

**WHITLEY COUNTY BOARD OF ZONING APPEALS
STAFF REPORT**

22-W-SE-12 **SPECIAL EXCEPTION/VARIANCE**
Zacheray & Sha Shawna Lybarger
7110 South State Road 5

AUGUST 23, 2022
AGENDA ITEM: 3

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural

Property area: 2.79 acres

The petitioners, owners and residents of the subject property, are requesting approval to operate a seasonal reception facility, to be known as “Prickly L Farms,” in a barn on the property at 7110 South State Road 5. It is proposed as a traffic-generating home occupation, which requires a special exception. However, the proposed floor area to be used for the home occupation exceeds the maximum permissible under the code, which necessitates a variance request as well.

As proposed, the petitioners’ existing 120± year-old bank barn would be used as a wedding reception venue. The barn is 48’x80’ in size, with upstairs and downstairs to be used in the operation of the venue, so the area would total 7,600± sq. ft. The petitioners are also aware of the need to obtain state building commission review and approval since the structure would be a public building (Class 1 structure).

Receptions would be held only during the warm season, as the barn is unheated. The petitioners have proposed a limitation on the number of receptions held to 2 to 3 weekends per month, with hours of operation being Friday, 12PM-10PM, Saturday 8AM-11PM, and Sunday 8AM-5PM. Music would be stopped by 10 PM. The proposed maximum number of guests would be 175. Of course, these proposals could be part of the Board’s discussion.

Access would be provided using the existing gravel driveway onto SR 5. Parking would be provided using stone parking area to the east and west of the barn with ADA parking on the north side.

Restrooms would be provided using portable facilities, provided by the client. Refuse management would also be the obligation of the client. The petitioners would provide only the event space—all catering, DJs, tables, chairs, decorations, and other accessories would be provided by the client.

Signage is proposed with name and address on the east side of the property.

HOME OCCUPATION STANDARDS

The requirements of §10.9 Special Exception Standards and §5.14 Home Occupation Standards of the zoning code apply. The following is discussion of applicable standards listed in §5.14(A).

(2) Home occupations shall be entirely operated from an enclosed, four-walled structure, provided that all doors shall be kept closed during use of the structure.

The barn is compliant with this standard, if the barn doors are kept closed. Use of the grounds for ceremonies, photography, or other purposes may not be. The Board should identify what parts of the use, if any, may be incidental or accessory and could be conducted outside the barn structure.

(3) Such use shall not occupy a total floor area greater than 20% of the principal structure.

Based on the Assessor’s records, the petitioners’ dwelling has a total finished floor area of 2,184 square feet. The 7,680 square feet (gross) to be used for the home occupation constitutes 350% of the dwelling

area. Being that the use would fully occupy the historic barn, which were frequently larger than the accompanying dwelling, this is not surprising. It does necessitate a variance request.

(4) The use of the property for an accessory home occupation shall be clearly incidental and subordinate to its principal uses as a residence by its occupants, and shall not dominate or cause variations in the residential character of the property, principal structure, or surrounding neighborhood.

The petitioners have stated that the proposed use, while large in area, would not constitute a significant part of the usage of their property as a residence or farm. The Board should strive to ensure this incidental and secondary nature by looking at size and frequency of events, and other factors that may lead to a commercial scale or intensity.

As proposed, the outward appearance would not be changed, other than gravel parking and signage, and so the venue would be virtually indistinguishable from other farms on most days. However, during the time of being occupied as a reception venue, the use may not appear incidental due to the volume of guests on-site. The code does not address well how to treat uses that are seasonal, temporary, or otherwise intermittent in their operation, so the Board should give consideration as to the time factor.

(5) There shall be no visible evidence of the home occupation...

As stated in (4) above, there would be no outward changes to the property, other than gravel parking and signage, which may be found on agricultural properties generally. On the day of the venue being used, guests, vehicles, decorations, etc. may be visible. Again, the intermittent nature of the usage could be given consideration in evaluating the appropriateness of this request.

(6) Parking generated...shall be provided off-street and in conformance with the Zoning Ordinance. The conducting of the home occupation shall in no way result in the parking of any motorized vehicle...overnight or longer.

Parking is proposed to be on-site, away from SR 5, and no vehicles would remain overnight. Depending on the usage of occupant load (one space per four seats) or square footage of the assembly area (assumed to be one floor of the barn) to calculate the parking number, 44 to 77 spaces would be required. The proposed parking area of 68 spaces should be adequate to accommodate the average of the two figures. If necessary, there would be some space for parking available elsewhere on the property along the existing driveway.

