

BZA - Minutes – November 14, 2006 Special Hearing 835

The Madison County Board of Zoning Appeals met on the above date at 1:00 P.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Bill Maxwell, John Randall, Jr., Mary Jane Baker, Shirley Aubrey and Bill Hobbs.

Members Absent: None.

Also Present: Michael Hershman, Executive Director, Judy King, Plan Reviewer, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

CURRENT BUSINESS

1. Roll call was taken and all members were present.

New Business

It was the consensus of the board to consolidate the following petitions as they are interrelated but vote on them separately. They are requesting relief of landscaping, street trees, sidewalk, buffer yards standards, and height requirements.

Three petitions had been previously withdrawn for public water, public sewer and the entrance.

Mr. Hershman said, staff has received proof of proper notification.

Mr. Hershman said, they are requesting a variance Petition #490 of the landscaping for interior planting, the parking lot and perimeter screening.

Petition 492 for relief of street trees. The ordinance requires a street tree for every four feet. They are requesting a variance for that requirement.

Petition #493 for relief of sidewalk requirement. They do not want to put in sidewalks.

Petition #495 is buffer yard requirements.

Petition #496 is relief of the height requirements. The tall structure they have is 136.5 feet, another structure is 120 feet and one is 100 feet. These do not meet the zoning ordinance Section 6.5. and Section 2.3.

It was the consensus of the board to hear all petitions at one time but vote on them separately.

Brian Minish, Vice President, Broin Company, South Dakota and Shane Andersen, Project Engineer were present representing this petition.

Mr. Minish said, we are in a rural setting. There are some residences on the east side. Some of the buffering requirements, the needs for sidewalks --- we are going to leave a considerable number of existing trees in place on the property that will buffer a lot of areas. Because we are leaving some of these there we are not going to have some within and around the site. We probably will have some around the office area.

We also were talking about to and from the parking lot and island. We are going to be leaving all the trees that would be in here and all the trees that would be over here. We are leaving a lot

of the original vegetation. Instead of having islands in there that require trees and so forth we would like to have the exemption from that and allow these to be our trees outside. We will landscape around the office building and around the entrance.

Mr. Shine said, if this board would approve such a broad request you must be specific then as to what you are requiring.

Mr. Hobbs said, something we have done in the past on some subdivisions and subdivision ordinances is, we have particularly on sidewalks, relieved those but, we have relieved those with the stipulation that in the event anything else should develop out there then they would be required to have set aside enough to be able to follow those ordinances through.

Mrs. Aubrey said, you have 11 on the berm and it looks like 11 on the other side of the berm. Is that what you anticipate?

Mr. Andersen said, we are proposing a four foot berm along 1300N and then the berm would quit in this area here just for site safety issues on the intersection. But, the whole area would have six foot high spaced every 30 foot on center trees on top of that four-foot berm. All along 1300N and then the berm would quit right at the intersection but the trees would continue to wrap around to 100E.

This is typical of the sign that we use. The emblem might change a little bit but yes that's the nature of the size and so on. The landscaping is also typical of what we use.

Mr. Maxwell said, down here where the wetland is I noticed the trees did not go across that. Can you not buffer that?

Mr. Andersen said, since it is the wetland areas so we have to mitigate anything you take out of the wetlands and the water table is actually pretty high right along there so I don't know if you have to put the berm up or put it some where else.

This area your asking could we put the trees all away across the wetland areas --- we want to preserve the wetland area and that's why we didn't put trees across there.

Mr. Maxwell said, up on road 100E, I see on these that it has the same tree spacings, are you going to ask relief from that too?

Mr. Andersen said, we are going to bring the trees up to about this point. The trees will be 30 feet on center. They will probably over 20 feet in diameter and approximately six feet high when fully grown. They are the big evergreens.

Mr. Maxwell said, Petition #492, that's relief of street trees, now that would be where you're talking about street trees?

Mr. Andersen said, around the rest of the property here. Around the whole perimeter. We will put in sidewalks and berms in the administrative building area and have a paved parking lot.

Mr. Maxwell said, the buffer yard standards requirements are that just the berm around the outside perimeter?

