

**(DRAFT COPY – SUBJECT TO APPROVAL BY THE ZONING BOARD OF APPEALS)
MINUTES OF A PUBLIC HEARING AND THE DELIBERATIONS OF THE TAZEWELL
COUNTY ZONING BOARD OF APPEALS**

A Public Hearing of the Tazewell County Zoning Board of Appeals was held at 6:00 P.M. on Wednesday, July 6, 2011, Tazewell County Justice Center, 101 South Capitol Street, Pekin, Illinois. Chairman James Newman called the meeting to order.

PRESENT: Chairman James Newman, JoAn Baum, Monica Connett, Duane Lessen, Loren Toevs, Robert Vogelsang and Alternate Phil Webb

ABSENT: Ken Zimmerman

STAFF: Kristal Deininger, Community Development Administrator; Matt Drake, Assistant States Attorney; Nicholas Hayward, Land Use Planner; Melissa Kreiter, Administrative Assistant; and Land Use Members: Chairman Carroll Imig, Joyce Antonini, Russ Crawford, Paul Hahn, Terry Hillegonds, Darrell Meisinger, Rosemary Palmer, Mel Stanford, and Sue Sundell

OTHERS

PRESENT: Petitioners and Objectors

MINUTES: Moved by Toevs, seconded by Baum, to approve the Minutes of the June 7, 2011 Zoning Board of Appeals Meeting as presented. **Motion carried by voice vote.**

CASE NO. 11-23-S: The petition of Ronald Springer for a Special Use to allow the creation of one new dwelling site in an A-1 Agriculture Preservation District

and

(Subject to Approval of the Subdivision Modification by the Land Use Committee)

CASE NO. 11-24-V: The petition of Ronald Springer for a Variance to waive the requirements of 7TCC1-7(f) for the creation of a New Zoning Lot of record having no frontage on a public road but will have access via a express ingress and egress easement in an A-1 Agriculture Preservation District.

Moved by Toevs, seconded by Baum to continue **Case No. 11-23-S** and **Case No. 11-24-V** to the September 7, 2011 ZBA Public Hearing.

Motion carried by voice vote.

CASE NO. 11-34-S: The petition of Delavan Township Road District for a Special Use to allow for the operation of a Governmental Non Essential Use from 2 existing structures on an existing zoning lot of record for storage of Township equipment and outside gravel storage in an I-2 Heavy Industrial Zoning District

Moved by Connett, seconded by Lessen to continue **Case No. 11-34-S** to the August 2, 2011 ZBA Public Hearing.

Motion carried by voice vote.

CASE NO. 11-35-V: The petition of Darren Greenlee for a Variance to waive the requirements of 7TCC1-7(f) to allow the creation of one new zoning lot of record to have 60' of frontage along King Road, which is 140' less than allowed in an A-1 Agriculture Preservation District

Moved by Connett, seconded by Lessen to continue **Case No. 11-34-S** to the August 2, 2011 ZBA Public Hearing.

Motion carried by voice vote.

CASE NO. 11-29-S: SECTION 1.

**ARTICLE 2
RULES OF CONSTRUCTION AND GLOSSARY OF TERMS**

7 TCC 1-2 (b) Glossary of Terms.

Add new definitions as follows:

INSTITUTIONAL USE: Uses that may or may not be permitted or special uses in a zoning district that typically provide education, governmental, health, recreational, social, and transportation services in the community on either a for profit or not-for-profit basis.

SECTION 2.

**ARTICLE 5
DISTRICT REGULATION AND STANDARDS**

7TCC 1-5 (l) Accessory Building, Structures and Uses:

(Add the following new verbiage)

- (9) The following accessory structure may be permitted without a principal structure:
- i. Agricultural structures;
 - ii. Open Picnic Shelters

SECTION 3.

**ARTICLE 7
(A-1) AGRICULTURAL PRESERVATION DISTRICT**

7TCC 1-7 (c) Special Uses. The following uses may be established by a special use in the A-1 district in accordance with procedures and standards set forth in Article 25 (Special Uses):

Renumber accordingly and add the following verbiage

Clubs or Lodges; private

SECTION 4.

**ARTICLE 31
BUILDING PERMIT**

(Add new verbiage as italicized and bolded)

7 TCC 1-31(b) Basis for Issuance. A building permit shall only be issued after the Community Development Administrator determines that the proposed development is in compliance with all requirements of this ordinance and all other applicable regulations of the County, including but not limited to the *Environmental Barriers Act (410 ILCS 15/1 et seq now in effect or as hereinafter amended), the building and property maintenance code*, subdivision, erosion control, and floodplain regulations.

In addition, a building permit shall only be issued for 7TCC 1-31(c) (1), (2), (4), (5), (7), (9) after the Community Development Administrator determines that the parcel of land involved was divided in compliance with the Illinois Plat Act, 765 ILCS 205/0.01 et seq. now in effect or as hereafter amended.

