

MINUTES
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
November 26, 2012 at 6:00 P.M.

Mrs. Rector reported that there was not a Chairman or Vice Chairman present, and asked for a census approval of the board for Terry Dayvolt to be Acting Chairman; the Board gave their approval.

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

MEMBERS PRESENT: Terry Dayvolt, Acting Chairman; Tina Baxter, Judy Writsel, Mike Winge, Jeff Valiant, and Jeff Willis.

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

MEMBERS ABSENT: Don Mottley.

MINUTES: Upon a motion made by Mike Winge and seconded by Jeff Valiant, the minutes of the last regular meeting held August 27, 2012 were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

VARIANCES:

BZA-V-12-25 (Advertised as BZA-V-12-24)

APPLICANT: Champion Windows by Wayne Staples, Manager **OWNER:** Acapulco Corp. by Melvin Ortez, Owner.

PREMISES: Property located on the N side of High Pointe Drive. Approximately 0 miles E of the intersection formed by Bell Road and High Pointe Drive of Ohio Township, LT# 40 in High Pointe Center North Sec 2 Phase 2, *8480 High Point Drive*.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued to allow the enclosure of an existing 16' X 60' wood deck (960 sq. ft.) encroaching 37.11 feet onto the Lake Maintenance and Storm Drainage Easement in an "C-4" General Commercial Zoning District. Previous Variances approved for deck encroachment BZA-V-08-21 (6-25-08) and BZA-V-11-26 (10-24-11). *Advertised in the Boonville Standard November 15, 2012.*

Wayne Staples and Melvin Ortez were present.

The Chairman called for a staff report.

Mrs. Rector stated all of the return receipts from certified mail were received from the adjacent property owners. She said they are asking for a Variance to allow the enclosure of an existing 16' X 60' covered deck encroaching 37.11 feet onto the Lake Maintenance and Storm Drainage Easement. She stated the surrounding property, the property to the north is zoned "A" Agriculture with a residence, the remaining property is zoned "C-4" with business. Mrs. Rector said there is a portion of the property that lies within the Hundred Year Flood Plain, but not anywhere where the building is. She stated that the entrance is off of High Pointe Dr. She stated the existing structure received three Variances as stated earlier. Mrs. Rector stated the first Variance was to allow a 34' X 16' covered patio encroaching 7.11 feet into the Lake Maintenance and Storm Drainage Easement. She stated this Variance was amended in 2008 to increase the length of the covered patio an additional 25 feet in width, not encroaching further into the Drainage Easement. She said they came back in 2011 to add on to the deck, which made it have a 37.11 foot encroachment into the Lake Maintenance and Storm Drainage Easement. Mrs. Rector said the 16' X 60' covered deck area to be enclosed because all of it was not enclosed, only encroaches 7.11 feet into the Lake Maintenance and Storm Drainage Easement. She stated they appeared before the Drainage Board on November 12, 2012 and the Drainage Board had no problem with the enclosure of the deck. Mrs. Rector said they have a Hold Harmless Agreement with this Board, the Drainage Board, and the County Commissioners that was executed on October 23, 2011. She said the Hold Harmless that has been recorded was for the construction of the covered deck, walkway, yard storage shed, and dock adjoining a restaurant into the Lake Maintenance and Storm Retention and Drainage Easement. She said which means that they would hold harmless all the entities that are listed if anything would happen with the deck being inside the Maintenance Easement, so we already have a recorded Hold Harmless on record. Mrs. Rector said the Building Inspector has gone to the property and has stated, "The screened dining room was sent with the original plans that were approved by the State." He said they are not changing the use of the building. He stated they are adding sliding doors; this does not have to go the State." Mrs. Rector said we have also received a letter from Newburgh Sewer stating that "No additional sewer taps would be required because they are already using the area as a deck, and just by enclosing it with windows does not change the status of the structure to them", so their also fine.

Mr. Ortez stated that the proposed enclosure is for the concrete patio.

Mrs. Rector stated that the application is in order, and the part that is being enclosed is the original patio area that is there at the restaurant.

Mr. Winge asked how many sq. feet was being enclosed.

Mr. Ortez said 960 sq. ft. 16' X 60'.

Mr. Winge asked if Mr. Ortez was enclosing the entire structure.

Mr. Ortez replied yes.

Mr. Winge asked if the building was sprinkled.

Mr. Ortez replied yes.

Attorney Doll asked if the building was going to have a furnace and air conditioner.

Mr. Ortez replied yes.

Mr. Winge stated that he was surprised that this didn't need approval from State.

Attorney Doll agreed with Mr. Winge.

Attorney Doll stated that he was curious what this does with the square footage requirements for restrooms and fire exits, because if it is heated and cooled, then it is available for use 12 months out of the year.

Mr. Winge said the square footage jumps substantially when he was in there. He also questioned why this didn't go to the State. He then questioned who determined that this didn't have to go to State, and asked if it was the inspector.

Mrs. Rector stated that it was the inspector, and said that she made him put it in writing, and that she does have it with her.

Attorney Doll asked if there was anything from the State to say that it was approved.

Mrs. Rector stated that all approvals were subject to State, Federal, and Local permits. She said the Board never has them beforehand. She also stated that the board would put this as a condition and Mr. Ortez would have to abide by the State.

