

Owen County Board of Zoning Appeals Minutes

July 19th, 2007

Those Attended

Members

Reese Nichols
Benton Pittman
Ed Raymer
Patty Steward

Public

Johnny White
Johnny White Jr.
Vic Farkas
Thelma McDougall
Randy McDougall
John Trimble
Mike Branham
Scott Barnett
Patty Rademachir
Cecil Rademachir
Russ Lorenzen
John Vermillion
Vickie Newman
Patty Truesdel
Wiley Truesdel
Tom Greene
Richard Lorenz
Jack R. Woodruff
Alice J. Miller
Mark Bates
Tony Trowbridge

Open Meeting

Ed Raymer: opens meeting with Pledge to the Flag

Matter of Minutes

Reese Nichols: Motions to Approve June 21st, 2007 Minutes

Benton Pittman: Seconds the Motion

Passes 3-0

New Business

Tom Greene

Tom Greene came before the Board to get a variance to operate a salvage yard. The Owen County Commissioners told him that is what he needed to do at this point.

Ed Raymer: Tom I know what was told to you in the regular planning and zoning meeting. I know what the motion was. But I got three members here I'm going to tell, the way I read it, the Book "all junk yard, race tracks, waste incinerators, and waste transfer stations (not licensed by and approved by the State of Indiana) are non-permitted uses in Owen County. So that is my position as chair but if any other member's want, they can make a statement.

Reese Nichols: Well it goes on to say "Which prohibition cannot be removed by an appeal for a use variance to the Owen County Board of Zoning Appeals. So I don't see where we have jurisdiction to start with.

Ed Raymer: I know what you were told and, I know what the members said. I know everything that was said.

Reese Nichols: I mean there shouldn't be, what you are talking about doing is a good idea where it is at but I mean you can't make it much clearer than that. "Which prohibition cannot be remove by an appeal for a use variance to us".

Tom Greene: I'm just going by what the application said that I need the approval of the Board, Then I could go get.

Ed Raymer: I know, I just don't what to drag you through it and everything. I'm just telling you right up front. The way I interpret the Book, we are suppose to go by the Book.

Tom Greene: It is not a scrap yard operation it is a storage lot.

Ed Raymer: You did admit in the meeting to cutting those lines with Freon and taking the radiators out.

Tom Greene: We do take it out with compliance with the State

Ed Raymer: That's a transfer station.

Tom Greene: You do reclaim that out of the machines.

Ed Raymer: It still goes into the air though, That's IDEM.

Tom Greene: There are other scrap yards in the County that probably do the same thing. They get to reclaim under compliance with Indiana.

Ed Raymer: I'm Not going to state the County business here, But there is other operation's going to be moved on to.

Tom Greene: There is no place I can go

Ed Raymer: You have the right to go to the Commissioners

Tom Greene: The Operation has since

Ed Raymer: Our boss the people over us are the Commissioners.

Tom Greene: If it is approved it is watched by the IDEM and EPA. They put the rules down and comply and they are a watch dog operation and they watch me awful close like they do all the others.

Ed Raymer: Like I said I know what was told to you and I know what the motion was.

Tom Greene: I just came from a place two hours ago, I was called out there that had twenty five cars sitting in a nice looking pasture. I made a deal with them to haul away those cars along with the wrecker that hauled them in. Now those people if anybody needed to be under compliance.

Ed Raymer: Tom you have done this for two years without a license and you were non-conforming then.

Tom Greene: I had a license when we were on the west 46.

Ed Raymer: You would have only been grandfathered there.

Tom Greene: The license could not be transferred from that address.

Ed Raymer: I'm asking you now for the people of this County to cease your operation. Because you are non-conforming.

Reese Nichols: I don't think we have the authority to do that. We can turn down but we can't tell him. The Commissioners never gave us that right.

Ed Raymer: No, I'm just asking him to cease his operation. It's non-conforming. You can go to your Commissioners.

Reese Nichols: All we can do is go by the rules, the laws that have been passed. Whether we agree with it or disagree with it. It says we do not have any authority. Any thing that we do, do whether you agree or disagree, you have the right to go to the Commissioners of Owen County. That's the only thing I can tell you.

Tom Greene: I'm just putting it right out there in front of you and do it legally.

Ed Raymer: The Commissioner's are the highest authority in the County.

Tom Greene: There is operations going on in the County that will not come forward.