7 TCC 1-31 (c) When Permit Required. A building permit shall be obtained from the Community Development Administrator, by the owner, lessee, or other person having the right to possession or his authorized agent, of any property or structure before commencing:

- (1) The construction, erection, or development of any building or structure, either by itself or in addition to another use, including buildings or structures to be used for agricultural purposes;
- (2) To move or relocate any building or structure or part thereof;
- (3) The expansion, change, or re-establishment of any non-conforming use, including the change from one use to another;
- (4) The construction of a swimming pool;
- (5) *The reconstruction or structural alteration of any building or structure or part thereof;*
- (6) *The demolition of any building or structure, including buildings or structures to be used for agricultural purposes;*
- (7) *The alteration of the interior of any institutional, commercial, industrial, or multi-family structure;*

- (8) *The interior alteration of any structure located in the floodplain;*
- (9) *The construction of a fence, other than ornamental (as defined in 7TCC 1-5 (o)) or agricultural fences;*
- (10) *Installation of new electrical service or equipment and repairs to or replacement of existing electrical systems of any institutional, commercial, industrial or multi-family structure;*
- (11) *Installation or alteration of any heating, ventilation, air conditional or other mechanical system of any institutional, commercial, industrial or multi-family structure;*
- (12) *Installation or alteration of any plumbing system of any institutional, commercial, industrial or multi-family structure.*

7 TCC 1-31 (e) Application for Building Permit. An application for a building permit shall be filed in the office of the Community Development Administrator on forms prescribed by the Community Development Administrator, along with the fees for building permits, *plan review and inspections*, and other pertinent information. Such application shall contain and be accompanied with the following:

- (1) The name and address of the owner, the name and address of the applicant, and the name and address of the contractor if known;
- (2) Property identification number, and legal description of the property;
- (3) The estimated cost;
- (4) A description of the uses to be established or expanded;
- (5) A site plan drawn to scale containing the following:
 - i. Actual dimensions of the lot to be built upon;
 - ii. Size, shape, and location of the use to be established or the structure to be constructed;
 - iii. Size, shape, and location of all existing buildings and uses on the lot;
 - iv. Auto parking area; and
 - v. Lot area to be used.
- (6) Ingress and egress: An approved ingress and egress permit shall be obtained from the appropriate state, county, or township responsible for road jurisdiction, when any such structure or use requires installation of a new ingress and egress;
- (7) Water supply and sewage disposal facilities, including a true and correct copy of any permit required by the County or State Health Department approving such facilities;
- (8) *For all proposed commercial, industrial and multi-family projects with three or more units, and institutional projects, three (3) full sets of architecturally sealed building plans and specifications shall be submitted and approved by the Community Development Administrator prior to issuance of a building permit. One set of digital building plans and specifications may be required upon the Community Development Administrator's request;*
- (9) *All plans for proposed commercial, industrial, multi-family and institutional projects shall be submitted to and approved in writing by the appropriate fire protection district, prior to issuance of a building permit, in all fire protection districts that have adopted a fire protection code and that have advised the Community Development Administrator that a plan review is required;*
- (10) Property located within the Flood Hazard Areas shall meet the standards as specified in Chapter 6, Regulating Development in Floodplain Areas; and
- (11) Any such other information as may be required by the Community Development Administrator to enforce the provisions of these regulations.

7 TCC 1-31 (f) Issuance of a Building Permit. A building permit shall be issued when the Community Development Administrator determines that an application for a building permit conforms to the applicable regulations and standards of the ordinance, and all required permits and approvals have been obtained, and all relevant fees have been paid *pursuant to 7TCC1-33(a) Fee Schedule associated with a building permit.*

7 TCC 1-31 (h) Fees. The applicant shall pay all costs associated with the application for a building permit pursuant ~~7TCC1-33(a) Fee Schedule~~ **to Article 9, Appendix “A” Fee Schedule of the Building and Property Maintenance Code for all commercial, industrial, institutional and multi-family projects as defined therein.** The fee shall be paid to the Community Development Department at the time of filing the application.

7 TCC 1-31 (j) Changes to Approved Permits.

- (1) After a building permit has been issued, no changes or deviations from the terms of the permit *or the application and accompanying plans and specifications*, and site plan shall be made without specific written approval of such changes or deviations by the Community Development Administrator.
- (2) An amendment to a building permit which requires payment of an additional fee, either because of an increase in the size of the buildings or a change in the scope of the work, shall not be approved until the applicant has paid the additional fees and the amendment has been approved for compliance with the County’s regulations.

