



# CICERO / JACKSON TOWNSHIP BOARD OF ZONING APPEALS

## PETITIONERS:

**Koumbari, LLC (Prop. Owner); La Cascada/Edis Mejia (Tenant)**  
**Indiana Conference of Seventh Day Adventists**  
**Robert and Kristen Wanczyk**

## **BZA MEETING MINUTES**

**03/21/13**

**7:00 p.m.**

Chairman Art Hall called the Cicero/Jackson Township BZA meeting to order at 7:00pm and the members were present or absent as follows:

### ROLL CALL

**Present:** Chairman Art Hall  
Vice Chairman Stephen Zell  
Bruce Freeman-Secretary  
Dan Strong  
Paul Munoz-C/JT Plan Director  
Kelly Gunn-Recording Secretary  
Aaron Culp- Legal Counsel

**Absent:** Corey Sylvester

### 1. DECLARATION OF QUORUM:

Chairman Hall declared a quorum with 4 of 5 members being present.

### 2. APPROVAL OF MINUTES:

Stephen Zell made a motion to approve the meeting minutes from Feb. 13th, 2013. Bruce Freeman seconded the motion. All members present were in favor.

### 3. OLD BUSINESS:

**Docket #: BZA-0113-001-NC**

**Petitioner: Koumbari LLC (Property Owner)**  
**La Cascada/Edis Mejia (Tenant)**

**Property Address: 400 W. Jackson St.**  
**Cicero, IN 46034**

**150 W. JACKSON ST. P.O. Box 650 CICERO, IN 46034**  
**PHONE: 317-984-5845 FAX: 317-984-5938 WWW.CICEROIN.ORG**



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**Land Use Variance: To allow for a restaurant with alcohol in a Neighborhood Commercial "NC" District whereas the ordinances state that this is not a permitted use within the district.**

Alex Mejia, representative for La Cascada came forward and discussed his request to obtain an alcohol license from the State of Indiana for the restaurant's new location, 400 W. Jackson St. Mr. Mejia said they will not be transferring the license from the current location. Mr. Mejia discussed the fact that the new location will have a bar. Chairman Hall asked the Plan Director, Paul Munoz if alcohol will be allowed outdoors. Paul Munoz stated that because there is no outdoor seating ordinance in place that no alcohol is permitted outdoors. Paul Munoz stated that the petitioner's can come for a future variance once the outdoor seating ordinance is completed and adopted. Chairman Hall asked the petitioner if he would like to move forward with his variance request as only 4 out of 5 board members are present. Mr. Mejia stated that he would like to move forward. Bruce Freeman asked if carryout alcohol sales would be permitted. Mr. Mejia stated no. Stephen Zell asked if patrons would be allowed to purchase only alcohol, without having purchased a meal. Mr. Mejia answered yes. Chairman Hall asked the petitioner if there had ever been any alcohol related incidents at the previous location of the restaurant. Mr. Mejia answered no, and stated that they have never had to make a call to Law Enforcement for an alcohol related incident. There were no other questions or comments from the board members.

Bruce Freeman made a motion to open the Public Hearing. Stephen Zell seconded the motion. All members present were in favor. There were no comments from the public. Bruce Freeman made a motion to close the Public Hearing and Stephen Zell seconded the motion. All members present were in favor.

Dan Strong made a recommendation that the variance be tied to the owners' of the business specifically. Dan Strong asked if the petitioner if he has intentions to finish the sign. Mr. Mejia said that the sign will indeed be finished. There were no further questions or comments from the board members.

Dan Strong made a motion to approve the request with the condition that the use of alcohol on the premises is tied to the current owners and that Paul Munoz follow up with the petitioner to ensure that the sign is finished. Stephen Zell seconded the motion and all members present were in favor.

