

**HENRY COUNTY PLANNING COMMISSION
1201 RACE STREET, SUITE 214
NEW CASTLE, INDIANA 47362**

*Darrin Jacobs
Zoning Administrator*

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The Henry County Board of Zoning Appeals held a public hearing in the Old Circuit Courtroom of the Henry County Courthouse, 101 S. Main Street, New Castle, IN 47362 on Thursday, March 7, 2019 at 8:00 am.

Board members present were: Larry Brayton, Cathy Hamilton, Dan Roach, Kevin Brown, and Matt Chapman. Also present was Darrin Jacobs, Zoning Administrator.

Previous Minutes

The Board reviewed the minutes from the September 6, 2018 meeting and the January 3 2019 meeting. Larry Brayton moved to approve, Matt Chapman seconded, and the motion carried 5-0.

Case C: 2319

An appeal has been filed by Joseph and Loretta Perry, 120 E Co Rd 650 N, New Castle, IN 47362 requesting a variance for a side yard setback of 3 feet instead of the required 10 feet for an accessory structure. The property is owned by Joseph and Loretta Perry and is located at 120 E Co Rd 650 N, New Castle, IN 47362. The property parcel number is 011-00648-00 and is located in Prairie Township.

The Zoning Administrator Darrin Jacobs gave a synopsis of the case and referenced particular points of interest in the case packet.

Chairman Roach asked the applicant to step forward to present their case.

Joe and Loretta Perry stated that there was a misunderstanding about the need for a permit for the barn. Mrs. Perry stated she had written down that no permit was needed for a septic system prior to building a pole barn and later misunderstood her own notes to mean that no construction permit was needed. Mr. Perry stated that he had used the survey that they were given when they bought the property to locate the surveying pins so he could determine where to place the barn. Mr. Perry thought from his layout of the site using their survey and the pins that the pole barn would be at least 12 feet off of the property line. The Perry's stated that they never intended to break any rules and had no idea that they might have built to close to their property line until they saw Mr. Drumm's survey. The Perry's stated that they have met with Ashton's Land Surveying several time because Ashton's had performed their and Mr. Drumm's surveys. The Perry's further stated that they believe that there are still discrepancies between the two surveys, but they

have been unable to clear the matter up to their satisfaction. Mr. Perry stated that their only other option is to get a new survey from a different company, but if they didn't want to incur that expense if the Board was willing to grant a setback variance.

Larry Brayton asked if the barn was the same distance from the property line the whole length of the building, according to the latest survey. Mr. Perry stated that the building is set at a slight angle to the property line and that the closet point to the property line, according to Mr. Drumm's survey, was approximately 3 feet, but the rest of the building is farther away.

Matt Chapman asked if there were old fence posts along the property line. Mr. Perry stated that there are posts but the wire doesn't run the whole property. Mr. Perry also stated that he believed that the fence posts further strengthen his opinion that the property line according to the latest survey is not correct.

Matt Chapman asked where they intended to build their house and would it have a setback issue. Mr. Perry told the Board that they intend to start construction on their house this year and that even by the latest survey the setback will be more than the minimum.

Chairman Roach asked if anyone wanted to speak in support of the request, there were none.

Chairman Roach asked if anyone wished to speak in opposition.

John Drumm approached the podium and stated that he was not opposed to the request, but he wanted to make sure that he would be held harmless if any trees from his property were to fall on the Perry's barn and he would like to have the property line established before the variance request was granted.

The Zoning Administrator stated that he didn't believe the Board had the authority to state or require that Mr. Drumm be held harmless or to establish the property line. The Zoning Administrator stated that the only way to establish a disputed property line is through civil action and taking the matter before a judge. The Zoning Administrator did state that if the Perry's agreed he could put in the minutes as a legal record that they would not hold Mr. Drumm liable if a tree from his property were to fall on their barn and to use the Drumm survey going forward.

Mr. Perry stated before the Board that he would not hold Mr. Drumm responsible if a tree from Mr. Drumm's property were to fall on his barn.

Mr. Perry also stated that though he still does not believe that Mr. Drumm's survey is a true representation of their shared property line, for practical purposes he will use the Drumm survey going forward until such time as he has his own survey that confirms the location or a judge rules on the location of the property line.

This seemed to satisfy Mr. Drumm who did not object to Mr. Perry's statements.

With no other comments from those in attendance or questions from the Board the finding of facts were read.

The Findings of Fact were as follows:

Question A... 5 Yes 0 No

Question B... 5 Yes 0 No

Question C... 5 Yes 0 No

Question D... 5 Yes 0 No

Question E... 5 Yes 0 No

The setback variance was approved.

Chairman Roach closed the public hearing and asked if there was any old or new business that needed to come before the Board.

With no other business Larry Brayton moved to adjourn, Kevin Brown seconded, and the motion passed 5-0.

Chair

Secretary