

**MERRILLVILLE BOARD OF ZONING APPEALS MEETING
WEDNESDAY
SEPTEMBER 23, 2015
6:30 PM**

The Board of Zoning Appeals meeting of September 23, 2015 was called to order by Chairman Minchuk at 6:30pm and led the group in the Pledge of Allegiance.

ROLL CALL

Members in attendance were Mr. Holtz here, Robert Bigelow here and Tim Fortier here, Chuck Stojakovich here and Mr. Minchuk here. Let the record show we have 5 here tonight. Staff in attendance was Dorinda Gregor, Attorney Touchette and Bob Csanyi of Robinson Engineers.

MINUTES: July 22, 2015 and August 26, 2015.

Chairman Minchuk stated minutes from July 22, 2015 an August 26, 2015 any additions or corrections.

Mr. Fortier made a motion to approve the minutes of July 22, 2015 and August 26, 2015 as presented.

Mr. Holts second the motion for both sets of minutes.

Chairman Minchuk asked all in favor motion carries.

COMMENTS FROM THE CHAIRMAN:

Chairman Minchuk proceeded I will call the case by case number and name of the petitioners I would ask that you come forward state your name and address for public record at which time you will be given an opportunity to present your case accompanied by any professionals that you may wish with you. After that we will have the open the case for further comment. If you are desirous of speaking for or against any case we ask that you please sign in at the registry in the center of the isle. We will have a question and answer period followed by a staff report pertaining to each case presented this evening. We will also render a decision either for or against or a deferral for more information or other reasons which we will state. Would you please at this time silence any communication devices, cell phones or pagers. We will appreciate it. Thank you.

COMMUNICATION:

**LETTER SENT TO CHAIRMAN JOHN MINCHUK REGARDING ITEM #2
UNDER NEW BUSINESS**

OLD BUSINESS:

None

NEW BUSINESS

Z31v15-0915 ROBERT VELEZ, PETITIONER AND OWNER, Located at 6862 Van Buren Street for a Variance from Sec. 21-12 (15) to maintain a legal non-conforming existing driveway side yard greenspace from 6' to 2' in a R-2, Single Family Residential zoning district to upgrade driveway appearance.

Good Evening my name is Robert Velez I live at 6862 Van Buren Street. I am requesting to have the driveway done. I have the paperwork for that we had to put in the paper. If you need that. I believe that I submitted some pictures of the driveway and it is in pretty bad shape. So I am just requesting permission I have the contractor line up already and I sent out my certified letters. A neighbor talked to me today about it she said she was fine with it even though she couldn't make it to the meeting today.

Chairman Minchuk said if she was fine about it it would have been better if she would have made an appearance.

Mr. Velez said I don't know why the previous owners did not do this because it has been since June. I have to have it done I can't go through another winter with that driveway.

Mrs. Gregor said the neighbor directly to the north of you is the lady to the north of you. She did come into the office and I did show her what was going on and she did not have a problem with it after she reviewed everything and that was the same neighbor that you had spoken with right.

Mr. Velez replied yes.

Mrs. Gregor read the staff report. If this is approved for this petitioner only, at this location only for this use only.

Chairman Minchuk asked if there are any questions from the Board.

Mr. Holtz asked if he is tearing out the out drive.

Mr. Velez replied yes sir.

Chairman Minchuk asked if there are any questions from the audience for or against.

Mattie Mulens 6865 Van Buren Place. I actually have a letter with his address on it but I didn't understand why I have to come to court.

Mr. Touchette said it wasn't a summons to court mam. It was just to notify you that this gentlemen was doing this with his driveway and if you were his neighbor it was giving you the opportunity to object if you wanted to.

Ms. Mulens said I am actually behind him. Ok.

Mr. Touchette said you didn't have to come sorry.

Chairman Minchuk said it is either for or against and I see you live behind since you are here he is making a bad situation better.

Mrs. Gregor said did you want to see the condition of the driveway.

Ms. Mulens replied yes.

Mrs. Gregor said there are several pictures so

Chairman Minchuk said this is the way it looks and it is going to look much better.

Mr. Fortier said so you are ok with what he is doing.

Ms. Mulens replied yes.

Mr. Fortier replied thank you.

Chairman Minchuk said seeing no others questions I would like to get a motion please.

Mr. Fortier said I would like to make a motion to approve the variance for case number Z31v15-0915 for this petitioner only at this location only for this use only.

Mr. Holtz second the motion.

Chairman Minchuk asked for a roll call vote.

Mr. Fortier yes, Mr. Holtz yes, Mr. Bigelow yes Chuck Stojakovich yes and Mr. John Minchuk yes.

Motion carries 5-0

Chairman Minchuk said see Dorinda before

Mrs. Gregor said you will need a permit.

