

## **MACON COUNTY ZONING BOARD OF APPEALS**

### **HEARING MINUTES – NOVEMBER 2, 2016**

#### **MEMBERS PRESENT**

Barb Lamont, Chairman  
Bill Koretke, Vice Chair  
Donald Wilson

#### **COUNTY PERSONNEL PRESENT**

Jennifer Hoffman, Planning & Zoning Director  
Tracy Sumpter, Planning & Zoning  
Michael Baggett, Assistant State's Attorney

#### **MEMBERS ABSENT**

Blake Noland  
Andy Freeland  
Ed Leonard, Alternate Member  
Dennis Hughes, Alternate Member

Chair Lamont called the meeting to order at 8:30.

#### **MINUTES**

Bill Koretke made note that there was a misspelling in the August 3, 2016 minutes. Ms. Sumpter stated she will correct that error.

Bill Koretke made the motion to approve (with the correction) the August 3, 2016 minutes, seconded by Donald Wilson. All members present answering, Aye. Motion Carried (3-0).

#### **OLD BUSINESS:**

- 4.1** S-01-08-16 a special use petition filed by Matt Craft to allow the operation of a construction business in (RE-5) Single Family Estate Zoning.

Ms. Hoffman stated this was approved by County Board September 8, 2016.

- 4.2** S-02-08-16 a special use petition filed by Robert Jr. & Deborah Weaver for the renewal of a special use permit to allow a mobile home on property where a primary residence already exists in (A-1) Agricultural Zoning.

Ms. Hoffman stated this was approved by the County Board September 8, 2016.

- 4.3** R-03-08-16 a petition filed by Betty Potrafka for rezoning of duplexes only from (A-1) Agricultural Zoning to (R-6) Multiple family Residential.

Ms. Hoffman stated this was approved by the County Board September 8, 2016.

Chair Lamont asked for any person wishing to speak today to please stand so that she could swear them in.

## **NEW BUSINESS:**

- 5.1** S-01-11-16 a petition filed by NFI Sales (Blake & Grant Noland) requesting the renewal of a Special Use Permit for the operation of a trailer/equipment sales business with the addition of occasional vehicle/service truck sale in (A-1) Agricultural Zoning

Grant Noland  
2502 Midiron Dr  
Decatur, IL 62521

Mr. Noland stated he is here on behalf of his brother Blake Noland and himself requesting renewal of their permit. He asked if anyone had any questions.

Mr. Koretke asked if he had any complaints.

Mr. Noland stated no.

Ms. Hoffman stated that they want to add occasional vehicle/service truck sale. She stated that she had talked to Blake and they really didn't do too many.

Chair Lamont asked was it to add an occasional vehicle? Ms. Hoffman stated yes.

Mr. Koretke asked what are they permitted to do? What is the size of the sign, etc.?

Ms. Hoffman presented the stipulations.

The following is a list of the stipulations for S-01-11-16 NFI Sales.

1. This Special Use Permit constitutes a license issued to the named Petitioners only. This special use permit is not property nor does it convey any property right. This special use permit is, therefore, not assignable or transferable.
2. Employees shall be limited to immediate family members living on the premises, plus no more than 2 outside employees working at the facility at any one time.
3. The business can only have one sign and cannot exceed an area of 6 square feet.
4. Building permits shall be obtained as required if needed.
5. Normal hours of operation shall be limited to 8 A.M. to 5 P.M., seven (7) days a week.
6. Said property and all operations shall remain subject to all other applicable local, county, state, and federal regulations including, but not limited to, the Macon County Zoning Ordinance and the Macon County Nuisance Ordinance.

7. Special use permit is for a 10-year period. After that time, the permit may be renewed if approved. This special use permit expires: December 10, 2026.

Mr. Koretke asked if there were any changes to those stipulations?

Mr. Noland stated no, and in regard to the sign, the sign meets the state approval. It's only like 2'x2'.

Marsha Potrafka asked what type of vehicles.

Mr. Noland stated he believed it would be primarily focused on the service truck side of things.

Marsha Potrafka asked if they would be obtaining a dealer's license.

Mr. Noland stated he believes they already have.

Chair Lamont called on Ms. Hoffman to present her finding of facts.

Petition: Renewal Special Use permit for a trailer sales business with an occasional vehicle/ service truck sale in A-1 Agriculture zoning

Parcel Number: 02-15-19-100-001

Location: This property is commonly known as 7770 S. Meridian Ave in Blue Mound Township.

Acreage: 27.3 Acres

Zoning: A-1 Agriculture

### **Finding of Facts**

- This is a renewal of a Special Use Permit that was issued on November 18, 2014. In 2014, the initial Special Use Permit was issued for trailer sales business and now they want to include an occasional vehicle/ service truck sale also.
- The Macon County Zoning Ordinance (Section 155.008) defines a special use as a use, either private or public, which because of its unique characteristics, cannot be properly classified as a permitted use in any particular district or districts.

