

**ROME CITY BOARD OF ZONING APPEALS
Regular Meeting
May 15, 2025**

The Rome City Board of Zoning Appeals held their regular meeting on Thursday, May 15, 2025 at 7:00 p.m. in the Rome City Town Hall. The meeting was called to order by President Kelly Morris.

Members Present:

Barb Tatman

Kelly Morris

Leigh A. Pranger-Secretary

Tom Clifton

Members Absent:

Christine Coe

Gerrit Geurs

Rollcall determined a quorum was present.

Member Tatman made a motion to waive the reading of the minutes and approve them as presented. Second by Member Clifton. All in favor-aye. Motion Carried. The minutes were posted on the bulletin board for everyone to read.

Interested Parties in attendance: Town Attorney Bill Eberhard, Kirk Klein, Kevin and Rhonda Noll, Larry Weisenberger, Christopher Goff-Attorney for Weisenberger, Carrie Brookhart, Glenn and Jean Ellis, John Lipasek, Billy Creigh, Janet Lawson, Vicky Fiandt, Mike and Sally Lundin, Dianne Trees, Juergen Hinz, Roger and Darlene Smith, Mark and Heather Shaver, Tyler and Michell Malott, Kevin Malott, Pam Baker, Donald and Jane Selke.

OLD BUSINESS-Tabled from January meeting

Tabled to the May meeting

Variance #2025-02

Bret and Jodie Swaney, 6714 Laysan Teal Cove, Fort Wayne, IN 46845, owners of 1498 North Shore Drive, Rome City, IN 46784 are requesting variances from the Rome City Unified Development Code, Lake Residential District, Article 5.66 SB-02 Setback Exceptions Standards A. Exceptions 6. Chimneys. This will allow the chimney two feet into the side yard setback on the east side of the house.

Attorney Glick informed the board he received a letter from Attorney Dana Carlson stating that a legal non-conforming lot only has to be less non-conforming than the previous building. The previous house was within three-four feet on the east side of the lot. The current survey shows the new house is 4'8" on the northeast corner and 5'1" southeast corner. They are questioning whether they needed a variance. Attorney Glick stated that the zoning administrator needs to determine what the codes states. He asked Pranger to make a written summation. Pranger presented the board with a copy of her findings on the Rome City Unified Development Ordinance: Article 8 Nonconformances Section. Under Article 8.02 Distinction Between Conforming, Illegal Nonconforming, and Legal Nonconforming, C. Setback Exemption: which states that any primary structure or accessory structure that was legally established prior to December 1, 2011, it and its setbacks will be considered legal as they exist. However, all new

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primary structures or accessory structures shall not be included in this exemption. So once Mr. Swaney demolished the primary structure it is no longer legal, nonconforming and must conform to the code as it exists today. Further, I found under 8.04 Legal Nonconforming Structures: That the code separates buildings from structures and gives a definition within the sections (A. Legal Nonconforming Building Provisions and B. Legal Nonconforming Structure Provisions). Section C. Loss of Legal Nonconforming Structure Status which Ms. Carlson cites as the reason Mr. Swaney should be allowed to keep the building where it is located actually only applies to structures (i.e. gazebo, driveway, fence and sign etc.)

We can all agree that Mr. Swaney built a building and not a structure as defined in this section. Therefore, the legal nonconforming Building Provisions, 8.04 A. only applies to expansions, exterior alteration, relocating a building, and interior alterations. Any new buildings will have to meet the code as it exists today and yes, Mr. Swaney needed a variance for the side yard setback and now also for the chimney setback. The issue now is how do we get Mr. Swaney in compliance with the first approved variance before granting any additional variances. See Attached Exhibit A for additional information submitted.

Variance #2025-10

Glenn & Jean Ellis Trustees, 690 Spring Beach Road, Rome City, IN 46784 are requesting a variance for relief from the Rome City Unified Development Code, 5.23FW-04 Residential Fence Standards C. Height, 1. Height in Lake Residential District requiring fences to be four feet in height in the side and rear yards. Requesting the fence to be six feet in height in the side and rear yard of the Lake Residential District. To allow for the continued placement of a 6' privacy fence and to contain play and sports equipment in the Ellis' yard.

Secretary Pranger informed the board that the public hearing on this variance was closed at the conclusion of the interested parties comments from the last meeting, when the tabling of the request was granted for the Ellis'.

Attorney Eberhard informed them they need to vote on the findings of fact for Variance #2025-10. He reminded the board he will read the findings so if they vote no they are voting against the variance, and a yes vote is a vote for the variance.