7 TCC 1-31 (k) Expiration of Building Permit.

- (1) A building permit, *with exception of a demolition permit*, for which *work approved by the permit construction* has not commenced, *as shown on the building permit*, within *one hundred and eighty (180) ninety (90) days* after the date of issuance, shall expire and become null and void, unless an extension has been obtained in writing by the Community Development Administrator. *The Community Development Administrator may grant only one extension for an additional ninety (90) day period of time.* Such extension shall be obtained by the applicant no later than ten (10) working days following expiration.
- (2) A building permit shall immediately expire if the work is not completed within two (2) years from the date of issuance. A written notice thereof, shall be given to the applicant together with notice that no further work shall proceed until a new permit shall have been issued. The Community Development Administrator may grant only one (1) renewal of a building permit not to exceed a two (2) year period. A building permit that has been renewed and is not completed within the additional two (2) years, shall be subject to enforcement procedures found in Article 36.
- (3) *Building permits for the purpose of demolition of a single family residential principal or accessory structures shall become null and void unless the work approved by the permit has commenced within thirty (30) days after the date of issuance, as shown on the building permit, unless an extension has been obtained in writing by the Community Development Administrator. The Community Development Administrator may grant only one extension for an additional thirty (30) day period of time. The permit shall immediately expire if the work is not completed within ninety (90) days, unless an extension has been obtained in writing from the Community Development Administrator. The Administrator may only grant one extension for an additional ninety (90) day period of time. No work authorized by any permit which has expired shall thereafter be performed until a new permit has been issued. The Community Development Administrator shall only grant one (1) renewal of a demolition permit.*
- (4) *Building permits for the purpose of demolition of principal and accessory commercial, industrial, institutional, multi-family or agricultural structures shall become null and void unless the work approved by the permit is commenced within ten (10) days after the date of issuance, as shown on the building permit, unless an extension has been obtained in writing by the Community Development Administrator. The Community Development Administrator may grant only one extension for additional ten (10) day period of time. The permit shall immediately expire if the work is not completed within ninety (90) days, unless an extension has been obtained in writing from the Community Development Administrator. The Administrator may only grant one extension for an additional ninety (90) day period of time. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been issued. The Community Development Administrator shall only grant one (1) renewal of a demolition permit.*

- (5) Renewal of a building permit will require re-payment of the original fee.

7 TCC 1-31 (m) Stop Work Order. When any building or structure is being constructed, either without a building permit or in violation of a properly issued building permit, the Community Development Administrator or their designee is hereby authorized to issue a Stop Work order on the premises where the violation is taking place.

The Community Development Administrator shall assess a fee for a stop work order as set forth in Article 33, Fee Schedule.

SECTION 5.

**ARTICLE 32
ZONING COMPLIANCE CERTIFICATE**

(Add new verbiage as italicized and bolded)

7 TCC 1-32 (d) Temporary Certificate of Compliance.

- (1) A temporary certificate of compliance may be issued by the Community Development Administrator for a period not to exceed sixty (60) days for a building or structure, or part thereof, prior to the completion of the entire building or structure.
- (2) A temporary certificate may state the nature of the incomplete work and the time period within which the work must be completed. *The fee for a Temporary Certificate shall be pursuant to 7TCC1-33-(a) Fee Schedule.*

SECTION 6.

**ARTICLE 33
FEE SCHEDULE**

(Add new verbiage as italicized and bolded)

7 TCC 1-33 (a) Fees Charged for Building Permits. The following fees shall be charged for the processing of applications and the issuance of building permits, and shall be collected by the Community Development Administrator, who shall be accountable to the County for such fees:

- (3) Other:

xv. Temporary Compliance Certificate: \$75.00

SECTION 7. This amendatory ordinance shall take effect upon passage as provided by law.

Community Development Administrator Deininger reviewed the proposed Amendment and explained to the ZBA the reason for the changes in each Section.

Tazewell County Health Department made no comment regarding the proposed Amendment.

Tazewell County Soil & Water Conservation District submitted a report having no comment regarding the proposed Amendment.

The Tazewell County Farm Bureau submitted a report regarding the proposed Amendment recommending approval with reservations.

All municipalities were notified however only the following comments were received regarding the proposed Amendment:

Jon Oliphant, City of Washington, submitted a letter stating the proposed Amendment was supported by the City of Washington.

Following all Public Hearings, moved by Vogelsang, seconded by Baum, to recommend approval of **Case No. 11-29-A** to the Tazewell County Board.

After considering all the evidence and testimony presented, the ZBA discussed and arrived at the following findings of fact:

1. *The proposed amendment shall not be detrimental to the orderly development of Tazewell County.*
2. *The proposed amendment shall not be detrimental to or endanger the public health, safety, morals or general welfare of Tazewell County.*

Moved by Connett, seconded by Baum, to accept the findings of fact as discussed.