(7) The home occupation shall comply with the requirements of the General Performance standards of Chapter 2...

Performance standards are now listed in §5.7 of the code, and the proposed use would likely be compliant with the standards. Noise may be an issue if the sound system volume is high enough to become objectionable to surrounding properties or the road. The nearest dwelling being ¼ mile away, noise may not be very problematic.

(8) The use of any tool or equipment powered by electricity, gasoline or diesel engine, or high pressure gas shall not be used before 8:00 A.M. or after 8:00 P.M. on any day.

Wedding receptions typically do last after 8 P.M., but do not typically include gas or electric tools. Electric "equipment" might be argued to include DJ equipment or sound systems, but even so, such equipment would be located inside the structure. The Board may clarify what "equipment" is intended to be regulated by this time frame requirement.

(9) Persons who are not residents of the dwelling...and who are engaged as employees, subcontractors, independent contractors, or otherwise in the home occupation, shall not exceed two.

The petitioners would be the operators of the venue, with all activities being conducted by the clients or the clients' contractors, which may fall into the definition of being a "subcontractor." This number of hired persons on-site during a reception should be reviewed by the Board and possibly could result in another variance request.

(10) Signage

Permanent signage is proposed, so the sign standard requirements would need to be met. Temporary, "day-of" signage for directional purposes may be expected to be used.

VARIANCE REVIEW CRITERIA

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

The proposed area variance will not likely be injurious to the public health, safety, and morals. Historic barns such as this one were typically constructed larger than the dwelling itself. To fully utilize the entire floor area of such a barn for a home occupation use would be little different than using it for agricultural purposes, as long as the use remains incidental and accessory to the primary use. A low frequency venue may be appropriately incidental, while a higher frequency of events would shift the use to being a full commercial use. Public safety is affected by the occupancy of the barn, but should be adequately mitigated by the required review and approval by the state building commission prior to opening. The general welfare may be injured by degrading the effectiveness of the zoning ordinance if there is not a specific difficulty for this property.

The number of subcontractors on-site should be evaluated by the Board and an interpretation made on the proposed scenario. The intent of regulating the number of employees is to have a specific limit on the scale of the use, but the use's scale may also be limited by other means. So the effect of a variance on this criterion is indefinite until determination on the other variance and special exception criteria.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

The use of the area adjacent to the property is not likely to be impacted by these variances, due to the separation of 1,300' or more between the use location and the surrounding residential properties. However, if traffic congestion is created by this use, and it is not mitigated by way of the special exception, it could have an adverse impact.

Home occupations are designed to have no effect on the use or value of surrounding area. The value of the area may be affected if the proposed use is obvious, frequent, or otherwise fails on the various performance standards of the home occupation and special exception. Increasing the scale or frequency of the use would increase the likelihood of an effect that is substantially adverse.

- 3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.**

The proposed use of the entire historic barn for a home occupation use, and the resultant excessive floor area, could be a practical difficulty due to the size of the historic barn and desire to utilize the space and character of the barn.

Whether the floor area difficulty is self-imposed should be scrutinized by the Board. If compliant with the code, about 440± sq. ft. of barn floor area could be utilized for the use, which is a difficulty for the petitioner's desired use. However, proposing the use at all may be viewed as a self-imposition.

The strict application of the code regarding the number of employees may or may not be a practical difficulty, depending on the Board's interpretation of the code.

SPECIAL EXCEPTION REVIEW CRITERIA

Indiana Code §36-7-4-918.2 and Section 10.9(A) of the Zoning Code authorize the Board to review special exceptions and state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

- 1. The special exception shall not involve any elements or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards;**

If the petitioners receive approval from the state building commission for the barn to be occupied by the public, it is unlikely that this proposal will have any elements or conditions that may be particularly dangerous, injurious, or noxious to other properties or persons. As discussed above, it should generally comply with performance standards, with the possible exception of noise.

- 2. The special exception shall be sited, or oriented and landscaped to produce a harmonious relationship of building and grounds to adjacent buildings and properties;**

The proposed special exception would not make any apparent modifications to the existing structure, other than the parking area. So there would be no significant change to the relationship of building and grounds to adjacent buildings and properties.

- 3. The special exception shall produce a total visual impression and environment that is consistent with the environment of the neighborhood;**

The use would have vehicles parked, and attendees on site while in operation, which might be consistent with the environment of the neighborhood if done only occasionally, as other occasional large events do occur in residential areas. For example, birthday or graduation parties, auctions, and potlucks can bring together similar numbers of people without any regulation, sometimes with resulting problems. The Board must determine if the proposed use is sufficiently infrequent or intermittent to be consistent with the area.