The Board finds, the proposed variance **will not** be injurious to the public health, safety, morals and general welfare of the community because: It protects community from basketball. Roll call for vote: Barb Tatman-Yes, Kelly Morris-Yes, Tom Clifton-Yes

The Board finds, the use and value of the area adjacent to the property included in the variance **will not** be affected in a substantially adverse manner because: The basketball requires a 6" fence. Barb Tatman-Yes, Tom Clifton- Yes, Kelly Morris-Yes.

The Board finds, the strict application of the terms of the Zoning Ordinance **will** constitute an unusual and unnecessary hardship if applied to the property for which the Variance is sought, because; the basketball requires a 6" fence to keep inside. Barb Tatman-Yes, Tom Clifton- Yes, Kelly Morris-Yes.

The Board finds the variance granted **does not** correct a hardship caused by an owner, previous or present, of the property, because; The basketball requires a fence. Barb Tatman-Yes, Tom Clifton- Yes, Kelly Morris-No.

The Board finds the variance granted **is** the minimum necessary for the project because; the basketball can clear a 4" fence. Barb Tatman-Yes, Tom Clifton- Yes, Kelly Morris-Yes.

The variance passed on all five findings. Member Tatman made a motion to approve Variance #2025-10 per the findings of fact. Second by Member Clifton. All in favor-aye. Motion Carried.

Variance #2025-14

Tyler & Michelle Malott, 3662 E Northport Road, Rome City, IN 46784 are requesting relief from Rome City Unified Development Ordinance, Article 5.05 AS-03 Rural Residential Accessory Standards, C. Quantity and Size 2. Maximum size not to exceed 2400 sq. ft. in storage buildings up to 4300 sq. ft. (Existing Barn 3100 sq. ft. and new barn 1200 sq. ft. with a covered porch). This will allow for a second storage barn of 1200 sq. ft and a covered porch to match existing barn. President Morris called for the Malott's to present their petition. Kevin and Tyler Malott approached the board informing them they would like to build a storage building 40'x 30' on the lot in their current parking area on the east side of the lot by the house. The building will be used for storage. They need additional space for vehicles and boats. Kevin Malott stated the building will meet the setbacks. He noted the porch will be located on the south side of the building. President Morris asked if that is the side closest to the house? Kevin Malott yes. Morris asked what colors they will be using on the building's exterior. Kevin Malott stated it will match the existing storage building (browns). Member Tatkman asked if they are running a business out of the existing building? Kevin Malott stated no, they have the business on Allen Chapel Road in Kendallville. Attorney Eberhard asked if they have enough green space on the lot? Kevin Malott stated the parcel is a little over three acres so yes there is enough green space. Secretary Pranger informed the board that due to the size of the existing storage building, which is over the allowed size, they are required to ask the board to increase the square footage amount. President Morris asked what the size of the existing building is. Kevin Malott stated it is 3100 sq.ft. and the new building will be 1200 sq. ft. for a total of 4300 sq ft in storage buildings. President Morris called for interested parties on Variance #2025-14. Secretary Pranger informed the board she notified the three adjoining owners, and no one returned the notice. There being no further comments or questions, President Morris called for a motion. Member Clifton made a motion to approve Variance #2025-14 per the findings of fact with restrictions: No business, no living quarters, no exterior stairwell, no bathroom and no rental. Second by Member Morris. All in favor-aye. Motion Carried.

MISCELLANEOUS BUSINESS-Second appeal hearing

2-Appeal #2025-12

Appeal by Larry Weisenberger, 1115 Pleasant Point, Rome City from Zoning Administrator's decision to enforce the Fence standards, 5.23 FW-04 Residential Fence Standards B. Location 2. Side Yard or rear yard in the Rome City Unified Development Ordinance.

President Morris called for Mr. Weisenberger and his attorney Christopher Goff to present their appeal to the board. Attorney Goff informed the board they previously recorded the meeting on January 16, 2025, and a board member showed bias against Mr. Weisenberger in his statements during the meeting. Mr. Clifton asked Mr. Weisenberger, "Do you not like your neighbors? Is this why you have planted the trees along the property lines? Perhaps you bought the wrong property and should move where you won't have neighbors. Attorney Goff stated Mr. Clifton's statements influenced the board to determine against Mr. Weisenberger. Toen attorney Eberhard interrupted Attorney Goff and asked Mr. Clifton whether he has any bias against Mr.

