

The Noblesville Board of Zoning Appeals met on Monday, March 4, 2019. Members in attendance were as follows:

- Dave Burtner..... Citizen Member
- Mike Field..... Chairman
- James Hanlon Citizen Member
- Brian McNulty Citizen Member

Others in attendance included: Planning Director Sarah Reed, Senior Planner David Hirschle, Senior Planner Denise Aschleman, Associate Planner Oksana Polhuy, Associate Planner Rina Neeley, City Attorney Mike Howard, Planning Department Attorney Steve Unger and members of the general public.

Chairman Field calls the meeting to order at 6:00 p.m.

SWEARING IN OF 2019 BZA APPOINTMENTS

Chairman Field states that they were going to swear in Mr. DeJarnett, but he is not in attendance.

APPROVAL OF MINUTES

Motion by Mr. Hanlon, seconded by Mr. McNulty to approve the February 4, 2019 Minutes as presented. AYE: Burtner, Hanlon, McNulty, Field. ABSTAIN: None. Motion carries 4-0-0.

APPROVAL OF FINDINGS OF FACT

Motion by Mr. Hanlon, second by Mr. Burtner to approve the February 4, 2019 Findings of Fact as presented. AYE: Burtner, Hanlon, McNulty, Field. ABSTAIN: None. Motion carries 4-0-0.

OLD BUSINESS

1. BZNA-0004-2019 / BZNA-0023-2019

- Location:** 15530 Herriman Boulevard
- Applicant:** Stony Creek Church of Christ (William Aaron Stucki)
- Description:**
 - a) UDO § 8.D.1.D & Appendix C – Conditional Use to permit a church, temple, place of worship use in the I-1 (Light Industrial) zoning district.
 - b) UDO § 10.0.3 – Variance of Development Standards to allow the reduction of the number of required parking spaces onsite.

Associate Planner Rina Neeley describes the subject site location on the east side of Herriman Boulevard about 75 feet south of the north portion of Stony Creek Way. She states that it is located behind the building at 15510 Herriman Boulevard. She points out that the property is about half an acre and it is developed with an existing 3,584 SF commercial office building and parking area. She describes the surrounding uses as industrial and residential uses to the north and west, industrial uses to the south and SR-37 and undeveloped industrial/office and commercial land to the east. She states that the existing building on the subject site was most recently used as offices for Children’s Bureau, Inc and that the current building configuration consists of an entry area, 14 individual offices, two restrooms and a utility/kitchen area. She states that the proposed church will be remodeling the existing building to include a 1,600 square foot

sanctuary at the north end of the building, expanding the central lobby area and using the existing offices at the south end of the building as classrooms.

Ms. Neeley states explains that a church, temple, place of worship use is allowed in most zones with BZA approval of Conditional Use application. The use is not permitted by right in any zoning district. She further explains that the Variance is required because the proposed church does not meet the parking requirement with the existing onsite parking. She states that the minimum required parking for the proposed church use with an approximate 1,600 square foot sanctuary is 28 parking spaces and there are only 17 spaces on the property. She points out that while a variance is requested for the required parking onsite, the church will fulfill the onsite parking deficit with offsite parking, as they have made parking agreements with the neighboring properties to the immediate west and north. She states that the businesses on the neighboring properties have different operating hours than the church. She explains that with the parking agreements, there will be a total of 63 parking spaces available to church patrons, which is over twice the amount of required parking as shown on the Parking Calculations in the Staff Report. She states that specific conditions of approval have been included to address the parking agreements as well as prohibiting overflow parking on Herriman Boulevard. She states that Staff recommends approval based upon the findings of fact and subject to the conditions listed in the Staff Report.

Chairman Field asks if there is a surplus of 36 to 46 parking spaces, depending on the calculation used, with the parking agreements.

Ms. Neeley confirms that he is correct. She states that the 17 onsite spaces will meet the church's current membership, which is about 30 people.

Mr. Hanlon asks if Staff has the parking agreements.

Ms. Neeley states that she included copies in the Staff Report, but they have not been recorded yet. She points out the location of the parking agreement at 15510 Herriman Boulevard and the parking agreement area with the Scooch property just north of the subject property.

Mr. Hanlon asks if they have consented to let them use the property.

Ms. Neeley agrees and states that the parking agreements are signed, but they have not been recorded as they were waiting for approval [of the conditional use application].

Chairman Field thanks Ms. Neeley and asks the Petitioner to step forward.

Mr. William Aaron Stucki, 14151 Moonlight Path, Fishers, Indiana, comes forth representing Stony Creek Church of Christ. He states that this is not a want for them, but a need. He explains that they [the church] have been wandering for several years, renting spaces and things like that, and this would be a wonderful base for them to work out of. He states that it is their great hope that they [the BZA] would approve this [application]. He states that they have done a lot of work to try to fulfill the needs of parking and they will certainly abide by the laws that are in place as that is their intention. He further states that they intend to improve the area by preaching the Gospel and trying to help people who are in need, as that is their work.

Mr. Hanlon asks if it is their property.

Mr. Stucki answers that the church owns it.

Chairman Field thanks and dismisses Mr. Stucki. He opens the public hearing and, seeing no one come forward, he closes the public hearing.

Mr. McNulty states that it is a good use and they have parking under control.

Chairman Field agrees and states that having some people there on Sunday mornings isn't bad for the surrounding neighborhood.

Motion by Mr. McNulty, seconded by Mr. Burtner to:

APPROVE the requested Conditional Use application BZNA-0004-2019 based upon the following Findings of Fact:

- Is in fact a conditional use established within the specific zoning district involved;
- Will be harmonious with and in accordance with the general objectives or with any specific objective of the City's Comprehensive Plan and the Unified Development Ordinance;
- Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the same area;
- Will not be hazardous or disturbing to existing neighboring uses;
- Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community;
- Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
- Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

and **APPROVE** the Variance of Development Standards application BZNA-0023-2019 based upon the following Findings of Fact:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.