EFFECTS ON GENERAL WELFARE: The establishment, maintenance, or operation of this Special Use will not be detrimental to or endanger the public health, safety, welfare, and morals.

EFFECTS ON NEARBY PROPERTY: The Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or

substantially diminish and impair property values with the neighborhood.

**EFFECT ON DEVELOPMENT OF SURROUNDING PROPERTY:** The establishment of the Special Use Permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

**ADEQUACY OF UTILITIES & FACILITIES:** No known problems with required utilities and facilities.

**INGRESS & EGRESS:** No known problems with ingress and egress.

**CONFORMITY TO REGULATIONS:** With the passage of the special use permit by the Macon County Board the property will conform.

**STAFF RECOMMENDATION:** The zoning board may approve the petition as submitted or deny or modify as appropriate. Staff recommends approval with stipulations that were previously presented.

Bill Koretke made the motion to approve the petition, seconded by Donald Wilson. All members present voting, Aye. Motion carried (3-0).

Chair Lamont handed Mr. Noland the ZBA Process Letter, which explains the next steps that will be taken on this petition.

**5.2** V-02-11-16 a variance petition filed by Michael Hanneken requesting for minimum setback to be changed from 10 feet to 2 feet in (R-1) Single Family Residential Zoning.

Nick Mitchell  
6455 Birchwood Ln  
Decatur, IL 62521

Mr. Mitchell stated he will be representing Michael & Gail Hanneken on the variance petition.

Mr. Mitchell passed out pictures to the board members to look at while he explains. He stated picture #1 is just a marker of the home 5290 Kruse Rd. Picture #2 is a view from the driveway and it shows the west side of the garage where the addition is proposed to be and if you take the property line on the 3<sup>rd</sup> picture it's a panoramic view of the whole area. It's about 200 feet from the front of the property to the back. The advantage would be allowing a 3 feet setback if it were approved by the board. If you look at picture #4, there is a line that approximately shows the property line. As the addition to garage goes farther to the South, you actually get farther than 3 feet away from the property line because of the way the house sits on the property.

Mr. Koretke asked how far away from the property line are they right now.

Mr. Mitchell asked from the garage to the property line?

Mr. Koretke stated it looks tucked way into the Northwest corner.

Mr. Mitchell pointed on the map to verify Mr. Koretke's question.

Mr. Koretke asked the farthest north, how far away from the property line there.

Mr. Mitchell stated it is 10 feet, right where the garage is.

Mr. Koretke asked what they are proposing to do.

Mr. Mitchell stated if you look at the picture where the footings have been unearthed, as you come down the line, the garage will go parallel with the house, and as you come down the line, the closest part will be to the North which is 3 feet. So as you come farther to the South, they get farther away from the addition. If you look at picture #5, he understands that these utility easements are put in for a reason obviously. The Hannekens already have utilities at the site. He stated that if you look at the picture that shows the power transformer, that is about 15-20 feet away from the house as it sits now. That is to the West of the house now.

Mr. Koretke asked if that's inside his property.

Mr. Mitchell stated actually it's not inside his property line, that's inside the easement.

Mr. Koretke asked how wide is the easement between the two properties.

Mr. Mitchell stated the easement should be 20 feet total, 10 feet on each side. He stated they are going from 10 feet to 3 feet.

Mr. Koretke stated the property lines Mr. Mitchell is describing, the adjacent corner to the West (Karch), how far is his property line from the construction property line.

Mr. Mitchell verified the property lines on the map.

Mr. Koretke stated that Mr. Mitchell had said there is a 20 foot easement, the easement is not part of either property?

Mr. Mitchell stated actually it is.

Mr. Koretke stated it's just an easement, a right of way.

Mr. Mitchell confirmed.

Mr. Koretke stated so the actual property line between the two properties is as we see here.

Mr. Mitchell confirmed yes.

Ms. Hoffman asked if the garage would be built on the easement.

Mr. Mitchell stated no. It would still be on Mr. Hanneken's property, well, yes it would be on the easement, 7 feet inside the easement.

Ms. Hoffman stated that nothing had been said about the easement before today.

Mr. Koretke stated there is a utility easement between the two properties.

Mr. Baggett asked if we had a copy of the easement that has been recorded.

Ms. Hoffman stated the legal description did not include the easement.

Mr. Koretke asked what they are proposing to build.

Mr. Mitchell stated they are proposing to build an addition to Mr. Hanneken's garage so that he can park his vehicles and keep them from the elements.

Chair Lamont asked how many car garage are they planning on.

Mr. Mitchell stated it is a 12x18 addition.

Mr. Mitchell stated that when they say right of way, they mean for utility easements and also for emergency vehicles if there were a road that had to be put in there, is that part of it?

Mr. Baggett stated that is part of the concern, this easement, he apologizes and introduces himself. He stated he is with the states attorney's office and he advises the board. The concern that the board would have with allowing anything to be built onto the easement is if it's a utility easement or an emergency easement, anything along those lines, there is a reason that easement is there. If we build a structure into that easement, it defeats the purpose of the easement and may in fact violate the terms of the easement. He stated he would advise the board, without knowing more about the exact language within the easement to not vote on this today. Unless we have more information regarding exactly what the terms to that easement are.

