

Minutes

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
July 23, 2012 at 6:00 P.M.

PLEDGE OF ALLEGIANCE A moment of silence was held followed by the Pledge of Allegiance.

ROLL CALL: Larry Willis, Chairman; Tina Baxter, Terry Dayvolt, Judy Writsel, Mike Winge, Jeff Valiant

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director; Sheila Lacer and Molly MacGregor, Staff.

MEMBERS ABSENT: Don Mottley

MINUTES: Upon a motion made by Mike Winge and seconded by Judy Writsel, the minutes of the last regular meeting held June 25, 2012, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

VARIANCE:

BZA-V-12-18

APPLICANT: Custom Sign & Engineering by Kathy Tuley, Sales Rep. **OWNERS:** Northwood Church SBC Inc., by John Greenback, Trustee.

PREMISES: Property located on the N side of Robin Hill Rd. approximately 500 ft. E of the intersection formed by Old SR 261 and Robin Hill Rd. Ohio Twp. Parcel 7A in Newburgh Plaza South. *8122 Robin Hill Rd.*

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow an Improvement Location Permit to be issued for an on premise sign encroaching 5' into a 50' recorded building setback line in a "C-4" General Commercial zoning district. *Advertised in the Boonville Standard July 12, 2012.*

Kathy Tuley with Custom Sign & Engineering was present, along with Richard Eich, Leadership Team Chair, and Kris Holzmeyer, Pastor.

The Chairman called for a staff report.

Mrs. Rector stated that they have all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said this is for a Variance for an on premise sign 5' off the property line, which locates it within the 50ft building set back line that was placed by

the developer, Mr. Ubelhor. She stated that the requirement for commercial zoning is only 5', however he had the choice to make it as large as he wanted to. She then said that the plat was recorded in 1973 with a 50' building setback line across the front, it would have only required a 5' set back. She said the existing land use is a church or religious facility. Mrs. Rector said the property to the North, West, and East are zoned C-4, being Newburgh Plaza, and the property to the South is Zoned R-2, being Wyngate Subdivision. She stated that there is no flood plain on the property, and the driveway is on Robin Hill Rd, with a back entrance off of a service drive that was platted inside of the subdivision for use as a service drive. Mrs. Rector said that in 1999 they received their original Conditional Use Approval for the church to be located in this building and in 2003 they received an Amended Conditional Use BZA-CU-03-27 to allow an additional 6250 sq. ft. to the existing church. She added that Attorney Doll may explain Federal Law regarding religious facilities, abbreviated to RLUIPA. Mrs. Rector stated that the application is in order.

Attorney Doll stated that the Board could ask questions first.

There were no questions at this time.

The Chairman asked for questions by the Board, being none he asked if the applicants had anything to be added to the Executive Director's report, they said no.

The Chairman stated that from looking at the drawing in the application it appeared that the proposed sign would be no closer to the pavement than what the landscaping company has next to their property, and asked if that was correct.

Mrs. Tuley stated that this was correct.

Mrs. Rector asked is this sign is replacing an existing sign.

The applicants stated that it was a new sign being proposed.

Mrs. Rector stated that most of the businesses do have their signs out at this distance and that it won't cause any sight problems with anybody pulling out of the driveway.

The applicant said no and that the proposed sign is not near the driveway.

The Chairman stated that from looking at the pictures the sign is a 3'x6' on a 2'x5' base, so the total height is 5', was that correct.

Mrs. Tuley stated that this was correct.

Mrs. Rector asked if it was going to be a message center board.

Mrs. Tuley said that it was not.

The Chairman asked for remonstrators, being none, he asked for Attorney Doll to speak on the Federal Law.

Attorney Doll stated that in 2000 the US Congress passed the Religious Land Use Institutional Persons Act which precludes local government from imposing or implementing land use restrictions of any manner to impose a “substantial burden” on the religious exercise of any person including a religious assembly or institution. He said the meaning that the burden shifts anytime a religious institution files an application for a zoning matter of any kind, and only if the local unit of government can prove that it has a compelling reason to deny the application based upon substantial public interest. He added only then can the local unit of government deny the applicant.

Ascertaining there were no other comments from the Board and being no remonstrators present, the Chairman called for a motion.

Terry Dayvolt made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the 50’ building set back line does not coincide with our 5’ building set back line, and based on the Religious Land Use Institutional Persons Act.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.

7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.
 - e) Subject to all conditions of the BZA-CU-03-27.

Motion was seconded by Jeff Valiant and unanimously carried.

ATTORNEY BUSINESS: None

EXECUTIVE DIRECTOR BUSINESS: None

Being no other business the meeting adjourned at 6:15 p.m. Motion made by Mike Winge, seconded by Terry Dayvolt and unanimously carried.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held July 23, 2012.

Sherri Rector, Executive Director