With the following specific conditions:

1. Provide recorded parking agreements with the neighboring properties including exhibits showing the location of the shared parking spaces. The document shall be recorded on all properties referenced in the parking agreement.
2. No overflow parking shall occur on Herriman Boulevard. If a complaint is received by the Department of Planning that the Applicant does not have enough parking to accommodate their daily needs, the Applicant shall be responsible for finding a way to accommodate the increased parking demand. That may mean that the Applicant needs to seek additional parking on an adjacent lot.
3. The Applicant shall sign the Acknowledgement of Conditional Use document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
4. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

AYE: Burtner, Hanlon, McNulty, Field. Motion carries 4-0-0.

2. BZNA-0005-2019 / BZNA-0006-2019 / BZNA-0007-2019 / BZNA-0008-2019 / BZNA-0009-2019 / BZNA-0010-2019 / BZNA-0019-2019

Location: 605 Sheridan Road

Applicant: Jim Sapp

Description:

- a) UDO § Table 12.0.7.E - Variance of Development Standards to permit the use of existing canopy trees instead of the installation of evergreen trees in the landscape buffer between a PB zoning district and a residential use.
- b) UDO § 12.0.5.C - Variance of Development Standards to allow the elimination of interior parking lot landscaping within a proposed fenced area.
- c) UDO § Table 12.0.6 - Variance of Development Standards to allow the elimination of building base landscaping within the proposed fenced area and the reduction of the building base area to a 5 foot strip around the building along Sheridan Road.
- d) UDO § Table 12.0.5.D.2 - Variance of Development Standards application to permit the reduction of perimeter parking lot plantings within the proposed fenced area.
- e) UDO § 10.0.4.D.1 - Variance of Development Standards application to permit the elimination of curbing within the proposed fenced area.
- f) UDO § 4.B.6 - Variance of Development Standards application to permit a reduction of architectural requirements for non-residential buildings.
- g) UDO § 12.0.8.B.2 - Variance of Development Standards application to permit the screening of a portion of a service yard with a vinyl coated chain link fence instead of an opaque fence or wall.

Planning Director Sarah Reed states that she is going to jump in here on this one since she happens to be here for another item tonight that happens to be on the agenda. She states as some of them may know that they get a lot of inquiries about self-storage and they have made a lot of changes in the City of Noblesville. She states that when someone comes in and says something isn't the typical self-storage, Staff normally just smiles and go their separate ways. She explains that in the case of this business, particularly the name itself doesn't do the business justice. She states that she conducted a site tour at their location in Castleton and can tell them that it is more of an economic development business. She states that it is not necessarily incubator, but it helps grow small business that are in the skilled trade areas.

Chairman Field states that he remembers this from a few months ago, that it was primarily for businesses that need a little extra storage space or a place to operate.

Ms. Reed agrees. She states that they would think it would be stores that store furniture or something like that, but it has grown and changed a lot...different than what you can see on paper. She states that what she would do is explain the economic development impact because there is no business like it in Noblesville

Mr. Hanlon asks if this is the same...

Ms. Reed interrupts that it is the same thing that they have seen in the past.

Senior Planner Denise Aschleman states that they saw it in July last year.

Ms. Reed states that they have dug into a little bit deeper to the site itself and have a couple extra constraints that they are here this evening on, and she will let Ms. Aschleman get into all of the details. She states that she just wanted to let them know that they will remember this from before, but the economic impact for this area could be pretty huge. She states that she wanted to preface with that.

Ms. Aschleman describes the subject site location on the south side of Sheridan Road, just west of River Road. She states that it is a total of three parcels, two of them have frontage on State Road 38 and then the larger parcel, which will be connected to the rest of them because they are required to plat through this process. She continues to describe that the property is surrounded by single family uses to the north and the south and there are some single family uses on either side [both east and west]. She states that this whole side [from the subject site east to River Road] is zoned Planned Business. She describes the site as 12.69 acres. She states that the Petitioner received Conditional Use approval to allow the commercial self-storage on the property in July 2018.

Ms. Aschleman states that as they have gone through the site development process, this is what the property will look like. She states that as they have gotten further through that process they have found that they do need some variance from development standards to make this site work. She states that there are a total of 14 buildings. She describes that the main building along Sheridan Road is the main office and it also serves as a multi-tenant building that will be able to

be leased to other users, just the space within there. She states that it [the main building] will also have conference rooms and meeting spaces that tenants of the rest of the project can use.

Mr. Hanlon asks so office space, right.

Ms. Aschleman agrees with it is office space although there are service doors on the back side of the building.

Ms. Aschleman states that the first variance deals with the requirement for screening between residential and this PB use. She states that it requires two deciduous trees and an evergreen tree for every 100 feet. She explains that the Petitioner is requesting [the variance] because they are preserving quite a few existing on this portion of the property. She describes that there is about a 30-foot grade difference here and so the majority of this part of their site will remain untouched. She states that the Ordinance allows them to get credit for deciduous trees per a chart. She states that they have to mark the caliber, size and give [the City] a prediction that the tree will last at least 10 years and they get credit for trees that they would be required to plant. She states that obviously that most of the wooded areas here in Indiana don't have evergreen trees in them. She states that they are asking to get credit for all of their trees and evergreen trees would be allowed to count as a saved existing deciduous tree.