On roll call to recommend approval of **Case No. 11-29-A** the vote was:

Ayes: 7 – Baum, Connett, Lessen, Toevs, Vogelsang, Alternate Webb, and Chairman Newman

Nays: 0

Absent: 1 – Zimmerman

Motion declared carried.

CASE NO. 11-30-Z: The Petition of Minier Co-Op Grain Co. for a Map Amendment to the Official Hittle Township Zoning Map of Tazewell County to change the zoning classification of property from an A-1 Agriculture Preservation Zoning District to an I-1 Light Industrial Zoning District.

The Tazewell County Land Use Planner submitted a report identifying 11 Positive Findings of Fact.

Tazewell County Health Department made no comment regarding the proposed Rezoning request.

Tazewell County Soil & Water Conservation District submitted a report recommending approval regarding the proposed Rezoning request.

Tazewell County Farm Bureau submitted a report recommending approval regarding the proposed Rezoning request.

Village of Armington made no comment regarding the proposed Rezoning request.

Jeff Schneider, Hittle Township Road Commissioner submitted a report having no objection regarding the proposed Rezoning request.

John Anderson, Tazewell County Highway Engineer made no comment regarding the proposed Rezoning request.

Kim Tribbet, Illinois Department of Transportation made no comment regarding the proposed Rezoning request.

School District 16 made no comment regarding the proposed Rezoning request.

NOTE – THE FOLLOWING TESTIMONY INCLUDES TESTIMONY CONDUCTED FOR CASE 11-30-Z AND CASE 11-31-V

Darrell Nobis appeared to testify on behalf of the proposed Rezoning and Variance request. Mr. Nobis stated he was the Superintendent for Minier Grain Co-Op. Mr. Nobis said the current Zoning would not allow for any more than 52% utilization of the property due to the setback requirements. Mr. Nobis added he would only be allowed to build on additional Bin without requiring further ZBA approval if he did not rezone the property and would be limited on location without requiring a Variance as the property was on a corner lot.

Following all Public Hearings, moved by Lessen, seconded by Webb, to recommend approval of **Case No. 11-30-Z** to the Tazewell County Board.

After considering all the evidence and testimony presented, the ZBA discussed the findings of fact and reviewed the Report of the Land Use Planner and arrived at the following findings of fact:

1. *The proposed amendment shall not be detrimental to the orderly development of Tazewell County.*

POSITIVE. The subject property is already developed; it contains a grain storage and handling business. Thus, the rezoning will not change the nature of the property. Rather, the rezoning will enable a larger portion of the property to be used for grain storage and handling because the setbacks in the I-1 District are smaller than in the A-1 District. The use of a larger portion of the property will not cause adverse effects on nearby properties, and the rezoning will better reflect the actual use of the property, so the proposed amendment will not be detrimental to the orderly development of Tazewell County.

2. *The proposed amendment shall not be detrimental to or endanger the public health, safety, morals or general welfare of Tazewell County.*

POSITIVE. The subject property already houses a grain storage and handling business, and the proposed amendment will enable a larger portion of the property to be used due to smaller setbacks. The rezoning will not change the nature of the existing use. Therefore, the proposed amendment will not be detrimental to the public health, safety, morals or general welfare of Tazewell County.

3. *The request is consistent with existing uses of property within the general area of the property in question.*

POSITIVE. The subject property is located at the eastern edge of the Village of Armington. Existing uses of property within the general area consist of farmland to the west, south and east, an agricultural business to the north, and single-family dwellings within the Village to the northwest. The existing grain storage and handling business is consistent with the nearby agricultural uses and does not substantially affect the nearby residential uses, so it is consistent with existing uses of property within the general area.

4. *The request is consistent with the zoning classifications of property within the general area of the property in question.*

POSITIVE. There is no other property in the general area that is within the I-1 Zoning District; land is either zoned A-1 or located within the Village of Armington. However, the parcel is located at the eastern edge of the Village, contains an agricultural/light industrial business, is located across Armington Road from an agricultural business, and is surrounded on three sides by farmland. As a result, the proposed rezoning is suitable for this property and is judged to be consistent with the zoning classifications of property within the general area.

5. *The suitability of the property in question for the uses permitted under the existing zoning classification.*

POSITIVE. The existing zoning classification of A-1 is intended to protect areas that are best suited to the pursuit of agriculture in order to ensure that agriculture will continue to be maintained as a long term land use and viable economic activity. The subject property is already developed and houses a business that involves the storage and handling of grain. Therefore, the property is not well suited for the pursuit of agriculture under the A-1 zoning classification.

6. *The suitability of the property in question for the uses permitted under the proposed zoning classification.*

POSITIVE. The property in question is located at the eastern edge of the Village of Armington, contains an agricultural/light industrial business, is located across Armington Road from an agricultural business, and is surrounded on three sides by farmland. Therefore, the property is suitable for uses permitted under the proposed I-1 Light Industrial Zoning District.