Mr. Shine said, they are asking for a clearance from all these standards. There is no proposing. If you look at our ordinance we have one to two pages of requirements, buffer yards is one of those things that has to be grass and has to be mowed, it's got to be maintained. We've got part of this that is wooded. I would be remiss in my responsibilities to the board to recommend that you

give them a variance on all these standards. Now if they've got certain standards under here I need a number trees, the location of the trees, where they be diagonal --- they talk about trees in here are supposed to be placed, irregularly spaced and be designed to appear of a natural landscape. They are talking about 30 feet from center all the way down. If you want to give a variance of that or if you just go ahead and grant them a variance, I don't know what to tell you how it could be enforced or maintained or inspected. If you grant a variance of that there wouldn't have to be any.

Then I also mentioned the height. That maybe one of the most important aspects. I was of the opinion that they were going to give us specific heights that they wanted. We require 30 or 40 feet. They just want a complete variance from the height. If you give them a complete variance they can o 250 feet. Normally on any height we have always required, if they want a variance of 102 feet because we're going to put a 142-foot tower. Now, I know this is a little late but at least they are asking for ---- from these standards and there are just some questions that I need to take a look at on hole bearings. I don't think that's what their intent is. They said in their hand out that they want a whole variance from the standard issue questions.

Mr. Andersen said, I think 150 will be sufficient on the height bases. We want 150 feet max and there's already 40 granted so the variance relief would be 110 feet max. That would cover the accessory structures as well.

The board then went back to Petition #490.

1. Petition #490 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of landscaping requirements. This property is zoned GI and is located on the northwest corner of Co. Rd. 1300N and Co. Rd. 100E in Monroe Twp. and containing 235 acres, more or less.

Mr. Hershman informed the board staff did receive proper notification.

Mr. Hershman said, fields with scattered houses characterize the surrounding area. The site is field.

The applicant is requesting 7 additional variances. Section 6.26 Landscaping Standards of the Zoning Ordinance does require interior plantings plus parking lot landscaping and perimeter screening.

They are seeking variances of all those requirements.

Mr. Hobbs said, as I understand that what we're really giving them relief of is the total landscaping of the total project that they are still intent on doing landscaping around the administration building. They are also submitting a boundary-landscaping plan with some interior plantings in lieu of the landscaping requirements of our ordinance.

Robert Lewis, 451 E 1300N.

Mr. Lewis said, I live on the southwest corner of the bottom property they propose to buy. That berm will be directly in front of my house. I would like to know if that berm is going to be

purely a dirt berm, is it going to be seeded and maintained as far as being mowed? I really don't have a desire to look at dirt. I would like to know how that will be cared for.

Mr. Andersen said, that will be seeded and maintained.

Danny Brown, 2160 E 1250N.

Mr. Brown said, these people are asking for exceptions for everything and how could you let them place trees every 30-foot. There should be twice that many trees. That will never cut the noise down and besides that how long will it take them to get big enough to do that?

Mr. Shine said, they will be two and a half inches in diameter and measured in six inches in the refall. Evergreen trees shall be six feet in height and the time of planting and measured at the base of the root ball and shrubs shall be 12 inches in height.

Mr. Brown said, all this does not fit in a normal criteria. Thirty foot is not enough.

Mr. Hobbs said, is there a reason you don't feel it's necessary or should continue this berm and plantings up to the entry on co. Rd. 100E and then extend beyond that entry on to the end of where the planting is?

Mr. Minish said, the reason for the trees along there was for the sound barrier and a visual barrier for the residences as there are homes on each side. There are no homes on the north side.

If this is a request we would be glad to accommodate.

We do have a retention and the drainage goes before the Drainage Board.

Ron Fowler, Attorney for the Parkers was present.

Mr. Fowler said, the Parkers property is across the street just to the southeast. What these folks want you to do is the away the only thing that is left for these people to protect any value of their property. By varying the landscaping, varying the trees they are destroying these peoples property.

These things are designed to protect the values of the surrounding people. By varying them all away you have totally undressed our property. I don't know the significant of a four-foot berm versus a 25-foot berm. The trees they are going to place will be of some benefit to the people on the south side and by taking away all these variances your taking away all their protection. Several people in the area are going to lose some of their value of their property. We need a solution for that. By giving more variances you are just making the problem worse. Why take a way the last thing they have to protect them.

Ms. Baker said, I believe what we are asking these people to do is in addition to what the county ordinance already stipulates.

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Mr. Hobbs said, we are talking about an industrial use and not a subdivision and I don't see the intelligence of trying to enforce a landscaping plan on an industrial site the same as we would a subdivision so I am more concerned about this berm area. What are our standards on that?