Attorney Doll said that if the structure is air conditioned and heated, that he didn't think it would be a deck anymore and that it becomes part of the building.

Mr. Winge agreed.

Attorney Doll said that he understands that there would be the ability to open the doors perhaps.

Mr. Ortez said that the windows will come out in the summertime and they are not permanent.

Attorney Doll asked if they were removable.

Mr. Ortez said yes.

Mrs. Rector asked Mr. Staples to explain what they were proposing to do with the structure.

Mr. Staples stated that there would be sliding doors all the way around, he said it is their patio room system. He said the doors can be lifted out and put up in the summer. He stated there will be three commercial doors with panic hardware on it. He said the structure is already self-supported. He said it has big concrete columns for the building itself. He stated what is being put up is technically interior walls. He said we are going around the inside perimeter. He said where the exit areas are now there will be commercial style doors with panic hardware on them. He said the rest of the way around will be the sliding patio doors, which are removable. He stated what our goal here is, that people like sitting out there and blowing rain or snow can still get on them and we are getting them out of the elements of the weather. He said in the summertime you want us to still be able to have this as a screened in porch technically.

Mr. Dayvolt asked if there were any questions from the board.

Mr. Winge asked Mr. Doll if it would be a concern of the board if they passed it for the zoning side, that's a State issue.

Attorney Doll replied whether or not it had to go to State.

Mr. Winge said yes.

Attorney Doll replied no it wouldn't be our concern.

Mr. Winge said ok, and like Mrs. Rector said it is contingent to.

Attorney Doll said that's right, each of your approvals is subject to compliance with all State, Federal, and Local regulations.

Mr. Winge said that he thinks they need to double check with the Building Inspector, that he may have made a mistake. He stated he does think it needs to go to State for approval.

Mr. Staples said that he does know there is probably a little of conflict. He stated he talked with Mr. Lockhart Monday. He said he came up here and the heating and air was never brought up. He stated he did know it was heated and air conditioned.

Attorney Doll asked whether he did or did not know.

Mr. Staples said he did know. He stated he saw the new ductwork in there, because it is the big hang down ductwork. He said his concern was making sure this was the original part of the building. He said that is what Mr. Lockhart called me; he had been up here to look at the blueprints. He said this was the original part of the building that already had once been approved by the Fire Marshal.

Mr. Winge asked if this whole section has been up to the Fire Marshal, and just shown as a porch.

Mr. Staples said yes.

Mr. Dayvolt asked if they were going to insulate and drywall this interior.

Mr. Staples said no. He said the doors are high efficiency glass doors; it's what we call our 365 high premium low E glass, double pane insulated.

Mr. Winge said he thinks this is going to change the square footage of the restaurant.

Attorney Doll said by almost a 1000 sq. ft.

Mr. Winge said that could change a lot of things.

Attorney Doll asked what the seating was on the deck, and what would the chair count be.

Mr. Ortez replied 60 chairs.

Mrs. Rector asked if it is going to increase what he has now.

Mr. Ortez said no.

Attorney Doll said it is just that 60 will be available year round verses an outside deck.

Mr. Winge said the only issue with it would be, once you enclose it and heat it and cool it, it's a habitable space. He said we just don't want to see you get into a problem done the road.

Mrs. Rector stated that is why she wanted Mr. Lockhart to look at it, talk to them, and give it to this board in writing so we have it.

Further discussion was held about the total square footage of the building.

Mr. Winge stated that Mr. Ortez needs to check with the Fire Marshal so he does not have a problem down the road.

Mr. Ortez said he does have a sprinkler system on the patio.

Mr. Dayvolt asked Mrs. Rector if there was enough parking on the premises.

Mrs. Rector stated yes, that according to the requirements of our Comprehensive Zoning Ordinance, Mr. Ortez exceeds the number required presently on-site. Mrs. Rector stated that this was checked with the other Variances and permits.

Mr. Winge asked if there was optional parking across the street.

Mr. Ortez replied yes.

Mrs. Rector stated that Mr. Ortez has purchased two more lots from Mr. Ubelhor on the other side of Subway and will be building a new building and there will be additional parking for the restaurant. She said the Commissioners allowed Mr. Ortez to construct a sidewalk from those lots down to the restaurant, so people will have sidewalk to walk on and will not be walking in the street.

Mr. Dayvolt asked if there were any more questions from the board.

There were no remonstrators present.

There was no rebuttal.

Mr. Dayvolt asked for a motion.

I, Mike Winge, make 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 retention pond already being developed prior to the purchase of the lot.
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 and all State and Federal Permits.
 - 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 BZA-V-08-21, BZA-V-08-30, and BZA-V-11-26.
 - f) Subject to the Hold Harmless Agreement executed October 23, 2011.

The motion was seconded by Tina Baxter and unanimously carried.

ATTORNEY BUSINESS: None

EXECUTIVE DIRECTOR BUSINESS: None

Being no other business the meeting adjourned at 6:20 p.m. Motion made by Mike Winge, seconded by Tina Baxter and unanimously carried.

Terry Dayvolt, Acting 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 November 26, 2012.

Sherri Rector, Executive Director