

**BROWN COUNTY AREA BOARD OF ZONING APPEALS**  
**WRITTEN FINDINGS OF FACT, CONCLUSIONS, AND DECISION**  
**IN RE PETITION NUMBER 21-A-01**

This matter came before the Brown County Area Board of Zoning Appeals (“Board” or “BZA”) on the application of Sherrie Mitchell (“Applicant,” “Petitioner,” or “Mitchell”), for administrative review of Planning Coordinator/Director Christine Ritzmann’s (“Planning Coordinator,” “Director,” “Ritzmann”) January 4, 2021, determination (“Determination”) that Mitchell’s November 25, 2020, application (“Application”) for Board review of a September 24, 2019 decision to file a Zoning Ordinance enforcement action (“2019 Decision”) against Jerry W. Cowan, Jr. (“Cowan”) was not timely filed in accordance with the Boards’ Rules of Procedure and should not be docketed for Board review. And the Board: having conducted a public hearing on the Application on January 27, 2021; having accepted testimony during said hearing from the Applicant, from Planning Director Ritzmann, from members of the public in attendance at the hearing, and from legal counsel David Schilling; having received and reviewed a variety of materials relating to the Application, including the Application, the Applicant’s Legal Notice of Public Hearing Appeal, the Director’s Staff Report on Docket Number 21-A-01, the Board’s Rules of Procedure, email exchanges between Mitchell and the Brown County Planning Staff, Ritzmann’s January 4, 2021 written Determination, and a copy of the Brown County Area Plan Commission’s September 24, 2019 Verified Complaint against Cowan; having received and reviewed copies of State and Brown County laws and reported judicial opinions; having considered and weighed the testimony and materials presented; and, having been duly advised in the premises; hereby makes the following written findings of fact and conclusions in support of the Board’s January 27, 2021 decision (“Board Decision”) to affirm the Director’s Determination

that Mitchell’s Application was clearly not timely filed within the forty-five (45) day appeal period specified in the Board’s Rules of Procedure and, thus, that Mitchell’s Application should not have been docketed for Board review. The Board hereby states that findings that are more appropriately deemed to be conclusions and conclusions that are more appropriately deemed to findings, shall be so appropriately deemed.

### **Findings**

1. On November 25, 2021, Mitchell appeared at the Brown County Government Center and completed a “Board of Zoning Appeals – Application for Hearing” – the Application.
2. The Application identified Mitchell as the Applicant and noted that Mitchell was appealing a “Director Decision.”
3. Indiana Code 36-7-4-919(a) states, in part, that “an appeal filed with the board of zoning appeals must specify the grounds of the appeal . . . .”
4. With respect to the specified grounds of the appeal, Mitchell only wrote the following in her Application: “Appeal a decision made by the Planning Director on September 24<sup>th</sup>, 2019.”
5. Mitchell’s Application stated, following her description of the appeal requested and above her signature, that “I (we) hereby attest that the foregoing information is true and complete to the best of my (our) knowledge and belief.”
6. Indiana Code 36-7-4-916 states, in part, that “[t]he board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance, concerning: (1) The filing of appeals . . . .”

7. The Board adopted Rules of Procedure relating to appeals long before Mitchell filed her Application.
8. On December 1, 2020, six (6) days after Mitchell filed her Application, Ritzmann, by email, provided Mitchell with a copy of the Board's Rules of Procedure and directed Mitchell's attention to Article VI a of the Board's Rules which states: 1. The Board shall have the following powers and it shall be its duty to: a. Hear and determine appeals from and review any order, requirements, decision, or determination made by the Director in the enforcement of the Brown County Zoning Ordinance or the Nashville Zoning Ordinance. All appeals must be filed with the Commission within 45 days of the order, requirement, decision or determination made by the Director."
9. By email dated December 1, 2020, Mitchell responded to Ritzmann's email regarding the Board's Rules of Procedure as follows: "I already have these. Thanks anyway. I would seriously prefer that you never interpret the law for me. You are not good at it."
10. Indiana Code 36-7-4-919(a) states in part that "[a]n appeal filed with the board of zoning appeals . . . must be filed within such time and in such form as may be prescribed by the board of zoning appeals by rule."
11. On January 4, 2021, Ritzmann determined - the Determination - that Mitchell's Application failed to meet the forty-five (45) day appeal filing deadline set forth in the Board's Rules of Procedure because it requested the appeal of a determination made on September 24, 2019.
12. Ritzmann communicated her Determination to Mitchell.

