

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF BROWN    )

IN THE BROWN COUNTY CIRCUIT COURT

CAUSE NO: \_\_\_\_\_

SHERRIE MITCHELL  
                    Petitioner

vs

BROWN COUNTY INDIANA BOARD  
OF ZONING APPEALS and BROWN  
COUNTY PLANNING COMMISSION  
                    Respondents.

VERIFIED PETITION FOR JUDICIAL REVIEW

Comes now Sherrie Mitchell and submits her Verified Petition for Judicial Review of an administrative decision appeal denied by the Brown County Indiana Board of Zoning Appeals and the Brown County Planning Commission and states:

1. The Brown County Board of Zoning Appeals (BZA) on January 27, 2021 denied an administrative decision appeal request submitted by Sherrie Mitchell.
2. Mitchell submits this Petition for Judicial Review under the 1600 series of Indiana Code Section 36-7-4.
3. Mitchell resides at 971 W. Robertson Road, Morgantown, IN 46160 in Brown County.
4. Respondents are Brown County Board of Zoning Appeals, 201 Locust Lane, Nashville, IN 47448 in Brown County and Brown County Planning Commission, 201 Locust Lane, Nashville, IN 47448 in Brown County.

COUNT I – PLANNING COORDINATOR DENIED APPEAL

5. On November 25, 2020, Mitchell submitted an application for appeal of an administrative decision starting on September 24, 2019 and settled on November 13, 2020.

6. Indiana Code 36-7-4-918.1 states that “A board of zoning appeals shall hear and determine appeals from and review: (1) any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;”

7. Indiana Planning Association a state affiliate to American Planning Association, the professional organization for planners across the county, wrote in the Indiana Citizen Planner’s Guide “An example of an appeal from an administrative decision would be if someone disagrees with how the planning staff interprets a provision of the zoning ordinance, and then appeals that interpretation to the board.”

8. Brown County Planning Commission Coordinator denied the administrative determination appeal request some time before January 5, 2021.

9. Brown County Planning Commission Coordinator does not have the authority to denial appeal requests.

10. The denial of the appeal by the Brown County Planning Commission Coordinator was illegal, arbitrary and capricious, and outside of the Coordinator’s authority. See Exhibit A.

11. Brown County Zoning Ordinance only permits the BZA the authority to review appeal requests. Coordinator denied petitioner’s appeal without legal authority making the denial of the appeal illegal. See Exhibit A

12. Mitchell is an aggrieved party to the denial by the Planning Commission Coordinator’s determination. Mitchell is a citizen of Brown County and has the right to appeal interpretations of the Brown County Zoning Ordinance made by the Planning Commission Coordinator.

## COUNT II – FAILURE TO HEAR APPEAL ON MERITS

13. On January 27, 2021, the BZA denied an administrative decision appeal request submitted by Petitioner on November 25<sup>th</sup>, 2020. .

14. On November 25<sup>th</sup>, 2020, Mitchell contacted the Brown County Area Plan Commission to discuss the request for an appeal of the Planning Coordinator's determination on November 13, 2020 fining a private contractor \$10,000 for violating the Home Occupation rules of the Brown County Zoning Ordinance.

15. Brown County Zoning Ordinance, Section 7.5 Appeals, (A) A decision of the Planning Coordinator enforcing this ordinance may be appealed to the Board by any person who is adversely affected by the decision.

16. Brown County Board of Zoning Appeals, Rules of Procedure, Article V, 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. Coordinator determination was made on November 13, 2020. Petitioner filed appeal on November 25, 2020.

17. Mitchell is an aggrieved party to the Planning Commission Coordinator's determination that private contractors are illegal uses under the Home Occupation rules of the Brown County Zoning ordinance. Mitchell's husband is a private contractor in the county. Mitchell's husband has equipment stored outside, two pick-up truck and a trailer

stored at 971 West Robertson Road. Petitioner's only source of income is through the use of the Mitchell property for/as a private contractor. The Planning Commission Coordinator's determination that private contractors with pick up trucks and trailers are subject to Home Occupation rules sets a precedent that all private contractors are subject to Home Occupation rules.

18. Use of property by private contractors is not a prohibited use in the Brown County Zoning Ordinance. Private contractors are not subject to and do not meet the definition defining Home Occupations in the Brown County Zoning Ordinance, as these businesses are operated outside of the residential property.

19. On January 5, 2021, Coordinator had prepared the legal notice that must be advertised in the Brown County Democrat at least 10 days before an appeal hearing. The legal notice was presented to Mitchell by the Planning Commission staff. Mitchell explained that it was the Coordinator's determination made on November 13, 2020 that petitioner was appealing. Planning Office refused to accept filing fees or schedule the hearing unless Mitchell signed the legal notice prepared by the Planning Coordinator. Mitchell signed the legal notice "Forced to sign". Exhibit B.

20. The Board decision is unreasonable, arbitrary, capricious, an abuse of discretion, or clearly erroneous, in that the Plan Commission based its recommendations to the Board on improper, incomplete considerations and influences. The Board decision is not based on substantial evidence but on a 'brief description' on an appeal application.