Ms. Aschleman states that the second variance is to allow the fencing at the southwest corner of the property, just this section, to be vinyl coated chain link fencing. She states that the rest of the property will have an opaque vinyl fence in a color similar to the proposed buildings. She states that they are just asking that in that portion they be allowed to do vinyl coated chain link. She explains that the variance is necessary because the UDO that service yards be screened with an opaque screen. She states that they also placed a condition on them [the Petitioner] in July of last year that they needed an opaque fence around the entire service area, so the variance is necessary for that reason.

She states that she is going to jump out of order of her Staff Report. She states the Petitioner is also asking for a number of variances from the Landscape Standards within this fenced area. She states that currently the fence starts here, they will see that one of the conditions they [Staff] asked that the fence move back here. She states from here back [as she points to an aerial photo or site plan] the entire property is fenced with an opaque fence. She states that they [the Petitioner] be able to waive the landscape and curbing requirements within that fenced area. She states that one of the conditions that Staff is proposing is that the fencing in this area be pushed back along these parking spaces, so a little bit closer to the parking lot and they do some shrub plantings to break up the mass of the fence. She states that a total of 75 plants from here to here, with the fence along the pavement line and that all the other landscaping that is shown within the fenced area be waived and that they install building based landscaping along this west side of the building as well.

[Unintelligible audio].

Ms. Aschleman states that there would be fencing, but because of the fencing, they could not see the landscaping on that is on the inside. She states that they are asking that they [the Board] waive the landscape requirement inside the fence.

Ms. Aschleman states that the last request relates to the architecture on the project. She states that this is the proposed look of the main office building from State Road 38. She states that there is no landscaping shown on here, but she wanted them to be able to see the buildings so she chose the version that did not have the trees in front of it. She states that this particular building most likely meets the requirements for architectural standards. She explains what they are asking for relief on is the buildings... She states while there is a 6-foot fence on this side and this side [as she points to the site plan], these buildings are 12 feet to the eaves. She states that what Staff asked them [the Petitioner] to do is to provide an architectural treatment on those buildings that breaks up the mass on the structure. She states that the majority of the buildings on interior of this project are just standing seam metal vertical siding. She states that on the portions of the building that face out from their project they are proposing to do a stone treatment with some column details and horizontal siding on the exterior portion of the building. She points out [on the elevations] examples of what the smaller three buildings on the west side and the two longer buildings on the east side would look like. She states that this does not meet the strict standard of the Ordinance in terms of architectural standards. She further states that the architectural standards take into context the actual context of the area. She explains that the problem in this area, of course, is that all the medical buildings in this area are full masonry or stone, so they are either brick or stone. She states that that is not something they are able to do with this type of use, so this is the compromise that they are proposing that Staff is willing to accept.

She states that Staff recommends approval of the requested variances based upon the findings of fact and subject to the five conditions listed in the Staff Report, including:

- moving the fencing on the east side of the project as well as landscaping the outside of it;
- doing additional building base landscaping on this west portion of the property; and
- allowing them to construct at a slightly lower architectural standard than required by ordinance.

Ms. Reed asks Ms. Aschleman to put up the elevation that shows the opaque wall so that they can see the smaller portion of the actual buildings peeking out of the top, or do we not have...

Ms. Aschleman replies that she does not have one with the wall on it.

Ms. Reed asks the Petitioner, Mr. Sapp, if he has one by chance.

Mr. Sapp replies that he does.

Ms. Reed apologizes stating that she wants to make sure that they can see what portion of the building on the exterior that they can see. She states that it really helps provide context to...

Ms. Aschleman states that these don't have an architectural treatment on them. She states these are the end buildings.

Ms. Reed states that she wants to show them at least what they could be able to visualize that's the remaining of the building after the fence is installed.

Ms. Aschleman comments that these buildings that they are seeing are these buildings [as she points to two different sets of elevations and the site plan]. She states that they are the end of these buildings. She states that this is the view from the southern property line, looking north [as she points to site photos or photo simulations].

Ms. Reed states that they will see a longer profile of those buildings from the north and south, direction-wise, but they will also see those pieces of stone columns that will come up on the edges. She states that Staff has asked them to dress up the exterior buildings.

Mr. Hanlon asks if the intent is that the agricultural stuff overtake the fence eventually.

Ms. Aschleman answers that they will keep it trimmed back. She states that they are only proposing shrubs because they are getting credit for their trees. She explains that it is not necessarily overtake the fence, it's just break up the large expanse of it.

Chairman Field asks if the east side of the building, where it looks like the building model 51 and 52 are, is that a wall or is that a chain link fence there.

Ms. Aschleman answers that it is a vinyl fence.

[Unintelligible audio].

Chairman Field states that it is an opaque fence.

Ms. Aschleman states that the only place that they are asking for an opaque fence is on the southwestern portion where it abuts Cicero Creek.

Chairman Field comments that he just wanted to make sure that if anyone from the east was looking at it, they would be screened from the back of the building or anything that was back there.

Ms. Aschleman states that this is the spot where they are asking for the non-opaque fence [as she points to the Site Plan]. She states that it drops directly down to Cicero Creek and there is at least a 30 foot grade drop at that portion of the property.

Ms. Reed explains that Staff's idea with reviewing this again is to just dress up whatever people could see from the public right-of-way, and the neighbors as well, so that is where they are at today.

Chairman Field asks if there are any questions for Ms. Aschleman and seeing no response, thanks and dismisses her. He asks the Petitioner to come forward. He states that they might have questions for Ms. Aschleman later.

Ms. Aschleman quips that she is surprised that they don't now.

Chairman Field compliments her by stating that she did a lovely job and it is very well laid out and she told them very clearly what is going on.

Mr. Hanlon asks how many total variances are requested.