#### **4. NEW BUSINESS:**

**Docket #: BZA-0213-002-AG**

**Petitioner: Indiana Conference of Seventh-Day Adventists**

**Property Address: 24815 State Rd 19  
Cicero, IN 46034**

**Development Standards Variance: To allow the Indiana Academy to construct a monument sign whereas a monument sign is not currently allowed in an "AG" Agricultural District.**

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Lyle Litzenberger, the Assistant Principal of the Seventh Day Adventist School came forward to discuss their proposal. Mr. Litzenberger discussed the school's request for a new monument sign and the location where the sign would be located. The petitioner stated that the school believes that the current sign is not located in an area which really identifies the school well. Mr. Litzenberger stated that they would like to place the sign near the new entrance to the property. Dan Strong asked about the size of the sign and whether the dimensions and square footage given include the brick and entire structure of the sign. Discussion of this topic continued. Mr. Litzenberger stated that the brick was not included in the total square footage figure. Dan Strong asked about potential lighting for the sign. The petitioner stated that the lighting will be pointed at the sign directly and will not disrupt or distract traffic. Discussion about the location of the sign continued. There were no further questions or comments from the members of the board.

Stephen Zell made a motion to open the Public Hearing and Bruce Freeman seconded the motion. All members present were in favor. There were no comments from the public. Stephen Zell made a motion to close the Public Hearing and Bruce Freeman seconded the motion. All members present were in favor and the Public Hearing was closed.

Dan Strong asked Plan Director Paul Munoz if the sign was within the total square footage amount allowed within the ordinances. Paul Munoz stated that it met all criteria. Stephen Zell made a motion to approve the proposed sign with the condition that Paul Munoz reviews the lighting of the sign. Bruce Freeman seconded the motion. All members present were in favor.

**Docket #: BZA-0213-003-R1**

**Petitioner: Robert and Kristen Wanczyk**

**Property Address: 22121 Schulley Rd  
Cicero, IN 46034**

**Development Standards Variance: To allow for a 3<sup>rd</sup> accessory structure, pole barn, whereas the ordinance allows for a maximum of 2 accessory structures.**

**Docket #: BZA-0213-004-R1**

**Petitioner: Robert and Kristen Wanczyk**

**Property Address: 22121 Schulley Rd  
Cicero, IN 46034**

**Development Standards Variance: To allow for an accessory structure to be 68% of the finished floor area of the primary structure whereas the ordinance states that the accessory structure may not exceed 65% of the finished floor area of the primary structure.**



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**Docket #: BZA-0213-005-R1**

**Petitioner: Robert and Kristen Wanczyk**

**Property Address: 22121 Schulley Rd  
Cicero, IN 46034**

**Development Standards Variance: To allow for a fence located in the front yard of the primary structure to be four (4) feet in height whereas the ordinance states that a fence located in the front yard may not exceed three (3) feet in height.**

**Docket #: BZA-0213-006-R1**

**Petitioner: Robert and Kristen Wanczyk**

**Property Address: 22121 Schulley Rd  
Cicero, IN 46034**

**Development Standards Variance: To allow for a 4<sup>th</sup> accessory structure, run in shed, whereas the ordinance allows for a maximum of two accessory structures.**

Mr. Wanczyk came forward to discuss his proposed plans for the property located at 22121 Schulley Rd. Mr. Wanczyk stated that he would like a fence to keep the animals they currently have in and to keep predators out of the property. The board discussed the ordinance requirements for various types of animals. Mr. Wanczyk stated that he was planning for the future in regards to his proposals as they would like to obtain more animals.

Mr. Wanczyk stated that the pole barn is a necessity as well as the run in shed for the animals that they would like to obtain in the future. Mr. Wanczyk also stated that the pole barn would allow them extra space to store the items and machinery necessary to maintain their property. Paul Munoz discussed the allotted acreage per type of animal as well as what is permitted in an R1 district, including hobby farming. Chairman Hall read the definition of hobby farming that is located within the ordinances for the record. Stephen Zell asked about the petitioner's request to have 3 years to complete these projects instead of the 2 years allowed. Mr. Wanczyk stated that this request is due to financial constraints that will not allow them to complete everything at once and that he believes 3 years is a reasonable time period. Chairman Hall discussed the Findings of Fact that each board member must rule on so that the petitioner was clear on the criteria that they have to consider. Stephen Zell discussed the letter from the petitioner's to Plan Director Paul Munoz in reference to boarding animals and discussion on this topic took place. Stephen Zell asked the petitioner's if they planned on boarding animals as a side business. Mr. Wanczyk stated not necessarily, but discussion had occurred about the possibility of doing so to offset their costs for the project. Chairman Hall stated that a business is not permitted to be run on the property and he explained the ordinance to the petitioner. Stephen Zell asked about the community garden that the petitioner's discussed in their letter and asked them to explain that. Kristen Wanczyk discussed that they sell produce to the Noblesville Farmer's Market. Mrs.