7. *The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the property in question was placed in its present zoning classification.*

POSITIVE. While not a development trend per se, the property was converted from farmland to the current grain storage and handling use in 1992 after the property was placed in the A-1 Zoning District. This change supports the proposed rezoning to the I-1 Zoning District.

8. *The length of time the property has been vacant as zoned, considered in the context of the land development in the area surrounding the subject property.*

POSITIVE. The property is not vacant as zoned, but the proposed zoning classification will better reflect the existing use of the property, so the proposed rezoning is suitable.

9. *The proposed map amendment is within one and one half (1 ½) miles of a municipality and consistent with an adopted Comprehensive Plan.*

POSITIVE. The proposed map amendment is adjacent to the Village of Armington. The Village does not have a comprehensive plan, but the proposed map amendment will not result in a change of use and the subject property is suitable for the I-1 Zoning District due to its location and nearby uses. Therefore, the proposed map amendment is suitable.

10. *The relative gain to the public as compared to the hardship imposed upon the individual property owner.*

POSITIVE. The use of the property will not change, so the proposed rezoning will not change the impact on the public. The existing zoning classification creates some hardship because the setbacks in the A-1 Zoning District are larger than the setbacks in the industrial zoning districts, and the existing use is light industrial in nature. Therefore, the proposed rezoning is suitable.

11. *The proposed amendment is consistent with the goals, objectives, and policies of the Tazewell County Comprehensive Plan.*

POSITIVE. The proposed amendment is consistent with the following Tazewell County Comprehensive Land Use Plan principle: "New and existing businesses and industries are willing and able to establish and maintain operations."

Moved by Lessen, seconded by Connett, to accept the findings of fact of the Land Use Planner as written. **Motion carried by voice vote.**

On roll call to recommend approval of **Case No. 11-30-Z** the vote was:

Ayes: 7 – Baum, Connett, Lessen, Toevs, Vogelsang, Alternate Webb, and Chairman Newman

Nays: 0

Absent: 1 – Zimmerman

Motion declared carried.

(Upon approval of Case No. 11-30-Z by the Zoning Board of Appeals.)

CASE NO. 11-31-V: The Petition of Minier Co-Op Grain Co. for a Variance to waive the requirements of 7TCC1-14(f)(1)(iii) to allow an Accessory Structure (Grain Compound) to be 34' from the centerline of Armington Road, which is 16' closer than allowed in an I-1 Light Industrial District.

Tazewell County Health Department made no comment regarding the proposed Variance request.

Tazewell County Soil & Water Conservation District submitted a report recommending approval regarding the proposed Variance request as no prime farmland would be removed from production.

Tazewell County Farm Bureau submitted a report recommending approval regarding the proposed Variance request.

Village of Armington made no comment regarding the proposed Variance request.

Jeff Schneider, Hittle Township Road Commissioner submitted a report having no objection regarding the proposed Variance request.

John Anderson, Tazewell County Highway Engineer made no comment regarding the proposed Variance request.

Kim Tribbet, Illinois Department of Transportation made no comment regarding the proposed Variance request.

School District 16 made no comment regarding the proposed Variance request.

NOTE – THE TESTIMONY FOR CASE 11-31-V WAS INCLUDED IN THE TESTIMONY LISTED ABOVE IN CASE 11-30-Z.

Following all Public Hearings, moved by Lessen, seconded by Toevs, to approve **Case No. 11-31-V.**

After considering all the evidence and testimony presented, the ZBA discussed and arrived at the following findings of fact:

1. *The particular surroundings and topographical conditions of the property upon which a petition for a variance are based are unique to the property for which the variance is sought and are not applicable, generally, to other property with the same zoning classification.*

POSITIVE. Due to other structures on the property, the ingress and egress and the layout of the lot the location for the compound structure is the most practical. Placement of the structure on the Western edge of the property could possibly hinder sight distance at the intersection of Armington Road and Route 136.

2. *The conditions upon which a petition for a variance are based are unique to the property for which the variance is sought and are not applicable, generally, to other property with the same zoning classification.*

POSITIVE. Due to other structures on the property, the ingress and egress and the layout of the lot the location for the compound structure is the most practical. Placement of the structure on the Western edge of the property could possibly hinder sight distance at the intersection of Armington Road and Route 136.

3. *Granting the variance will not be detrimental to the public welfare, nor injurious to other property or improvements in the neighborhood in which the property is located.*

POSITIVE. The compound storage is needed for temporary grain storage during harvest season. The site is surrounded by farm field on three sides.

4. *The proposed variance will not impair an adequate supply of light and air to adjacent property, nor substantially increase the congestion in public streets or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

POSITIVE. The applicant located the structure in such as manner as to prevent site distance problems at the intersection of Armington Road and U.S. 136.