Ms. Aschleman answers that there are seven total, but they can group the landscaping ones together so...

Mr. Hanlon asks if they group them all together.

Ms. Aschleman clarifies that they list them all individually, so that theoretically they could approve one without approving all of them, but their [Staff's] analysis is done as a whole assuming that they are going to approve... [Unintelligible audio].

Mr. Hanlon states that is all he needed to know.

Ms. Reed asks if they just want to vote one time.

Ms. Aschleman states there are four of them... [Unintelligible audio].

The Petitioner, Mr. Jim Sapp, 5433 Cayman Drive, Carmel, Indiana, comes forward. He states that as they [the Board] recall from July, he and his wife are the owners of Commercial Self-Storage. He states that they are not consumer storage, as they start where consumer storage ends in size. He explains that they are a much bigger project than consumer storage and their prices are much higher. He states that their traffic is low. He continues that 66% of their tenants are 3-5 year old companies, so they are an accelerator of businesses. He comments that they have three sites in Indiana and Ohio. He states that they know that they grow businesses and that they generally stay within 3-5 miles when they outgrow them [Commercial Self-Storage]. He states that if they happen to catch their video; they did a video of a couple of people that left them. He states that they are requesting several variances because they have to keep their rents low. He continues that in order to keep their rents low, they made changes that save \$1.5 million. He states that this is an \$8 million project and if they have to increase it, their tenants cannot afford the rent because they are new companies. He states that they help them [new companies] through lunch and learns and mentoring them to grow their businesses. He explains that they are hands-on type of businesses from olive oil to chocolate from Venezuela to IT companies, landscapers, contractors...it runs the whole gamut of small businesses. He states that they have ones now that are from Noblesville and Elwood with their office in Castleton that want to move up here. He states that their average space is about 300 square feet and they go to 3,000 square feet. He states that their main building has offices where they can office in the front and go back to get their materials. He comments that they are very low usage on public services, none of the tenants use the schools; they have never had a fire or police call. He reiterates that it is all businesses storing usually high-end equipment and that is why they need the solid fence. He states that it is gated and very secure and very quiet. He comments that there are two very nice homes on the south side that enter onto State Road 32. He states that they are here tonight. He states that they have proposed a 30-foot landscaping for those homes, then their [project's] fence, then the 100-foot pond and then the buildings. He states that they [the neighboring homes to the south] are anywhere from 3-5 feet below the development because they [the project] will be entering off of State Road 38. He states that it is going to be very difficult to see the back buildings from State Road 38, or Sheridan Road, because they will be going about 45

miles per hour. He states that they have a lot of shrubs [as he points them out on the Site Plan or Landscape Plan]. He states that he can answer any questions. He comments that Wye Engineering, the landscape architect and the contractor are present if they have any questions. He states that they are going to meet all the drainage; they are going to do a pond. He states that some of these other things get quite expensive when there are 14 buildings.

Mr. Hanlon asks about water run-off.

[Unintelligible audio].

Ms. Aschleman states that it is actually through their office because it is within City limits and they are relatively close...

Mr. Hanlon states that they approved this originally, they covered this.

Ms. Aschleman states that they are very close to getting their drainage sign off at this point. She states that there were a few tweaks that they needed to make, but they're close.

Mr. Hanlon asks if everything just runs down into the creek.

Ms. Aschleman answers that she thinks they outlet to Cicero Creek, but she does not know that for sure.

Mr. Hanlon states just like everyone that lives here. [Unintelligible audio].

Ms. Aschleman states that she is getting a nod from their engineer.

Mr. Howard states that they still have to detain the marginal increase in runoff offsite and discharge it slowly.

Mr. Sapp states that they catch everything from the asphalt in a four-bay which catches the gravel and things, then it goes into a pond and then when it fills up it'll go into Cicero Creek. He comments that the Engineer is shaking his head. He states that this is a four-bay [as he points on a Site Plan], which all of their drainage go onto here, from here it goes into here...this is the pond. He states that it is about 100 feet across. He states that it is about 2 acres in between. He apologizes that he is not an engineer that is why he keeps looking at him [the engineer]. He states that it will go down about 30 feet. He states that they own about 2 ½ acres down there and it will go into Cicero Creek, but it is clean by then.

Mr. Hanlon asks what neighbors he is talking about.

Mr. Sapp responds that there are neighbors behind.

Mr. Hanlon states that they are not affected by this at all.

Mr. Sapp states no. He comments that there are neighbors to the east and west. He states that Dr. Pam is the chiropractor next to them and she has submitted a letter approving them. He states that Evan Husk is further to the east and he is remodeling a home.

Mr. Hanlon states that he sees it.

Ms. Aschleman states that the homes to the southeast that he is referring to, there are two of them, are pretty close to that northern...

Mr. Sapp states that it is the new reason that... [Unintelligible audio]. He states yes, they are behind them and below them. He states that there will be a lot of trees between [the project] and them, as they will be leaving most of those trees and adding trees, adding a 30-foot landscape, then adding the composite fence as they can see. He states that all of their building are brown...they don't have green doors, but brown doors, and black roofs. He states that they are very low key because his tenants want it to be very secure. He states that they [his tenants] don't want anybody to know that they are there. He states that they want to keep their products and materials. He states that he thinks they have satisfied the neighbors. He comments that the neighbors up on 38 have written notes that they support the change and he thinks that it will have very little effect on the neighbors behind.

Mr. Hanlon asks that if originally this was intended to be short term.

Mr. Sapp states that they do have month-to-month. He states that sometimes an IT company will come in for 3 or 4 months. He states that most of his leases are 6 months to a year, but their first tenant in Castleton is still with him after 10 years. He explains that the companies like that they are short-term leases and they can exit if they need to.

