



STATE OF INDIANA

BEFORE THE DEPARTMENT OF HOMELAND SECURITY
FIRE PREVENTION AND BUILDING SAFETY COMMISSION

IN RE AN APPLICATION FOR A
VARIANCE FROM THE REQUIRED
SEPARATION DISTANCE FOR AN
EXISTING UNDERGROUND LIQUID
PROPANE TANK.

ERIC R. ERWIN and
JOYCE L. ERWIN, Applicants.

Variance ID No. 19050

Administrative Cause No.
DHS-1903-FPBSC-003

**OBJECTION TO ADMINISTRATIVE LAW
JUDGE'S RECOMMENDED, NON-FINAL ORDER**

Come now adversely affected parties, Benjamin F. Russell and Lisa Ramsey-Russell (hereinafter referred to as the "Russells"), and respectfully object to the recommended, non-final order issued by Administrative Law Judge Brian L. Parke (the "ALJ) on October 25, 2019 (the "Order"), in favor of petitioners, Eric R. Erwin and Joyce L. Erwin (the "Erwins"), on the following grounds:

1. The Order acknowledges that Variance No. 18-10-27 (the "First Variance") was revoked by the Commission at its meeting on January 3, 2019. [*Order pp. 4-5*].
2. The First Variance was thereafter a legal nullity.
3. The ALJ nonetheless cites the Commission's initial grant of the First Variance in support of the ALJ's "technical" finding that the underground propane tank is safe as-is. [*Order pp. 13-14*].
4. The determination of whether the location of the Erwins underground LP tank in violation of Section 3.2.2.2 of the NFPA 58 (2001) should properly be determined based solely on

the record of the Commission's consideration and denial of Variance No. 19-02-16 (the "Second Variance" at its meeting on February 5, 2019. [*Order p. 5*].

5. The Order goes on to find requiring the Erwins to remove the tank constitutes an "undue hardship", regardless of whether the cost of removal would be the \$1,500.00 estimate the Russells obtained from a propane distributor as testified to during the proceedings on the revocation of the First Variance,¹ or the cost estimate of \$5,986.95 for removal and relocation of the underground LP tank submitted by the Erwins during consideration of the Second Variance. [*Order pp. 5, 10-11*].

6. The ALJ reaches this conclusion without referencing the \$80,000.00 cost that the Erwins admittedly expended in constructing the detached garage that caused the violation of NFPA 58 that resulted in the necessity of the variance.

7. It the comparison of the estimated cost of removal to the Erwins' investment in the detached garage that should properly determine whether it results in an undue burden, and the Commission has previously rejected the Erwins' arguments regarding this issue.

8. The Erwins' financial investment in the detached garage presumably has continued to increase, as since the denial of the Second Variance, the Russells have personally observed significant improvements being made within the detached garage by contractors obtained by the Erwins, including without limitation, cabinetry and plumbing materials delivered to the site.

9. This continuing construction work casts significant doubt on the representations made in the Erwins' Second Variance application that (i) "1. The garage does not have any exterior equipment posing an ignition hazard, nor any air intakes or other hazards illustrated by NLP 58 Appendix – see attached.", and (ii) "3. Based upon proximity to a normally unoccupied structure

¹ The Order ignores that this propane distributor subsequently increased his estimate to approximately \$3,400.

and lack of specific hazard addressed by the code, the lack of 10 feet of separation will not be adverse to safety.”, made in support of the statement required by 675 IAC 12-5-5(7)(A) that the variance application to demonstrate that “[n]oncompliance with the rule will not be adverse to the public health, safety, or welfare”.

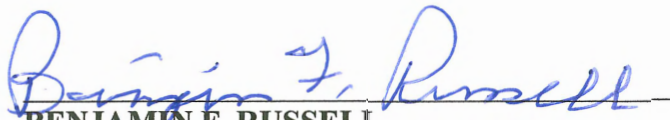
10. In his summary judgement argument, counsel for the Commission, Justin K. Guedel, observed that the window in the Erwins’ garage immediately adjacent to the underground LP tank is an air intake source that further increases the safety risk to the Russells and their home. This fact was ignored by the ALJ.

11. Furthermore, if this objection is placed on the agenda of a subsequent Commission meeting, it would be the intent of the Russells to appear and present evidence regarding the frequency at which numerous positive readings for propane gas have been obtained from a meter purchased by the Russells that they maintain on their front porch at the location of their house closest to the underground LP tank.

12. Based on the foregoing, the Russells respectfully request the Commission to place the Order and this objection on the agenda of a subsequent Commission meeting, and subsequently issue a final order affirming the denial of the Second Variance.

WHEREFORE, petitioners, Benjamin F. Russell and Lisa Ramsey-Russell, respectfully request that the Second Variance requested by the Erwins be denied by final order issued by the Commission.

WE AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.


BENJAMIN F. RUSSELL


LISA RAMSEY-RUSSELL

This Petition prepared by:

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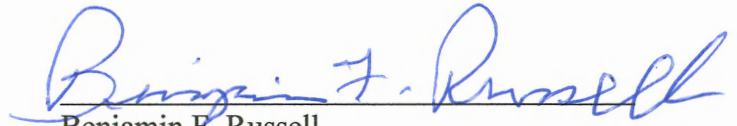
CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, a true and correct copy of the foregoing Objection to Administrative Law Judge's Recommended, Non-Final Order was served by First Class United States Mail, postage prepaid, on the following:

Justin K. Guedel
Indiana Department of Homeland Security
302 W. Washington Street
IGCS, Room E208
Indianapolis, IN 46204

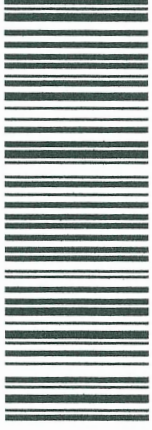
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Benjamin F. Russell

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