

NOBLESVILLE BOARD OF ZONING APPEALS MINUTES – MARCH 6, 2017

The Noblesville Board of Zoning Appeals met in regular session on Monday, March 6, 2017. Members in attendance are as follows:

David Burtner
Doug DeJarnatt
Vice Chairman Mike Field
Chairman Jim Hanlon
Barry McNulty

Others in attendance included Senior Planner Justin Schuessler and Associate Planner Rina Alvarez from the Department of Planning and Development and Assistant City Attorney Darren Murphy.

Chairman Hanlon calls the meeting to order at 6:00 pm.

APPROVAL OF MINUTES

Mr. Burtner motions to approve the **January 3, 2017 Minutes** as presented. The motion is seconded by Vice Chairman Field.

AYE: Burtner, Field, McNulty; ABSTAIN: DeJarnatt, Hanlon.

The motion carries, 3, 0, 2.

APPROVAL OF FINDINGS OF FACT

Mr. McNulty motions to approve the **January 3, 2017 Findings of Fact** as presented. The motion is seconded by Mr. Burtner.

AYE: McNulty, Burtner, Field; ABSTAIN: DeJarnatt, Hanlon.

The motion carries, 3, 0, 2.

NEW BUSINESS

1. **BZNA 0010-2017**
2233 Sheridan Road
Variance of Use to allow farm animals on a property within city limits

- BZNA 0022-2017**
2233 Sheridan Road
Variance of Use to allow the construction of a detached accessory structure prior to the construction of the principal residence

Chairman Hanlon informs the audience that applications **BZNA 0010-2017** and **BZNA 0022-2017** have been **CONTINUED** until the May 1, 2017 Board of Zoning Appeals Meeting.

Chairman Hanlon sees that the petitioner for application **BZNA 0011-2017** is not present in the audience

and calls for the introduction of application **BZNA 0013-2017**.

3. BZNA 0013-2017

1810 Westfield Road

Variance of Development Standards to continue the display of an off-premise sign

Mr. Schuessler introduces application **BZNA 0013-2017** and informs the Board that staff received letters of support from several adjacent property owners. He distributes the letters to the Board members. Mr. Schuessler states the subject site is located at the southeast corner of Willowview Road and Westfield Road, immediately south of the property located at 1810 Westfield Road. He explains that the site is comprised of a single undeveloped 9-acre parcel that contains a large, off-premise sign that was originally approved via Variance of Development Standards in March of 2004. He informs the Board that the 2004 Variance of Development Standards was approved with a condition that limited the display of the sign to a period of ten years. He informs the Board that the petitioner has requested an extension to display the sign for an additional period of seven years, but states that the petitioner has informed staff that he will not request an additional extension on any future variance applications.

He explains that the sign was originally approved as a 96 square foot sign to be displayed on a 12 foot tall, 12 foot wide sign frame and informs the Board that the location of the sign was regulated in the conditions of approval of the 2004 Variance of Development Standards. Mr. Schuessler informs the Board that the property immediately east of the subject site has been developed as a mortuary/funeral home, but states that all other adjacent property have remained unchanged since the Board's 2004 variance approval.

Mr. Schuessler explains that the off-premise sign has increased in height and no longer complies with the maximum height limit established as a condition of approval in 2004. He states that staff has recommended denial of the requested Variance of Development Standards, but explains that if the Board should vote to approve the variance, staff has requested a condition of approval that would require the petitioner to lower the off-premise sign to the maximum height imposed as a condition of the 2004 variance approval.

Mr. Burtner asks for clarification regarding the message currently being displayed on the sign and comments that the sign currently displays a different message than the message approved in 2004. Mr. Schuessler clarifies that the Variance of Development Standards approved in 2004 allowed a prohibited sign type to be displayed, but did not restrict the message of the sign. Mr. Burtner asks if the petitioner sells the right to advertise on the sign. Mr. Schuessler confirms.

The petitioner introduces himself as Syd Davis, residing at 1810 Westfield Road. He informs the Board that his mother, Phyllis Davis, has displayed the off-premise sign on the property since the 1960s. He states that no future variances will be requested beyond the seven-year extension being requested upon this variance.