Chairman Field asks how much the variance package equated to in dollars.

Mr. Sapp answers \$1.2 million. He states that the standards that the City requires a lot more stone, a lot more glass, a different roof, the curbing, a lot more shrubs...and the thinks that those standards are okay if they are building a single doctor's building or something. He states that he has 14 buildings and his tenant rental price would go up so high that he would have to put it up for sale. He comments that they can't add another \$1.5 million or \$1.2 million to this facility...the numbers just don't add work

Chairman Field asks that at full capacity, how many tenants he would anticipate.

Mr. Sapp states that having 20 doors, a lot of times companies have grown and they would take 2 doors, so in Castleton they have about 96 different businesses. He states that some of them, about 20% of them, are there daily and the rest are there once or twice a month. He comments that he thinks when Ms. Reed toured [the facility] it had just snowed and most of the doors had snow in front of them...nobody had been there.

Ms. Reed states that one of the important pieces to point out, one of the reasons that they are in front of them [the Board] today, hearing their story again, is these are businesses that are typically growing out of garages, She states that these are the kinds that they don't like to see,

where someone is operating a business in a garage and they get a code violation or their wife gets tired of them hogging up their entire basement. She states that these companies grow into a smaller space. She explains that just from her one site visit she saw how they would start in a small space within the development and grow into more than one space as they get bigger. She states that for the cost of rents...that is the reason why they are here again today, to hear the story about how keeping the price of building construction low is important for the rents that the tenants of this particular use would be acceptable for...if that makes sense.

Chairman Field states all right are there any more questions from the Board. He thanks and dismisses the Petitioner stating that they may call him back after the public hearing. He opens the public hearing and, seeing no one come forward, he closes the public hearing.

Chairman Field states that to his way of thinking, this does not seem unrealistic. He states that this is a different product that would be built in a business park or on the street.

Mr. Hanlon states that they have already proved that though...

Mr. Burtner interrupts with all they are doing is...

Mr. Hanlon finishes the sentence with polishing it up a little bit.

The Board agrees.

Chairman Field states that what he is asking for does not seem unreasonable given what they are trying to accomplish. He states that he thinks having an incubator in town is probably a wonderful idea.

Mr. McNulty agrees.

Motion by Mr. Burtner, seconded by Mr. Hanlon to APPROVE Variance of Development Standards applications BZNA-0005-2019 / BZNA-0006-2019 / BZNA-0007-2019 / BZNA-0008-2019 / BZNA-0009-2019 / BZNA-0010-2019 / BZNA-0019-2019 based upon the following Findings of Fact:

- The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.

With the following specific conditions:

1. The fence along the parallel parking spaces at the northern/eastern edge of the enclosed area will be moved towards the pavement and at least four (4) landscape clusters with at least seventy-five (75) shrubs on the outside of the fence.
2. The Applicant shall move the fence on the west side of the building to the southwest corner of the building and include building base landscaping at the rate required by Article 12 of the Unified Development Ordinance.

3. The building architecture on buildings 12, 51, 52, 53, 61, and 62 shall match the elevations shown in Exhibit 6.
4. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
5. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

Chairman Field clarified that the motion was for all variances a through g.

Mr. Burtner and Mr. Hanlon agreed that it was all the variances.

AYE: Burtner, Hanlon, McNulty, Field. Motion carries 4-0-0.

The Board wishes the Petitioner good luck again.

Chairman Field states that if Ms. Aschleman keeps making them read the roll, he is never going to break his record.

Ms. Reed comments that at least they did not make them call roll for each individual one.

Chairman Field comments that there is that.

Ms. Reed states that it is good to group them all together.

[Unintelligible audio].

NEW BUSINESS

3. BZNA-0024-2019

Location:	1609 S 10 th Street
Applicant:	Dale Hartline
Description:	UDO § 11.C.5.B, 11.C.5.E, 11.C.6.C, An Appeal of a Notice of Violation requesting to remove an illegal sign (pennants/streamers) from the property.

Associate Planner Oksana Polhuy states that the item before them is an appeal of a Notice of Violation ordering the removal of streamer from the Dealer Auto Outlet property. She describes the location on the west side of South 10th Street about a quarter mile south of Christian Avenue. She states that the Applicant and other Property Owners of the subject site were mailed a Notice of Violation on January 4, 2019 asking to abate the violation by January 15th. She explains that

per the UDO, a person receiving a Notice of Violation has the right to appeal to the Board of Zoning Appeals.

Ms. Polhuy explains that last year the Code Enforcement Staff of the City of Noblesville Planning Department started a proactive Temporary Sign Enforcement Program. She states that when the Officers visit different sites, they notify people [business owners/managers, property owners or tenants] when they find violations. She explains that the Officers give them brochures that explain what [temporary signs] are allowed or prohibited and the Officers also give them a deadline to correct the violation. She states that when the Dealer Auto site was visited, Staff found streamers, which are considered an illegal sign per the current UDO. She further states that when Staff spoke to Mr. Hartline [the Applicant/Appellant] on the phone, he said that the streamers were grandfathered. She states that the Notice of Violation was not issued onsite at the time of the visit because Staff did more research. She explains that it was found that the sign was illegal as a result of the research and the Notice of Violation was issued.

Ms. Polhuy states that the UDO defines a legal nonconforming sign as a sign legally existing as of the effective date of this Ordinance that is not in compliance with this Ordinance or any subsequent amendment. She comments that the effective date of the UDO is May 1, 1996. She states that per UDO § 11.C.6, a legal nonconforming sign can lose its nonconforming status and turn into an illegal sign for a number of reasons, including complete sign replacement. She states that the definition of a legal nonconforming sign as well as the reasons for it losing its nonconforming status have not changed much since the UDO became effective in 1996. She explains that In order to determine if a sign is illegal or legal nonconforming, one would have to check if:

- the sign was installed before or after May 1, 1996;
- it was installed legally; and
- it was replaced any time between May 1, 1996 and today.

