

AGENDA
BOARD OF ZONING APPEALS
Zoom Meeting
Wednesday, December 9, 2020 - Meeting Starts at 6:00 P.M.

Pledge of Allegiance

Roll Call

Approval of Minutes

November 18, 2020

Monthly Conflict of Interest Statement

Old Business

New Business

Administrative Appeal of Staff's Interpretation of Town of Ellettsville Municipal Code of Ordinances 152.054, Residential Fencing; Subject Property is Located at 723 N. Daisy Drive; Petitioners: Marisa Weiler and Jonathan Brauer; Case No. BZA 2020-07

Request for a Variance of Development Standards to Allow a Second Freestanding Sign; 5492 W. State Road 46; Petitioner: Kymbar Cortese; BZA 2020-08

Board of Zoning Appeals Comments

Next Meeting: January 20, 2021

Adjournment

MEETING NOTICE

Wednesday, December 9, 2020, at 6:00 p.m.

The Town of Ellettsville Board of Zoning Appeals will conduct its regularly scheduled meeting on Wednesday, December 9, 2020, at 6:00 p.m., local time.

The meeting will be conducted remotely. No Board of Zoning Appeals members will attend the meeting in person, but will instead attend remotely. The public is invited to attend by remote access. The meeting will be hosted by Zoom.

Topic: BZA 12-9-20

Time: December 9, 2020 06:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/82276356018?pwd=NmVTdmhJNVNoQnoyTWxrbFJEb3cwZz09>

Meeting ID: 822 7635 6018

Passcode: 758957

One tap mobile

+13017158592,,82276356018#,,,,,0#,,758957# US (Washington D.C)

+13126266799,,82276356018#,,,,,0#,,758957# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 822 7635 6018

Passcode: 758957

While the public will not be able to attend the meeting in person, public input is still encouraged. Agendas and meeting packets can be obtained by submitting an email request to: planning@ellettsville.in.us.



Town of Ellettsville

Department of Planning & Development

BZA 2020-07–Administrative Appeal Staff Report

Petition

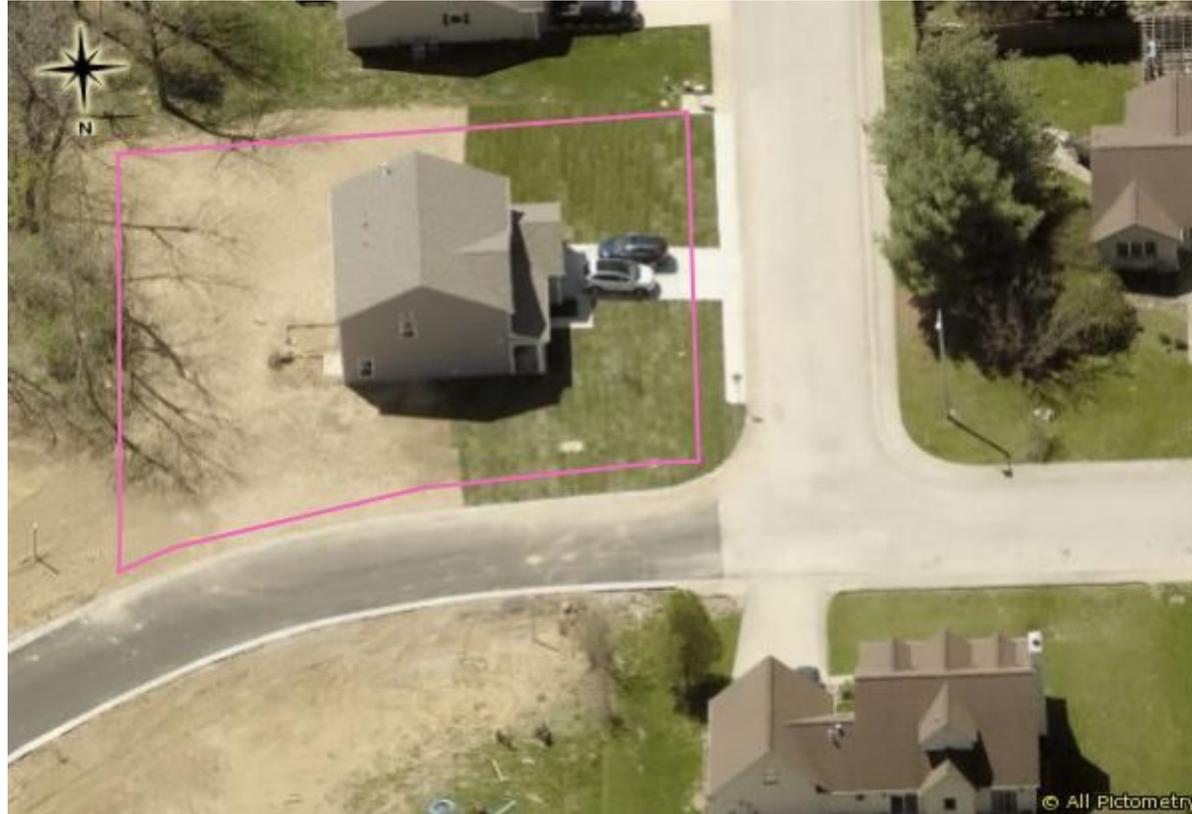
Case - BZA 2020-07. A request by Marisa Weiler and Jonathan Brauer for an administrative appeal of Staff’s interpretation of §152.054, Residential Fencing. The subject property is located at 723 N. Daisy Drive.

Surrounding Zoning Districts & Uses



Zoning District	Property Use
North: R-1; Single Family Residential	Ruby Creek
South: R-1; Single Family Residential	Meadowlands
East: R-1; Single Family Residential	Ruby Creek
West: R-1; Single Family Residential	Meadowlands

723 N. Daisy Drive



Considerations

1. The petitioner is requesting an administrative appeal of a ruling that their fence does not meet Ellettsville Town Code, specifically §152.054 – Fence Height in a front yard.
2. The Town has found that the property is otherwise in conformity with Ellettsville Town Code.
3. In an appeals case, it is the duty of the Board to determine whether the Town has correctly applied Town Code as it is written. Arguments as to the validity of Town Code or how nonconformance with Town Code would be a better alternative shall not be considered.
4. The petitioner has put forth four (4) arguments:
 1. Abigail Lane did not exist when their house was purchased at the end of 2019.
 - a. While the plot plan for their house does not show Abigail Lane, it is also based on the 1999 recorded plat of the Meadowlands. Ruby Creek, which received preliminary plat approval in September 2019 and a grading permit November 2019, would have been approved either before or around the time the house was completed.
 - b. According to the Monroe County Assessor, the house was purchased by the applicants on December 23, 2019, well after the date the preliminary plat and grading plans were approved. Unfortunately, they were misinformed as to the construction of Ruby Creek.
 2. The applicants followed HOA guidelines and neighborhood norms.
 - a. Although something may be permitted by an HOA, that does not mean it is approved by the Town. In addition, the Town does not review or approve HOA guidelines, and in the case of conflict, the more restrictive guidelines apply, which in the case is Town Code.
 - b. The applicant is correct in that there are several nearby properties with fences with similar situations. However, upon GIS review, each of these examples predate the current (and previous) fence ordinances by at least several years, and are considered legal, nonconforming fences.
 - c. The applicant does admit that unawareness of an ordinance is not a valid excuse. This also would apply to all others involved, including the realtor and fence contractor, neither of whom bothered to check with our department on fence guidelines.
 3. Everyone would be better off with a 6' fence.
 - a. Whether or not this is true is not particularly relevant in this case. This argument would be more applicable to a variance request (which has separate findings from an appeal), but has little to do with the Town's (correct) assessment that the fence is 6' tall and located in a front yard.
 - b. Financial considerations are not part of any findings (variance, appeals, special exceptions) and again, are not relevant to the Town's assessment. The threat that altering the fence will harm the aesthetics is also irrelevant to the height and location of the fence.