- 4. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and**

Use of only one driveway as the access point from SR 5 could create traffic congestion if numerous vehicles are stacked on the highway waiting to turn onto the property. The highway is low volume for being a state road, but even so, the nature of wedding receptions usually means the arrival of many vehicles in a small timeframe. Since there is no turn lane on SR 5, the possibility of congestion

could occur in either direction, although left turns from the northbound lane would be the most likely to back up. However, such congestion is likely to dissipate quickly. The use of both driveways as access points may disperse traffic more effectively, and other methods may be implemented when and if congestion occurs.

Additionally, INDOT may have requirements for the driveway access and permitting if they consider the use to be a significant change.

5. The special exception shall preserve the purpose of this Ordinance.

Home Occupation (traffic-generating) is a listed special exception of the AG district. Generally, the above criteria cover most of the purposes stated in the ordinance. However, since this is an unconventional home occupation use, more detailed review of this criterion by the Board may be warranted. The purpose of the Ordinance is stated in §1.4 and is attached for reference.

SUGGESTED CONDITIONS

If the Board moves to grant the special exception, the following are suggested conditions of the approval:

1. The Special Exception is granted for the applicant and is non-transferable.
2. The Special Exception is granted as presented and per the site plan.
3. The Indiana Building Commission must issue a design release for the remodeling of the barn to be used by the public.
4. No events that occur primarily outside shall be permitted under this special exception.
5. All event activities—for example, ceremonies, dining, music, etc.—must occur within the barn, with the barn doors closed. An exception is made for photography of small groups elsewhere on the property.
6. Events of any type are limited to no more than two per month from May to September, inclusive. No more than one event per calendar week is permitted.
7. Hours of operation for event activities shall be Friday, 12PM-10PM; Saturday, 8AM-11PM; and Sunday, 8AM-5PM. Music shall be stopped no later than 10 PM.
8. One permanent sign, not to exceed six square feet per sign face, is permitted as regulated by the sign code. Temporary directional signs, not to exceed 18"x24" each, may be placed on the property on the day of an event.
9. No additional employees are to be hired by the petitioner to operate this facility.
10. The parking areas must be kept in good condition and available to accommodate the required parking.
11. The Health Department must approve the restroom facility, food service, and/or related issues.
12. The access onto SR 5 is subject to INDOT's rules and requirements.
13. To avoid congestion, the petitioner must implement an effective traffic management plan.

Date report prepared: 8/17/22

BOARD OF ZONING APPEALS RECORD OF ACTION

Motion:

By:

Second by:

Approve

—

Approve w/conditions

—

Deny

—

Vote: Denihan Lopez Wilkinson Wolf Wright

Yes

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No

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Abstain

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Weaver, Floyd
E & Romona L

Arnold, Jason
A & Annette J

Schmidt,
Arthur J

Weaver, Floyd
E & Romona L

Hyser,
Karen

Weaver, Floyd
E & Romona L

Michel,
Brian E

W 700 S

Scott & Tins
Lynette Zachary
Star Staura Ridge
SSR 6

Schipper, Rex A
& Schipper, Cinda
L Co-Trustees Of
The Schipper Rev
Trust, 11/30/06

Michel,
Brian E

Hauptert, Dale L
Revocable Trust

Reiff, Don R
& Tonya Jo

Coble, Jo Ann

Mythier,
Russell E &
Amber N

Mythier, Mark B & Moss,
Marion (Joint Tenants
Full Survivorship)

Prickly L Farms

ShaShawna Lybarger

260-224-5730

shawnalybarger@outlook.com

Plan:

Hours of Operation: Friday 12PM-10PM, Saturday 8AM-11:00PM, Sunday 8AM-5PM

Frequency: 2-3 Weekends a month

Barn will not be open through the week, except for showings/meetings with future brides/grooms

Music must be stopped by 10pm.

Guests would enter from north driveway.

South driveway will be blocked off.

Parking will be on the east and west side of the building, see site plan

Single lane, one way driveway will be on the south side of the building. Signage to show 1 way, 1 lane only.

ADA Parking will be on the northeast side of the building

Bathroom location will be on the northwest side of the building

Deliveries will be made anytime from Friday at noon to Saturday at noon.

Will have a preferred vendor list.

Dinner will be served upstairs or downstairs. Bride/grooms choice.

First dance will be allowed upstairs or downstairs. Bride/grooms choice.