Mr. Velez asked should I do that today

Mrs. Gregor replied no tomorrow.

Z32uV9-0915 ROSILYN& KELVIN HATHORNE, PETITIONERS AND OWNERS, Located at 1142 West 53rd Court for a Variance of use approval for a kennel having four or more dogs in an R-2 Single Family Residential zoning district for owners to keep 5-9 personal rescued dogs until placement of safe homes are found for 5 dogs.

Good evening Ms. Hathorne and this is my husband Kelvin and son Joshua. We rescue dogs and we have had dogs for the last 6 or 7 years. And they are pretty old dogs and some of those dogs that we have are show dogs we put them in contests. We understand that the amount of dogs that we have some people are a little put off by it. We are willing to get down on dogs we are just trying to find them safe homes turning them into the pond is not an option because the dog pounds are full

So we just wanted to be able to register the dogs that we are going to keep for our shows if that is possible.

Mrs. Gregor read her staff report. Conditions are be specific how many pit bull that are allowed to retain with their other dogs. King Corso and French Bull dog as the other dogs don't have to be registered as a dangerous animal. If granted approval the owners will have to install a 6' secured fence per code and for this petitioner only at this location only for this use only.

Chairman Minchuk asked what would be the hardship in this case.

Mrs. Gregor said this is a use variance so some of the requirements are different than a variance from developmental standard.

Mr. Touchette said the terms of the zoning ordinance we are concentrating unnecessary hardship that is one of the things that need to be proved as a variance.

Mrs. Gregor said that is the second page of the application the facts form.

Mr. Hathorne asked if Mr. Stojakovich wants to read one of our letters.

Chairman Minchuk asked if everyone on the board read the letters.

They replied yes.

Mrs. Gregor said maybe just acknowledge that we received it.

Mr. Stojakovich said I would like to acknowledge that John Minchuk and every member of the board of zoning appeals have received copies of the letters that has been sent by Ruby Phillips. It is quite a long letter and I am going to go through it real quick. In response of the certified letter for the public hearing to consider the application of Rosilyn and Kelvin Hathorne for a variance of use approval in a R-2 Single Family residential district for a kennel having 4 or more personal dogs only on the following property which is lot 38, blk 6 in the Meadow dale subdivision which is 1142 West 53rd Court Merrillville. We the residence at 1136 West 53rd Court are absolutely 100% in outrageous nonsense to allow a kennel in a residential neighborhood. Once again we reiterate that we are 100% opposition of a kennel at 1142 West 53rd Court. A kennel should not and must not be allowed in a residential neighborhood this will severely decrease property values destroy the quality of life and put residence in danger and make it virial impossible for anyone to sell their home in the 53rd courts who would ever want to live next to a kennel. In the meantime what is more baffling and mysterious is that the Town of Merrillville only informed one residence on 53rd court about the application for a kennel no other residence on 53rd court received a certified letter. I read this application for Variance of use approval affects everyone on 53rd court and adjacent property.

Mr. Touchette said if I may interrupt just a second on that. The certified mail notice just goes out to the adjacent property owners ok by law. If wasn't that anyone else was being over looked or that the Town wasn't paying attention to everyone else but by statue only the adjacent property owners get a certified mail notice.

Mrs. Gregor said I can read those who received that certified notice.

Mr. Touchette said I don't think that we need to go through all of that. I think that everyone got their notice who had to have one.

Chairman Minchuk said I have read some of those letters myself and I don't know if it was a personal threat to me or the board about calling the newspapers and channel 7 or whoever else they wanted to call. We are here for the good of the people and the good of the public for public safety that is why we are here. So threats like that really don't mean a lot I don't know about anyone else but this is my personal opinion so when you threatened us with different stuff of calling the papers if you want whatever you want to call it. I don't think that my qualifications on the BZA as far as watching out for our public safety watching out for our public has anything to do with this. Just my personal comment how everybody else feels is up to them. Any questions from the board before we go on to anybody in the audience. No questions.

Mr. Bigelow said I have a concern about the amount of noise. Where are the dogs being kept?

Mr. Hathorne said when we first moved there we kept in the back and when we realized there wasn't any windows there we moved them to the inside of the house. They are inside of the house

Ms. Hathorne said on like a back porch. When we had the inspection we didn't realize that the back porch didn't have windows it just had screens like a two season room and when one of our neighbors mentioned that they could hear the dogs barking at night we moved them from that place where you can hear them barking to inside of the main house.

Ms. Hathorne said so they are in the inside of the house in their own individual cages.

Chairman Minchuk said anyone else.

Mr. Stojakovich asked how long have these dogs been there.

Mr. Hathorne said only about two months.

Ms. Hathorne said one of them we have had over 8 years and the other is about 7 years. The two puppies we have had them for less than a year.