Weisenberger, Mr. Clifton Stated No. Attorney Goff made a request that Mr. Clifton recuse himself from the appeal decision. Attorney Eberhard stated he will not. Attorney Goff asked if Attorney Eberhard was speaking for Mt. Clifton. Attorney Eberhard then asked Mr. Clifton if he wanted to recuse himself from the appeal decision. Mr. Clifton stated no, he added that he has the town's interest at heart. Attorney Goff stated he wanted to make sure the request for Mr. Clifton to recuse himself from the appeal was on record. Attorney Eberhard stated it noted now move on. Attorney Goff directed the board to Tab 5 in his submitted exhibit. The secretary asked for a page number to bring the information up on the screen for the audience. Attorney Goff stated Tab 5, Pranger stated the submitted document has no page number, so she won't be able to present the information for the audience. Attorney Goff directed the board back to Tab 5 showing a picture of trees removed after the first appeal, Stating Mr. Weisenberger removed 11 trees showing they solved the viewshed issue. January 31, 2025, Pranger sent a letter telling Mr. Weisenberger all the tree in the front yard need to be removed per the ordinance. That the trees constitute a fence and are not allowed in the front yard. Mr. Goff then stated the remaining trees are not dense and you can see through them. He then reviewed the definition of a fence and hedge rows. He then directed the board to Tab 6 showing examples of other properties violating the town fence rules and stated other neighbors have similar trees in the front yard. Attorney Goff then stated the town's fence definition is ambiguous at best and Town Attorney Glick even discussed changing the ordinance in April 17, 2025, BZA Meeting. He added that Indiana law sides with the property owners and uphold private property rights. He noted his client just wants to have some green and plant life in his yard. Attorney Goff stated he sent an email to Attorney Glick on May 7, 2025, to add two supplemental items to the appeal, 1 Mr. Bill Creigh stopped in the road and asked Mr. Weisenberger if he had something to say to him, He proceeded to ask, "How are you going to live here when everyone hates you? You are a piece of S___. Attorney Goff then told the board that Secretary Pranger was with Mr. Creigh in his boat on May 7th taking pictures of Mr. Weisenberger's property. #2 After the April 17, 2025, meeting Mrs. Carrie Brookhart informed the Weisenberger's that the board discussed the settlement after the Weisenberger's left the meeting.

President Morris then asked Pranger to present her stand on the appeal. Pranger reread the letter she researched and presented for the first appeal. The letter reviewed the timeline of the complaint, and subsequent notifications regarding the code violation of the viewshed in the lake yard due to the trees being planted on the perimeter of the lake lots blocking neighboring view of the lake. In September 2024 Attorney Lang contacted Mrs. Pranger regarding an extension on the tree removal. Pranger granted the September extension and two subsequent extensions on the removal of the trees from September 2024 to November 1, 2024. Attorney Lang also notified me that he disagreed with my interpretation of the viewshed. In the latter part of October 2024 doing research on another issue I found the UDO code stated fences are not allowed in the lake yard. Upon researching fences, our code included living materials I.e. hedgerows. I then sent a letter to Mr. Weisenberger of my findings on November 18, 2024. Telling him that all trees/fence in the lake yard need to be removed, as fences are only allowed in the side and street yard in a Lake Residential District. I was then notified that Attorney Lang would be filing an administrative appeal. Pranger defined the fences, inclusive, hedgerows and informed the board she felt she interpreted the code as the town intended and that was to protect homeowners right to view the lake unimpeded by fences and hedgerows and rows of the trees. The first appeal

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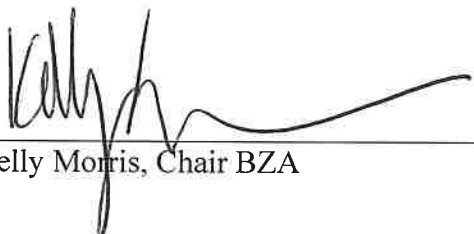
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hearing was held on January 16th, the Board of Zoning Appeals upheld Zoning Administrators interpretation of the UDO on fences. Pranger then directed the board to the packet of information submitted by Attorney Lang /Attorney Goff. The packet contained pictures of various lake properties and other properties somewhere, the pictures were submitted with no addresses, so it was difficult to determine where some of the pictures were taken. Pranger numbered the pages of the document submitted prior to the meeting so you could connect the submitted photos to google earth or copies from Noble County's GIS Beacon Schneider website. Pranger showed the board 8 of the 9 submitted violation photos predated the Rome City Unified Development Ordinance which was Passed in December of 2011. The other photo was unidentifiable, and no address was included.

Member Tatman made a motion to uphold the Zoning Administrators decision on the removal of the trees. Second by Member Morris. All in Favor-aye. Motion Carried.

Next Meeting: June 19, 2025, at 7:00 p.m.

There being no further business, Member Tatman made a motion to adjourn the meeting at 7:51 p.m. Second by Member Clifton. All in favor-aye. Motion Carried.



Kelly Morris, Chair BZA

Attest: 

Leigh A Pranger, Secretary