4. The fence is not effectively 6' tall due to surround grade elevation.
 - a. According to code, fence height is measured from the average grade of the ground where the fence is located. While there is some elevation change, the highest point of the property is the street side along Abigail Lane. The fence itself is measured from the ground directly below it when the ground the fence is placed upon is flat. In this case, although it is rolling terrain from south to north, the fence is on flat ground and is (correctly) measured at 6' tall.
5. There is visual evidence, in the form of 2020 aerial photography conducted by Monroe County, that the fence was installed after the road was completed. Therefore, the front yard requirement would have taken effect prior to installation of the fence.

Criteria For Decisions – Administrative Appeals

Unlike other Board of Zoning Appeals hearings, the State of Indiana does not require specific findings for administrative appeals. The Board may only grant an appeal if, after a public hearing, it finds that Staff did not correctly apply the specific code in question (IC 36-7-4-919).

Board of Zoning Appeals Action

The Board of Zoning Appeals action shall be in the form of *granting, granting with conditions or denying* the administrative appeals request. The Board may table the request if it deems more information is necessary to make a correct decision. The Board of Zoning Appeals takes final action on all appeals petitions.

Staff Recommendation

Upon significant research, it is of Staff opinion that the code was correctly interpreted. Aerial photos taken earlier this year show that the road was in place prior to the placement of the fence. Although the planning may have taken place prior to the road being completed, it is clear the road was in place prior to the fence. Therefore, Staff recommends that the Board support the professional opinion of Planning Staff. If the Board approves the appeals request, it shall state, in writing, the basis for their decision.

Submitted by Kevin Tolloty, AICP
Director of Planning, Town of Ellettsville
December 2, 2020

Site Photos





BZA Application Description

In a letter dated October 20, 2020 Denise Line, the Assistant Planner for the Town of Ellettsville, issued Ms. Marisa Weiler and Dr. Jonathan Brauer (hereafter “we”) a Request for Compliance. That letter states:

“On October 16, 2020, while conducting an inspection in your neighborhood we noticed a fence constructed on your property located at 7223 [sic] N. Daisy Drive. What caught our attention was the 6’ fence in your yard running parallel to Abigail Lane.

According to Ellettsville Town Code, when a property is located on a corner lot, it is considered to have a secondary front yard (see diagram included with the enclosed fence code). Any fence located in a secondary front yard, between the front yard building setback line and the road right-of-way, shall not exceed four feet in height (§152.054(B)(2)).

Therefore, we are requesting you either remove the fence in the front yard or reduce the height of the fence to four feet as permitted by the Town Code.”

We respectfully request to be issued a variance to leave the fence as it is currently constructed for the reasons specified below.

#1. House was on a dead-end (Daisy Dr.) when we purchased it; Abigail Lane did not exist.

- Our property, which is located at 723 N. Daisy Dr., is lot #86 of The Woods of the Meadowlands neighborhood. When we purchased our house at the end of 2019 and started planning our fence, Meadowlands Dr. ended at Daisy Dr. This is clear in both the “ME 86 Plot Plan” (attached below) and the “Erosion Control Plan” (attached below). There was no Abigail lane; our back yard and northern side yard, where the section of fence currently in question is constructed, bordered undeveloped land. This can be seen in the pictures below.



- Above, our property shortly after purchase, with the North side bordering undeveloped land and no road. Below, our property today.



- According to #20 of The Woods of the Meadowlands’ Declaration of Covenants and Restrictions (i.e., HOA document; attached below):
 - o *“Sidewalks. Shall be installed and paid for by the owner of the lot when lot is built on, where there is a hard surface driveway that part shall be accepted as sidewalk, the sidewalk shall be four feet wide and shall be six feet from the concrete curb.”*

In the above picture, note that the sidewalk stops at the end of Daisy Dr. There was no bordering road (later Abigail Lane) next to which the builders (Beacon Builders) could have installed a sidewalk. In fact, in response to our question about whether there were any plans to remove trees or develop next to or behind our lot, Beacon’s realtor who sold us the house told our realtor (paraphrased): “I do not know what they are doing with the land around you, but there are currently no plans to develop it”:.” We were surprised and quite disappointed to see the trees being ripped down behind us a few months later.

- Hence, when we initially reached out to our fencing company to place an order and get on the long waitlist for a fence, we thought that we were fencing in a back yard and two side yards. Unfortunately for us, apparently the later construction of Abigail Lane subsequently changed our side yard to a “secondary front yard,” though we were unaware of this designation or the Town’s related fencing ordinance.

#2. We followed HOA guidelines and neighborhood norms in planning our fence.

- Unfortunately, we were unaware that the Ellettsville Town Code contained a specific ordinance (152.054(B)(2)) pertaining to fencing in a “secondary front yard.” If we had been aware of this ordinance, we certainly would have made every effort to comply with all appropriate rules and ordinances, or we would have gone through proper channels initially to request a variance.

- Yet, even if we *had* been aware of this ordinance when we planned the fence, we would not have known that the ordinance applied to us given our lot's placement on a dead end road (see #1 above). We were aware of The Woods of the Meadowlands' Declaration of Covenants and Restrictions (attached below), which we consulted before planning our fence to ensure compliance with HOA rules. #10 of that HOA document states (bold emphasis added):

- o *“Fences. The owner of each lot agrees not to erect fences of barbed wire, fences which are electrically charged nor those made of steel materials, except chain link. Fences shall not be higher than six feet within sixty feet of any roadway with the exception of swimming pool enclosures. No fence may be constructed on the property lines parallel to any roadway nor may side lot fences extend beyond the front of any house except decorative fences not more than forty-eight inches high.”*

As explained above, since there was no road bordering the northern side of our property, we thought this was considered a side yard. To be safe, we conservatively built the fence well within the property lines on both sides and the back yard because we wanted to be good neighbors and avoid any disputes with future neighbors. We talked with our Meadowlands neighbors about our fence plans to identify and address up front any potential concerns. We also made sure not to extend the fence beyond the front of the house; rather, we set the “front” of the fence back several feet because, it seemed to us, that is how most of our Meadowlands neighbors' fences were constructed. (Since receiving this Request for Compliance, we alerted many of our Woods at Meadowlands neighbors; everyone we spoke to was happy with the fence and did not think it should be shortened or moved).

