

**CITY OF FISHERS
BOARD OF ZONING APPEALS - FALL CREEK DIVISION
CITY HALL AUDITORIUM
MINUTES
October 28, 2021**

The Fall Creek Board of Zoning Appeals convened at 6:00 p.m.

A roll call was taken. Members present: Steve Richards, Chris Huck and Rich Bassett. Member not present: Joel Fenske. Others present: Rodney Retzner, Megan Vukusich, Ross Hilleary, Bre King, Tracy Gaynor, Kay Prange, Feng Feng Yin, Tim Haley, Pat McIlvenna, Mary McGahey, Lynn Seymour, Monte Chamberlain, Joshua Huser, Matt Price, Jay Bray, Curt Tappendorf, Kraig and Lauren Gallagher, Kelly and Taylor Williams, Jackie Sanner, John and Kim Flowers, Mike Morgan, Jeff Hern .

Mr. Richards confirmed quorum and called the meeting to order.

Public Hearings:

a. Case # VA-21-36 14985 Southeastern Pkwy

Consideration of a Use Variance from Sec 5.1.5 Permitted Use Table of the City of Fishers Unified Development Ordinance (UDO) for the husbandry of chickens on a residential lot zoned R2. Common address of 14985 Southeastern Pkwy, Fishers, IN 46037.

Mr. Yin, the property owner, presented the Variance request. He stated that he had received a noise complaint and removed a rooster. He wants to keep the chickens for his kids. There are currently 13.

Bre King, Planner II, presented the Staff Report. Staff is making no recommendation. The property is bordered by Heartland Church and two subdivisions. Chickens would be allowed on 5 acres zoned AGR. This property is just under 5 acres. A previous Variance allowing chickens was approved in the 8/21 BZA meeting. Mr. Retzner noted that each case is different and to avoid using precedent, and precedent does not have to be followed. It was noted that the previous approved BZA variance had overwhelming support and no remonstrations. If approved, conditions would be:

13 chickens only

No roosters

Waste removal to APA standards

Variance would go with the current property owner

Voluntary annexation if eligible

Vegetative buffer

Mr. Richards opened the Public Comment portion of the meeting.

Kraig Gallagher (14791 Daventry) – He is opposed. He also presented a petition signed by 19 residents to be entered into the record. Concerns:

Home value impact

Peace and quiet

Prone to flooding

Coop wear

Loose chickens

Some neighbors did not receive notice

100% of no buffer homeowners are opposed

Josh Huser (12863 Shakespeare Way) - He is opposed. It is contrary to the 2040 master Plan and could be a commercial endeavor.

Seeing no one else in the audience to speak, Mr. Richards closed the Public Hearing.

In Board member discussion, the following topics were discussed:

American Poultry Association (APA) standards

Maintaining the coop

The property was previously 5+ acres prior to the additional ROW taken. Yes, this was done prior to his ownership of the land.

Laying eggs

If variance is approved, there is a period of time to bring the property into compliance- generally 10 days?

Can chicken coop be moved away from residential? Yes- the current location of the chicken coop was located on map and Mr. Yin showed that it will be moved closer to the house in the back yard.

Mr. Yin is willing to screen and add 6- ft fencing on the north property line by residential.

The smell would be governed by General Health and Safety standards in the UDO.

Drainage would be looked at by Fishers Stormwater team.

Mr. Richards made a Motion to approve the variance with the following conditions:

The addition of a 6-ft wooden panel fence at northern property line- 4 -ft. at house

Professionally built coop would be rebuilt to APA guidelines no closer than current location, closer to the house and behind the house.

10 hen max

Waste removal to APA standards

The Variance would be recorded on the property and goes with the existing property owner

Agreed to voluntary annexation if eligible

Buffer to SE Pkwy.

Old coop disassembled

Mr. Bassett seconded the Motion. The Motion was approved, 3-0.

b. Case: # VA-21-19 Collect Towers Variance

Consideration of a variance of use and development standards of UDO Section 5.3.3 to provide for a telecommunications facility including a 199-foot-tall monopole structure (including lightning rod), and Section 5.1.5. to be located in an R2 district, approximately 28 feet from the east property line, and less than 500 feet from residences. Common address of 15348 Southeastern Parkway, Fishers, IN 46037.

