



# **Minutes**

## **August 5, 2020**

### **Tipton County Board of Zoning Appeals**

The Tipton County Board of Zoning Appeals held its regular meeting on Wednesday, August 5, 2020, at 7:00 pm, in the Tipton County Foundation Building, 1020 West Jefferson Street, Tipton, Indiana.

#### **Call to Order**

Chairman Gary Herrell called the meeting to order at 7:00 p.m.

#### **Roll Call**

Members in attendance: Gary Herrell, Bob Powell, Grant Dunn Scot Gasho and Joe Mahaney.

Members absent: none.

Staff in attendance: Steve Niblick, Judy Coker and David Langolf Smith.

Staff absent: none.

#### **Modifications to Agenda / Agenda Summation**

None.

#### **Approval of Minutes**

a) July 1, 2020 Minutes

Bob Powell made a motion to approve the minutes of July 1, 2020 as presented; seconded by Joe Mahaney. Motion carried 5-0.

#### **Public Hearings**

a) CO-V-18-20 Prater/Jackson Development Standard Variance Request.

Gary Herrell opened the public hearing.

Wendy Prater and Frank Jackson came forward to present their petition for seeking five development standard variances.

Gary Herrell asked what the square footage was of the previous dwelling. Frank Jackson responded that it was over 2,000 square ft., and the septic that they installed was for a three-bedroom home.

Gary Herrell asked what the square footage was of the new home. Frank Jackson stated that the new home would set on the existing foundation, but that he was not sure what the actual square footage was. Joe Mahaney stated that the new home would be 1512 square feet.

Bob Powell asked if the distance from the back of the house or foundation to the rear property line the same as it was previously. Frank Jackson stated that it is the same and that nothing has changed. Bob Powell asked if the property owners were ever bothered by the chemicals that they spray on the corn, or if that ever affected them. Frank Jackson and Wendy Prater stated that they never had any problems.

Steve Niblick responded that the rear property line angles, and, at the closest point, there is twelve feet between the corner of the foundation to the rear property line.

Bob Powell asked how that lot was formed originally. Steve Niblick responded that he does not know, but that it was permitted by the county at that time.

Discussion ensued concerning who owned the original lot, where the well is located, and other features of the property.

With no further comments, Gary Herrell closed the public hearing.

Discussion ensued among the board members regarding the petition. With no further discussion, Joe Mahaney made a motion to approve all five (5) variance requests for petition CO-V-18-20; seconded by Grant Dunn. Motion carried 5-0.

b) CO-AP-15-20 Colbert

Tina and Dave Colbert came forward to present their petition to appeal the administrative decision to place the Hope for the Hurting special exception petition on the agenda.

David Smith asked the petition if they contend that Mr. Niblick has the discretionary right to refuse their petition. Tina Colbert stated that she believes that if they were not within the timeframe to file the petition, Steve Niblick had the ability to refuse the petition. David Smith then asked the petitioners if they believe they have an absolute right to file a petition and to be heard. Tina Colbert stated that she believes that she had a right to file the petition and be heard, but that Steve Niblick should have made them aware of the deadline before he accepted their application and money. Dave Colbert clarified that they filed their petition in reference to the May 29<sup>th</sup> staff report.

Gary Herrell clarified with the petitioner that the appeal is of the revised staff report that classified the project as a social rehabilitation center and not a hospital. The petitioner confirmed.

Steve Niblick came forward to provide a rebuttal to the administrative appeal petition.

Scot Gasho asked Steve Niblick if, after he made the decision to reclassify the project as a social rehabilitation center, did he advertise that. Steve Niblick responded no, the original advertisement was for a social rehabilitation center. Scot Gasho asked Steve Niblick if the Colbert's asked for a staff report to figure out what this was classified as. Steve Niblick responded that he did not recall.

Joe Mahaney - **\*\*inaudible\*\*** Steve Niblick responded the petitioner argues that they were not late, and he believes they had a right to be heard. The petitioner is making the argument that there is an obligation to lead these people that come in, and that Steve Niblick acts as the "gatekeeper" to the board. Steve Niblick responded that he does not take the position as gatekeeper, and that he believes his position is to take complete applications, make sure they are properly advertised, and make sure that rules and statutes are followed. Steve Niblick stated that he feels it is incumbent upon the petitioners to know the rules. Steve Niblick stated that he does not write staff reports as soon as petitions come in. The paperwork is taken in and processed, but the decision to place petitions on the docket is when the legal notice is sent to the newspaper.

Steve Niblick stated that the decision to place this petition on the docket was in April, which is when the neighbor notices went out, the advertisement was placed in the newspaper, and the sign was placed in the yard.

Gary Herrell asked Steve Niblick if he informed the Colbert's that they were past the deadline when they came in to file their appeal. Steve Niblick responded that he did not.