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Wanczyk continued to discuss their involvement with the Noblesville Farmer's Market. Dan Strong asked about the proposed barn height. Mr. Wanczyk stated that it would be less than 20 feet. Dan Strong discussed the attachment that would be added to any motion that there would be no living quarters contained within the accessory structure. Dan Strong asked what the fence would be categorized as, and Paul Munoz stated that it would be considered an agricultural fence. Chairman Hall asked if an agricultural fence is permitted in an R1 district. Paul Munoz stated yes and that the height is what actually requires the variance. Discussion of the proposed fence material took place. Chairman Hall asked about the number of accessory structures currently on the property. Mr. Wanczyk stated that he currently has 2, a shed and a greenhouse. Chairman Hall asked if the petitioner's had considered taking down the current structures so that 2 variances would not be necessary. The petitioner's stated that they had not considered that as both current structures are used. Stephen Zell asked about the petitioner's letter and how their operation would benefit the community. Mrs. Wanczyk discussed the great feedback that they have received from neighbors and discussed their goals as a hobby farm. Mrs. Wanczyk discussed that she does give her eggs to neighbors and family but understands that she cannot sell them. Mr. Wanczyk stated that all of their vegetables are organic and that the run off of pesticides into the reservoir is not an issue. Chairman Hall asked where the animals would be penned. The petitioner stated that they would be penned at the rear of the property where the barn would be located. Dan Strong asked if both buildings will be architecturally similar. The petitioner discussed his plans and the barn materials and aesthetics that have been discussed. Stephen Zell stated that he would like to have the materials and aesthetics narrowed down. The petitioner stated that they would like to use wood or T1-11 and that they do not want to do a metal barn. Discussion continued on the materials and what would be used for the barn. Bruce Freeman asked about the size of the barn and discussion continued. Dan Strong asked about the dimensions of the barn and the petitioner stated it would be 42' x 42'. There were no further questions from the board.

Bruce Freeman made a motion to open the Public Hearing. Stephen Zell seconded the motion. All members present were in favor, and the Public Hearing was opened.

Tony Jensen  
111 Royal Pine Ln.  
Forest Bay Subdivision

Mr. Jensen discussed the history of the subdivision and previous issues in the past. Mr. Jensen stated that he would like to see whatever is approved to be abided by and enforced. Mr. Jensen stated that the petitioner's have more than 2 accessory structures on the property currently. Mr. Jensen does not want to farm land as he lives in an upscale housing development.

Shelly Gerhart  
6850 Sweetgrass Ln.  
Calumet Farms Subdivision

Ms. Gerhart discussed similar concerns that Mr. Jensen brought up. Ms. Gerhart discussed the Covenants and Restrictions of her neighborhood. Ms. Gerhart discussed the square footage of the petitioner's home and



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the previous meeting that was scheduled and subsequently canceled in the past. Ms. Gerhart stated that she and several neighbors were unaware of the rescheduled meeting and the structure was granted. Chairman Hall informed Ms. Gerhart that the board does not have the power to enforce Covenants and Restrictions in particular neighborhoods.

James Simpkins  
6845 Sweetgrass Ln.  
Calumet Farms Subdivision

Mr. Simpkins stated that his home and property back up to the petitioner's property. Mr. Simpkins stated that the smell coming from the petitioner's property is horrible and that he can look out a window of his home and see farming equipment and "stuff" everywhere. Mr. Simpkins stated that if the barn is approved, he would like to see all of the outdoor storage items moved indoors. Mr. Simpkins stated that he believes that the surrounding property values are going down and being affected by the petitioner's property. Dan Strong asked Mr. Simpkins what kind of "stuff" is stored outdoors. Mr. Simpkins stated that there are a tractor, boat, roadside produce stand, and a camper on the property currently.

