

BOARD OF ZONING APPEALS
OF THE CITY OF DECATUR / MINUTES

January 2, 2018

A meeting of the Board of Zoning Appeals of the City of Decatur, Indiana was called to order by Chairman Kitson on Tuesday, January 2, 2018 at 4:30 pm at City Hall, 172 N 2nd St, Decatur IN 46733.

Present at the meeting were: Steve Hakes, Greg Kitson, John Schultz, and Bill Stuckey. Also in attendance were Tim Baker, City Attorney; Curt Witte, Superintendent Building/Zoning; and Sharon Braun, Assistant. Absent was Dave Haggard.

The meeting was turned over to Tim Baker for election of officers. Baker opened the floor for nominations.

Upon motion by Schultz, seconded by Stuckey, Kitson was nominated as Chairman, Hakes as Vice-Chairman, and Braun as Recording Secretary. Motion carried, 4-0.

Baker called for any other nominations with no response.

Upon motion by Schultz, seconded by Stuckey, the nominations were closed. Motion carried, 4-0.

Baker called for vote, all those in favor of nominations as stated -- yes 4, opposed 0.

The meeting was turned over to Chairman Kitson. Kitson asked for nominations for city attorney.

Upon motion by Stuckey, seconded by Schultz, Baker be retained as legal counsel for the Board of Zoning Appeals. Motion carried, 3-0.

Upon motion by Stuckey, seconded by Hakes, the minutes for the previous meeting (August 15, 2017) were approved as presented. Motion carried, 3-0.

Upon motion by Schultz, seconded by Stuckey, the proof of publication for the evening's meeting was approved as presented. Motion carried, 3-0.

Upon motion by Schultz, seconded by Stuckey, the Affidavit of Notice to adjoining property owners was approved as presented. Motion carried, 3-0.

Matt Evans, 221 Oak, Decatur IN 46733 addressed the board and explained his request to build a 32 x 64 pole barn on his vacant lot at 527 Cleveland, Lot 868 (located on the corner of Cleveland and Stevenson Streets). Evans requested –

- (1) Per city code 150.040, request for Special Exception to build an accessory structure prior to the principal (residence) in the R-1 zoning district.
- (2) Per city code 150.046, request for Variance of the side yard setback (10 feet requirement) to build the pole barn with zero setback to the property line (Evans owns the adjoining vacant lot, Lot 867)

Following the board's discussion, with regard to the Special Exception, Chairman Kitson asked for any comments from the audience with no response.

Chairman Kitson read the Findings of Fact for the Special Exception, which were approved 3-0 with no restrictions.

Regarding the Variance of side yard setback requirements, the Board discussed several options as restrictions –

- Condition upon future ownership of the 2 lots not being separated, meaning that both lots would have to be transferred to a successor owner in the same deed, to be recorded as a covenant
- Condition that either (1) the pole barn would need to be built with fire protection, or (2) any structure built on Lot 867 would be required to have a 13-foot setback from the property line (10-foot setback plus the required 3-foot separation to meet fire code)

Evans agreed that both lots would be sold together and that at any such time a residence is built on Lot 867, the building would comply with a 13-foot side yard setback (property line with Lot 868).

Following the board's discussion, with regard to the Variance, Chairman Kitson asked for any comments from the audience with no response.

Chairman Kitson read the Findings of Fact for the Variance, which were approved 3-0 with the restrictions as follow –

- both lots would have to be transferred to a successor owner in the same deed, and
- that at any such time a structure is built on Lot 867, the building must comply with a 13-foot side yard setback (property line with Lot 868)

Chairman Kitson asked for any old business, with no response.

Chairman Kitson asked for new business. Mayor Ken Meyer asked to speak to the board.

Mayor Meyer explained an on-going problem regarding the Mark Gamble property, 839 N 10th St, Decatur IN 46733.

[Note: In November, 2015 Gamble had applied for and was granted a Special Exception for a vehicle repair/restoration business with the restrictions that (1) he would not park customer vehicles in the street, but keep them on his property, maximum of four, and (2) that Gambill would attempt to park his personal vehicles on his property rather than in the street.]

Mayor Meyer reported –

- Gamble has purchased additional properties, upon which he parks vehicles
- one such property, which is occupied, has no water and most of the windows are boarded up (this was reported to the Health Dept who advised there can be no action unless children are involved)
- Tim Baker suggested the city take photographs, which has been done over the past four months
- also, the city should obtain a realtor's statement of devaluation of the neighborhood because of the conditions of Gamble's properties

Chairman Kitson asked Baker what steps should be taken to address this situation?

Baker responded that the Board of Zoning Appeals would need to schedule a hearing to determine if compliance with the restrictions is being maintained. The board would need to review the evidence, decide if there is sufficient evidence to warrant a hearing to address the situation, and give Gamble opportunity to respond before making a decision.

Baker stated that any decision the BZA would make could be appealed in court (within 30 days) by Gamble. Gamble could file in court based upon (1) violation of due process rights, or (2) under the “arbitrary and capricious” standard, whereby a decision was made without reasonable grounds or adequate consideration of the circumstances.

There being no further business to come before the board, upon motion by Schultz, seconded by Hakes, the meeting was adjourned at 5:15 pm. Motion carried, 3-0.

Respectfully submitted,

Sharon Braun
Recording Secretary