Scot Gasho asked Steve Niblick if he would have told the Colbert's that they were past the filing deadline for their appeal, would the Colbert's have been able to be heard during the Hope for the Hurting public hearing. Steve Niblick stated that he did not tell them that, but they would have been able to bring their arguments up during the Hope for the Hurting hearing.

Jane Harper came forward to support the petition, citing that the determination to classify the project as a hospital happened on May 6, 2020, which makes the June 5, 2020 filing of the appeal within the 30-day timeframe. Jane Harper stated that our ordinance defines a social rehabilitation center as a "licensed" facility, and if that definition is not met, then the use cannot exist under our ordinance.

David Smith asked Jane Harper if she could show in the ordinance where it specifically states that the matter cannot be heard unless it meets the requirement of a licensed facility. Jane Harper replied that "as defined" means the definition, which in the ordinance for a social rehabilitation center is a licensed facility.

Peter Schram came forward to speak in support of the petitioner stating that there is a big difference in not requiring licensing before approving a daycare center versus allowing a social rehabilitation facility without proper licensing. Peter Schram stated that Steve Niblick is the gatekeeper of the BZA and should ensure that definition requirements are met before placing items on the agenda.

Paul Wyman came forward to speak in opposition to the petition. Paul Wyman stated that the primary function of the Board of Zoning Appeals is to determine if the property is the right property for the special exception. Paul Wyman stated that during their communication, it was never stated that the facility would be a hospital. Wyman stated that they have every intention to be licensed and to follow all Board of Zoning Appeals and ordinance requirements.

Janet Stacey came forward to speak in opposition of the facility.

Greg Cullen came forward to speak in opposition of the petition. Greg Cullen stated that their intention is to comply with every ordinance and regulation and would like for their petition to be heard.

Katie Thompson came forward to speak in opposition of the petition. Katie Thompson believes the Hope for the Hurting petition should be heard because it was not their error, and Hope for the Hurting should not pay the price for definition issues.

Brett Thompson came forward to speak in opposition of the petition because there should be a consistency, because there must be zoning approval in order to get a license. Brett Thompson believes that everyone has a right to be heard.

Christina Wyrick came forward in support of the petition. Christina Wyrick feels like Hope for the Hurting's application was not complete, and they are not a licensed facility.

Walt Januszkiewicz came forward to speak in favor of the petition. Walt Januszkiewicz believe that the decision to place the Hope for the Hurting petition on the agenda was made in April during the COVID, so the Colbert's should receive some leniency on the 30-day restriction. Mr. Januszkiewicz stated that he believes that a social rehabilitation facility is quite different from a childcare center so they should not be held at the same licensing standard.

Amanda Carver came forward to speak in favor of the petition. Amanda Carver wanted Steve Niblick to be asked if he purposefully did not advise the Colbert's that they were past the 30-day deadline for filing an appeal so that he could turn around and use that as basis to have the petition denied.

Gary Herrell asked Steve Niblick if he intentionally did not tell the Colbert's that they were past the 30 days so that the appeal would be denied. Steve Niblick stated that he did not, and clarified that he has been called the gatekeeper, but that is not a position that he has necessarily taken.

Joe Mahaney \*\*inaudible\*\* Steve Niblick stated that he believes that the request they would like for board to consider is for a licensed facility. Steve Niblick stated that he disagrees with the idea that they must be licensed for their petition to be heard.

Bob Powell asked Steve Niblick what he bases that determination on. Steve Niblick responded that he bases that on 30 years of experience, and that the petitioner is asking for special exception for a licensed facility, not an unlicensed facility. Steve Niblick stated that the petitioner also has the option to apply for a use variance for an unlicensed facility.

Joe Mahaney \*\*inaudible\*\* Steve Niblick responded that this is what the board is being asked to decide.

There being no further comments, Gary Herrell closed the public hearing.

Discussion ensued concerning the petition.

Bob Powell made a motion to deny the request from the Colbert's. Motion died for lack of a second.

Paul Wyman came forward to ask that the board approve the Colbert's petition, and allow the Hope for the Hurting to withdraw their petition and refile later.

There being no further discussion, Joe Mahaney made a motion to approve the administrative appeal, CO-AP-15-20; seconded by Scot Gasho. Motion carried 5-0.

Discussion ensued concerning the withdraw of petition CO-SE-07-20.

**Old Business**

a) CO-V-13-20 Dever Development Standard Variance Findings of Fact.

Bob Powell made a motion to approve the Findings of Fact for CO-V-13-20; seconded by Joe Mahaney. Motion carried 5-0.

**New Business**

None.

**Staff Reports**

None.

**Adjournment**

There being no further business, Bob Powell made a motion to adjourn the meeting at 9:30 pm; seconded by Scot Gasho. Motion carried 5-0.

  
Chairman

  
Executive Director