5. *The purpose of the variance is not based exclusively upon a desire to increase the monetary gain realized from the property.*

POSITIVE. The compound storage is needed for temporary grain storage during harvest season.

6. *Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.*

POSITIVE. Due to other structures on the property, the ingress and egress and the layout of the lot the location for the compound structure is the most practical. Placement of the structure on the Western edge of the property could possibly hinder sight distance at the intersection of Armington Road and Route 136.

7. *The alleged difficulty or hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property.*

POSITIVE.

8. *The plight of the owner is due to unique circumstances.*

POSITIVE. Due to other structures on the property, the ingress and egress and the layout of the lot the location for the compound structure is the most practical. Placement of the structure on the Western edge of the property could possibly hinder sight distance at the intersection of Armington Road and Route 136.

Moved by Vogelsang, seconded by Connett, to accept the findings of fact of the as discussed. **Motion carried by voice vote.**

On roll call to approve **Case No. 11-31-V** the vote was:

Ayes: 7 – Baum, Connett, Lessen, Toevs, Vogelsang, Alternate Webb, and Chairman Newman

Nays: 0

Absent: 1 – Zimmerman

Motion declared carried.

CASE NO. 11-32-S: The petition of Steve Lowery, d/b/a Lowery Excavating Inc. for an Expansion to an existing Special Use (Case No. 07-13-S) to expand the operations of mining sand and gravel in an A-1 Agriculture Preservation District

The Tazewell County Land Use Planner submitted a report identifying 14 Positive Findings of Fact.

Tazewell County Health Department made no comment regarding the proposed Special Use request.

Tazewell County Soil & Water Conservation District submitted a report recommending denial of the proposed Special Use request as prime farmland would be removed from production.

Tazewell County Farm Bureau submitted a report recommending approval regarding the proposed Special Use request.

Hopedale Township Road Commissioner made no comment regarding the proposed Special Use request.

John Anderson, Tazewell County Highway Engineer made no comment regarding the proposed Special Use request.

School District 702 made no comment regarding the proposed Special Use request.

NOTE – THE FOLLOWING TESTIMONY INCLUDES TESTIMONY CONDUCTED FOR CASE 11-32-S AND CASE 11-33-V

Steve Lowery appeared to testify on behalf of the proposed Special Use request. Mr. Lowery stated the Code had recently changed which had made requirements more restrictive with regards to setbacks which limited his ability to mine the property as he had originally intended. Mr. Lowery said the request is not actually an expansion as he purchased the property in 2007 with the intent to mine the property under the former requirements. Mr. Lowery added the 55 acre parcel has the primary pocket of gravel and the 20 acre parcel was utilized primarily as a staging area for equipment to process the gravel. Mr. Lowery stated if he had known the Zoning Code were going to change, he would have requested to mine his entire property back in 2007 upon his purchase. Mr. Lowery stated he had 6 employees and supplied 8 area Villages, 18 area Townships and the Tazewell County Highway Department with sand and gravel. Mr. Lowery stated if even if a 625' setback were imposed, there would be 1.7 million tons of gravel lost if he was unable to mine the property to its capacity. Mr. Lowery said he watered his ground up to 12 times per day to keep dust down and maintained stockpiles below the surface grade. Mr. Lowery added he only operated his business during business hours and was not in operation 24 hours a day. Mr. Lowery stated he had a reclamation plan in place to return the ground to row crop production. Mr. Lowery said he did not request to operate on the entire parcel in 2007 because he did not know how long it would be for his operation in Mackinaw to be complete. Mr. Lowery added it took him a while to find this property and purchase it. Mr. Lowery stated most of the mines in the general area were completely mined out and only one had been reclaimed, all others had been abandoned. Mr. Lowery said if his request were approved it could take up to 20 years to mine the entire property. Mr. Lowery added most of the property would remain farm ground until it was ready to be mined. Mr. Lowery stated if he could not mine the property he would have to try and subdivide the land, as the farm income did not generate enough money to cover the payment of interest on the loan for the land. Mr. Lowery said the largest portion of gravel was to the West of the property and he would not mine straight towards the Stark property. Mr. Lowery added he was willing to work with the Stark family and would do what he could in order to keep his operation running. Mr. Lowery stated he would come up with what areas he would be mining first and noted he would only open up about 3 to 4 acres per year to mine. Mr. Lowery stated that gravel pits had gotten a bad reputation because they can be large, noisy and dusty, however he was a small operation and not nearly as big as most in the area. Mr. Lowery said he even silenced the back up alarms on his equipment as much as allowed. Mr. Lowery added one adjacent owner, Mr. Bolliger's property sat above the elevation of the gravel pit in current operation and he did not have any complaints about the noise or dust.