Mr. DeJarnatt asks the petitioner when the sign was modified to be taller than permitted by the 2004 variance approval. Mr. Davis responds that a sign company raised the height of the sign without his knowledge, and confirms that the current sign is 44 inches taller than the originally approved height.

Chairman Hanlon asks the petitioner if he is willing to lower the sign to meet the 2004 condition of approval. Mr. Davis confirms.

Chairman Hanlon opens the public hearing; seeing no one come forward, Chairman Hanlon closes the public hearing.

Vice Chairman Field motions to APPROVE application BZNA 0013-2017 based upon the following findings of facts:

1. The approvals will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variances will not be affected in a substantially adverse manner;
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property;

With the following specific conditions:

1. The petitioner must modify the existing sign to meet the height and location commitments originally imposed by the Board's 2004 approval within sixty (60) days.
2. The sign may remain in existence until the subject real estate is developed or for a period of seven (7) years.
3. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff and return to the Department 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.
4. Any alterations to the approved site plans, other than those required by the Board of Zoning Appeals (BZA) or the Technical Advisory Committee (TAC) shall be submitted to the Department of Planning and Development prior to the alterations being made, and if necessary, a BZA hearing shall be held to such changes.

The motion is seconded by Mr. McNulty.

AYE: Field, McNulty, Burtner, Hanlon; NAY: DeJarnatt. The motion carries, 4, 0, 1.

2. BZNA 0011-2017

444 South Harbour Drive

Change of Development Plan to allow the construction of a 1,200 square foot addition to an existing Conditional Use

Ms. Alvarez introduces application **BZNA 0011-2017** and states that the petitioner filed a Change of Development Plan application to request a 1,200 square foot addition to an existing church in the R2 (Low to Moderate Density Single-Family Residential) zoning district. She explains that the property is approximately 5.3 acres in size and is located on the east side of South Harbour Drive, approximately 60 feet north of SR 38. Ms. Alvarez states that the subject site is adjacent to existing single-family residences on the north, east, and west, and is adjacent to a fire station to the south.

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Ms. Alvarez explains that the petitioner's proposed expansion requires the Board's approval because the existing use is considered a conditional use in the R-2 zoning district. She explains that the conditional use was originally established in the 1970s and states that the church has undergone three minor structural updates since 2011, including the addition of a covered walkway, an electrical upgrade, and an interior remodel. She states that the proposed addition will include a 55-foot tall steeple, complete with four speakers to broadcast chimes.

Steve Holt, 83 S 9th Street, introduces himself as the petitioner. Mr. Holt states that the proposed addition has been requested to increase the aesthetics and modernize the church. He states that there have been discussions to modify the existing structure to better resemble a place of worship since the church was established.

Mr. Holt explains that the proposed steeple will include speakers and distributes information (Exhibit 7) regarding the times and occasions that the church would like to broadcast chimes. He asks the Board members if they have any additional questions about the requested Change of Development Plan.

Mr. DeJarnatt states that he used to live adjacent to the subject site and never had issues with the church. He expresses concern with the installation of chimes and refers to the morning and evening chimes included in Exhibit 7. He states that the chimes would be disruptive and requests a revision to the proposed times that chimes would be broadcast. He states that several of the surrounding homes are located in close proximity to the church and would be adversely affected by the chimes.

Chairman Hanlon asks if there are currently chimes on the church. Mr. Holt states that there are not.

Mr. Holt explains that attempts have been made to limit the times of the chimes to exclude late nights. Chairman Hanlon refers to the adjacent firehouse and mentions that sirens may already occur late at night in emergency situations.

Chairman Hanlon opens the public hearing.