- In planning our fence, we checked the county's website and iccsafe.org, and we asked our fencing contractor (Blake Ward, Award Fence), who has many years of experience building fences in the area, how people typically build their fences on lots like ours. He too followed neighborhood norms – with the exception that we used much more expensive PVC materials that are uncommon in our neighborhood – to ensure the fence improved the property aesthetically and that it would continue to do so for years to come. (When we reached out to our fencing contractor upon receiving this Request for Compliance, he stated that he has never seen a request like this.)
- As one of us (Dr. Jonathan Brauer) is a Professor of Criminal Justice at IU, we certainly realize that ignorance of an ordinance is not a valid excuse for violating an ordinance. Yet, nonetheless, we *were* ignorant of this ordinance despite our many good faith efforts at following neighborhood rules and ensuring our neighbors were happy with the result. In hindsight, we wish that we had checked with someone in the city before planning our fence – and will most certainly do so for any future projects. Instead, we relied our fence contractor's expertise, conversations with our neighbors, and on HOA documents approved by the Town, which we appear to have misunderstood (as have our neighbors apparently; see below).
- Finally, we inaccurately assumed that our neighbors' fences in The Woods at Meadowlands neighborhood served as good models for what is acceptable and appropriate. Specifically,

consider that there are three houses on corner lots that are directly within view of our front porch; each of which have “secondary front yards” facing Daisy Dr. (across the street from our house). All three of these houses are in direct violation of the same Town ordinance. As can be seen in the pictures below, all three have 6’ tall privacy fences built within a couple feet of the sidewalk (rather than 4’ tall in place, or 6’ tall set back 25’ from curb).



- These are just the three we can see from our front door; there are several others throughout The Woods at Meadowlands neighborhood also violating the same ordinance that we see every day when walking our dog. Our goal here is not to request enforcement of this ordinance on all our neighbors. Rather, we wish to illustrate the fact that our ignorance of this particular ordinance does not reflect a lack of concern for the rules. In contrast, we honestly believed we were doing things the “right way” by following HOA guidelines (we thought), hiring a respected and knowledgeable contractor, and following neighborhood norms.

#3. We *and* our neighbors are better off if the fence is permitted to remain unchanged

- Changing the fence would pose safety risks: We purchased a 6’ privacy fence to keep our kids and dog (a Boxer) safe. Moving the fence back to the building setback line would result in a large part of our lawn with the flattest grading to be outside the fence line. This would force us and our kids to play many of our lawn games outside the fence’s boundaries on the flat side yard (aka, “secondary front yard) – right next to what is now a road (Abigail Lane) that is teeming with substantial construction traffic. In contrast, lowering the height of the fence in place to 4’ would result in an ineffective perimeter for our dog, as a sufficiently motivated Boxer can jump over a 4’ fence. Hence, the changes required by the ordinance would undermine the safety goals that motivated our expensive fence in the first place.
- Changing the fence would threaten to diminish curb appeal and neighborhood property values: We sunk our savings into a beautiful, expensive, white PVC fence that, unlike wood fences, will not degrade over time and thus will improve our lot’s curb appeal for years to come. We also have devoted ample resources and effort toward ensuring that all visible yard in front of the fence is sodded and looks appealing to neighbors and potential home buyers who visit the area. See below for pictures of our current fence and surrounding yard.





- If we are forced to comply with this ordinance, we do not have sufficient funds to order new 4' tall PVC fencing or pay our professional fencing contractor to tear down our old fence and reinstall a new 4' fence in its place on the north side of our property. If required to change it, I will try to manually cut the current fence down to 4' high; if that is unsuccessful, the likely result will be a cheaper fencing option such as chain link along that section. (Note too that the backyard was improperly seeded by the builder; currently, it is not as visually appealing as the sod we had installed outside the fence; see picture below).



- Keeping the fence as-is by granting a variance is the safer, more aesthetically pleasing option. Requiring change will result in an asymmetric fence of different heights (and likely materials) bordering each side of our house's façade. Ultimately, this will hurt our home's curb appeal and value, as well as hurt bordering property aesthetics for current neighbors and for potential new home buyers in the newly developing Ruby Ridge neighborhood on/around Abigail lane.

#4. Current 6' privacy fence is not effectively 6' tall due to surrounding grade elevation

- Finally, despite being a 6' tall privacy fence, the current fence does not effectively sit or "look" that high given the surrounding grade elevation. For instance, the newly built house that sits directly across the street from the north side fence in question – i.e., across from what is now considered our "secondary front yard" – has a much higher average grade elevation. Specifically, the ME 86 Plot Plan (Figure X below) shows an average grade of approximately 749.00 in our side yard near the fence, compared to a grade elevation of approximately 750.00 at our curb and 751.00 at the opposite curb. Meanwhile, the opposite curb sits at the bottom of a hill, with the houses across the street sitting at a substantially higher elevation that is several feet above our grade (i.e., grade elevations at the back of the lots across the street approaching and exceeding 760.00).
- As a result, the 6' privacy fence already stands lower than 6' relative to the curb grade elevation, and it stands substantially lower than the home grade elevations that are directly across from the fence. In fact, the new house directly across the street from our fence has an unimpeded view over our fence from their first-floor elevation point of our back door and most of our yard. This can be seen clearly in the picture below, which was taken at eye-level from our side kitchen window: the windows on a standard-size truck at the opposite curb are visible over the top of the fence, and the neighboring house's entire porch and front door are fully visible over the fence. Hence, this is not an imposing privacy fence; in contrast, due to grading, it does not even afford the level of privacy that one typically receives from a 6' fence.