Ms. Hoffman asked how far is the house from the easement.

Mr. Mitchell stated the house is approximately 30 feet from the easement. He stated the terrain of this easement is a very hilly, wooded terrain and he is experienced, he owns a construction company, an educated guess as to what it would take to remove all that and

fill in and grade to make it all level, is \$50,000 plus is what he has come up with. And so in order for the county to put a road in there so to speak, there are no structures to where that road would benefit now, there are no homes, outbuildings, nothing like that. But if the county decided to, then there would be a lot of work and expense just to get it ready to do that.

Mr. Baggett stated he is not saying that the county is necessarily planning on building anything out there but without having a copy of the easement that is recorded in the recorder's office we don't know what the terms of the easement are. There may be a restrictive covenant in that easement that would prevent the building of this or the extension of this garage. If there is a restrictive covenant, that would put the property owner in violation in terms of the easement, this board would not grant the variance. Mr. Baggett stated he's not trying to propose that this is a deal killer, but without more information regarding the easement he could not advise the board to make a final decision on this petition.

Mr. Mitchell stated he appreciates that and he understands.

Mr. Baggett stated it is ultimately the board's call on what they want to do today, but he thinks without more information and evidence regarding the terms of the easement, it is inadvisable to move forward. He doesn't think the petitioner should be required to re-file the petition, but bring more information.

Chair Lamont agreed, just bring us the additional information and re-schedule the hearing.

Ms. Hoffman agreed. She stated there was not discussion of an easement when she was at the property, just discussion of the property lines.

Mr. Koretke stated he was confused, referring to a picture he was looking at, he was figuring it was a transformer, but it is a pile of concrete block.... he asked what is in the easement right now.

Mr. Koretke shared the picture with Mr. Mitchell.

Mr. Mitchell stated there is nothing in the easement right now.

Chair Lamont asked that it looks like a transformer, but is it just a pile of blocks?

Mr. Koretke said it appeared to be a transformer. And asked Mr. Mitchell if as far as he knows, there is nothing in there right now?

Mr. Mitchell stated Mr. Hanneken does have underground utilities for his electrical, there is nothing in the easement that he knows of.

Chair Lamont stated the board will need more information on that easement to make an

informed decision. She asked if we could continue this for next month.

Mr. Baggett stated there may be more persons here who wish to speak today who made the trip. He would encourage the board to hear from them today and put it on the record so that they wouldn't have to return unnecessarily.

Chair Lamont asked if anyone would like to speak on this matter.

There were no speakers.

Chair Lamont stated she would like to continue this one until the December meeting when we have the information.

Mr. Baggett asked for a motion to table.

Chair Lamont asked for a motion to table until next month.

Bill Koretke made a motion to table until the December hearing, seconded by Donald Wilson. All members present voting, Aye. Motion carried (3-0).

Mr. Koretke asked Mr. Mitchell if he could attend that meeting.

Mr. Mitchell stated yes, absolutely.

Mr. Mitchell asked if the board wanted a copy of the plat and the covenants if there are any.

Mr. Baggett stated he could go down to the recorder's office and look up this Deerfield 2<sup>nd</sup> addition lot 1 and get any easement that's been recorded with respect to utility easement so that we can have the exact language that was recorded and then just give it to Ms. Hoffman so that it may be included in the board's packet for next month. Mr. Baggett stated he doesn't normally review these much in advance of hearings but this is one of the stickier situations that Ms. Hoffman would refer to him. He will look into it and advise the board appropriately.

Mr. Koretke stated the concern is that if it's a sewage line, that would require a massive amount of digging.

Mr. Baggett stated if it's a utility easement, if there is anything underground, he's assuming that if they have dug anything, if there is anything underground whether its sewage or electrical lines etc. any of the like, there is probably going to be a restrictive covenant that nothing can be built over the easement.

Ms. Hoffman stated they are on septic out there.



Mr. Baggett stated so it may not be anything with regards to sewage but until we see the easement, there is no way of knowing why it's there. We need to know why it's there before we can act.

Mr. Koretke agreed saying we need exact details.

Chair Lamont informed Mr. Mitchell of the date and time for the next meeting.

Mr. Mitchell asked if the petition is approved at the next meeting, would there be any further steps.

Mr. Baggett stated this is a variance, so this is the sole deciding board.

Ms. Hoffman stated it does not go on to the full County Board. It will be decided here.

Chair Lamont asked Ms. Hoffman if there is anything for next month.

Ms. Hoffman stated we have one petition already and this continuation will make it two.

ADJOURNMENT: Bill Koretke made the motion to adjourn; Donald Wilson seconded. All members present voting, Aye. Motion Carried. (3-0). Meeting adjourned at approximately 8:53 AM.

*Minutes submitted by Tracy Sumpter, Macon County Planning and Zoning Dept.*