21. On information and belief, Mitchell states that persons appearing and participating in the hearing on January 27, 2021 were:

Jerry Cowan

Carol Bowden

Sherrie Mitchell

Kevin Fleming

Tim Clark

Anna Hostetler

22. Mitchell requests that the Court on judicial review declare the decision of the BZA under docket number 21-A-01 to be illegal and void. Mitchell requests that the Court vacate the BZA denial of the administrative appeal.

WHEREFORE, Mitchell requests the Court on judicial review to clear the decision of the BZA under docket number 21-A-01 to be illegal and void, and for all other and proper relief.

I swear or affirm under the penalties of perjury that the foregoing representations are true.

Respectfully Submitted,

  
Sherrie Mitchell

## **BROWN COUNTY BOARD OF ZONING APPEALS**

### **Staff Report Sherrie Mitchell Appeal of Director's Decision**

**Docket No:** 21-A-01

**DATE:** January 27, 2021

**Petitioner:** Sherrie Mitchell

**Request:** Appeal the decision of the Planning Coordinator (Director) of the Area Plan Commission that the forty-five (45) day period to file an administrative appeal has expired.

**Ordinance Provisions:** Chapter Seven: Administration, Enforcement and Appeals and Board of Zoning Appeals Rules of Procedure: Article V Powers and Duties: 1. a

#### **General Findings:**

1. On November 25, 2020, the Petitioner produced an application to appeal the Planning Coordinator action which occurred on September 24, 2019. At that time, the Petitioner also tried to force acceptance of the \$100.00 filing fee so forcefully that law enforcement was called.
2. During a phone call, the Director informed the Petitioner that per the Board of Zoning Appeals Rules of Procedure, the deadline to file an Administrative Appeal had passed by more than a year. The BZA Rules of Procedure were provided to the Petitioner by email attachment on December 1st, 2020.
3. On January 5th, 2021, docket day, the Petitioner presented payment and was informed again that she could appeal the Director's determination that it was too late to appeal the 2019 decision. Staff asked the Petitioner to amend the application to replace the original appeal request. The Petitioner refused.
4. The Petitioner refused to sign the legal notice which reflected an appeal to the Plan Coordinator determination that the filing deadline had passed. Eventually, the legal notice was signed with the words: "Forced to sign" scrawled on the document.
5. The legal notice was published in a timely manner and included the words "Forced to sign".
6. 36-7-4-916 Rules provides: *The board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance, concerning:*

*(1) The filing of appeals...*

7. While 7.5 Appeals provides:

*A. A decision of the Planning Coordinator enforcing this ordinance may be appealed to the Board by any person who is adversely affected by the decision. For filing fees, see Chapter 8, Section 8.2*

*And:*

*B. On an appeal under subsection (a), the Board may make any decision that the Planning Coordinator might have made.*

8. The Board of Zoning Appeals Rules of Procedure Article V. Powers and Duties 1.A. states:

*The Board shall have the following powers and it shall be its duty to: 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. 36-7-4-919 Section 919. (a) *An appeal filed with the board of zoning appeals must specify the grounds of the appeal and must be filed within such time and in such form as may be prescribed by the board of zoning appeals by rule.*

**Summary:** The grounds of the current appeal were not specified by the petitioner who refused to amend the application or by any other means set forth the grounds for the current appeal. No time frame is provided by 7.5 but the Board of Zoning Appeals Rules of Procedure limit the appeal period to forty-five (45) days. The Plan Coordinator (Director) does not have the discretion to accept a late appeal filing because the rules state that appeals "must" be filed with the Commission within 45 days.

**APPLICANT'S LEGAL NOTICE OF PUBLIC HEARING  
APPEAL  
AREA BOARD OF ZONING APPEALS**

Notice is hereby given that Sherrie Mitchell has filed with the Area Board of Zoning Appeals of the County of Brown, Indiana, an appeal of the decision of the Brown County Area Plan Commission Director.

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 of the Brown County Board of Zoning Appeals allows only 45 days for such appeals.

The file on this matter is available for public inspection at least 10 days prior to the hearing, during the regular working hours at the Brown County Area Plan Commission office in the County Office Building located at 201 Locust Lane in Nashville, Indiana.

A public hearing will be held by the Board at the Brown County Music Center located at 200 Maple Leaf Boulevard on January 27, 2021 during a meeting commencing at 6:00 p.m. All interested persons will be given the opportunity to be heard in reference to the matters set out in the application. This notice is being published to notify persons affected by this application by order of the Area Board of Zoning Appeals. Written comments regarding the petition, which are filed with the secretary of the Area Plan Commission before the hearing, will be considered. The hearing may be continued from time to time.

Due to the Coronavirus Pandemic, this meeting may be held remotely using internet and telephone technology. If the meeting is held remotely a Zoom link will be available on the Brown County Government calendar at [browncounty-in.gov](http://browncounty-in.gov). More information is available at [browncounty-in.gov/departments/planning commission](http://browncounty-in.gov/departments/planning%20commission) or by calling 812-988-5490.

If you have a disability that requires special assistance for your participation in the meeting, please contact the Area Plan Commission office at (812) 988-5490.

**Petitioner: Sherrie Mitchell**

**Petitioner's Signature:**

**Date:**

*FORCED TO SIGN*  
*Sherrie Mitchell*  
*1/5/21*