

STARKE COUNTY BOARD OF ZONING APPEALS

53 EAST MOUND STREET

KNOX, IN 46534

PHONE: 574-772-9176

MINUTES October 12, 2022

Chairperson Troike opened the meeting at 6:30 p.m.

I Pledge of Allegiance- led by Chairperson Troike.

II Roll Call- Bob Troike (Chairperson), Mark Allen (Vice-Chairperson), Denise Cultice (Executive Secretary), Gwen Rentz (Member), Jason Downs (Member), Justin Schramm (Attorney), Wallace Williams (Boz) (Building Commissioner), Mary Beever, (Planning Commission Administrator), Tina Holley, BZA Secretary

III Review of the meeting minutes for – September 12 2022. After review, Mark Allen motioned to approve minutes as presented; seconded by Denise Cultice. Voting unanimous 4-0.

IV Chairman Troike opened the floor to discuss tonight's Public Hearing. –

Public hearing to consider an area variance request by Steve P. Kelly, owner, to install a car port/addition to cover up to 56% of property in an R-3 zoned area S12/T34/R1 owned by Steven and Gloria Kelly and describes as follows: Woodland Park Lots 29 and 30, Parcel number 75-03-12-103-074.000-009, located at 11221 E. Pottawatomie Trail South, Walkerton IN 46574.

Bob Troike asked if all Affidavits were returned correctly – Signed notarized sheet was shown to the Board. No opposition nor in favor responses were received from the notices.

With no opposition responses received, Mark Allen motioned we open the floor for public discussion; seconded by Denice Cultice. Voting 4-0.

Mr. Steve Kelly took the floor. He apologized for all of us having to do this. Fourteen years ago, he came to our office with a full set of prints and a letter from each of the 4 neighbors. They loved the house and location with no objections. He then told the lady upstairs that he would like to add a carport. She responded that would be fine as we do those all the time. He gave her the 4 letters and full set of prints and walked out with a permit. Cement work started and got everything lined up when recession hit; almost went bankrupt and had to put everything on hold. Tick-tock, things got better financially and he re-applied for another permit; returned to the Starke County office and she asked if he had any changes – which he stated no. He walked out with a permit in hand. Nobody said he needed to go see anyone else, or obtain a variance, or any specific procedure. He walked out not knowing he needed to obtain a variance; with the permit in hand assumed everything was fine. Two times he walked out with a permit in hand. His intentions were honorable, they were never to mislead anyone." You don't

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know what you don't know when you are going through this. With a permit in hand, I just assumed everything was good, said Mr. Kelly

Boz responded with his thoughts that permits were obtained – he stated that he was out there for inspections and checked several things while they were out. Everything looks good at this point. The item in question at this time is the placement of the carport being too close to the road and the percentage of the property being taken up by the house. That is the reason why he has appeared for a variance. Mark Allen responded that it appears Mr. Kelly followed the rules and obtained permits but the inspections were not caught by anybody. Denise Cultice asked Boz to report about the percentage of the home and the relationship to the property ordinance; the structure is too big? Need a larger piece of property? Please explain. Tina responded that it is 56% and Mary stated that once the area goes over 40% of property that they must come to the Board of Zoning Appeals to obtain a variance to cover more than 40%. Mr. Kelly is actually here for 2 reasons; one of the main ones is the overhang of the carport and being too close to the center of the road. Mr. Kelly states it is even with the neighbor's fence; he took pictures of other structures.

Boz stated that this has gone through the Planning Commission and they referred him to the BZA. They also stated that he needed to apply for a new permit with us which he has done and Boz went out to inspect things. He is compliant with what the Planning Commission has required. Denise asked for location of carport. It was explained that the carport has already been completed. Jason Downs asked if first permit was 2014, when was the last one; which Mr. Kelly stated was about 3 years ago. Boz stated that Terry, the last Building Commissioner allowed him to renew with no documentation located in the records for this property. Mark Allen stated it appears the failure is not in Mr. Kelly's part but with the Planning Commission. The Board asked if anyone from the floor was opposed or in favor. The couple stated their names: Bryan and Heather Cecrle. 6240 N 1100 E Walkerton, IN 46574. They stated that they are not in favor nor against but were there because of Mr. Kelly as they understood about the overhang and fines, etc. Based on the records, it doesn't appear that he has done anything wrong but the concern is how many other people will see his property and think they can build the same; or just figure they will get a fine and go ahead. Some chatter ensued amongst the Board and the attendees.

Bob asked if there were any further questions from the Board. Jason asked Mr. Kelly if at no time during this entire time span did he not think to get inspections? Mr. Kelly stated he walked in with a full set of prints and letters. He stated he didn't want to build a garage like others that build out to the street and enclose them. He deliberately wanted a carport that was up high that would not obstruct neighbor's view; "I did my best per the architect's suggestions. If there was an issue with the size, I wish someone would have said something at the time. I am embarrassed coming in now asking for this but as I said – you don't know what you don't know. Having the permit in your hand

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two times, to me, was pretty much it was good to go.” He stated that Boz enlightened him to the rules. The outside is done. Boz asked if he had any inspections of anything prior. Mr. Kelly responded that someone came out; he is certain the electrical inspection was done because they bumped the service from 100amp to 200 amp. He doesn’t remember what day or year that was done. There appears to not be any written recorded inspections in Mr. Kelly’s records. Jason responded that he was still concerned that the entire time Mr. Kelly was building that he never thought he needed multiple inspections on his home. He also questioned that “didn’t a red light go off” saying maybe I should have someone check this since no one else is this close to the road. Mr. Kelly stated that he stayed on the original footprint but that the carport is the only place that is extending further. The foundation support for the carport and the brickwork is the only part extending out. Further discussion concluded.