Ms. Polhuy states that in an aerial photo from 1997, the year after the current Ordinance went into effect, we don't really see anything that resembles the streamers over the cars on the subject site, however we can view streamers on the property across from the subject site. She states that in the 1998 aerial photo, we can see a line appear over the cars [on the subject site]. She explains that from this evidence, Staff has reasons to believe that the sign appeared sometime between 1997 and 1998, when streamers were already a prohibited sign, so it was illegal from the very beginning. She additionally states that the sign is attached to the poles and light posts, signs attached to light poles or standards have been illegal since 1988. She states that if there was any evidence brought [forward] showing that the sign was installed before the effective date of the UDO in 1996, and the sign was considered legal nonconforming, we could see that the streamers have been replaced since then. She states that [the photos show] there are silver and blue streamers in 2007 and that in 2009 they were completely replaced with streamers in different colors and a different configuration. She summarizes that the complete replacement of a sign would lose its legal nonconforming status. She reiterates that Staff believes that the sign was illegal the entire time and should be removed. She states that Staff recommends denial of the appeal of the Notice of Violation and affirm the order to remove the streamers by March 9, 2019, the end of this week.

Chairman Field asks to clarify that basically the problem is the streamers.

Ms. Polhuy confirms his statement with a yes.

Mr. Hanlon asks if the property across the street was the old Hare lot.

Mr. Burtner answers yes.

Mr. Hanlon states that it's gone and Mr. Burtner agrees.

[Unintelligible audio.]

Ms. Polhuy states that it [the subject site] is across from the County Highway Department.

Chairman Field thanks Staff and asks if the Petitioner is present.

Mr. Dale Hartline, 1609 S 10th Street, the Petitioner, representing Dealer Auto Outlet, comes forward. He states that she [Ms. Polhuy] presented him with evidence that they [the streamers] were there since 1996 and then told him that they were nonconforming because the streamers have been replaced over time. He states that he is not denying that because it UDO § 11.6 says that the sign has to be kept in good repair and/or safe condition. He states that it is hanging plastic tassels and they have never increased or decreased size or amount, but every 6 months they start breaking. He states that by law he has to replace them and they have been there for 20+ years. He states that he has maintained them as he is supposed to. He also states that per the International Sign Council, every portion of the sign including the two poles that hold it are part of the sign. He explains that he didn't change the entire sign, just the part that was littering the roadway and the occasionally breakage. He states that he replaces all of [the streamers] whenever any of them break or start losing fringes. He continues by stating that they have kept the same colors. He states that in the photo from 1996 showing silver, blue and red, but the silver is no longer available so they kept them red and blue. He reiterates that they have not increased or decreased [the streamers], they just dropped one of the colors because it's no longer available and they wore out fast, which is why they stopped carrying them.

Mr. Hanlon asks how many of the other car dealerships have streamers on them.

Ms. Polhuy answers that she has not seen any.

Mr. Hanlon states that there are none.

Mr. Hartline states that is because they [Staff] went through and eliminated them all.

Mr. McNulty asks when the Petitioner originally put streamers up.

Mr. Hartline answers that he did not originally put them up; Jim Hine put them up. He states that he started working there September 2, 1999 and he maintained them the whole time. He states that he [Mr. Hine] told him to maintain them or he would lose his grandfather clause.

Mr. Hanlon asks Mr. Howard if there is such a thing, a grandfather clause, here.

[Unintelligible audio].

Ms. Reed states they we are going to confuse [the Board] with multiple attorneys this evening. She explains that Mr. Unger is the new Enforcement Attorney.

[Unintelligible audio].

Mr. Steve Unger explains that there is a provision in the UDO that if a use is existing before an Ordinance is adopted and that Ordinance says that it is illegal, that is what is considered a grandfathered use. He states that the purpose of having a grandfather provision is that you eventually want to phase those out. He continues with an example that by replacing the sign, it is no longer a legal nonconforming use. He states as Ms. Polhuy outlined there are two issues, is it actually grandfathered and it's the Petitioner...

Mr. Hanlon interrupts by stating that's all they really want to know, whether it is grandfathered or not.

Mr. Unger answers was it put in properly when it was put in. He states if the Ordinance was adopted in 1996 and the evidence is that the signs, the banners themselves are a sign under the Ordinance. He states if those banners weren't there in 1996, it's not a permitted grandfather. He further states that even if it was there in 1996 and it was replaced at any point since then, it is no longer considered a grandfathered use. He goes on that either way it was not originally and yet you can't replace it. He understands that the Petitioner wants to maintain it, but that is the purpose of the language in the UDO is to not let people continually replace those things because you want to phase them out.

Ms. Polhuy states that in the definition of the legal nonconforming sign, if the sign legally exists as of the effective date. She states that attaching signs to the poles, any poles, that type of sign was prohibited since 1988, the previous Ordinance, before the current one. She states streamers being attached to the posts...it was just illegal.

Mr. Hanlon interrupts stating that this is pretty cut and dry.

Chairman Field asks was it 1996 or 1997.

[Unintelligible audio].

Ms. Reed states it was 1996...

Chairman Fields interrupts stating that aerial photos are hard [Unintelligible audio]. He states it's pretty clear in the 1997 aerial photo that they are there and the 1998 they are.

Ms. Reed answers correct and the Ordinance was 1996.