Matt Price, with Dentons Bingham Greenebaum LLP, on behalf of Collect Towers, presented the Variance request for a monopole cell tower. The request is for a use variance and setback variance (25 ft fall zone). He is aware of remonstrations and clarified that the tower will not be lit or painted.

Ross Hilleary, Assistant Director of Planning and Zoning, outlined the Staff Report and addressed the future planned ROW at Florida Road and Cyntheanne. Staff has no recommendation for the Board. IF the Board decides to approve, the following Conditions are suggested:

***Voluntary Annexation (Landlord agrees)**

Variance letter recorded on the property

All site improvements are to be removed if the tower is decommissioned

Commitment to limit the height

**No paint, no light, galvanized steel
Treeline preservation**

Mr. Richards opened the meeting to Public Comment.

Tim Haley (15532 Malta Way)- He lives 980 feet away from the proposed tower. He is a former T-Mobil site manager. Encouraged to deny variance or many reasons- too tall, too close, health hazards, too close to schools.

Tim Morgan (15536 Malta Way)- Don't grant this variance. There are other sites for AT&T to pick at Heartland and St. John Vianni properties.

Monte Chamberlain (15284 Southeastern Parkway)- Move the tower site to his property.

John Flowers (15636 Malta Way)- don't grant this variance

Jeff Hern – (Hamilton County Councilor)- are they willing to be annexed? Rezone as commercial.

Mr. Richards closed the Public Comment portion of the meeting.

In Board discussion, the following topics were discussed:

Option to Re-zone for Commercial use

The ROW will make it a corner and a roundabout

Why is AT&T selecting this site? AT&T discussed the towers tenants, AT&T and First Net, which is first responders. There is a proposed diesel backup system. Matt Price reviewed the 2 church properties. At Heartland, it would take up needed parking space and at St. JV there were hydrology problems. He disagrees emphatically with the statement that there are concerns with building close to the school. He also disagrees with concerns about property values.

Tower height needs to be limited by a commitment.

Lifespan- we have no standards on tower decommission.

Future land map could be re-zoned commercial. Both Megan Vukusich and Rodney Retzner stated that this Board cannot make a zoning change.

Mr. Richards made a Motion to approve VA-21-19 with the Commitments listed above *. Mr. Bassett seconded. The Motion for the Use Variance and development standards variance was approved, 3-0.

c. **Case #VA-21-38 & #VA-21-40 Tolle Residential Conversion**

Consideration of two petitions related to the conversion of an existing residence into a chiropractic clinic. The clinic will operate 10 treatment rooms. A Variance of Land Use is being sought to permit the operation of a medical clinic within a residential (R2) zone. A Variance of Development Standards is being sought to permit for a reduced buffer yard of 10'. The subject site is generally located on 116th Street and east of John Street within the Fall Creek Heights subdivision. Common address of 13880 E. 116th Street, Fishers, IN 46037.

Jeff Hern, Hamilton County Councilor, presented the Variance. The Variance requested is to convert the house to a commercial chiropractic clinic. The house is adjacent to an existing retail area at 116th and Olio.

Jonah Butler, Planner II, presented the Staff Report and noted that the house abuts commercial and residential. Public comment includes 3 supporting, and 1 remonstrance. Staff recommends approval with the following Commitments:

Sidewalk

Light fixtures (residential lighting)

Signage not illuminated

3 treatment rooms

Voluntary annexation

Retain residential character of house

Mr. Richards opened the meeting to Public Comment.

Lynn Seymour (13928 E. 117th St.)- asked that the board vote no

Mr. Richards closed the Public Comment portion of the Meeting.

In Board discussion, the members asked if there was any long-term redevelopment potential for that area.

Mr. Richards made a Motion to approve VA-21-38 and VA-21-40, seconded by Mr. Bassett. The Motion was approved, 3-0.

As there was no other business, the meeting was adjourned at 8:48 p.m.

Respectfully Submitted by:

Kay Prange, Recording Secretary