John Gerhart  
6850 Sweetgrass Ln.  
Calumet Farms Subdivision

Mr. Gerhart stated that he purchased an expensive lot, and built a very nice home on it and that he would like to keep his property value and the values of the surrounding homes up. Mr. Gerhart stated that he has a problem with animals being on the property and is concerned with how the number of animals on site would be enforced. Mr. Gerhart stated that his side of the road is not farmland and it is an upscale neighborhood.

Don Robinson  
103 Royal Pine Ln.  
Forest Bay Subdivision

Mr. Robinson stated that if the petitioner's put the structures in the rear of their property that is the back of the Forest Bay Subdivision. Mr. Robinson wants the board to consider this.

Keith Condra  
101 Royal Pine Ln.  
Forest Bay Subdivision

Mr. Condra echoed many of the same concerns at the previous members of the public. He is concerned about the surrounding property values. There is a 3<sup>rd</sup> structure on the property, a roadside stand and they have run a business out of that structure.



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There were no other comments from the public. Stephen Zell made a motion to close the Public Hearing. Bruce Freeman seconded the motion. All members present were in favor and the Public Hearing was closed.

Chairman Hall asked the petitioners' if they had any final comments. Mr. Wanczyk began to discuss the size of his home. Chairman Hall stated that the size of their home was ruled on in the past and that it will have no bearing on tonight's decision. Mr. Wanczyk stated that the purpose of the barn will be to store the tractor, farming supplies and supplies for upkeep of the property. Mr. Wanczyk stated that he doesn't see how the proposed structures will affect surrounding property values in anyway. Mrs. Wanczyk said that the long term goal was to build a barn and their hobby farming has never been intended to be used as a primary source of income. Mrs. Wanczyk stated that their camper will be parked next to the pole barn and that the boat on their property is not theirs. It is being temporarily stored there. Mrs. Wanczyk stated that they will be adding trees and shrubs for privacy. Mr. Wanczyk added that the barn will be blocked by already existing 20 foot tall Evergreen trees. Mr. Wanczyk stated that one of their neighbors brought up the idea of the petitioners' boarding an animal for them but it was never intended to be a source of income. Chairman Hall stated that a business is not permitted to be run on the property. Mrs. Wanczyk stated that the reason why they filed for the number of variances that they did was in interest of saving them time and money. Legal Counsel Aaron Culp discussed the fact that the board cannot enforce Restrictive Covenants as it is a private agreement between private individuals. Aaron Culp stated that only a court can enforce those. Aaron Culp also stated that the petitioner's have the right in the R1 district to operate a hobby farm. Paul Munoz discussed how he handles the filing of a variance and how he suggests to petitioner's to think far enough ahead in regards to planning so that they can file for everything at once to save them time and money. Chairman Hall stated that he believes that is the right way to serve the public. Mrs. Wanczyk stated that their goal overall is to leave something of value to their children and that they cannot possibly run a full time farming operation when she and her husband both have 2 full time jobs. Dan Strong asked about the produce stand and if it is on site. Petitioner's discussed the produce stand and that it was intended to use at the Farmer's Market, but it was not permitted. Mr. Wanczyk stated that they had sold produce from the stand on their property, but they were unaware that it was not permitted. Since they have been notified that it was not permitted, they have not done so since. Dan Strong asked about how many animals they are planning on in the future and what the need for the run in shed is. Mr. Wanczyk stated that even if they only have one animal, he believes that shelter from inclement weather is necessary if the petitioners' are not home to let them in the barn. Discussion continued on the run in shed. Stephen Zell said that he has several concerns with this proposal due to this home being located in an R1 district. There were no further comments or questions.

BZA-002-003-R1 (3<sup>rd</sup> Acc. Structure variance)

Paul Munoz asked that the board members clarify in the motion that this is in reference to the Pole Barn. Aaron Culp recommended that the motion also include no commercial business on the property. Dan Strong also added that it should be attached that no living quarters be in the structure. Dan Strong made a motion to approve the request with the added commitments that there would be no living quarters and no commercial business to be run on the property. Stephen Zell seconded the motion. Dan Strong, Bruce Freeman and Steve Zell all voted yes. Chairman Hall voted no. Variance request passed 3-1.





