

The meeting of the Berne Board of Zoning Appeals was held on Monday, November 9, 2020 at 5:00 P.M. at South Adams Senior Center, 825 Hendricks Street.

An agenda was posted at the door of the Senior Center and at City Hall. The legal notice was published on October 26, 2020 in the Berne Witness.

Members Present

Jerry Burke Present

Dave Burson Present

Brent Lehman Present

John Kaeser **Absent**

Linda Steury Present

Tom Stuber Present

Staff Present

Director, Shannon Smitley accessed the meeting via the phone.

Board Attorney Dave Baumgartner was present

Present from the City of Berne

Gregg Sprunger, Mayor

Guests Present: Berne residents Ray D. Gill, 1610 Carrington Way; Ron Weston, 355 Sprunger Street; Dean and Tammy Hummel, 316 N Jefferson Street; Randy and Dianne Beer, 356 Jefferson Street; Seth Beer, 365 Jefferson Street; Clint Anderson, 663 Sprunger Street, Brian Habegger, 1510 Shorewood Drive; Pete and Julie Bodle, 266 Jefferson Street; John and Angie Richert, 306 W Van Buren Street; Judy Lipina, 306 Wabash Street; Lynn and Bonnie Sprunger, 1104 Mill Pond Rd; Fred Linn, 986 Mill Pond Road; Curtis Wurster, 266 Baltimore Street; Bill and Linda McKean, 1146 Mill Pond Road; Sue Carlson, 1076 Mill Pond Road; Paul and Mary Burry. 365 N Jefferson Street. From Monroe, Dan Schwartz 234 W Jackson Street.

Linda Steury called the meeting to order and verified a quorum.

Public Hearing: # 1 Variance Request BZA 2020 -6 Filed by Brian and Denise Habegger on their residence at 1510 Shorewood Drive. The Habegger' s will be requesting that they be allowed to build a 9'6 X 17'6 sq. foot garage expansion and small stoop within five (5) foot of the property line.

Brian Habegger submitted letters from his neighbors and who have no opposition to the request.

After hearing all those wishing to be heard, Linda called for the reading of the Finding of the Facts.

The Board of Zoning Appeals of Berne, Indiana finds that:

1. Approval **will not** be injurious to the public health, safety, morals, and general welfare of the community because: ***Will not, neighbors signed a letter not opposing the addition, the addition will match the exterior of the home.***
2. The use and value of the area adjacent to the property included in the Variance **will not** be affected in a substantially adverse manner because: ***Will not, addition will not detract from the neighborhood***

3. The need for the Variance **does** arise from some condition peculiar to the property involved: ***Does. homeowner could not build within five feet of the property line without BZA approval.***
4. The applicant **did** establish that the strict application of the terms of the Zoning Ordinance constitute an unnecessary hardship if applied to the property for which the Variance Request is sought because: ***Did. Would not be able to build the addition for needed storage without BZA approval.***
5. The petitioner **has** established that approval **does not** interfere substantially with the comprehensive plan of the City of Berne because: ***Has and Does Not***
6. If granted, the board prescribes the following conditions: ***None***

(DECISION)

Therefore, on a motion by Jerry Burke and a second Dave Burson the decision of the Board of Zoning Appeals unanimously approved the Variance Use request of BZA 2020-6 as stated in the Finding of the Facts. **Adopted this the 9th Day of November by the following vote 5 yeas -0 nays**

BERNE BOARD OF ZONING APPEALS

Jerry Burke aye
Linda Steury aye
Tom Stuber aye
Dave Burson aye
John Kaeser Absent
Brent Lehman aye

- 2. BZA 2020-7 Variance Request** Filed by John and Angela Richert for their residence, 306 W. Van Buren, Berne IN. The Richert's will be requesting approval to build a 26 X 36 sq. ft. garage that will be within 6 foot of the property line.

John Richert explained to the board that they are wanting to build a 1 bay, two car garage on the west side of their property with access off of Van Buren Street. The garage will set back from Van Buren street the same distance as the front of the Richert's home. The variance is needed because the new garage will be within 10 feet of the west side of their property line.