BEACON BUILDERS, LLC
 PO Box 784836
 Indianapolis, IN 46278

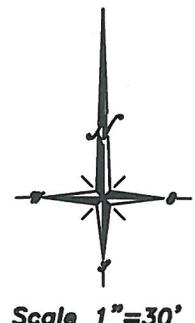
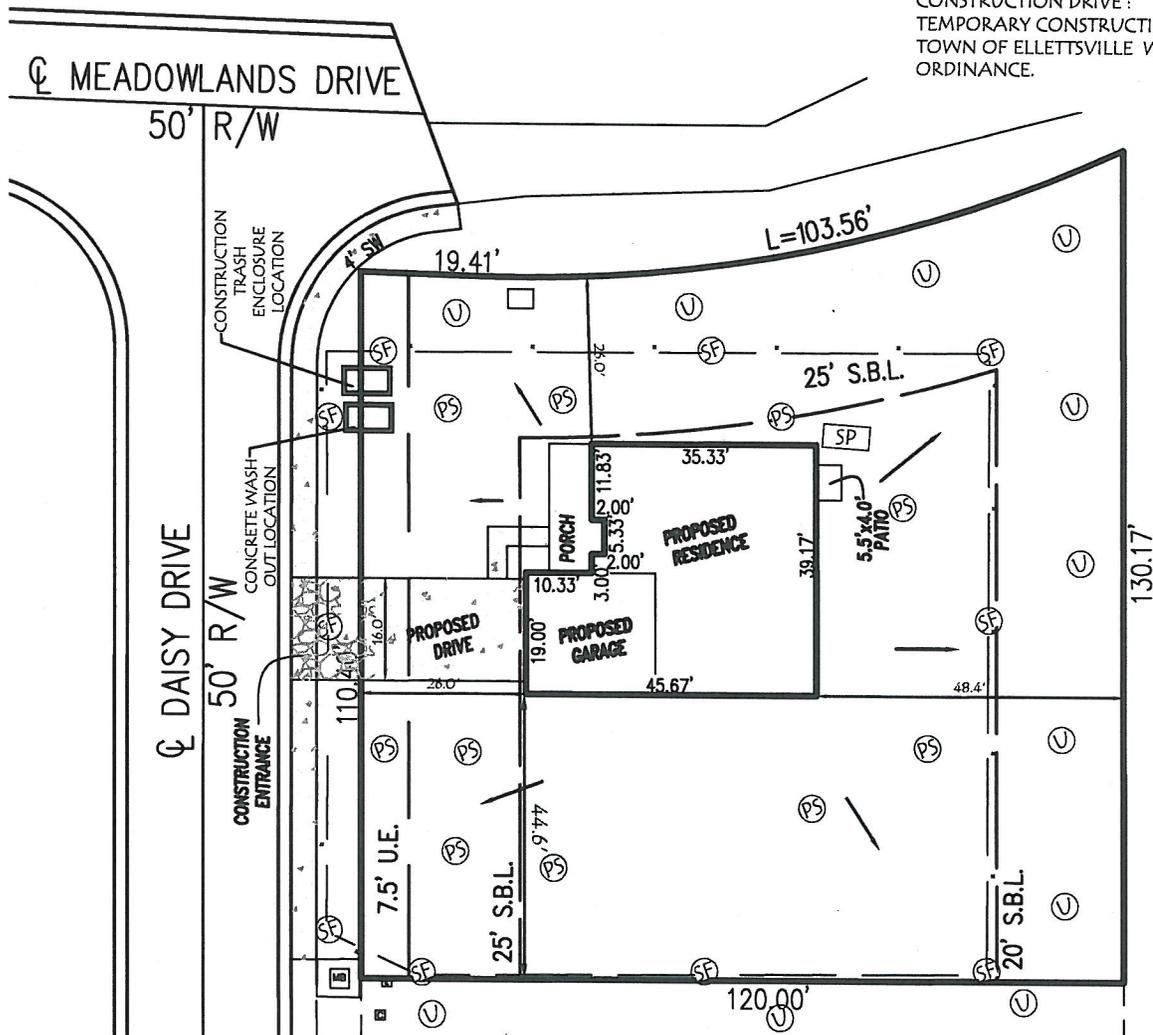
PROPERTY ADDRESS:
 723 N. DAISY DRIVE

EROSION CONTROL PLAN
 LOT 86
 THE MEADOWLANDS
 SUBDIVISION
 SECTION FIVE
 INSTRUMENT NO. 1999024582
 ELLETTSVILLE, INDIANA
 MONROE COUNTY, INDIANA

NOTE:

- 1.) EROSION CONTROL MEASURE MUST BE FUNCTIONAL AND MAINTAINED THROUGH CONSTRUCTION.
- 2.) SEDIMENT DISCHARGE AND TRACKING FROM LOT SHALL BE MINIMIZED.
- 3.) ADJACENT LOTS DISTURBED BY AN INDIVIDUAL LOT OPERATOR MUST BE REPAIRED AND STABILIZED.
- 4.) CHANGES OR DEVIATIONS TO THIS PLAN SHALL BE SUBMITTED TO THE TOWN OF ELLETTSVILLE FOR APPROVAL.
- 5.) THE INDIVIDUAL LOT OPERATOR IS RESPONSIBLE FOR INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURE UNTIL THE LOT IS STABILIZED. THE OPERATOR MUST COMPLY WITH ALL REQUIREMENTS OF THE STORM WATER MANAGEMENT ORDINANCE OF THE TOWN OF ELLETTSVILLE, INDIANA.

CONSTRUCTION DRIVE :
 TEMPORARY CONSTRUCTION DRIVE TO COMPLY WITH TOWN OF ELLETTSVILLE WATER MANAGEMENT ORDINANCE.



NOTE: TEMPORARY COSTRUCTION DRIVE TO COMPLY WITH TOWN OF ELLETTSVILLE STORM WATER MANAGEMENT ORDINANCE.

LEGEND :

- (SF) DENOTES SILT FENCE
- (S) DENOTES SAND BAG INLET PROTECTION (OR APPROVED EQUAL)
- (U) DENOTES UNDISTURBED AREA
- (TS) DENOTES TEMPORARY SEEDING
- (PS) DENOTES PERMANENT SEEDING
- (SP) DENOTES SOIL STOCKPILE PROTECTION
- (C) DENOTES CURB INLET PROTECTION
- (DC) DENOTES DOUBLE CURB INLET PROTECTION
- (DI) DENOTES DROP INLET PROTECTION
- (E) DENOTES TEMPORARY CONSTRUCTION ENTRANCE

NOTE: CONTRACTOR TO COMPLY WITH ALL APPLICABLE SECTIONS OF THE "INDIANA HANDBOOK FOR EROSION CONTROL IN DEVELOPING AREAS" PUBLISHED BY THE DIVISION OF SOIL CONSERVATION, INDIANA DEPARTMENT OF NATURAL RESOURCES, OCTOBER 1992, FOR THE PROPER INSTALLATION AND MATERIALS USED FOR ALL EROSION CONTROL MEASURES SHOWN ON THESE PLANS.

I, the undersigned Registered Land Surveyor, hereby certify that I have conducted a survey to establish A Plot Plan of proposed improvements and erosion control measures under my direct supervision and to the best of my knowledge, information and belief this plan is an accurate representation of that survey of the following described real estate:

Lot 86 in The Meadowland Subdivision Section Five as per plat thereof recorded as Instrument No. 1999024582 in the Office of the Recorder of Monroe County, Indiana. Subject, however, to all legal highways, rights of way, easements and restrictions of record.



HAROLD GIBSON, Registered Land Surveyor, RLS910021

Harold Gibson, President
 RLS910021
 321 N. State Street
 Greenfield, Indiana 46140
 (317) 462-4055
 www.hgsurveys.com



Know what's below.
 Call before you dig.