Richard Lorenz: There is a need to amend the ordinance as it is written. To have a definitional section that will distinguish between these types of things. Obviously transfer station were not intended to be added to the ordinance that we have, The question is the activities here can be properly defined in some other way that allows it to be permitted. And there are in fact definitions that do follow the classification because the salvage permit is a State defined operation.

(Issue begins at 037 on tape)

Scott Barnett

Scott Barnett came before the Board to ask for a set back variance on his property. His home is located 18 feet from his property line.

Scott Barnett: I'm requesting that the corner of my building at foot end be 18 feet from my property line instead of 25. The footers were inspected by the County Building Department and okayed where they were.

Ed Raymer: It is already in

Scott Barnett: yes it is already in when they okayed the footers they knew the Building Department knew where the house was going to sit.

Patty Steward: So is there a reason why it is only 18 feet away from the property line.

Scott Barnett: When we set the post we measured straight out 25 feet and straight over 25 feet so that's where we set our house. Not thinking of measuring at a 45 degree angle.

Ed Raymer: How long have you been there?

Scott Barnett: It has been there for about a month.

Ed Raymer: What brought the issue up then 18 feet instead of 25?

Scott Barnett: I guess one of the adjacent property owners.

Ed Raymer: Is there any adjacent property owners here?

Jack Woodruff: I'm representing the adjacent property owner.

Ed Raymer: Okay, Were the green cards sent out?

D.J. Bault: Yes

Ed Raymer: Okay, state the rest of your business and I will call Jack up here. So this is what brought the issue up.

Scott Barnett: Right

Ed Raymer: Did you talk to your neighbor about it?

Scott Barnett: I have not, he lives in Virginia.

Ed Raymer: Okay, would you take a seat and Jack would you come forward then. State your name Jack.

Jack Woodruff: My name is Jack Woodruff I am an Attorney here in town for Hickam and Lorenz. I represent George Huff Jr. an adjacent property owner to Mr. Barnett's property.

Ed Raymer: What is your objections?

Jack Woodruff: The objection is with respect to the fact that Mr. Barnett's Dwelling does not meet the set back requirements. The history between Mr. Barnett and Mr. Huff go back approximately seven years. With respect to boundary line disputes. Mr. Barnett has been aware of the issues with respect to that boundary line for that entire time period going back to July of the Year 2000. At the time George Huff Sr. owned the property. There was issue's of trespass, issue of damage to crops on Mr. Huff's property. Surveyors were hired to come out and set stakes for the boundary lines. Those stakes were removed twice from boundary. There was a request to the prior township trustee to come forward and build a boundary line fence to alleviate some of the problems between these two property owners. Unfortunately the prior township trustee became ill, this goes back a number of years now, and it never was built. In this instance when the notice was sent that Mr. Barnett was again putting a structure on the property that did not fall with in the boundary line requirements. Mr. Huff hired Trico surveying to come out and survey the line again, and identify exactly where it was and it establishes that it does not meet the set back requirements. I will show you a copy of the plat prepared by Trico. Specifically in this instance the complaint would be that aside from the history between these two parties is that the purpose behind having the Planning and Zoning Ordinances is to protect all the property owners of Owen County. There is nothing in the application of Mr. Barnett that sets out anything peculiar to his piece of land that indicates that he should be treated differently from any other owner. In his application he seems to imply

that it really does not matter because Mr. Huff property is unimproved ground. There is nothing in the Ordinance that say that unimproved ground has any less value to the owner there of than owners of improved property. There is nothing here to justify it. When he accepted his building permit from the County he agreed to abide by the Zoning and Planning Ordinances. And clearly in this case he was aware of where the boundary line were as been for eight years and he chose to ignore it. In this case to grant the variance does do damage to the adjacent property owner in that it impact the value of his land. Whether it is improved now or improved down the road having something sitting that close to the boundary line is going to affect his ability to use his land to it's best use as he sees fit. I would respectfully ask the Board to deny the Variance request in this case.

Ed Raymer: Let me ask you something, What are you, the home is sitting on the property in questioned right? The corner of the home?

Jack Woodruff: The corner as I understand it at this point the footers have be laid.

Ed Raymer: The home is not there then.

Jack Woodruff: That's my understanding.

D.J. Bault: The home is ready for a foundation, perimeter.

Ed Raymer: But there is no structure there now?

D.J. Bault: Yes there is the structure is already on the foundation.

Benton Pittman: Is this a modular home that could be moved or is it a stick built that is permanently there?

Scott Barnett: It is a modular with a permanent foundation.

Ed Raymer: And your asking it to be moved back another seven feet?