Curt Bolliger appeared to testify on behalf of the proposed Special Use and Variance request. Mr. Bolliger stated that he lived closest to the Gravel Plant on Townline Road and to the West. Mr. Bolliger said Mr. Lowery kept excellent control of the dust and noise and there was more noise generated from the area sportsmen's club than from the gravel pit.

Attorney Burt Dancy appeared to testify against the proposed Special Use and Variance request on behalf of Mr. and Mrs. Stark, who owned the dwelling that would be surrounded by the proposed Gravel Pit. Mr. Dancy said it appeared as if Mr. Lowery would be mining directly towards the Stark property. Mr. Dancy stated he had discussed various options with his client in case the petition were to be approved, but his client stated they would like to see the gravel pit adhere to the 1,000 foot regulation. Mr. Dancy said the Stark's had purchased their property 26 years prior and was originally opposed to the gravel pit in 2007. Mr. Dancy added the old pit to the South of the Stark residence had been closed for over 30 years and the Stark's were not affected by the operation of the other current gravel pit in the area. Mr. Dancy stated the restrictions set forth in the Zoning Code were to protect property owners from the noise, dust and loss of property value. Mr. Dancy said a 750' buffer was what the current pit was located at and his client would be willing to discuss a graduated plan for operation.

Kathy Stark appeared to testify against the proposed Special Use and Variance request. Mrs. Stark stated she was opposed to the proposed gravel pit expansion and that Mr. Dancy had covered the majority of her concerns. Mrs. Stark said her husband was retired and she would be retiring soon. Mrs. Stark added she would be willing to sit and talk with Mr. Lowery to try and reach some sort of agreement.

Mark Fehr appeared to testify on behalf of the proposed Special Use and Variance request. Mr. Fehr stated he farmed the land to the East of the proposed site and also owned land in the vicinity. Mr. Fehr said he did not have a dwelling in the area but never had a problem with Mr. Lowery. Mr. Fehr added Mr. Lowery's operation used his farm lane and repaired it to a condition better than what it had began as. Mr. Fehr stated Mr. Lowery often watered the farm lane, which was not part of the gravel operation, to keep the dust at a minimum. Mr. Fehr said Mr. Lowery had given him his personal cell phone number to contact him direct should he ever have any concerns. Mr. Fehr added his property was South of the Sportsmen Club and he would rather see the land mined because it was not very productive farmland.

Larry Childress appeared to testify on behalf of the proposed Special Use and Variance request. Mr. Childress stated he was with the Tremont Sportsmen Club which owned the property directly adjacent to the Gravel Pit operation. Mr. Childress said he had never had any complaints regarding the Gravel Pit from any of its members. Mr. Childress added he did not personally know Mr. Lowery but considered him to be a very good neighbor. Mr. Childress stated he never had an issue with any dust or noise from with Gravel Pit.

Following lengthy discussion, moved by Baum, seconded by Connett, to continue Case No 11-32-S to the August 2, 2011 Public Hearing directing the Community Development Administrator to set a up a meeting with Mr. and Mrs. Stark and their Attorney Burt Dancey and the petitioner, Steve Lowery, to discuss a compromise and options of setback requirements which would best suit all parties. Further requiring the applicant to submit a new Site Plan prior to the August 2, 2011 Hearing to identify the setbacks reached in agreement by all parties.

Motion carried by voice vote to continue Case No. 11-32-S to the August 2, 2011 Public Hearing.

(Upon approval of Case No. 11-32-S by the Zoning Board of Appeals)

CASE NO. 11-33-V: The petition of Steve Lowery, d/b/a Lowery Excavation Inc. for a Variance to waive **in its entirety** the requirements of 7TCC1-25(f)(12)(v)(1) and (2) to allow the mining and excavations of sand and gravel to be located closer to an existing dwelling and existing out buildings without the homeowners written permission. Mining, excavations and stockpiling of over burden are proposed to be within 50' of the adjacent property owner's property line. Said property located in an A-1 Agriculture Preservation Zoning District.

Tazewell County Health Department made no comment regarding the proposed Variance request.

Tazewell County Soil & Water Conservation District submitted a report making no comment regarding the proposed Variance request.

Tazewell County Farm Bureau submitted a report recommending approval regarding the proposed Variance request.

Hopedale Township Road Commissioner made no comment regarding the proposed Variance request.

John Anderson, Tazewell County Highway Engineer made no comment regarding the proposed Variance request.

School District 702 made no comment regarding the proposed Variance request.

NOTE – THE TESTIMONY FOR CASE 11-33-V WAS INCLUDED IN THE TESTIMONY LISTED ABOVE IN CASE 11-32-S.