DATE	REVISIONS	SCALE
6-4-19	REVISED HOUSE FOUNDATION PER CLIENT	1"=30'
		DRAWN
		CKK
		CHECKED
		HG

FILE: 19-026

BEACON BUILDERS, LLC
PO Box 784836
Indianapolis, IN 46278

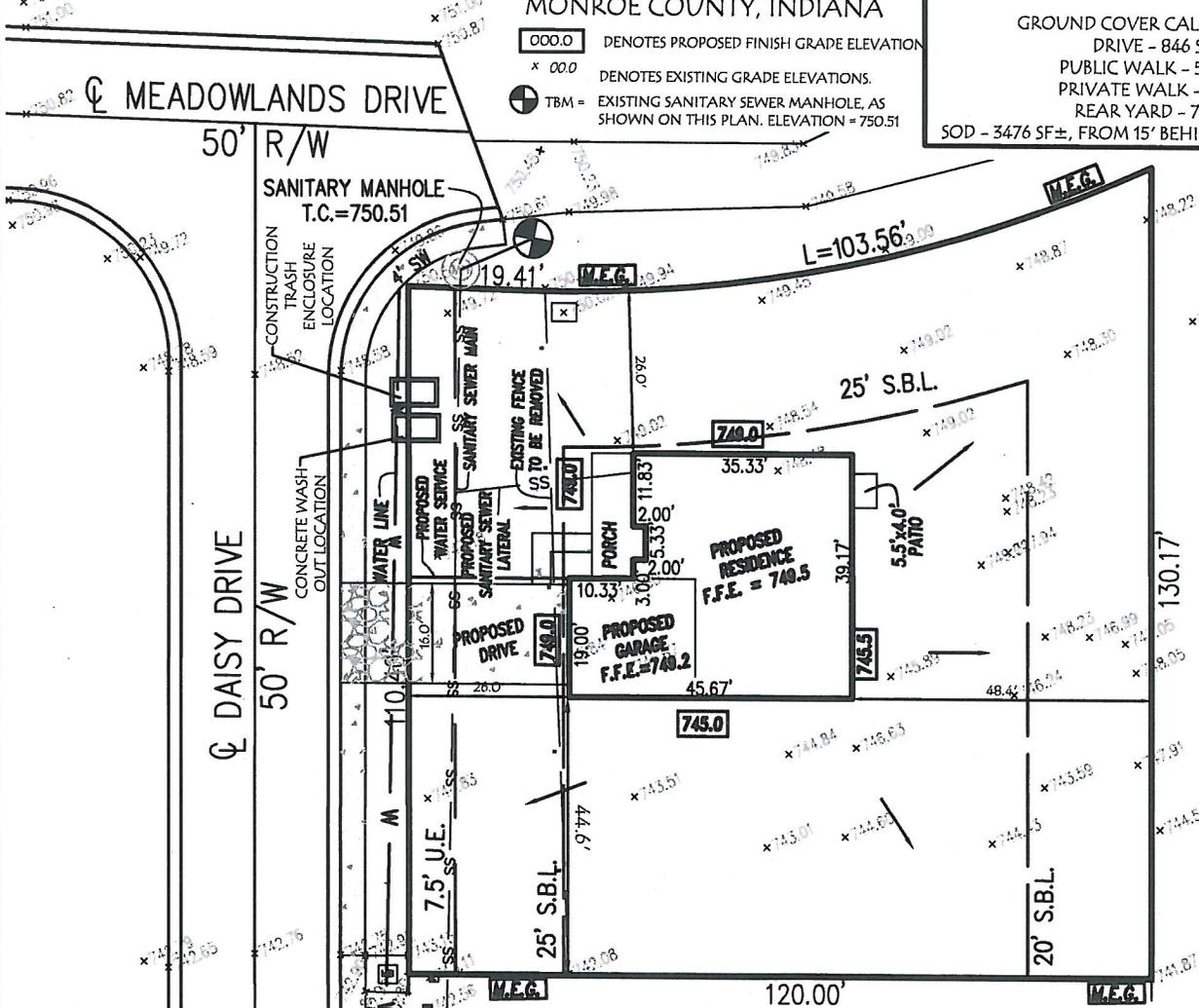
PROPERTY ADDRESS:
723 N. DAISY DRIVE

PLOT PLAN
LOT 86
THE MEADOWLANDS
SUBDIVISION
SECTION FIVE
INSTRUMENT NO. 1999024582
ELLETTSVILLE, INDIANA
MONROE COUNTY, INDIANA

NOTE:
THE PROPOSED RESIDENCE IS NOT LOCATED IN A SPECIAL FLOOD HAZARD ZONE "A", BUT IS LOCATED IN ZONE "X" PER THE FEMA FLOOD INSURANCE RATE 18105C0126D MAP NUMBER, DECEMBER 17, 2010 THE ACCURACY OF THIS FLOOD HAZARD STATEMENT IS SUBJECT TO MAP SCALE UNCERTAINTY AND TO ANY OTHER UNCERTAINTY IN LOCATION OR ELEVATION ON THE REFERENCED FLOOD INSURANCE RATE MAP.

GROUND COVER CALCULATIONS:
DRIVE - 846 SF±
PUBLIC WALK - 522 SF±
PRIVATE WALK - 87 SF±
REAR YARD - 7132 ±
SOD - 3476 SF±, FROM 15' BEHIND FRONT OF HOME

000.0 DENOTES PROPOSED FINISH GRADE ELEVATION
x 00.0 DENOTES EXISTING GRADE ELEVATIONS.
TBM = EXISTING SANITARY SEWER MANHOLE, AS SHOWN ON THIS PLAN. ELEVATION = 750.51