Bob Troike, President asked if there is a motion to close the public hearing. Mark Allen motioned to close the public hearing; Denise Cultice seconded. Voting was 4-0.

The Board opened itself for discussion. Mark abstained from discussion as he lives in the neighborhood. Jason reiterated his concern as to no inspections being recorded or completed as far as we know. Mr. Kelly again stated the gentleman was from Starke County; though he did not have the name nor date. Mark Allen stated that the issue we have here is the “johny-Q Public” is going to know that the home reaches further into the street than regulations state and they will want to know why they can’t do the same; as this sets the standard. This cannot be grandfathered in as it goes back 14 years and the home definitely does not look like it was constructed that long ago. Mark went on to state that someone called in to the Planning Commission office and complained which started this situation originally. Mark stated that he does not have a problem approving the variance but going forward there cannot be any further footprint of the home.

Mark Allen motioned that we approve the variance for Mr. Steve Kelly with the stipulations that no further changes/additions are made to this home. Denise Cultice seconded the motion. Voting was 4-0.

OLD BUSINESS:

Home Rule Fund

Tina, Recording Secretary, stated she received an email from Rachel Oesterreich who requested we respond to the 3 questions listed on our Agenda as this is going to the council mtg Monday. The 3 questions are:

1. Estimated Attorney Fee’s for this litigation. \$1200 invoice received and paid.
2. BZA ‘s plan for the use of the funds.
3. What is the BZA going to spend the funds on.

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Attorney Justin Schramm responded to the questions. It was brought to his attention by Dave Pearman that possibly Atty Schramm was being underpaid. Justin discussed this with him and assured him that the fee was accurate and fell within the budget. When he drafted the ordinance to form the Home Rule Fund per the State Rule of Public Accounts, it was designed to be used by the BZA so there was not a need to approach the county council for additional funding. Atty Schramm stipulated 3 uses of the funds. He is not sure if Dave and the Council were unhappy with the uses as they were more general and they wanted them to be more specific. The uses stated were that funds can be used for the design, planning, engineering, implementation and enforcement of the zoning enforcement system for Starke County; being the engagement of professionals to assist in the design, planning and implementation of the enforcement for Starke County, and the funding for full-time and part-time Staff for BZA as needed per the salary cap and following ordinances. He felt that it was fairly broad what you could use the funds for and as the Board starts to crack down on more people (unlike Mr. Kelly) that purposely build where there needs to be a stop order in effect. As the BZA penalizes more people there will be more funds going into the Home Rule Fund Account. Atty Schramm stated he was not sure if the concern came after the list of uses were sent to the Council or after. He is not sure how we can be more specific.

Boz stated that he spoke with Todd earlier and the feeling is that these funds are being placed in the Unsafe Building Fund and the amounts collected should be going back to the General Fund. Atty Schramm stated that it can go back to the General Fund or you can set up a Home Rule Fund which is what this is called to specify what these funds can be used for. Bob Troike stated that Mr. Pearman wants these funds available to them to offset some of the necessary cleaning up of property's that they have recurred probably. Atty Schramm stated that it was brought to his attention that they were hoping to put these excess funds into the "Unsafe Building Fund". Justin stated that he would have to looking into just how funds can matriculate into that fund. We would need to be sure we are doing that correctly especially if we would be audited. The Board spoke together in realizing that all the funds should not be given to the Council as that appears to be what they are asking. Mary Beever, Planning Commission Administrator responded that Mr. Pearman was asking Rachael if these funds could be put in the Unsafe Building Fund; however, in her opinion, she thinks it should go into its' own Fund – whether it goes into the BZA or whatever and the uses should be general. If it goes into the Council's General Fund there aren't so many things it can be utilized for. The funds are not from an unsafe building. Atty Schramm stated we probably need to budget for this but he is aware that the 2023 Budgets have already been submitted and accepted by the Council. Say we need to buy a \$5000 piece of equipment and that has not been specified in the budget then we would need to submit a special appropriation for it which would still have to go to the Council for approval. Perhaps that can be explained to them. It had been mentioned to look into a Scanning Project so the funds could one day be used for that – if this is not in the budget then it would need to be procreated. Boz also was

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concerned as to the fuel increase and perhaps those funds can be moved over to be use for that.

Denise Cultice requested some clarification as to fund disbursement and how those funds become available. Bob Troike asked Atty Schramm if he will be presenting this back to the Council Monday; which he responded yes. He is hoping to make this general usage. Mark requested that we bring this back up at our November meeting following the Council meeting. Much discussion ensued in regard to Monday's meeting- which Mark Allen and Bob Troike will be present.

Tina Holley, did mention to the Board that MP Improvements, which was denied last month, will be returning in November for a new hearing on a developmental standards variance and a use variance which perhaps should have been requested at the original meeting. The property is unique in how it has evolved into one requesting an extension of the campground. Atty Schramm stated that he spoke with their attorney and the owners of EZ Kamp who stated their presence was probably needed at the original meeting instead of the Manager of the Campground. They plan to address the issue with the one neighbor and hopefully have an agreement prior to the November meeting.

With no further business, Mark Allen motioned the meeting be adjourned, Denise Cultice seconded the motion. Voting 4-0.

Meeting was adjourned at 7:20 pm
Respectfully submitted,

Tina Holley
BZA Secretary

This meeting was recorded and will be on file in the zoning office. The next meeting of the Starke County Board of Zoning Appeals is scheduled for November 14, 2022 the latter of 6:30 p.m. or the conclusion of the Planning Commission Meeting, in the Starke County Government Building, located in Knox, IN.