Mr. Stojakovich asked if you were aware the ordinance with the Town of Merrillville.

Mr. Hathorne said no we didn't find out until I came up here to register them.

Mrs. Hathorne said we asked the previous owner said as long as you keep your dogs on your property there should be no problem everybody here is ok and that is alright. I mean I didn't even get a notice from any of my neighbors that said my dogs are giving them a problem until I got a citation and I thought that they would come to me first and say we hear your dogs barking at night but nobody said

anything and we are not the only on 53rd Court with dogs. So are not the Only ones in a 6 blocks radius with dogs so.

Mr. Stojakovich said you are saying there are other Merrillville residences that have more than 3 dogs.

Mrs. Hathorne replied no

Mr. Stojakovich said you were cited for having numerous dogs and I understand that you went to courts and you were fine \$50.00 and know the Judge wants to leave it up to us to make a decision.

Mr. Touchette said just for your information I think that just about every town and city does have an ordinance about how many dogs you can have for your personal use. Here it is 3 some towns and cities may have more once you exceed that number almost every town will require you to have a license for a kennel.

Mr. Hathorne said that is when we found out that is what we started to do because like I said we didn't know that until I came up here to register the dogs.

Chairman Minchuk said where did you live previous to this

Mr. Hathorne replied we stayed in Hammond.

Chairman Minchuk said I know that they have the same regulations there.

Joshua said I used to work for Hammond police station canine so I was pretty much organized and trying to find homes for the dogs.

Mr. Fortier said so it sounds like you might want to run a little business out of here to.

Mr. Hathorne said what we want to do is I own the dogs we put over 6 years of training our dogs are beginning to win major competitions. We just want to keep the main dogs we always have. The other dogs were rescued because the pound said it was full and they didn't know what to do with them so according to Hammond if we have the dogs 5 days they are considered ours so we had to take care of these dogs while we find homes for these dogs. Before we moved to Merrillville we had 21 dogs we found homes for 21 dogs. So basically all we want to do is the dogs we just been keeping competition and doing demonstrations with those dogs that we are mainly worried about.

Chairman Minchuk said is there anyone in the audience for or against. Come up it time to speak. Make room for them to get to the microphone. Have you signed in the middle?

My name is Attorney Wanda Rogers-Hayes I reside at 5329 Pierce Street I live on the corner red brick house. I got no notice of this hearing and they are only two houses from me. So I got no certified letter I did get a notice on my door for the showing and I indicated to my husband to my neighbors that I am we are just opposed to this. This is what appears to be a business and the dogs that is too many dogs in my opinion it is not in compliance with the town. I have 3 grandchildren I have a small dog. The pit bulls and the variety of dogs they are

talking about I am just opposed to it. I called animal control spoke with them and we had a conversation and she said to me come here tonight. It is not about making complaints or acquisitions against any of you. I think that Ms. Dorinda may have heard from me once. I am here because of safety and because I don't believe that lets see I have been here 28 years and nobody in our cul da sac has an Any more than 1 or 2 dogs and it is unfortunate that they were not informed but that doesn't change the law and for the people that are here and have been here we would like to preserve our community in a safe manner and in a manner that comports with What the reason the law is there and that is all we are asking is that you do not allow that.

Mr. Fortier said we appreciate you coming in but please understand that our Attorney pointed out to you adjacent property owners so only 3 or 4 people would have been notified of this by certified letter. We appreciate the communities input because that is what we are here for is to judge what is going to be best for the community and the town of Merrillville.

Attorney Rogers-Hayes replied thank you

My name is Burton Phillips and this is my mother Ruby Phillips 1136 west 53rd Court. They have been at West 53rd Court for 26 years since 1989. We think I think that all the residences at 53rd Court we have battled floods we don't need to battle a kennels we don't need to battle the noise so we are totally against this. Nothing against the owners but we want to preserve 53rd Court. When I was in high school 53rd Court 26 years later looks and sound just like it does know 26 years later and we want to keep it like that. We have all battled floods we don't want to battle a kennel we don't want to battle the noise we don't want to battle the Bombardment of flies we have flies from the dog feces. We don't want to battle this at this [articular time. We have an ordinance we know the ordinance 1 pit bull \$300,000.00 insurance for 1 pit bull and a 6 foot fence. We would like for you to oppose this particular Variance of use approval. Thank you

Good afternoon my name is Mike Walker I am at 5351 Pierce Street the corner house form the Hawthorne's. I spoke with Mr. Hathorne and his wife from day one since they moved in and I assured him that this is nothing personal between him his family or his business. I can commend wanting to do the right thing for animals however I have been in that cul da sac for 24 years. I am opposed to having 6,7,8,9 or 12 dogs in my cul da sac it is just a personal issue for me. I have a daughter she also has a dog that lives with which is a 4 pound shitzu. That is temporary again I can understand what they want to do and I understand that they want to do the right thing but personally for me from a neighborhood from a safety perspective I am opposed to having any neighbor with this amount of dogs. The ordinance is what it is I think that should speak for itself as you guys said he is already gone to court and now the Judge wants to leave it up to you. I think that it is unfortunate for that to be sit in your lap but the ordinance is the ordinance the law is the law and again it is nothing personal to the neighbors I welcome them with open arms to the neighborhood I just do not welcome the dogs. Thank you

Chairman Minchuk replied thank you. One more

Mr. Fortier said would you mine stating your name for the record please.