After hearing all those wishing to be heard, Linda called for the reading of the Finding of the Facts.

The Board of Zoning Appeals of Berne, Indiana finds that BZA 2020-7

1. Approval **will not** be injurious to the public health, safety, morals, and general welfare of the community because: ***Will Not. Will improve neighborhood, will eliminate some on street parking.***

2. The use and value of the area adjacent to the property included in the Variance **will not** be affected in a substantially adverse manner because: ***Will Not. Improvement to the neighborhood.***
3. The need for the Variance **does** arise from some condition peculiar to the property involved: ***Does. The garage will be built to close to the west side property line.***
4. The applicant **did** establish that the strict application of the terms of the Zoning Ordinance constitute an unnecessary hardship if applied to the property for which the Variance Request is sought because: ***Did. Cannot build without the variance.***
5. The petitioner **has** established that approval **does not** interfere substantially with the comprehensive plan of the City of Berne because: ***Has and does not.***

Before Linda read item No. 6 in the Finding of the Facts, Board member Dave Burson asked Judy Lipina, 306 Wabash Street, if her concerns were answered. Judy advised the board that she understands the request for a garage, her concern was if the addition will affect property values and if there are any concerns as far as safety with the addition of the garage. With further explanation from the Richert's tonight, Judy said she is now comfortable with the request and has not opposition to the garage.

After additional discussion the board considered item # 6 of the Finding of the Facts

6. If granted, the board prescribes the following conditions: ***None***

(DECISION)

Therefore, on a motion by Jerry Burke and a second by Tom Stuber, the decision of the Board of Zoning Appeals unanimously approved the Variance Use request of BZA 2020-7 as stated in the Finding of the Facts. **Adopted this the 9th Day of November by the following vote 5 yeas -0 nays**

BERNE BOARD OF ZONING APPEALS

Jerry Burke aye
Linda Steury aye
Tom Stuber aye
Dave Burson aye
John Kaeser Absent
Brent Lehman aye

3 BZA 2020-8 Special Exception Variance Filed by Jamison and Shenna Ringger, 1750 Oakwood Lane, Berne IN. The Ringger's are planning to build a 50X100 sq ft barn on 27.222 acres of bare ground they own adjacent to their property at 1750 Oakwood Lane, Berne IN for the purpose of housing up to three (3) steers for meat and two (2) horses.

The Ringger's were unable to attend this hearing, but their builder Dan Schwartz of SCI (Schwartz Construction Inc.) was present to address any questions or concerns. City Attorney Dave

Baumgartner advised the BZA that the City of Berne has granted such special exemptions requests before including for the housing of livestock and a deer farm.

When asked if all adjacent property owners had been sent a letter about this hearing, it was confirmed that the nine adjacent property owners on Mill Pond Road along with Ted Beitler and the Nancy Yoder Living Trust were sent a letter about this hearing.

Among questions asked by the board:

- where will the barn be in conjunction with the house- *400 foot south of the house*
- who will care for and maintain the animals as the Ringgers have to be out of town often- *Shannon said he has asked the Ringger's about that, and they assured him that there will someone who will be responsible in their absence.*
- Where will the pasture actually be- *about 90' feet to the west of the tree line,*
- What are the plans to dispose of the manure? *Shannon advised that the manure will of such quantity that it can be spread on their ground.*
- How are the Ringger's planning to transport the livestock when necessary- The contractor said he could not speak for them, but he assumed they would use the new drive put in off Old Colonial Drive.