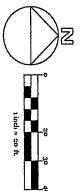
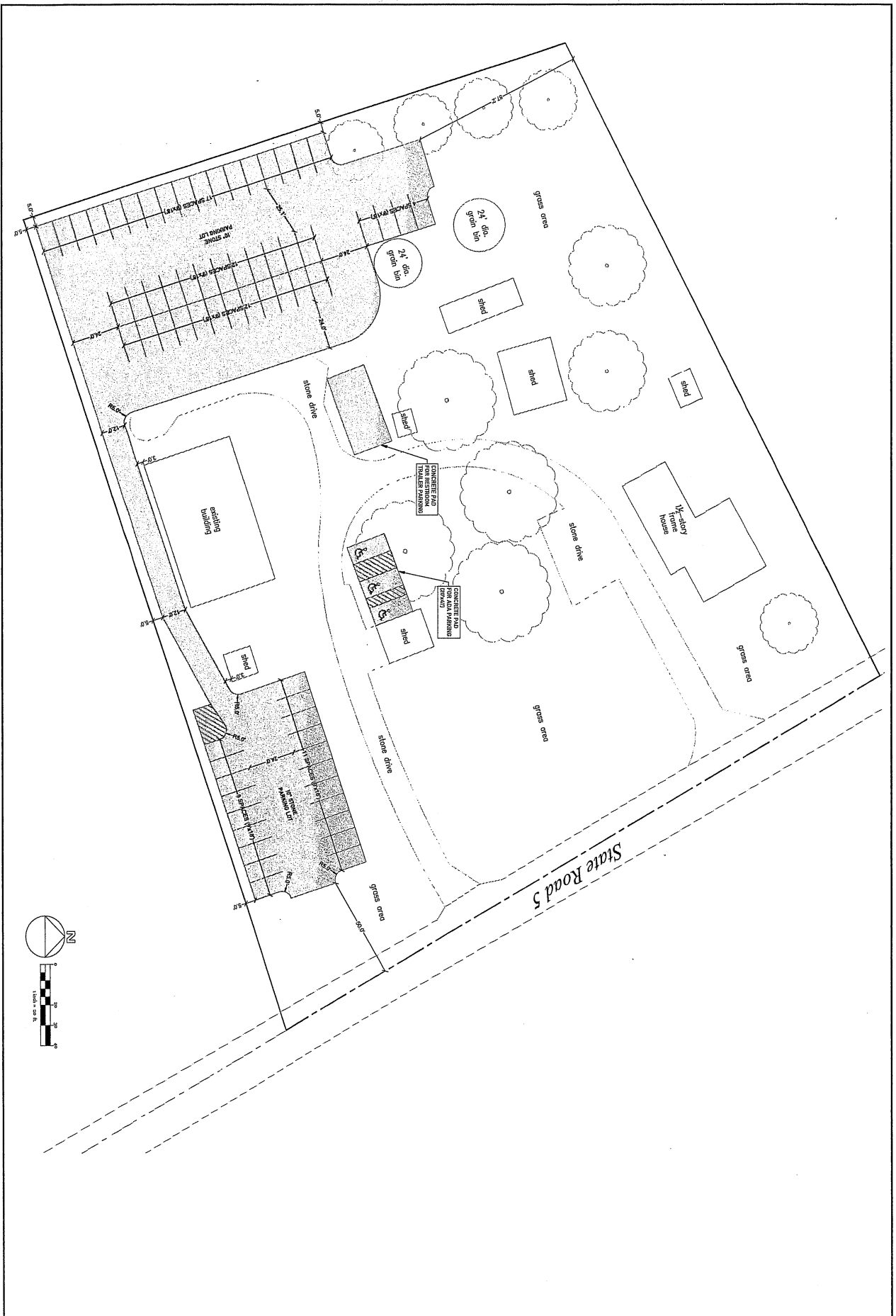
Guest dancing will only be allowed downstairs.

Restrooms must be rented by guests.

Max of 175 guests.

Signage with barn name and address will be located on the east side of the property off state road 5.

Ramp and steps will be added to the front of the barn for guest access.

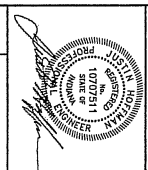


PROJECT:	C-1.0	
	TITLE:	Site Plan
DATE:	06/16/2022	SCALE:
DESIGNER:	AS/SHAWN	DATE:
REVISION:		SCALE:
JOB NUMBER:	22200001	DATE:
DESIGNED BY:	DJM	DATE:
CHECKED BY:	JMH	DATE:
SCALE:	AS SHOWN	DATE:

Lybarger Reception Hall

Location: 7110 South State Road 5, South Whitley, Indiana

Prepared for: Zacheray & ShaShawna Lybarger
7110 South State Road 5
South Whitley, IN 46787



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