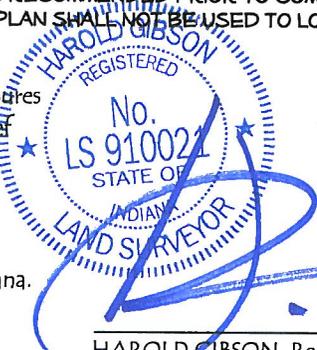


GENERAL NOTES

- 1) PROPOSED 1ST FLOOR ELEVATION OF RESIDENCE SHALL BE 749.5
- 2) THE PROPOSED FINISH FLOOR AND FINISH GRADE ELEVATIONS SHOWN ARE MINIMUM ELEVATIONS IN ORDER TO PROVIDE POSITIVE SURFACE DRAINAGE AWAY FROM THE PROPOSED RESIDENCE. THE FINISH GRADE ELEVATIONS SHALL NOT IN ANY WAY SHED SURFACE STORM WATER FLOW ONTO THE ADJOINING PROPERTIES UNLESS PROVISIONS HAVE BEEN MADE WITH THE ADJOINING PROPERTY OWNERS AND THE GOVERNING JURISDICTION. SHALLOW FLOW LINES SHALL BE MADE BY THE FINISH GRADE SUBCONTRACTOR ALONG THE COMMON LINES WITH ADJOINING PROPERTY OWNERS TO DIRECT THE STORM WATER FLOW AS SHOWN ON THIS PLOT PLAN. THE BUILDER SHALL NOTIFY THIS FIRM IF FIELD ADJUSTMENTS ARE MADE LOWERING THAN THE ELEVATIONS SHOWN OR REDIRECTING THE SURFACE STORM WATER FLOWS.
- 3) THE DIMENSIONS SHOWN ON THE PROPOSED RESIDENCE ARE BASED UPON PLANS PROVIDED BY THE BUILDER. PRIOR TO CONSTRUCTION THE BUILDER SHALL VERIFY NO CHANGES HAVE BEEN MADE FROM THOSE SHOWN HEREON.
- 4) THIS PLOT PLAN HAS BEEN PREPARED FOR USE IN OBTAINING A BUILDING PERMIT AND IS NOT INTENDED TO IDENTIFY LOT OR PROPERTY LINES. THE DIMENSIONS SHOWN TO LOT LINES OR LINES REPRESENTING PROPERTY LINES ARE SHOWN BASED UPON LIMITED FIELD EVIDENCE OF SAID LINES AND THE DIMENSIONS ARE SUBJECT TO THE SAME LIMITATIONS WHICH MIGHT AFFECT THE ACCURACY OF THE DIMENSIONS.
- 5) NO WETLANDS SHALL BE DISTURBED DURING OR AFTER THE CONSTRUCTION OF THE SITE IMPROVEMENTS.
- 6) ANY SUBSURFACE DRAINAGE TILES ENCOUNTERED DURING THE CONSTRUCTION OF THE SITE IMPROVEMENTS SHALL BE PROTECTED FROM DAMAGE AND IF NECESSARY REROUTED WITH THE DRAINAGE FLOW WITHIN PERPETUATED. IF SAID TILE IS DAMAGED, REPAIRS SHALL BE MADE IMMEDIATELY TO RESTORE THE TILE TO ITS ORIGINAL CONDITION.
- 7) DISTURBED AREAS ARE TO BE RE-SEED AS SOON AS PRACTICAL HOWEVER DISTURBED AREAS WHICH REMAIN UNWORKED FOR LONGER THAN 15 DAYS SHALL BE TREATED WITH TEMPORARY SEEDING.
- 8) THE BUILDER AND/OR ANY UNDERGROUND SITE CONTRACTOR SHALL CALL INDIANA 811 TO VERIFY THE LOCATION OF THE UNDERGROUND UTILITIES ON THIS SITE AND REPORT ANY CONFLICTS TO H. GIBSON LAND SURVEYING PRIOR TO COMMENCING WORK.
- 9) THIS SURVEY SHALL NOT ACT AS A RETRACEMENT SURVEY ("BOUNDARY SURVEY"). IN THE EVENT THE MINIMUM SIDE YARDS OR MINIMUM SETBACKS ARE BEING HELD FOR ANY STRUCTURE A RETRACEMENT SURVEY IS RECOMMENDED PRIOR TO COMMENCING WITH CONSTRUCTION OF THE RESIDENCE OR ACCESSORY STRUCTURES. THIS PLOT PLAN SHALL NOT BE USED TO LOCATE OR DETERMINE LOT OR PROPERTY LINES.

I, the undersigned Registered Land Surveyor, hereby certify that I have conducted a survey to establish A Plot Plan of proposed improvements and erosion control measures under my direct supervision and to the best of my knowledge, information and belief this plan is an accurate representation of that survey of the following described real estate:

Lot 86 in The Meadowland Subdivision Section Five as per plat thereof recorded as Instrument No. 1999024582 in the Office of the Recorder of Monroe County, Indiana. Subject, however, to all legal highways, rights of way, easements and restrictions of record.



HAROLD GIBSON, Registered Land Surveyor, RLS910021

CERTIFIED: 04-03-19
RE-CERTIFIED: 06-05-19

<p>Harold Gibson, President RLS910021 321 N. State Street Greenfield, Indiana 46140 (317) 462-4055 www.hgsurveys.com</p>			DATE	REVISIONS	SCALE
			6-4-19	REVISED HOUSE FOUNDATION PER CLIENT	1" = 30'
					DRAWN
					CKK
		CHECKED			HG

From: [Tolloty, Kevin](#)
To: [Nicholas Julian](#); jrbrauer817@gmail.com
Cc: [Line, Denise](#)
Subject: RE: 723 N. Daisy Dr. Fence Issue
Date: Monday, November 30, 2020 11:22:46 AM

Good morning,

I will include your email in the meeting packet that will be sent to Board members later this week. Zoom meeting information will be available later this week at www.ellettsville.in.us.

As a side note, I checked and your property was just outside of the notice area for when the subdivision (Ruby Creek) was approved in 2019. Property owners along Daisy Drive did receive notice of the subdivision, which included the extension of Abigail Lane. The builders of 723 N. Daisy Drive were also aware of the subdivision and road extension.

Thanks,
Kevin

Kevin Tolloty, AICP
Director of Planning & Development, Town of Ellettsville
812-876-8008
ktolloty@ellettsville.in.us

From: Nicholas Julian <njulian90@gmail.com>
Sent: Sunday, November 29, 2020 3:16 PM
To: Tolloty, Kevin <ktolloty@ellettsville.in.us>; jrbrauer817@gmail.com
Subject: 723 N. Daisy Dr. Fence Issue

Dear Kevin Tolloty, Town Planner, Ellettsville IN,

My wife and I have received word from our new neighbors at 723 N. Daisy Dr., that they have been issued a Request for Compliance from the town in regards to their fence. The fence was built prior to any road being built and as far as I understand, the town did not do enough to inform residents of the Meadowlands neighborhood where, when and if a road was actually going to be built in that area. The fence built around the yard of Jonathan Brauer and Marisa Weiler, is wonderfully constructed and aesthetically pleasing for the entirety of the neighborhood, it poses no vision restrictions or movement restrictions whatsoever. Additionally, the fence provides the resident with a valuable tool to keep their dog contained, forcing a reduction in the height of the fence could possibly lead to their dog escaping and chasing after wildlife or domestic animals. This could result in the injury of the dog or damage to private property. Forcing either a movement or a reduction in size of the fence places an undue burden on the residents and no city or town planner should have the power to create such an undue burden on any resident of any neighborhood. These kinds of rule enforcements, that are clearly made erroneously, can greatly discourage new home ownership which is not something that any neighborhood would benefit from. Having lived here for

nearly a decade on Wildflower Dr., I can confidently say that no effort was made in any way to inform the residents of the construction of this road which is now creating the issue at hand. All of this being said, I would like to be invited to the Zoom meeting in support of Jonathan Brauer and Marisa Weiler's appeal.