Hardy Anthony said I have a petition I would like to leave with you.

Chairman Minchuk said we already have that in our files.

Mr. Anthony said that is all I have to say I am opposed to it.

Chairman Minchuk said is there anything from the board.

Mr. Hathorne said I have a question. The gentlemen that came up with his Mom. He said there is feces in the back I can bet him a thousand dollar right now if he goes in the back of the house nothing. Not a drop

Mrs. Hathorne said we are not here to battle with the neighbors here. We re new here we are not trying to battle with any of you and not trying to get on anybody's Bad side we are not trying to hoard, board, bred. We don't have a business we don't have any of that. We just have dogs we take to the contest. We walk them around in our backyard and bring them back into the house.

Mr. Hathorne said we load them up in the car 4 or 5 days and take them to training.

Mrs. Hathorne said we don't integrate our dogs into the community if that is the right term. We walk them around our backyard and we keep them on a leash. The only time they are off leash is when they are in our house.

Chairman Minchuk yes sir you have a question in the back.

The gentlemen in the back did not come up to the microphone and he and Mr. Hathorne all spoke at the same time.

Mr. Hathorne said I think what everybody is misunderstanding the dogs that we are tryinng to find homes for is 4. We 2 that are real sick and we don't know how long she is going to be here.

My only question is you find a home for the 4 dogs and you may have whatever is left ok let's say you have 2. Are you guys going to stop?

Mr. Hathorne said we are going to stop. Once we found homes for the 21 before we moved like I was trying to explain to them people bring us dogs we take the dogs and get them evaluated we put them on the internet people will call us to see if they want them.

Mrs. Hathorne said no fees no charge.

Mr. Walker said you are not taking any more dogs of the streets.

Chairman Minchuk said no other questions. No other rebuttals ok

Mr. Holtz said they can only have 3 dogs.

Chairman Minchuk said 1 pit bull and 2 other dogs.

Mr. Holtz so 1 pit bull and 2 other ones.

Mr. Fortier asked if they still need the 6 foot fence with the pit bull.

Mr. Touchette replied yes.

Mrs. Gregor said and the insurance.

A lady said I have a question does the insurance policy cover 6 dogs or is that for 1 dog.

Mrs. Gregor said it covers all of them.

The lady said if you have a \$300,000.00 insurance policy wouldn't that be per animal vicious animal.

Mr. Fortier said it is per vicious and they are only allowed 1.

The lady said then they aren't in compliance then.

Mrs. Gregor said they have a million dollar policy.

Mr. Holtz said you 9 dogs and you are going to get rid of 4 so that leaves you with 5.

Mr. Hathorne said we have 2 that is sick

Mr. Holtz said you are going to move out so you will leave them with 4 or does that leave them with 3.

Mr. Hathorne said I have my own dog.

Mrs. Hathorne said I have my French dog.

Joshua said that he has his own 2 dogs and they are worth around \$10 or \$10,000.00 a piece. They are coming with me.

Mr. Holtz said where are they right now.

Joshua replied they are at my mother's right now.

Mr. Holtz asked are they part of the 9

Mrs. Hathorne replied yes.

Mr. Holtz said so when you move out there leaving but that leaves you with what.

Mr. Hathorne replied 3 dogs.

Joshua said I am taking my 2 dogs.

Mr. Hathorne said we are keeping the one that is real sick.

Mr. Holtz said how close are you to getting rid of the 4.

Mr. Hathorne said we were hoping they would be gone before we came here but nobody came to pick their dogs up yet so we are waiting for people to pick them up.

Mr. Holtz said to Joshua you are moving out in December.

Joshua said in December or early January.

Chairman Minchuk asked any other questions. I need a motion

Mr. Holtz said no matter what we do it stills goes to the town right.

Mr. Fortier said Mr. Chairman in view of the strong opposition from the surrounding community I make a motion that we deny the Variance of use for case **number Z31uV9-0915.**

Chairman Minchuk said do I have a second.

Mr. Bigelow seconded the motion.

Chairman Minchuk called for a roll call vote please.