Chairman Field states that it is pretty clear. He states he doesn't see them in the 1997 and he does see them in the 1998.

Mr. Hartline states that she [Ms. Polhuy] presented him with evidence that they were there in 1996.

Ms. Polhuy explains for clarification that the aerial dated 1997 was labeled as 1996/1997 in our GIS system. She states that she had to do research with Hamilton County regarding the date that the aerial was flown. She states that Hamilton confirmed that the aerials for that area of Noblesville were flown in 1997. She states she did not know exactly when the sign was installed until this research was done, which was not until the appeal was filed.

Ms. Reed states that if the sign was there in 1996, but not in 1997, doesn't make it okay for it to come back in 1998...that's the point there. She states even it did exist for a year but was taken down for a year, that doesn't mean you can go back to the original because you had it when the Ordinance was adopted.

Chairman Field thanks the Petitioner and dismisses him. He asks if they need to hold a public hearing on this item.

[Unintelligible audio.]

Mr. McNulty comments that this is a lot to do about a streamer. He states that it's pretty clear that it is not there in 1997, but it is there in 1998.

Mr. Hanlon states that the City is pretty clear about how they feel about it and since there are no other car lots that are doing it.

Mr. Hartline, the Petitioner, states [from the audience] that is because they are not allowed. He states that she has lied to him on several occasions and he doesn't know if she changed the date on that...

Chairman Field states that the Petitioner needs to come up to the microphone.

Ms. Reed states that just so the Board of Zoning Appeals is aware, Staff has a full time Code Enforcement Officer now, so they are doing a more proactive approach. She states previously we wouldn't do a multiple use sweep like we have been able to do more recently because we didn't have the staff. She states that we were always complaint-driven. She comments that since Council approved a full-time Code Enforcement Officer, we have several people out there looking, so we're tackling things... [Unintelligible audio.]

Mr. Hartline interrupts stating they are trying to find a way to eliminate...

Ms. Reed confirms that is the purpose of the grandfathering clause.

Mr. Hartline interrupts commenting just to get rid of it. He states that even though there wasn't a problem with it or doing anything wrong.

Ms. Reed comments that they [the streamers] are not legal.

Mr. Hartline states that is why they lied to him on several occasions so they could get to this point.

[Unintelligible audio.]

Mr. Hartline states no, no they are true remarks. [Unintelligible audio.] He re-states that those are true remarks.

Ms. Reed states that they are not targeting one person specifically which is also proven in the Staff Report. She states that they can see other businesses that they have asked to take their flags or pennants down, and they [the other businesses] have done so.

Chairman Field states that they are not in a position today to talk about what other people are doing, they are just looking at his situation and he does not see any evidence that the banners were there in 1997. He states that they may not have been put up appropriately before then. He comments that he doesn't see it.

Mr. Hartline states that he doesn't know.

Chairman Field continues stating he doesn't see them in the aerial photo. He states that they had a situation a while back where somebody had a sign that the wind blew down and they couldn't put it back up because it was a nonconforming sign. He states that he thinks it was the gas station or liquor store up at the corner. He states that if the 1997 aerial photo clearly showed, he'd probably think it was a banner, no big deal. He states that he does not see them on the aerial photo with the evidence that they exist... [Unintelligible audio.]

Mr. Hartline states he was just presented with that. [Unintelligible audio.]

Chairman Field states that in a public meeting they are providing them with accurate information. He states that if they were lying to them [the Board], then that would be... [Unintelligible audio.]

Mr. Hartline states that he doesn't know, he was just presented with this information. He states that she told him previously that they were up in 1996, which he would have no knowledge of. [Unintelligible audio.]

Chairman Field states that they provide them testimony, they have to make the assumption that it is true... [Unintelligible audio.]

[Unintelligible audio.]

Mr. Hartline states that he understands what their position is, he has no way of refuting that because he wasn't there.

Mr. Hanlon states that it is like losing their place in line, basically.

Mr. Hartline answers that he understands what that means, but he is saying that it doesn't mean that their {Staff's} evidence is correct or he has any way to refute that.

Mr. Hanlon states that they have no reason to lie to him.

Mr. Hartline comments that he doesn't know how well they have dealt with them but he has continuously.

Mr. Hanlon thanks him.

Ms. Polhuy states that she can quote from...

Chairman Field states that it is okay and they are good.

Motion by Mr. McNulty, seconded by Mr. Burtner to uphold the determination of the Department Administrator [denial of the appeal of the Notice of Violation and affirm the order to remove the streamers by March 9, 2019] for application BZNA-0024-2019.

Mr. Hartline asks for an extension of time, because of the weather, to get them [the streamers] down. He states that they are up there pretty high and they want them down by the end of the week.

Ms. Reed states that he could have until the end of the month.

Mr. Hartline asks for 30-45 days, something reasonable.

Amended motion by Mr. McNulty, seconded by Mr. Burtner to uphold the determination of the Department Administrator [denial of the appeal of the Notice of Violation] for application BZNA-0024-2019 and allow 30 days to be in compliance.

AYE: Burtner, Hanlon, McNulty, Field. Motion carries 4-0-0.

4. BZNA-0027-2019 / BZNA-0031-2019/ BZNA-0032-2019

Location: 7015 E 161st Street

Applicant: Mark Spencer

Description:

- a) UDO § 10.0.4.D.1 - Variance of Development Standards to allow an unpaved and uncurbed parking lot;
- b) UDO § 10.0.4.C.3 & C.4 - Variance of Development Standards to allow a parking lot to encroach in the required side yard setback and to extend over a property line;
- c) UDO § 12.0.5.B.1 - Variance of Development Standards to allow an un-landscaped parking lot.

