of the 1993 daycare variance upon the commencement of the bed and breakfast.

Discussion following on the timeline of closing the daycare and number 7 was added.

Mr. Culp asked if the board wanted to include a restriction that this shall not become a multi-family home if its going to have two different residences in it so if at some point in the future Mrs. Giles moves out, we're not going to end up with a duplex.

Mrs. Giles stated that her daughter would be moving in when she no longer lived there. Would she not be able to have the option to continue the bed and breakfast?

Mr. Hall stated that he didn't see that as an issue. I don't see that her personal ownership makes a difference here.

Mr. Kirby seconded.

Mr. Habig stated that this is the first one that we've dealt with. And I think it's a great place. What if it doesn't float and Mrs. Giles has all of this invested? It's a start-up and I think we're putting some un-do... a commercial drive? If I had a rental house out there, I wouldn't have to put in a commercial drive. I'm worried about some of the expense we're putting on the property owner. This is something that we will have to get into with our ordinances. (2) But only because this is going to be called a "commercial property." I don't know where bed and breakfast facilities fall in our ordinances. Maybe Mrs. Giles would be better off renting her house out every week.

Mrs. Johnson answered, but this is from the Hamilton County Highway Department.

Mr. Hall stated that he thought the difference to him was that they were inviting public in. I'm not sure why in 1993 there wasn't a highway department requirement for a commercial driveway at that point.

Mr. Habig asked... for a daycare?

Mr. Clark stated that there are twice the number of kids there so there was probably more traffic before then there will be now.

Mr. Habig stated that he hoped this won't be the only bed and breakfast they have in the area because are some things that are going to start pulling people in and hopefully into Adams Township.

Mr. Kirby asked what the difference was between the commercial and the residential. She already has it blacktopped.

Mr. Wert stated that he did talk to the highway department a little bit about this. We don't know that they are going to require anything of us, but they want to inspect it with respect to the use that we hope to get approved here tonight.

Mr. Culp stated that he was looking at the letter from January 6th. It says, "A permit for a commercial drive is required and that the drive may require improvements." But not necessarily will require improvements.

Mr. Habig asked with an Air B&B and a different family in every week how does that differ from this bed and breakfast. I'd rather have a bed and breakfast than an Air B&B because at least she is there on her property instead of someone having free will on the property.

Mr. Hall stated that he is all in favor of the project. I think its going to be very good.

Mr. Habig stated that he didn't want to put too many restrictions on somebody that has an idea of bringing that kind of facility into the area.

Mr. Hall stated that they are making their approval conditioned upon them getting the other approvals which they are going to have to have anyway. It's not us imposing it.

Mr. Kirby stated that the county is the one who said they would need a permit.

Mr. Hall stated that he appreciated having the opportunity to provide a courtesy to the highway department so that our departments do work together as much as possible. And whether we condition it or not they are going to have to meet the requirement and it will be a highway department issue.

Mr. Habig stated that what really worries him in the future is does this really fall under commercial. Whereas if somebody had a house sitting by itself and renting it out every week. (2) Does the highway department have the determination to declare it commercial or non-commercial? That's us isn't it?

Mr. Hall stated that that was a highway department determination.

(2) Mr. Culp stated that he believed that it comes from the highway department. They decide whether or not you need to meet commercial standards.

Mr. Clark stated that it sounds like we don't need to address it at all. It's just a show of acceptance.

Mr. Culp stated that if the highway hadn't said this, we wouldn't even be worried about it. They're looking at the use and whatever their standards are.

Mr. Wert stated that it was his understanding that they were going to look at the width of the driveway at the right-of-way to make sure it would be able to handle the uses.

Mrs. Giles stated that it can handle two cars.

Mr. Kiphart stated that they look at drainage as part of that. It basically has to do with the number of trips in and out of the property, if there was a culvert there that was crushed. They might ask that it be repaired. Then they might ask that it be paved within the right-of-way.