Jack Woodruff: Absolutely

Benton Pittman: (looking at the survey by Trico) I notice there is a trailer on here, How long has that trailer been there?

Scott Barnett: Right at five years or more.

Benton Pittman: Five years, Has there ever been an issue between the property owners about that trailer where it sits?

Scott Barnett: None at all.

Jack Woodruff: There was a from my understanding from Mr. Huff there was a prior trailer there that belong to a predecessor entitled to Mr. Barnett. There was a widow lady that lived there and that was not a particular issue where that prior trailer sat and when Mr. Barnett brought in a trailer I believe it was put in behind the original trailer that was on the property. The original dispute between the land owners had to do with the boundary line and trespass on Mr. Huff's property and destruction to the land and in the particular instance, Mr. Huff is in the opinion that the driveway that has been put in is actually on his ground and that is still to be addressed privately.

Ed Raymer: Mr. Barnett, were you ever sent a letter to remove this?

Scott Barnett: What's that

Ed Raymer: Did Mr. Huff ever ask you to remove this?

Scott Barnett: No

Ed Raymer: He never said anything to you about it?

Scott Barnett: He never said anything about the trailer that is there or the new structure until this point.

Benton Pittman: I'm surprised there has not been an issue because it appears from the drawing that the trailer is exactly the same set back as the modular home. Both of them at eighteen feet. That is the only comment I have at this time.

Patty Steward: I recon I need a little more on a time line, because obviously someone wanted to filed for this variance. At what point was the home set on the footers? Because you made the remark that the footers were approved by the County, at what point, can you give me a time line of how that kind of all came down?

Scott Barnett: Around the first of June somewhere in there, they inspected the footers, the foundation went up and then they set the home on it. As far as the end of June this is all came about. Then I filed on July the first for the variance.

Ed Raymer: D.J. do you have his building permit? Let me see it.

Patty Steward: When you were notified that were not with in the proper setback was after your home was set?

Scott Barnett: Yes it was

Patty Steward: And it was Mr. Huff who notified you that you did not.

Scott Barnett: He notified the Building Department, The Building Department knew about this.

Cecil Rademachir: I'm Cecil Rademachir I'm Scott's step father, back in 2002 or 3 something along that line I married patty his mother and we moved over to that property and the property that he was talking about a while ago about the lady that owned. We bought that property, we split the properties up and I had that whole plot surveyed again. Trico quite honestly Trico has made a bundle off this dispute. It's been the same way for years and years. Trico surveyed it for me I assumed that Trico surveyed it for them just this time. And that property line now is exactly the same place that Trico put it when they surveyed it for me. It's exactly the same place. It's been surveyed by Trico I don't know how many times. And it has always been put in the same place. I don't know what they are talking about as far as getting the driveway or what ever. But the line has always been where it is at now. When they came out and surveyed it this time I'm not complaining about the variance I'm just saying the property line has always been where the property line is. So we can't dispute whether or not the property line is on one side or the other. When it was surveyed by Trico for Mr. Huff they put it where they put it when it was surveyed by Trico for me they put it where it's at now. I can't see that there is a problem exactly where the property line is. It does not make sense

Patty Steward: But the property line is not what we are addressing. It's the set back

Cecil Rademachir: I know that but this gentleman referring that there has been a dispute over the property line and should be moved one way or the other. My point is the property line has never been moved regardless of who it was surveyed for. It's exactly where it is right now.

Jack Woodruff: Whether you accept that there is a boundary line dispute or not, and whether that is totally relevant, if you accept what this gentleman is saying that they have the boundary line survey clearly Mr. Barnett had knowledge of where that boundary line was and he intentionally decided to ignore the County setback requirements and place this new home with in something less than twenty five feet of the property line. And whether or not the prior favor was there or not really is not relevant either. This is a new home under a new application under the current zoning laws and is a matter of the home being set on a permanent foundation versus something that is personal property.

Ed Raymer: Mr. Barnett, I was looking at your application you knew that the foundation was being moved over eighteen feet right? You knew it was over?

Scott Barnett: I was not aware of the eighteen feet because I measured twenty five feet forward and twenty five feet.

Ed Raymer: You measured it, You measured it yourself?

Scott Barnett: I set that pole at approximately where it was at and needed to be off the property line. And it was accepted.

Cecil Rademachir: We did not intentionally ignore it. That's the point.

Ed Raymer: Did you know that you were six feet from the property line.

Scott Barnett: No I was not aware of that at the time.

Ed Raymer: You never knew that all this time? The other trailer was there.

Scott Barnett: I knew I was twenty five feet this way and twenty five feet this way.