Mr. Hershman said, the standards are on page 100 of the ordinance book. They are asking 30 feet instead of 25 feet so that's only a difference of five feet.

Mr. Minish said, we would agree to place the trees 25 feet apart instead of 30 feet.

Rob Keesling, 13849 N 200E, Alexandria,

Mr. Keesling said, when I asked for a variance back in 99 some of you folks came out and looked at it and I was required by the ordinance to put up either a privacy fence or put six foot trees. I had to do this. It was stated to me that was to protect the interest of people who own the neighboring grounds so they wouldn't have to look at anything and the noise control. I would ask that you would hold these people to the same standards as was placed on me.

I think it's silly that they are spending so much money to come in here and then are trying to ask for a variance to comply with the laws and spend a little extra to make it right. We don't want it and we don't want to look at it.

Mr. Hershman said, for Mr. Fowler submitted an objection for the BZA. Mr. Fowler has filed an objection and an appearance.

Rick Wood, 100E and 1150N.

Mr. Wood said, I am also concerned with the spacing of the trees. How many years is going to take for them to fill in? And what kind of trees are they planting?

Mr. Wood was informed conditions could be placed on their variance.

Ms. Baker asked if there was anyone else would like to speak. There was no response.

Ms. Baker said, then I would ask for a motion.

Mr. Maxwell said, I would make a motion approve Petition #490 for the landscaping around the building as presented to us and they will leave the wooded area there that exist now except for the wooded that is proposed for their site than is shown here.

I don't think that will be it would not be injurious to public health, safety and general welfare of the public.

It will not reduce the value of the adjacent properties and it would somewhat met the ordinance as far as landscaping needed.

Mr. Hobbs seconded the motion.

The vote was unanimous in favor of the motion.

Petition #490 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of landscaping requirements was approved.

2. Petition #492 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of street trees requirement. This property is zoned GI and is located on the northwest corner of Co. Rd. 1300N and Co. Rd. 100E in Monroe Twp. and containing 235 acres, more or less.

Mr. Hershman read the following: Public Improvement Standards (PI) 6.22 F,

Street Trees: All developments shall be required to provide street trees within the right-of-way.

- a. One street tree shall be planted for every 40 feet of road frontage.
- b. All street trees shall be a minimum of 2-1/2 inch calliper as measured consistent with the American Nursery Standards Institute (ANSI) at the time of planting and shall be of a species listed as an approved street tree in the Madison County Subdivision Control Ordinance.
- c. No tree may be planted so that its center is closer than 2 feet to a sidewalk or curb, or edge of pavement if no curbs are present. No tree shall be plated within 25 feet of the intersection of two street rights-of-way, or within 10 feet of the intersection of a street and an entrance driveway. No tree shall be planted within 10 feet of any fire hydrant or 5 lateral feet of any underground utility service.

Mr. Maxwell said, if I read that right the streets really go back to the buffer trees. So, we need to break that down and relief of street trees and not the buffer on the outer roads. The road issues are on Petition #495.

Ted Smith, Attorney was present.

Mr. Smith said, we don't have any problems. We understand this is a variance for internal park trees and if you want to add to granting this variance that we are going to put up a perimeter of trees as discussed that's fine with us. Along 1300 --- I don't want there to be any mistake we are going to put those buffers up.

This variance is simply for relief of trees within the project.

Mr. Hobbs said, I make a motion to approve Petition #492 based on the Findings of Fact. The public safety, health and welfare will be unaffected by the approval. The greater impact of use and value of adjacent property made by the Ethanol plant its self and not just the variance and the surrounding are is rural in nature. Strict application of the ordinance would add additional cost to the project.

Mr. Maxwell seconded the motion.

The vote was unanimous in favor of the motion. **Petition #492 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of street trees requirement was approved.**

3. **Petition #493 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of sidewalk requirements.** This property is zoned GI and is located on the northwest corner of Co. Rd. 1300N and Co. Rd. 100E in Monroe Twp. and containing 235 acres, more or less.

Mr. Shine said, that is specifically paragraph 6.22 D and refers only to public streets and not the interior streets.

Mr. Maxwell said, we've done this before, certain businesses in an area that was required to have the sidewalks because there was no other development and the nature of the business is was not required --- it seems like that we put conditions on that, if this area ever built up to where -- if there was a subdivision put on the north side of this or restaurant, or motel or anything else that was required to have a sidewalk, would they be required to ruin it down to the corner? If we give them the relief now?

Mr. Hobbs said, we have always done that.