Questions from those in attendance:

- Where is the grazing area going to be- *Builder stated that it will be north of the barn and west of the new drive that is being built.*
- If passed, who will police the use and that there are no more than the allotted head: *Shannon confirmed that they will only be allowed to have the 3 steers and 2 horses as requested at any one time.*
- The notice stated that the Ringger's were going to request approval to build the barn and house the animal, has their barn be approved? *Dave explained that the Ringgers have already pulled the building permit and this hearing is about what they can do with the barn as far as having farm animals.*
- Who is going to police any restrictions and that there are only the allowed 3 steers and 2 horses- *Dave stated that any additional restrictions can be added to item 6 on the Finding of the Facts and enforcement would be by the Director of Building and Planning. If anyone were to observe more than the allowed number of farm animals, they can call the Building and Planning Director to enforce the findings of the hearing.*
- What happens if there is a change of ownership on the property? *This is a personal variance for the current property owner and the variance does not stay with the property should it change hands.*
- Will the manure pose a run-off problem in the ditch which empties into the lake? *Shannon said he was told by the excavator putting in the driveway, that they plan to*

clean out the ditch and make improvements to the ditch including adding two culverts. It was mentioned that the manure from 5 farm animals won't be that much and the ditch has a long way to go before it reaches the lake.

After hearing all those wishing to be heard, Linda called for the reading of the Finding of the Facts for BZA 2020-8.

The Board of Zoning Appeals of Berne, Indiana finds that:

1. Approval **will not** be injurious to the public health, safety, morals, and general welfare of the community because: ***Will Not. Area is in the fringe and already is used in a similar manner.***
2. The use and value of the area adjacent to the property included in the Variance **will not** be affected in a substantially adverse manner because: ***Will not, given that there will only be three steers and two horses.***
3. The applicant **did** establish that the strict application of the terms of the Zoning Ordinance constitute an unnecessary hardship if applied to the property for which the Variance Request is sought because: ***It is in the City of Berne fringe area, but the question is, is it a hardship? The animals should not be an issue because there are only 3 steers and 2 horses allowed.***
4. The petitioner **has** established that approval **does not** interfere substantially with the comprehensive plan of the City of Berne because: ***Has and does not***
5. If granted, the board prescribes the following conditions:
 - a. ***Must have current animal care provider contact information on file with the Building and Planning Department at all times.***
 - b. ***Distance of manure application can be no closer than 200 ft east of the adjacent property lines.***
 - c. ***Grazing area is only allowed north of the barn and west of the new driveway.***

(DECISION)

After additional discussion and additional questions, and with the board feeling it is necessary for the Ringger's to personally attend the hearing so all questions and concerns can be answered by them, Dave Burson made a motion to table their request until the Ringger's can be in attendance. On a second by Jerry Burke, the motion to table hearing 2020-8 was unanimously approved on a vote of 5-0.

4 BZA 2020-9 Special Use Variance filed by Smith Brothers of Berne Inc and Christine Good, 355 N Jefferson Street, Berne. If their variance is approved, Smith Brothers of Berne is

planning on purchasing and razing the house on 355 N Jefferson Street for the purpose of a new landscaped parking lot for their employees. The property is currently zoned R2-Multi Family.

Dave Burson recused himself from the hearing as a BZA board member because he is the Controller at Smith Brothers of Berne, and he will be making the presentation along with Executive Vice President Jay Hunter, who joined the meeting by phone.

In explaining the need for a hearing, Shannon reported that there is no zoning for parking lots in the City of Berne. Because Smith Brother's wish to purchase the property, raze the house and put in the parking and this being a residential neighborhood, he asked that they come before the BZA with their request.

Dave Burson explained to the board that Smith Brothers has a contract to purchase the property contingent on being able to level the house and put in a parking lot. Dave continued that the parking lot would originally be a stone surface and will be paved once it has settled. Dave reviewed plans that includes planting trees and shrubs, which will block the view from the neighbors, adding that if the property owners are in opposition to Smith Brothers plans, Smith Brothers will not proceed with the purchase of the property.

Randy Beer, 356 Jefferson stated that he and his family have lived in their home since 1983. At the time they purchased their home, Smith Brothers was quite a distance from them. Randy noted that Smith Brothers has grown a great deal over the years, and he has been supportive of their growth. Randy knows that the 355 N Jefferson property needs a lot of work, but feels it is not beyond saving and worth the effort, and it could be a nice home for a family. Randy said that some of the houses in that neighborhood, including his home and the home in question were built between 1883 and the early 1900's and contribute to the history of our community.