Following lengthy discussion, moved by Baum, seconded by Connett, to continue Case No 11-33-V to the August 2, 2011 Public Hearing directing the Community Development Administrator to set a up a meeting with Mr. and Mrs. Stark and their Attorney Burt Dancey and the petitioner, Steve Lowery, to discuss a compromise and options of setback requirements which would best suit all parties. Further requiring the applicant to submit a new Site Plan prior to the August 2, 2011 Hearing to identify the setbacks reached in agreement by all parties.

Motion carried by voice vote to continue Case No. 11-33-V to the August 2, 2011 Public Hearing.

CASE NO. 11-36-V: The petition of Ryan White for a Variance to waive the requirements of 7TCC1-7(g)(3)(i) to allow the construction of an Addition to Dwelling (Attached Garage) to be 37' to the Rear Property Line, which is 13' closer than allowed in an A-1 Agriculture Preservation District

Tazewell County Health Department made no comment regarding the proposed Variance request.

Tazewell County Soil & Water Conservation District submitted a report having no comment regarding the proposed Variance request.

Tazewell County Farm Bureau submitted a report recommending approval regarding the proposed Variance request.

Roger Spangler, Village of Morton made no comment regarding the proposed Variance request.

Larry Bolliger, Tremont Township Road Commissioner made no comment regarding the proposed Variance request.

John Anderson, Tazewell County Highway Engineer made no comment regarding the proposed Variance request.

School District 702 made no comment regarding the proposed Variance request.

Mike Warren appeared to testify on behalf of the proposed Variance request. Mr. Warren stated Mr. White would like to construct an attached garage and remove a single stall garage that is presently on the property. Mr. Warren said the single stall garage was located in the approximate driveway for the new addition.

Following all Public Hearings, moved by Lessen, seconded by Webb, to approve **Case No. 11-36-V**.

After considering all the evidence and testimony presented, the ZBA discussed and arrived at the following findings of fact:

1. *The particular surroundings and topographical conditions of the property upon which a petition for a variance are based are unique to the property for which the variance is sought and are not applicable, generally, to other property with the same zoning classification.*

POSITIVE. The applicant in placement of the addition due to the existing septic system and structurally and cosmetically the proposed location for the addition is the most practical. Further there is an existing shed located on the property which is closer to the rear property line and the addition will not extend beyond the shed.

2. *The conditions upon which a petition for a variance are based are unique to the property for which the variance is sought and are not applicable, generally, to other property with the same zoning classification.*

POSITIVE. The applicant is hindered in placement of the addition due to the existing septic system and structurally and cosmetically the proposed location for the addition is the most practical. Further there is an existing shed located on the property which is closer to the rear property line and the addition will not extend beyond the shed.

3. *Granting the variance will not be detrimental to the public welfare, nor injurious to other property or improvements in the neighborhood in which the property is located.*

POSITIVE. The property is surrounded on the three sides by farm fields, and allowing the structure to be closer to the rear property line will not hinder existing farming operations.

4. *The proposed variance will not impair an adequate supply of light and air to adjacent property, nor substantially increase the congestion in public streets or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

POSITIVE.

5. *The purpose of the variance is not based exclusively upon a desire to increase the monetary gain realized from the property.*

POSITIVE. The applicant does not have an attached garage and due to the unique circumstances the Variance is needed and therefore is not for monetary gain.

6. *Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.*

POSITIVE. The applicant is hindered in placement of the addition due to the existing septic system and structurally and cosmetically the proposed location for the addition is the most practical. Further there is an existing shed located on the property which is closer to the rear property line and the addition will not extend beyond the shed.

7. *The alleged difficulty or hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property.*

POSITIVE.

8. *The plight of the owner is due to unique circumstances.*

POSITIVE. The applicant is hindered in placement of the addition due to the existing septic system and structurally and cosmetically the proposed location for the addition is the most practical. Further there is an existing shed located on the property which is closer to the rear property line and the addition will not extend beyond the shed.

Moved by Lessen, seconded by Toevs, to accept the findings of fact of the as discussed. **Motion carried by voice vote.**

On roll call to approve **Case No. 11-36-V** the vote was:

Ayes: 7 – Baum, Connett, Lessen, Toevs, Vogelsang, Alternate Webb, and Chairman Newman

Nays: 0

Absent: 1 – Zimmerman

Motion declared carried.

NEXT MEETING

The next meeting of the Zoning Board of Appeals will be **Tuesday, August 2, 2011** at 6:00 p.m. in the Tazewell County Justice Center, 101 South Capitol Street, Pekin, Illinois.

ADJOURNMENT

There being no further business, moved by Baum, seconded by Connett, to adjourn the Zoning Board of Appeals Public Hearing at 8:03 p.m.

Kristal Deininger, Secretary

Secretary's Note: For further information regarding the discussion and testimony during the Public Hearing, please contact the Community Development Department for copies of the transcripts.