13. On January 5, 2021, Mitchell returned to the Brown County Government Center to pay the one hundred dollar (\$100.00) filing fee for her November 25, 2020, Application.
14. On January 5, 2021, Ritzmann refused to accept the appeal filing fee for Mitchell's Application on the grounds that the Application was not timely filed in accordance with to the Board's Rules of Procedure. Ritzmann then informed Mitchell that she would accept an appeal filing fee if Mitchell desired to appeal to the Board Ritzmann's January 4, 2021, Determination that Mitchell's Application was untimely and would not be docketed.
15. On January 5, 2021, Mitchell, under protest, tendered the appeal filing fee and signed the Applicant's Legal Notice of Public Hearing Appeal, which stated, "Applicant is requesting an Appeal of a decision made by the Director of the Brown County Area Plan Commission on January 4, 2021 that the deadline for appeal of a Director decision made on September 24, 2019 in the Jerry Cowan Verified Complaint has expired. Rules of procedure for the Brown County Board of Zoning Appeals allows only 45 days for such appeals."
16. Ritzmann accepted Mitchell's filing fee for the appeal described in the Applicant's Legal Notice of Public Hearing Appeal and docketed the appeal as Docket Number 21-A-01 on the Board's January 27, 2021, meeting agenda.
17. Mitchell, being in possession of the Board's Rules of Procedure and having been specifically directed to the Rule's forty-five (45) day appeal deadline by Ritzmann, did not amend her Application, at any time subsequent to November 25, 2020, to identify and include another decision in addition to or in lieu of the September 24, 2019 Decision, and thus did not specify any grounds for believing that any such additional or alternative decision was defective and merited Board reversal, as required by statute.

18. The Board conducted a hearing during its January 27, 2021, meeting on the issue that was described in the Applicant's Legal Notice of Public Hearing Appeal, which was published in the Brown County Democrat Newspaper, i.e., on Ritzmann's January 4, 2021, Determination.

19. During the January 27, 2021 hearing, Ritzmann presented her Staff Report to the Board, the contents of which the Board hereby accepts as fact and incorporates into these findings and conclusions.

20. During the January 27, 2021, hearing, Mitchell presented her arguments and testimony to the Board.

21. Mitchell did not confine her testimony and arguments to the Board to the appeal issue that was identified in the published Applicant's Legal Notice of Public Hearing Appeal, i.e., the Director's Determination.

22. Throughout her testimony Mitchell reiterated that she was appealing the Director's determination that Cowan's use of his property violated the Brown County Zoning Ordinance. She argued that such a determination was defective because it effectively means that all private contractors operating in Brown County, Indiana, are in violation of the Zoning Ordinance. She stated that her husband is a private contractor and is the primary source of family income. She then argued that by virtue of the foregoing, she was aggrieved by the Director's actions. She later clarified that she didn't believe she was aggrieved by the September 24, 2019 decision, i.e., the 2019 Decision, but rather, that she was only aggrieved by the November Agreed Entry of Judgment that was approved by the Brown Circuit Court in mid-November of 2020 in the Brown County Area Plan Commission's enforcement action against

Cowan. She asserted that the November 2020 agreed entry of judgment was actually the subject of her November 25, 2020, Application.

23. Mitchell asserted that the Brown County Zoning Ordinance does not regulate private contractors but did not cite or provide the Board with any Zoning Ordinance provisions in support of her contention.

24. Mitchell was not a named party to the Cowan ordinance enforcement action filed on September 24, 2019 and did not establish that she had been allowed to intervene in that action by the Brown Circuit Court.

25. A copy of the Zoning Ordinance enforcement action Complaint that was filed against Cowan on September 24, 2019, was provided to the Board as part of the Board's meeting materials. The allegations of the Complaint relate to the specific nature, and to the specific conditions, of Cowan's use of Cowan's property in Brown County, Indiana. The relief requested in the Complaint applied exclusively to Cowan and to those using the Cowan property.

26. Mitchell did not claim or demonstrate that she or her husband were using the Cowan Property in the manner and for the purposes alleged in the Cowan Complaint.

27. Mitchell did not contend that the Board's Rules of Procedure conflicted with the Zoning Ordinance.

28. Mitchell did not deny that the date of the only Director's decision identified in her November 25, 2020 Application for appeal was September 24, 2019.