Mike Morris, 106 Aspen Way, introduces himself as a member of the South Harbour HOA and asks the petitioner how loud the chimes will be broadcast. Mr. Holt responds that the church is committed to being a good neighbor to the surrounding residences. Chairman Hanlon asks the petitioner if the first chime would be played at 7:30am. Mr. Holt responds that the first chimes would be played at 8:00am. He mentions that the chimes can have their volume adjusted, and commits to lowering their volume if neighboring residences felt that the chimes were too loud. He offers to meet with the neighboring residents and the South Harbour HOA to determine an appropriate volume level for the chimes.

Chairman Hanlon asks Mr. Morris if the petitioner's response was reasonable. Mr. Morris confirms.

Laura Cordray, 571 Lakeview Drive, introduces herself as a representative of the church's building leadership committee and clarifies that chimes would only be regularly played on Sunday mornings for the 8:00am, 9:30am, and 10:30am services. Ms. Cordray states that the 8:00am chimes can be omitted if neighboring residents felt that the chimes would be disruptive. She clarifies that evening chimes would only be played during weddings.

Seeing no other speakers come forward, Chairman Hanlon closes the public hearing.

Vice Chairman Field asks Mr. Murphy if the proposed chimes would fall under the City's noise ordinance regulations. Mr. Murphy confirms and explains that the noise ordinance regulations impose a decibel limit measured at the property lines. Mr. Murphy explains that the Board cannot waive the noise ordinance regulations and reiterates that the ordinance regulations will still be in effect.

Chairman Hanlon comments that the noise ordinance should be mentioned in a commitment if the Board votes to approve the petitioner's request. Vice Chairman Field states that the church will be required to follow noise ordinance regulations even without a specific commitment to follow the regulations.

Mr. DeJarnatt reiterates his concern with chimes being broadcast early in the morning and requests the chimes start later than 8:00am as originally proposed. Vice Chairman Field asks Mr. DeJarnatt for a reasonable time that chimes could be played in the morning. Mr. Burtner comments that the chimes should be broadcast at 8:00am in conjunction with the first church service. Mr. DeJarnatt again states that he feels chimes should not be broadcast at 8:00am but states that he has no issues with chimes played in conjunction with the 9:30am and 10:30am services. He suggests that the 8:00am chimes be eliminated or quieted so that neighboring residence cannot hear them.

Mr. McNulty states that he feels the petitioner has made attempts to be a good neighbor to the surrounding residents. Chairman Hanlon states that only one resident expressed concern with the chimes, and only asked that the chimes be broadcast at a reasonable volume. Mr. DeJarnatt agrees that the petitioners have made an attempt to work with surrounding residents but states that he is concerned that the 8:00am chimes will wake adjacent residents.

Vice Chairman Field motions to APPROVE application BZNA 0011-2017 based upon the following findings of facts:

1. The proposed Conditional Use is, in fact, a conditional use established within the specific zoning district involved;
2. The proposed Conditional Use 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;
3. The proposed Conditional Use 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;
4. The proposed Conditional Use will not be hazardous or disturbing to existing neighboring uses;
5. The proposed Conditional Use 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 Conditional Use shall be able to provide adequately any such services;
6. The proposed Conditional Use 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;

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7. The proposed Conditional Use 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;
8. The proposed Conditional Use will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
9. The proposed Conditional Use will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance;

With the following specific conditions:

1. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff and return to the Department 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.
2. Any alterations to the approved site plans, other than those required by the Board of Zoning Appeals (BZA) or the Technical Advisory Committee (TAC) shall be submitted to the Department of Planning and Development prior to the alterations being made, and if necessary, a BZA hearing shall be held to such changes.

The motion is seconded by Mr. Burtner.

AYE: Field, Burtner, DeJarnatt, McNulty, Hanlon. The motion carries, 5, 0, 0.

4. BZNA 0018-2017

20901 Hague Road

Variance of Development Standards to relocate required building base landscaping elsewhere on site

Mr. Schuessler introduces application **BZNA 0018-2017** and states that the subject site is located at 20901 Hague Road and is comprised of approximately 4.5 acres. He explains that the site currently contains a 14,500 square foot marine craft sales, repair, and service facility that was originally approved as a conditional use in 1978. Mr. Schuessler further explains that the original facility was constructed as a 6,000 square foot structure that has since been expanded to include an 8,400 square foot building addition and three detached accessory structures on the property. He informs the Board that the petitioner has submitted applications to construct a 5,200 square foot addition to be used for watercraft maintenance. Mr. Schuessler notes that the proposed addition would include multiple overhead service doors to accommodate the proposed use and refers to the building elevations submitted as Exhibits 6 and 7.