Ed Raymer: Let me ask you again, when the other trailer was there with the other foundation did you know it was six feet on Mr. Huff's land.

Scott Barnett: No sir there was no zoning then, I was told I had to stay 10 feet off the property line at that time.

Ed Raymer: So you, When the issue arisen here you never knew about being six feet over?

Scott Barnett: No, my old trailer is not.

Reese Nichols: What are the, on the survey, What are the items marked flush? Does anybody know?

Vic Farcas: That would mean it is rebar set that's flush to the ground that is not sticking up.

Reese Nichols: What is the terrain like behind the, that would be the south east of the modular what's the terrain? By the shed?

Scott Barnett: Slope

Vic Farcas: Are you asking me?

Reese Nichols: Who ever the owner, who ever knows.

Scott Barnett: It is a down hill slope down towards the tree line.

Reese Nichols: Where's your property line run from where the gravel drive is? Does it continue on to the south east? Or is that dotted line the property line?

(Looking at the survey by Trico)

Reese Nichols: Is this your property line?

Scott Barnett: This property here, this line should not even be there because we have split that.

Vic Farcas: He has separate deeds, there is a 1.17 acre deed and another but both pieces are his as far as the south east that is his property also.

Scott Barnett: That has been changed to 1.7 to 1.09 now.

Ed Raymer: When you bought this property Mr. Barnett did you have it surveyed?

Scott Barnett; Yes

Cecil Rademachir: That is the survey I was talking about.

Ed Raymer: Do you have title insurance on it?

Scott Barnett: Title insurance, My mortgage company has got it right now.

Ed Raymer: Does any of the Board have any thing?

Patty Steard: I think we should go through the questions (as seen in the application for a variance) and see if they apply for this.

Ed Raymer: We are not here to determine property lines.

Patty Steward: Right, the first one is “The approval will not be injurious to the public health , safety, morals, and general welfare of the community because? I think we need to answer this question.

Reese Nichols: I think we have been drug into a on going dispute between two property owners. And the pass on the building permit when they had the foundation inspection it says that the foundation was outside of the perimeter.

D.J. Bault: What that actually, I ask Bud (Bud Smith Building Inspector) he was talking about three feet footing is what he was talking about, It is not three feet footing out side of the perimeter. He was talking about it being three foot wide footing instead of the normal sixteen inch. So the footing itself is above and beyond what they ask. That is what that is stating.

Reese Nichols: Some where along the line we are going to have to, something is going to have to be made clear about the building inspectors are not responsible for determining property lines and such.

Ed Raymer: I can't understand how you get twenty five foot here and twenty five foot here and you can not get it here.

Reese Nichols: Because it is at an angle.

Vic Farcas: When we measure a house, we measure it perpendicular to the property lines so that is the closest point as any corner would be.

Ed Raymer: Does any body else have anything?

Benton Pittman: The second one says(question number 2 in variance application) “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? I guess I would ask you that question. My first thought I’m not trying to put words in your mouth, but my first thought is you are within eighteen feet of the property line, if you neighbor decided to build a house within twenty five feet of the property line that is going to be pretty close. So Substantially and adversely affecting his property. I did not make this rule this is.

Scott Barnett: I say if they built within ten feet of the property line it would not affect anything. As long as we can get a vehicle between the house and the property line then it would not affect it.

Jack Woodruff: If I may I would argue that the Owen County Commissioners in adopting this set of ordinances made the determination on behalf of all the citizens of Owen County that buildings within twenty five feet of the boundary line would cause damage to the property owners.

Reese Nichols: No they made it so there would be adequate fire access to the adjacent property.

Jack Woodruff: And not to have that does cause damage to the property owners.

Reese Nichols: Except in towns where there are houses sitting next to each other.

Ed Raymer: We need a motion.

Ed Raymer: Is there anybody else here that wants to talk on this? Any other neighbors?

John White: This has been an on going thing like he said, Scotty has not agreed with the property line. He has tried to set it over. At this moment he has started building a fence and those posts are off the property line on our acre. We would probably come to an agreement if the County would come in and put a property fence up with the help of the surveyor on the line.

Ed Raymer: I understand what you are saying, but the issue here today is whether to grant this variance or not and is got to be dealt with at this time.

Jack Woodruff: I would point out that Mr. Huff is not asking this Board to settle a property line dispute under any circumstances that just thrown out as coloring the situation here. But clearly if you accept what Mr. Barnett is setting forth is the boundary

line what he has determined it to be, he has violated the ordinance even under the standards of what he has determined to be the boundary lines.