Besides hoping that the house can be saved, Randy voiced his concern that if allowed to become a parking lot, would Smith Brothers really care about the effect on surrounding homes. In expressing his concern, Randy noted other instances where the company chose to put in a chain link fence in his neighborhood. Randy also questioned if an exception can really be given since there is no zoning for a parking lot. In other questions Randy asked the following:

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- If it is turned into a parking lot, will it look like any other parking lot?
- Will Smith Brothers need more parking, and will they want to purchase and raze more homes?
- What is our standard as a city to allow a parking lot in a very historical area and there should be concern as to what precedent is being set?
- Will it impact property values, probably, but Randy stated that he is more concerned about destroying the history of the neighborhood.

Tammy Hummel, 316 N Jefferson stated that she and her husband have enjoyed the view and the peace and quiet of their home and their neighborhood for over 18 years. In the summer they like opening their windows. Even without the parking lot, she stated that they hear trucks at Smith Brothers being loaded in the early morning hours, employees revving their car engines, racing up and down the street before the start of their shift or at lunch, running the stop signs, which poses a safety factor, employees loud and sometimes slangy language. She added that with tearing down this home, and turning it into a parking lot, the problems and the impact to homes will be even worse. Tammy also is concerned about adding more hard surface area if there is a parking lot replacing what is now grass. She expressed concerned that it will make for more stormwater

runoff and most basements in the neighborhood are river rock and already receive some water. Tammy feels there are a lot of issues and voiced her opposition to the parking lot.

Paul Burry, 365 N Jefferson asked Dave Burson if the entire property will eventually be a parking lot. Dave confirmed that eventually, the plan is to have 3 rows of parking with landscaping and addressing concerns of the neighbors. Paul said he in support of Randy Beer and other neighbors that spoke tonight in opposition to the special use variance request.

Mr. Jay Hunter, Smith Brothers Executive Vice President spoke via the phone stating that Smith Brothers have additional opportunities for more growth, which would also benefit the Berne community, but they are facing the challenge of not enough people in the workforce.

In hearing Tammy's concerns, Mr. Hunter stated that would like to meet with her to address the concerns of safety, speeding cars etc. He further stated that Smith Brother's have in the past, contacted Berne Police Chief Tim Taylor asking his force to monitor some of the issues raised, and he knows that the Berne Police department has issued tickets.

Mr. Hunter stated that Smith Brothers have a growth plan for the future, saying that "we love Berne, Steve (Steve Lehman, President of Smith Brothers) loves Berne, and we want to be good neighbors".

Ron Weston, 355 Sprunger Street expressed his concern about the increase of traffic that he sees by living directly to the west of the Randy Beer residence. He has talked to a Public Safety official and his councilman about this and has concern that it will get worse with the parking lot.

Ron asked what the ingress and egress would be for the parking lot, Dave Burson advised that all entry and exits will be east onto Behring Street.

Ron asked about additional stormwater displacement and as other neighbors have already addressed, they were surprised with how Smith Brothers handled run-off in a neighbor's yard to the north. Ron stated that this was not done in a way that the neighbors thought Smith Brothers would do in a residential neighborhood, which has added more concern about this request.

Ron stated that because he is in town at different times during the day, he sees a lot of empty parking spaces in the lots Smith Brothers already have.

After hearing additional discussion, Dave Burson, as a representative of Smith Brothers, stated that he is not opposed to having the board table the request so Smith Brothers can address the concerns that were heard tonight.

Jerry Burke made a motion to table BZA Hearing 2020-9 for Smith Brothers of Berne, Tom Stuber made the second and the motion to table was unanimous on a vote of 5-0.

REGULAR MEETING

Approval of Minutes. Dave Burson made a motion to approve the minutes of August 10, 2020 and Brent Lehman made the second. The minutes were unanimously approved on a vote of 5 yeas 0 nays:

Old Business- None

New Business- None

Closing of Meeting. On a motion by Tom Stuber and a second by Brent Lehman the meeting was adjourned.

Respectfully Submitted,

BZA Secretary Dave Burson