Senior Planner David Hirschle introduces himself as the newest member of the Planning Staff. He describes the subject site location on the south side of 161st Street about a quarter of a mile west of 161st Street and Cherry Tree Road. He states that the site was the subject of a land use variance approval in October 1993 to allow retail sales in a residential district. He states that Applicant

seeks to establish Spencer Farm Winery on the site, just on Lot 1 and not on the parent tract that surrounds it. He explains that Lot 1 was created by plat in 2004.

Mr. Hirschle states that as part of the establishment of the proposed winery the Applicant is seeking three variances all concerning the parking lot proposed to be established to serve the Spencer Farm Winery:

- 1) Allow the parking area to remain unpaved and uncurbed, which would include the drive that extends from 161st Street to the parking area.
- 2) Extend the parking area into the required 10 foot side yard setback and cross the eastern property line of Lot 1 onto adjacent property also owned by the Applicant.
- 3) Provide no landscaping for the new parking area.

Mr. Hirschle states that the proposed crushed stone area is serve the patrons of the tasting room and retail space for the proposed business. He states that there will be exterior modifications to actual structure, the former farmhouse, mainly dealing with ADA compliance. He states that there would not be any change to the siding or look of the farmhouse except to provide a guardrail for the wraparound porch, ADA-complaint doors and a ramp to allow access to the porch and entry doors. He states that they will be the only exterior changes seen apart from the proposed crushed stone parking area and a proposed patio south of the farmhouse which would serve as a seating area for patrons.

Mr. Hirschle states that the key argument for variances 1 and 3, unpaved and uncurbed parking and no landscaping, is that farming equipment will cross that area during regular farming operations. He asks that the Applicant state that for the record because that is the key to those two variance recommendations from Staff. He explains that if there is equipment crossing this parking area, it certainly would be unwise to require paving or curbing that might result in damage to the equipment or to the curbing and paving itself. He states that similarly the same argument goes for the landscaping as they don't want equipment running over the landscaping.

Mr. Hirschle states that regarding the setback, the proposal is to establish the parking area within not only the 10-foot side eastern setback, but also across the property line. He states that the reason for this is to set the parking area a little distance away from the patio seating area due to noise and fumes, for the better experience of the patrons. He states that there is a septic system to the west of the farmhouse which may preclude putting a parking area there.

Mr. Hirschle states that Staff recommends approval based upon the findings of fact and subject to the conditions listed in the Staff Report. He shows the existing conditions on an aerial photo and points out the location of the proposed crushed stone parking area, drive to the parking area, the farmhouse and the septic system.

Chairman Field thanks Staff and calls the Petitioner forward.

Mr. Mark Spencer, 500 South Cherry Street, Westfield, Indiana, comes forth as the Petitioner.

Chairman Field asks if the description of the project is his plan.

Mr. Spencer answers yes, they are basically a working farm as well as a retail operation. He states that they have some pretty big equipment. He explains that when the tractor is fully loaded with

some equipment, it could be 20,000 pounds. He states that the area to the southeast or east of the parking area will still be farmed. He states that the turning radius on the tractor is not great and they may need to go over the drive or into the parking lot to turn around.

Chairman Field states that Staff has recommended five specific conditions to add unto this variance should they choose to grant it and he asks if he is aware of those or if he has any problems with any of them.

Mr. Spencer states that they do not have problems with any of them.

Chairman Field asks the Board if they have any questions for the Applicant. He thanks Mr. Spencer and dismisses him. He opens the public hearing and, seeing no one come forward, he closes the public hearing.

[Unintelligible audio.]

Mr. Burtner states that it is a great farm out there anyway.

Motion by Mr. Hanlon, seconded by Mr. McNulty to APPROVE Variance of Development Standards application BZNA-0027-2019 / BZNA-0031-2019 / BZNA-0032-2019 based upon the following Findings of Fact:

- **The approval will not be injurious to the public health, safety, morals, and general welfare of the community;**
- **The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and**
- **The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.**

With the following specific conditions:

1. That a disability-accessible parking space be provided as the nearest space to the public entry on the primary structure's east side, and that such space be marked with a sign utilizing the international access symbol at a minimum of 5.5 feet above ground level.
2. That any lighting installed for the parking area or for the outdoor patio seating area be of the fully-shielded variety, and that a minimum of one (1) foot-candle of illumination be provided throughout the parking lot.
3. That, in the event of a sale of Lot 1 to another party, the applicant record a parking easement on the parent tract in favor of Lot 1 that matches the extent of the encroachment of the parking area onto this parent tract. This condition will apply only in the event that the parking area is to remain in use in its encroaching configuration.
4. That the Applicant sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
5. Any alterations to the site's approved land uses or site plan, other than those required by the Board of Zoning Appeals, shall be submitted to the Planning and Development

Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

AYE: Burtner, Hanlon, McNulty, Field. Motion carries 4-0-0.

Mr. Burtner asks if this will mess up their strawberries.

[Unintelligible audio.]

Mr. Burtner asks in wine form.

[Unintelligible audio.]

Chairman Field states if they would please.

[Unintelligible audio.]

Mr. Spencer remarks Mr. Howard hasn't changed a bit. He states that they did consider asphaltting it but it's going to be impossible to get fertilizer wagons across there without crumbling that asphalt. He states that the strawberries and grapes will be added to the area east of the house.

Mr. Hanlon addresses Mr. Spencer and asks what is next... a television series.

Ms. Reed asks if there is going to be a ribbon-cutting and tasting.

Mr. Spencer states that they will have to ask the proprietor.

Chairman Field asks if there is a motion to adjourn the meeting.

ADJOURNMENT

Meeting adjourned at 7:04 p.m.