No one from the audience had any question on this petition.

Mr. Hobbs said, I make a motion that we approve Petition #493 based on the Findings of Fact. The general health, safety and welfare should be unaffected by the approval. The absence of a sidewalk should not affect the surrounding area and the surrounding area is rural in nature. Strict application of this ordinance would add additional cost to the project without any benefit but I would also like to put a stipulation on. In the event that the area would develop around it they would be required to then install the sidewalks at a later date.

Mr. Maxwell seconded the motion.

The vote was unanimous in favor of the motion. **Petition #493 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of sidewalk requirements was approved.**

4. **Petition #495 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of buffer yard standards requirements.** This property is zoned GI and is located on the northwest corner of Co. Rd. 1300N and Co. Rd. 100E in Monroe Twp. and containing 235 acres, more or less.

Mr. Hershman said, what the applicant would be required in 6.7, they would be required a buffer type 2. That is per the matrix established on page 100. What they are asking is the buffer along the streets on 1300N and 100E. But as per the ordinance they would be required to buffer along the railroad right of way zone and the railroad tracks.

That's what they are asking a variance of and some of the buffering along 300N and 100E.

Mr. Flower asked, how far back is the berm and buffer ---

Mr. Hobbs said, it has a 35-foot front yard setback to the center of it.

Mr. Minish said, a lot of this is contingent on what happens on 1300 of course but right now we show just inside of the right of way. Inside on our property. Thirty-five foot front yard setback so in other words we're giving that 35-foot front back. Thirty foot is from the center of the road is the right of way and they are five foot beyond the right of way. The trees would be further back than that.

Mr. Hobbs said, I could live with the 30-foot spacing. We could increase that. But, I sure would like to see them run that on past the end of the project. Because as I understand from looking at the diagram that they had up there that would run up all the way to the woods which I don't think the people up there could ask for better coverage than what they have at that point. With the exception of the entrance 50 to 100 feet whatever they want setbacks on either side of that, I just think it would really be ---

Julie Davidson said, I was wondering if they would be willing to let us know where they intend to move these poles. Let us know where the hammer mills are and I would appreciate if they would put them on the west side of the plant.

Everyone was informed that has nothing to do with this request.

Mrs. Davidson said, I would also like to say I think there is a conflict of interest here today with this board. I believe there are some members who have some indirect or direct financial interest in the out come of these variances.

Mr. Hobbs said, I would like to make a motion to approve Petition #495 with the stipulation that the perimeter or the buffer tree the buffered area that surrounds the property be extended to the very north end of the plant leaving a -- to the wooded area -- leaving an area between what they make as their proper driveway. The Findings of Fact. The community safety, health, welfare would be unaffected by the approval. The greater impact of the use and value of the adjacent property will be made by the ethanol plant its self not by the change of this variance of this ordinance. And the surrounding area is rural in nature and strict application to this ordinance would add additional cost to the project without any benefit. My motion is also to include the berm.

Mrs. Aubrey seconded the motion.

The vote was unanimous was unanimous in favor of the motion. **Petition #495 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of buffer yard standards requirements was approved.**

4. **Petition #496 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of height requirements.** This property is zoned GI and is located on the northwest corner of Co. Rd. 1300N and Co. Rd. 100E in Monroe Twp. and containing 235 acres, more or less.

Mr. Shine said, this is Section 6.5.

Robert Lewis, 451 E 1300N.

Mr. Lewis said, about three and half miles south of us there is an airport. There are a lot of low flying aircraft in the area. That is also an area that entertains ultra light flyers. Will these buildings be properly marked?

The reply was yes.

Mrs. Aubrey said, I move to approve Petition #496 for a variance of height requirements for relief of 110 feet and not to exceed 150 feet maximum. Approval will not be injurious to public health, safety and welfare and none of the structures should be affected by flight patterns. The adjacent property would not be affected by the variance and the greater impact would be by the plant its self. Strict application of zoning ordinance would not result in any difficulties.

Mr. Hobbs seconded the motion.

The vote was unanimous in favor of the motion. **Petition #496 of Max Bingham, landowner, and Ultimate Ethanol, LLC for a variance for relief of height requirements was approved.**

It was the consensus of the board not to have a December meeting, as some of the members would not be present so there would not be a quorum.

It was the consensus of the board to adjourn.

Adjournment: 2:41:14 P.M.

Mary Jane Baker, Chairman

Beverly Guignet, Secretary