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BZA-0213-004-R1 (Variation in size for Pole Barn)

Dan Strong made a motion to approve the motion with the added commitment that no business will be operated on the property. Stephen Zell seconded the motion. All members present in favor. Variance request granted.

BZA-0213-005-R1 (Fence)

Dan Strong stated that he does not see a need for this variance. Dan Strong made a motion to approve the variance as presented. Stephen Zell seconded the motion. All members present voted against this motion. Variance request denied.

BZA-0213-006-R1 (Run in shed as 4<sup>th</sup> Acc. Structure)

Dan Strong made a motion to approve the request with the added commitment that no business shall be operated on the property. All members present voted against this motion. Variance request denied.

Chairman Hall reiterated that no business shall be operated on the property and that the petitioner's may not have any more animals than what is allowed per the ordinances. Legal Counsel Aaron Culp responded in regards to the previous question about the enforcement of number of animals on the property. Aaron Culp stated that Paul Munoz cannot be everywhere all the time, but if a complaint is reported, he does act on them. Aaron Culp spoke to the petitioners' and stated that he would like them to understand that their neighbors who came and spoke tonight are concerned about the aesthetics of the properties and neighborhood as well as their property values. They do not have malicious intent and the board has to rule on narrow constraints and statutes. Chairman Hall asked about the screening of storage in an R1 district. Paul Munoz stated that this is not listed directly in the ordinances.

## **5. PLAN DIRECTOR'S REPORT**

Paul Munoz discussed the Comprehensive Plan and gave an update to the board. Paul Munoz discussed the county-wide EDC meeting that he attended. Paul stated that the next quarterly meeting will be held here in Cicero. Paul stated that this meeting will occur around the same time as the first draft of the Comprehensive Plan is completed and that he will be looking to the city and county officials present at the meeting to give their input on the Plan. Discussion of this topic continued.

Paul Munoz discussed the proposed Greenways Plan for the Town of Cicero. Paul gave a brief update on this topic to the board and explained the reasons why it would be beneficial to implement the plan. Paul stated that he has been in discussion with the Hamilton County Convention and Visitor's Bureau about ideas and upcoming events for the Town of Cicero, and that they are very excited about what has been proposed. Paul discussed the Stellar Communities grant and stated that he would like to put together a Steering Committee to see if this would be a viable option to pursue.





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Paul Munoz discussed the new vehicle that was purchased for his department. Paul discussed that the money was already in the budget to purchase the vehicle and that it is a retired Fishers Police Department vehicle.

Paul Munoz discussed the sign ordinances and his desire to update these after the new Comprehensive Plan is adopted. Paul discussed the need for this as there are some discrepancies and unclear language in the current sign ordinances. Dan Strong asked Paul if he is taking note of discrepancies that have been brought to his attention, and Paul answered yes.

## **6. CHAIRMAN'S REPORT:**

NONE

## **7. LEGAL COUNSEL REPORT:**

Aaron Culp discussed the US Bikeways project and its proposed location. Mr. Culp stated that the Town Council has signed endorsed the Town of Cicero's participation in the trails. Discussion of this topic continued.

## **8. PUBLIC COMMENT:**

NONE

## **9. BOARD MEMBERS COMMENTS:**

Stephen Zell stated that with the technology that is evolving daily in the area of lighting for signs, that the board should take a look at including some changes involving foot candles from LED's/Halogen lights in the updated ordinances. Paul Munoz discussed the difficulty in enforcing something like that his department does not currently have a light meter. Discussion of this topic continued.

## **11. NEXT MEETING:**

**April 18<sup>th</sup>, 2013 at 7:00 p.m.**

## **12. ADJOURNMENT:**

Bruce Freeman made the motion to adjourn and Stephen Zell seconded the motion. All members present were in favor and the meeting was adjourned at 8:37 pm.



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Signatures:

\_\_\_\_\_  
Art Hall-2013 Chairman

\_\_\_\_\_  
Stephen Zell-2013 Vice-Chairman

\_\_\_\_\_  
Bruce Freeman-2013 Secretary

\_\_\_\_\_  
Kelly E. Gunn- Recording Secretary

\_\_\_\_\_  
Date