29. Mitchell did not deny that her November 25, 2020, Application was filed more than one year after the September 24, 2019 Decision.

30. No individual objected to the procedures employed by the Board in conducting the hearing or to the submission of testimony or exhibits by any hearing participant.

### **Conclusions**

31. The appeal Application filed by Mitchell on November 25, 2020, identified in writing the specific Director's decision that was the subject of her appeal request, but did not specify the grounds of the appeal as required by statute. The term "grounds" is defined as "factors forming a basis for action or the justification for a belief" or "a basis for belief, action, or argument." [www.google.com; www.meriam-webster.com](http://www.google.com; www.meriam-webster.com). Mitchell's Application failed to include a description of the factors that led her to believe the September 24, 2019 decision was defective and merited Board reversal. Mitchell's Application was defective in that it did not comply with the statutory requirement of IC 36-7-4-919(a) that the grounds of the appeal be specified and was properly rejected by Ritzmann. The Application would be defective and subject to rejection for the same reasons even if the Board accepted, which it does not, Mitchell's contention that she was actually appealing the mid-November 2020 Agreed Entry of Judgment decision.

32. The Board's Rules of Procedure regarding the deadline for filing administrative appeals does not conflict with the Brown County Zoning Ordinance.

33. If Mitchell intended to appeal the mid-November 2020 decision regarding the Agreed Entry of Judgment, rather than the September 24, 2019, enforcement action decision, she was aware of the Board's Rules and had ample opportunity to amend her Application to reflect that intent but failed to do so.

34. Mitchell's November 25, 2020 Application for appeal of a September 24, 2019 decision was untimely, and thus defective, and was properly rejected by Ritzmann.

35. Ritzmann's determination that Mitchell's November 25, 2020, Application was untimely and should be rejected was not arbitrary and capricious because it was based on the relevant facts, circumstances, and legal standards of the case, including those set forth in Ritzmann's Staff Report and the Board's Rules, and in the information provided and attested to as complete by Mitchell in her Application.

36. The conclusion of Zoning Ordinance violation, which was described in the allegations of the September 24, 2019, Cowan Complaint, was based on an application of the legislatively established provisions of the Zoning Ordinance to the specific facts of the Cowan case and does not purport to apply to or be binding on any other case, use, or situation in Brown County, Indiana. Likewise, the relief requested in the Cowan Complaint relates only to the use of the Cowan property. Consequently, the Board rejects Mitchell's assertion, which is presumably the basis for her November 25, 2020, request, that the September 24, 2019 Decision renders all private contractor businesses in Brown County unlawful. Even if the Board were to accept Mitchell's contention that the subject of her Application was actually the mid-November 2020 Agreed Entry of Judgment decision, which it does not, the Board would reject her assertion on the ground, among others, that she did not present the Board with facts sufficient to support an assertion that the Agreed Entry had the claimed effect or was binding on her or her husband.

37. The Board rejects Mitchell's argument or implication that a new determination regarding Cowan's compliance with the Zoning Ordinance was made by the Director by virtue of the Agreed Entry. The determination regarding Cowan's compliance was made on September

24, 2019, through the Complaint. The only new decision made with regard to compliance through the Agreed Entry was Cowan's decision to agree with the Director's September 24, 2019, compliance determination and request that Cowan cease his unlawful land use. Cowan's private decisions are not subject to Board review.

38. The Board concludes that Mitchell failed to carry her burden of demonstrating that the Director's Determination was incorrect or invalid and subject to reversal.

39. The Board concludes that Mitchell failed to demonstrate that she was aggrieved by any decision, determination, or action taken by Ritzmann with respect to her Application or with respect to the Cowan lawsuit.

40. Mitchell failed to demonstrate that she possessed standing to appeal a decision on behalf of the general class of Brown County, Indiana, private contractors.

41. The Board concludes that the relief Mitchell requested during the hearing, namely the overturning of a November 2020, Judgment of the Brown Circuit Court, i.e., the Agreed Entry, is beyond the power of the Board and cannot be granted.

**SO FOUND AND CONCLUDED** by the Brown County Area Board of Zoning Appeals this 17<sup>th</sup> day of March 2021.

**BROWN COUNTY AREA BOARD OF ZONING APPEALS**

/s/ John Dillberger  
JOHN DILLBERGER, President  
Brown County Area Board of Zoning Appeals

ATTEST:

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KAYLA ROBERTSON, Secretary  
Brown County Area Board of Zoning Appeals