Thank you for your time,

Semper Fidelis

Nicholas Julian Sgt USMC (Retired)

Ashely Julian (USN)



Town of Ellettsville

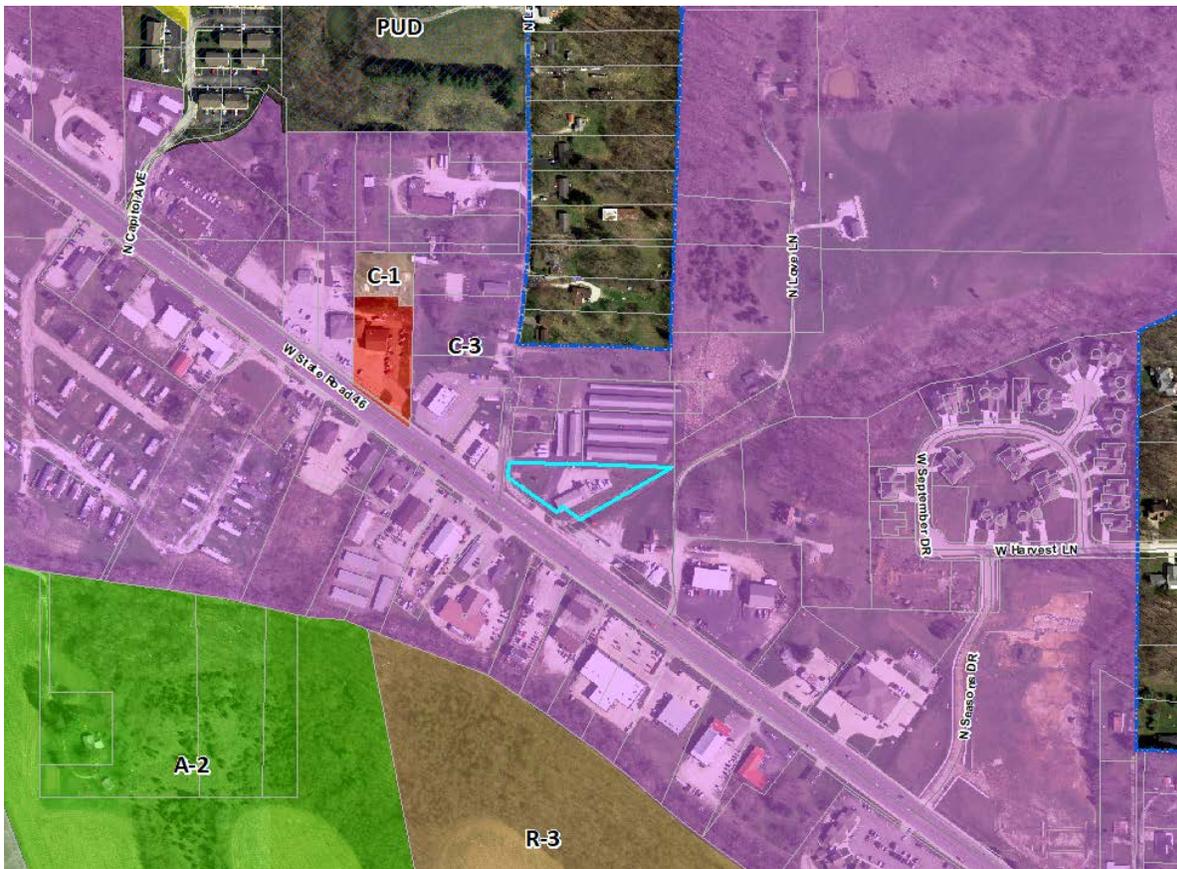
Department of Planning & Development

BZA 2020-08–Variance from Development Standards Staff Report

Petition

Case - BZA 2020-08. A request by Kymbar Cortese, for a variance of development standards to allow a second freestanding sign in the C-3; General Commercial zoning district. The subject property is located at 5492 W. State Road 46.

Surrounding Zoning Districts & Uses



Zoning District	Property Use
North: C-3; General Commercial	Storage Units
South: C-3; General Commercial	Mixed Commercial
East: C-3; General Commercial	Mixed Commercial
West: C-3; General Commercial	Convenience Store

Considerations

1. The petitioner is requesting a development standards variance to use a second freestanding sign for their new business.
2. The property is zoned C-3; General Commercial.
3. The structure for the sign is leftover from a previous business and was not to be used after a new electronic sign was placed on the property
4. There are currently two businesses already located on this parcel. The proposed coffee shop would be the third business on the parcel.
5. Town Code addresses freestanding signs in Section 152.262 (C)(2)(e), which specifically states: "One freestanding sign per 500 linear feet of frontage, maximum of two freestanding signs."
6. This parcel contains approximately 200 linear feet of road frontage and would not be eligible under Town Code to allow a second freestanding sign.
7. Indiana Code (IC 36-7-4-918.5) requires the following criteria be met in order to approve a variance from development standards request:
 - a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. 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
 - c. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.
8. Additionally, Town Code requires the following criteria to be satisfied:
 - a. The approval does not interfere substantially with the comprehensive plan.
 - b. The approval is not based solely upon financial hardship or mere convenience; and
 - c. The approval is in conformance with all other Town Ordinances.
9. In order to be considered a practical difficulty, the following criteria should be met:
 - a. The need for a variance arises from unique conditions on the property and is not shared by neighboring properties in the same zone;
 - b. Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use, or would render conformity necessarily burdensome;
 - c. The particular request, or a lesser relaxation of ordinance standard, would provide substantial justice to the landowner and neighbors;
 - d. The need for a variance is not the result of a self-created action by the current or any former property owner.
10. A variance, once granted, runs with the property, regardless of ownership.
11. All persons who own or have controlling interest in the property included in the petition have joined in the petition.

Criteria For Decisions – Variance From Development Standards

In taking action on all variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of Indiana Code. The Board may grant a variance of development standards from this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.5) that:

DECISION CRITERIA – DEVELOPMENT STANDARDS VARIANCE

- 1. General Welfare:** The approval (will or **will not**) be injurious to the public health, safety, morals, and general welfare of the community.

Staff Finding:

The structure for the sign is already in place, but has been blacked out since the new freestanding electronic was installed. The location of this sign has not and will not obstruct any sight lines.

- 2. Adjacent Property:** The use or value of the area adjacent to the property included in the variance (will or **will not**) be affected in a substantially adverse manner.

Staff Finding:

The location of sign should have no effect on any other parcels.

- 3. Practical Difficulty:** The strict application of the terms of the zoning ordinance (**will** or will not) result in practical difficulties in the use of the property.

Staff Finding:

The practical difficulty in this situation is that there are generally not multiple businesses on one parcel that are not situated in a strip mall like manner, which would use a multi-tenant sign. Because these situations are rare, they are not specifically addressed in Town Code, and are rightfully addressed on an individual basis by the BZA. There is nothing in Town Code to allow for the proper advertising of this location through freestanding signage, and should be considered a practical difficulty.

- 4. Compliance with Comprehensive Plan:** The variance request (**is or is not**) substantially in compliance with the existing comprehensive plan.

Staff Finding:

The comprehensive plan does not specifically or generally address this issue.

- 5. Financial Hardship:** The need for the variance (**does** or does not) arise from some condition peculiar to the property involved.

Staff Finding:

The reasons for this request are due to the location of multiple businesses on this property, and are not related to financial reasons.

6. Compliance with other Town Codes: The variance request (is or is not) substantially in compliance with other Town Codes.

Staff Finding:

The property is currently in compliance with all other Town Codes.

Board of Zoning Appeals Action

The Board of Zoning Appeals action shall be in the form of *approval, approval with conditions, denial, or a continuance*. The Board of Zoning Appeals takes final action on all variance petitions.