Reese Nichols: No I don't agree with that. What we got to decide here today is whether Mr. Barnett purposely did what he did because there is no question that he took twenty five feet from the perpendicular to the house. Now if that was a accidental mistake that he made by assuming he set it back twenty five feet, to me that may be outside the ordinance but it is an honest mistake which is one of the things that this Board of zoning appeals was set up for I believe. Now if he purposely because of his dispute said the heck with it I'm going to put it where I want to than it is an entirely different matter. But on Mr. Barnett Application he shows where he measured the distance and apparently there was no reason for anybody to catch it because he was in compliance. So there was no violation to committed. That's the dilemma I'm in, because the very reason we're here is to definitely improve the value of his property by replacing a single wide mobile home with a double wide manufactured which probably has two by six walls and drywall for the interior which is one of the reasons we put in zoning to increase the value.

Jack Woodruff: I guess I would say Mr. Nichol's, I respectfully disagree with regard to the issue of intent being a real consideration here. Whether it was a mistake or not a mistake we he accepted the building permit he agreed to abide by the terms of the ordinance's. His boundary lines as he determined it the house is in fact within eighteen feet of the boundary line which is a violation of the ordinances. Nothing in the application sets out that there is anything peculiar to his land that should entitle it to be treated differently from anyone else's land. I would argue that granting this variance is injurious to public health in my specific instance to my client Mr. Huff. He has a reasonable right to privacy, which is affected by the failure to enforce the set back requirements. And it basically means that anyone could come into this Board and say oops I made a mistake so the ordinances should not apply to me. Either they have meaning or they don't.

Ed Raymer: I agree with you Jack, As far as I'm concern we are here to rule on the issue of whether or not there should be a variance here granted. I see no logical reason to grant a variance. There is no reason. There is no safety concern here, there is no land structure, there is no reason in the book I see to grant a variance. I think we should stick with the twenty five feet but that is my opinion.

Benton Pittman: I can't argue Whether it was an honest mistake is grounds for granting a variance or not however I do believe the man made a honest mistake. I wish that, I don't know if the Building Department do they, I guess it is not up to them to pick the survey line and say it is in the right place. There concern is, is it deep enough and wide enough and so forth.

Reese Nichols: Is the house on the foundation?

Scott Barnett: Yes

Reese Nichols: Or is the house sitting up ready to go onto the foundation.

Scott Barnett: Sitting on the foundation tied down right now.

Reese Nichols: then they have completed the job

Benton Pittman: you are living in the house now?

Scott Barnett: I can not move in until I get a certificate of occupancy.

D.J. Bault: They are waiting for a foundation inspection also an electrical inspection and by that time an electrical inspection on a modular home normally is a final.

Benton Pittman: Besides the inspections it is ready to move into?

Reese Nichols: I move that the variance be denied.

Ed Raymer: Is there a second

Patty Steward: I'll second it

Ed Raymer: The motion has been made for the variance to be denied and properly second and in favor.

Denial passes: 3-1 With Benton Pittman voting against.

Patty Rademachir: What are they going to do with the house?

Ed Raymer: Maam we are sticking with the rules on the variance.

Cecil Rademachir: This is nothing more than a high powered rich person who has hired a lawyer and to cause a major problem that is all it is about, it's the property line that has caused the problem and has nothing to do with the variance. I know what you say sir and I understand that but it has nothing to with that it has absolutely nothing to do with that. If I hired a lawyer and he came up here and made the case there is no reason why that house should not be where it is at.

Ed Raymer: I guarantee you that if I put ten feet from my barn and property I would move it.

Cecil Rademachir: It just does not make sense.

Mike Branham: Could he not move the modular ten feet the opposite way?

Patty Rademachir: The foundation is already there.

Mike Branham: Could he have done it before he dug the foundation?

Cecil Rademachir: He made an honest mistake.

Mike Branham: Sir you are not answering my question, He could have moved the foundation ten feet farther in and he wouldn't have this problem.

Ed Raymer: Okay that is enough lets go to the next case.

Reese Nichols: You have the right to go to the Commissioners, they have the right to over turn any thing this Board does.

Old Business

No old Business

Open Microphone

No public speaking

August 16th 2007 next meeting

Adjournment

Reese Nichols: Motions to Adjourn.

Patty Steward: Seconds the Motion

Passes 3-0

Edward Raymer (Chair)

Reese Nichols (Vice Chair)

Benton Pittman

Patty Steward

Vernon Souders