Mrs. Johnson stated that as far as cumbersome goes... manure management plan for two donkeys. Two donkeys on six acres with a couple of goats. When I read through that I thought it was over the top. I don't think that has a place for her variance.

Mr. Kiphart stated that it isn't related to the use. I'll call soil and water and explain it to them.

Mr. Wert stated that they have two parcels there for a total of about 10 acres.

Mr. Habig asked if the B & B doesn't work, are we going to make Mrs. Giles come back in to get a variance to start the daycare back up?

Mrs. Giles stated that she wanted to do something and be productive because she enjoys people. I think it would be interesting and fun. And great for the community to share what I have with families.

Mrs. Burdett asked Mr. Culp and Mr. Habig if they remembered the conditions the plan commission asked for.

Mr. Culp stated to close the daycare, no more than six people at one time, follow the septic requirements for whatever that's going to be, and also follow the commercial drive requirement for whatever that turns out to be. Their vote was unanimous 6 yes... 0 no.

Mr. Hall moved to amend his own motion to remove the manure management plan and add "as per the Hamilton County Highway Department."

Mr. Kirby amended his second.

With no further comments... Mrs. Johnson call for the vote on the amendment. ***5 yes votes... 0 no votes.***

With no further comments... ***Mrs. Johnson called for the vote on NBZA-L.U.V.-0001-01-2021 a Land Use Variance with the following six conditions: (1) existing daycare closes upon the opening of the new bed and breakfast; (2) a maximum of six guests; (3) owner occupied; (4)***

commercial drive permit per highway department; (5) Indiana health change of use for septic; (6) expiration of the 1993 daycare variance upon commencement of the new bed and breakfast. 5 yes votes... 0 no votes. Your variance is approved. Good luck.

Mr. Kiphart stated that before you open the bed and breakfast you will need to get a change of use permit from our office. (2) Since you're not doing any construction improvements on it whether or not the state has to look at it as a different classification of commercial use. I'll check on that and let you know.

Mrs. Giles stated that she will let the parents know and give them four to six months' notice. (2) Ok. Thank you very much.

Director's Report: Mr. Kiphart stated that they do allow a bed and breakfast in two other zone districts but not in the A-2 as a Special Use. That's why we went with the Land Use Variance.

Legal Counsel Report: Mr. Culp stated that Mrs. Burdett alerted him to an error in the minutes that were approved at the December 9th meeting. The minutes we approved were actually from the September 23rd meeting not the October 28th meeting. There was no October 28th meeting. We need to correct that to show that we approved the September 23, 2020 minutes. As it stands right now, they have not been formally approved although those were the minutes that you reviewed that night.

Mr. Habig made a motion to approve the minutes for the September 23, 2020 meeting.
Mr. Clark seconded.

With no further comments... Mrs. Johnson called for the vote. **5 yes votes... 0 no votes.**

Mr. Habig made a motion to rescind the approval of the minutes for the October 28, 2020 meeting.
Mr. Kirby seconded.

With no further comments... Mrs. Johnson called for the vote. **5 yes votes... 0 no votes.**

Mr. Culp gave an update on the property with the trailers. It was set for trial January 20, 2021. On January 19, 2021 Hamilton County moved for a continuance. A re-trial is set for March 7, 2021. I'm still guessing they are holding it out while he cleans it up.

Mr. Hall stated that nothing has happened in the last month. I can understand with the weather conditions that getting those trailers out of there could be a difficulty. Thanks for the update, Mr. Culp.

The next BZA meeting will be Wednesday, February 24, 2021 at 7:00 p.m.

With nothing further to come before the board... Mrs. Johnson asked for a motion to adjourn.

Mr. Habig made a motion to adjourn.

Mr. Kirby seconded.

With no further comments... Mrs. Johnson called for the vote. ***5 yes votes... 0 no votes.*** Meeting adjourned at 7:55 p.m.

Kristin Johnson, Chairman

Date: _____

Linda Burdett, Secretary

Date: _____