Staff Recommendation

The purpose of the freestanding sign restriction is to prevent a strip mall/plaza from placing freestanding signs for each individual business, which would be both aesthetically unpleasing and likely a detriment to public safety. However, in this particular situation, there is not adequate room on the existing freestanding sign for additional signage, and since the coffee shop will be in a separate structure, it would make sense to have a separate freestanding sign. Therefore, based on the above analysis, it is of Staff opinion that the variance does meet the decision criteria, and recommends approval of the variance. The Board may approve the variance if, after testimony and discussion, it finds that the request does meet all six (6) of the stated requirements. If the Board denies the request, it shall state which requirement(s) of which variances have not been met.

Submitted by Kevin Tolloty, AICP
Director of Planning, Town of Ellettsville
December 2, 2020

Site Photos





4' 6"

4' 6"

DRIVE THRU

COFFEE - ESPRESSO - TEAS



AMERICANO



Town of Ellettsville
Department of Planning Services

P.O. Box 8, Ellettsville, IN 47429 ♦ (812) 876-8008 ♦ planning@ellettsville.in.us

BZA
Application

Application Description (attach additional pages as needed)

We are seeking the permission to utilize an existing monument sign that is on the property we have leased from Kevin Farris of First Choice Storage. The monument sign was originally installed when IU Credit Union was using the property to house an ATM. The monument sign has been vacant on the property for several years since IU Credit Union removed the ATM from the property.

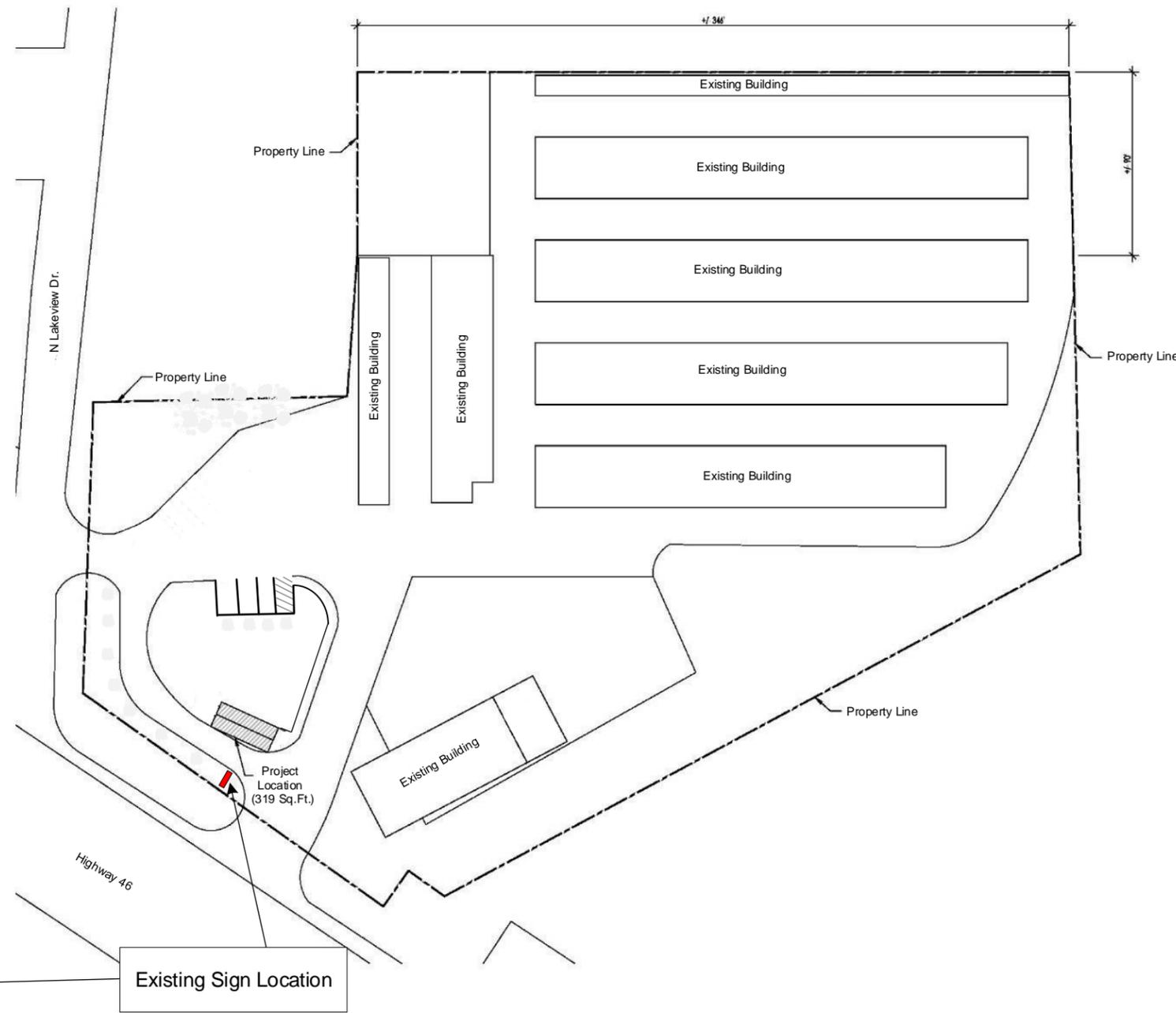
The monument sign we are requesting to utilize is directly across the drive thru lane from our building. It would be the most logistically conducive place to put a sign displaying our business name. Through a miscommunication with the Planning Department, we had anticipated being able to utilize the monument sign with a "change of face" fee/permit request. Due to this assumption on being able to use the sign, we had Vanhorn Tint and Accessories create a set of sign inserts for us at a cost of \$800. After discussing the original sign request with the Planning Department, Kevin Tolloty suggested we submit a request through the board of zoning appeals.

The sign in question is smaller than the majority of signs along the SR 46 corridor and since it has been in place for more than ten years, the continued utilization of the sign would seem noncontroversial for Ellettsville residents frequenting the location. There are several attached photos of the Monument sign as well as a mock-up of the sign inserts that will be used on the next page for reference.

If there are any objections or need for clarification, we are willing and able to plead our case to the zoning appeals board.

ARCHITECT'S PROJECT NO. 20-40
AMERICANO COFFEE
 4910 N. LAKEVIEW DRIVE
 BLOOMINGTON, IN

JULY 17, 2020



Landscape Legend

-  Existing Tree
-  Broadleaf Evergreen Shrub
 Botanical Name: *Buxus Sinica* Var
 Common Name: Wintergreen Boxwood
-  Drive thru width dimensions
 (total drive thru length – 131 ft.)
-  Set back lengths
-  Direction of Vehicle Flow

Satellite Reference Image



Existing Sign Location

LANDSCAPE PLAN ↑
 SCALE: 1/32" = 1'-0"

LEGA DESCRIPTION: 009-0906-06 BELCHER LOT 1, 2, 3, 6
 PARCEL NUMBER: 53-04-14-201-005.000-013

ARCHITECT

 SPRINGPOINT ARCHITECTS PC
 213 SOUTH ROGERS STREET, SUITE 5
 BLOOMINGTON, INDIANA 47404
 812.318.2930
 WWW.SPRINGPOINTARCHITECTS.COM