Mr. Schuessler states that the petitioner is requesting a variance for the proposed addition that would allow required building base landscaping to be installed on the perimeter of the site rather than along the building base. He notes that neither the original structure nor the subsequent addition were required to install landscaping along the building base. Mr. Schuessler clarifies that the petitioner is not requesting a reduction in the amount of required landscaping, but is only requesting the Board's approval to install the landscaping elsewhere on the site. He mentions that the petitioner expressed concern that the operation of watercraft maintenance would likely damage any landscaping planted around the building base.

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Mr. DeJarnatt asks whether the amount of outdoor storage was limited by any conditions of approval when the facility was originally established. Mr. Schuessler states that he does not believe so.

Nathan Winslow, 7260 Shadeland Station, introduces himself as a representative of American Structurepoint and a petitioner. Chairman Hanlon asks Mr. Winslow if he has any questions or issues with the conditions provided in the staff report. Mr. Winslow states that he does not.

Mr. McNulty asks Mr. DeJarnatt if he has issues with the outdoor storage on the subject site. Mr. DeJarnatt states that he does not, but states that limitations to outdoor storage are usually imposed as conditions of approval on Conditional Use applications, and states that the subject site has a large amount of outdoor storage.

Chairman Hanlon asks Mr. Schuessler if outdoor storage would be grandfathered if it was not prohibited by a previous condition of approval. Mr. Schuessler confirms.

Chairman Hanlon asks the property owner to step forward to answer questions. Jim Lingenfelter, 20901 Hague Road, identifies himself as a petitioner and the brother of the property owner. He states that outdoor storage was not prohibited by the 1978 Conditional Use hearing and states that he is not proposing to expand the outdoor storage beyond its current capacity.

Chairman Hanlon opens the public hearing.

Matt Cupp, 20942 Waters Edge Court, introduces himself as an adjacent property owner. Mr. Cupp states that he was unsure about the specific details of the petitioners' request but states that he has no issues with the proposed addition.

Seeing no other speakers come forward, Chairman Hanlon closes the public hearing.

Mr. McNulty motions to APPROVE application BZNA 0018-2017 based upon the following findings of facts:

1. The approvals will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variances will not be affected in a substantially adverse manner;
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property;

With the following specific conditions:

1. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff and return to the Department 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.
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Planning and Development prior to the alterations being made, and if necessary, a BZA hearing shall be held to such changes.

The motion is seconded by Mr. Burtner.

AYE: McNulty, Burtner, DeJarnatt, Field, Hanlon. The motion carries, 5, 0, 0.

MISCELLANEOUS

Mr. Murphy provides an update regarding the Board's 3, 0, 0 decision at the January 3, 2017 Board of Zoning Appeals meeting to uphold Director of Planning and Development Sarah Reed's decision to issue a fee for the occupancy of a commercial structure without a Certificate of Occupancy at 802 Mulberry Street. Mr. Murphy states that the petitioner has appealed the Board's affirmation to the Circuit Court. He informs the Board that he has prepared a brief that includes the minutes and findings of fact from the January hearing.

Chairman Hanlon asks whether the appeal process will be affected by the fact that only three (3) Board members were present for the January meeting. Mr. Murphy states that it will not since a quorum was present.

Chairman Hanlon asks if there will be any further action required by the Board. Mr. Murphy states that it is most likely that there will not, but states that the Circuit Court may ask the Board to re-evaluate their decision if the court determined that there was insufficient evidence given for any of their findings of fact. Mr. Murphy reiterates that he does not anticipate this situation to occur.

ADJOURNMENT

Meeting adjourned at 6:46 pm.

Jim Hanlon, Chairman

Sarah Reed, Secretary