Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
December 28, 2020 at 6:00 P.M.

PLEDGE OF ALLEGIANCE:

MEMBERS PRESENT: Mike Moesner, Chairman; Jeff Valiant, Bill Byers, Mike Winge, Terry Dayvolt, & Doris Horn.

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, Kim Kaiser, and Glenda Schapker staff.

MEMBERS ABSENT: Paul Keller

MINUTES: Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held November 23, 2020 were approved as circulated.

Chairman Moesner explained the Rules of Procedure.

SPECIAL USES:

BZA-SU-20-32
APPLICANT: Husk Signs by Kip Husk, President
OWNER: Colonial Classic-Alliance Newburgh, LLC by Julie McCarty, owner
PREMISES AFFECTED: Property located on the west side of Epworth Road approximately 600 feet north of the intersection formed by Epworth Road and Stahl Road. Ohio Twp. 20-6-9 *3633 Epworth Rd.*
NATURE OF CASE: Applicant requests a Special Use, SU-8, for 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 for a 32 square foot (4x8) electronic message board in a "C-4" General Commercial Zoning District. *Advertised in The Standard December 17, 2020*

Kip Husk, with Husk Signs, and James McCarty, with Colonial Classics LLC, were present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts from the notice to the adjacent property owners. She said the existing land use is a landscaping and nursery business. She stated the surrounding zoning and land use is to the north is "A" Agricultural and vacant. She said to the east and south is "C-4" General Commercial being St. Vincent Orthopedic Hospital and the cancer center. She added to the west is zoned "M-2" General Industrial and vacant. She stated there is a partial .2 percent flood plain, which we issue permits in because we don't really consider it to be a flood area. She said the traffic and street access is an existing drive on Epworth Road. She said

the Applicant's statement is *upgrading an older changeable message center on an existing double pole sign to a 4'x8' electronic message center.* She stated the application is in order.

Chairman Moesner asked if the applicant or owner had anything to add to the report.

Kip Husk replied nothing specific we are just happy to answer any questions you might have.

Chairman Moesner asked if any Board members had any questions.

Terry Dayvolt asked is this a bigger sign.

Kip Husk replied it is the same size as the copy board that is there. He stated we have taken down two signs and putting up a copy board to replace those.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Moesner called for a motion.

I, Terry Dayvolt, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.

2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.

3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.

4. The USE as developed will not adversely affect the surrounding area.

5. Adequate and appropriate facilities will be provided for proper operation of the USE.

6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.

2. Subject to an Improvement Location Permit being obtained.

3. Subject to any required Building Permits being obtained.

4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.

5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

6. Subject to all public utility easements and facilities in place.

7. Subject to no use of the words, "stop", "danger", "look", or any other word which would confuse traffic.

8. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Doris Horn and unanimously carried.

Mrs. Barnhill stated we will have your approval ready on Wednesday.

BZA-SU-20-33
APPLICANT: Celena Werremeyer
OWNER: Stephen & Mandy Marx
PREMISES AFFECTED: Property located on the east side of County Line Road approximately 2,940 feet north of the intersection formed by Boonville New Harmony Road and County Line Road. Campbell Twp. 7-5-9 *4288 County Line Rd.*
NATURE OF CASE: Applicant requests a Special Use, SU 12, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: 9' x 18', 162 square feet to be used for a home occupation (beauty salon) in a "FP" Flood Plain Zoning District. *Advertised in The Standard December 17, 2020*

Celena Werremeyer and Mandy Marx were present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts from the notice to the adjacent property owners. She said the existing land use is a single-family dwelling. She stated to the north, south, and east are all zoned "FP" Flood Plain with a single-family dwelling to the north and the rest of the ground is farm ground. She added to the west is Vanderburgh County. She stated there is actually no flood plain. She said the old "FP" Flood Plain is an old zoning layer it is really like an agricultural zoning. She said the access is onto County Line Road. She said the applicant's statement is *a single chair hair salon.* She stated everything is in order.

Chairman Moesner asked if the applicant and owner had signed in.

Mandy Marx replied yes.

Chairman Moesner asked the applicant and owner if they had anything to add to the report.

Celena Werremeyer and Mandy Marx replied no.

Chairman Moesner asked have you been working some other place and decided to open your own.

Celena Werremeyer responded yes, I own my own hair salon and I am closing it to go to a single chair salon.

Chairman Moesner asked if there were any questions from the Board members.

Terry Dayvolt asked if this is attached to another building.

Celena Werremeyer replied it is in the garage.

Terry Dayvolt said pardon.

Celena Werremeyer stated the space is within the garage.

Terry Dayvolt asked so you will have proper facilities in place for restrooms and (in audible).

Celena Werremeyer responded yes.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Moesner called for a motion.

I, Doris Horn, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

2. Subject to no identifying or business sign being erected or placed on any site for which the SU 12 has been granted by the Board of Zoning Appeals.

3. Except for the shipment and receipt of goods, products or items necessary for the SU 12, the use shall not be visible from the exterior of the premises and no retail sales.

4. No person or persons may be employed in the SU 12 home occupations at site other than the resident (residents) of the site for which the SU 12 has been granted.

5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.

The motion was seconded by Jeff Valiant and carried unanimously.

VARIANCES:

BZA-V-20-31
APPLICANT: Jack Jenkins
OWNER: Jack & Janet Jenkins
PREMISES AFFECTED: Property located on the south side of Paulie Drive approximately 1556 feet east of the intersection formed by Bell Road and Paulie Drive, Ohio Twp., Lot 3 in High Ridge Part 3 Sec B *8199 Paulie Dr.*
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 for an addition to an unattached accessory building without a residential dwelling in a "R-1A" Single-Family Dwelling Zoning District. *Advertised in The Standard December 17, 2020*

Jack & Janet Jenkins were present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated we are missing one of the return receipts from Arlene Sellers. She said we do have the white pay receipt showing it was mailed correctly and on time. She stated the existing land use is an unattached accessory building and they have a single-family dwelling on the lot next to it. She said the surrounding zoning and land use is to the north, east, and west are zoned "R-1A" one family dwelling being High Ridge Part 3 Section C. She added to the south is zoned "PUD/R-2" being Magnolia Place PUD Subdivision and "A" Agricultural with a single-family dwelling. She stated there is no flood plain and they have an existing drive on Paulie Drive. She said our ordinance does not allow for an unattached accessory to be built on a lot in the "R-1A" zoning by itself. She stated when the existing unattached accessory was built it was allowed so the ordinance has changed since they got their permit for the barn and now they are just wanting to add to that barn. She said the applicant's statement says *the ordinance has changed after the*

barn was built and we need a variance to add on to the existing building. She stated everything is in order.

Chairman Moesner asked the owner's if they had anything to add to the report.

Janet Jenkins replied no.

Chairman Moesner asked what is the purpose of the addition.

Jack Jenkins replied just storage.

Chairman Moesner responded just needing more space.

Jack Jenkins replied yes.

Chairman Moesner asked is it like a pole building or what type of building is it.

Jack Jenkins stated it is a pole building. He said he has Graber to do the work on it to make it larger.

Chairman Moesner asked Graber Post.

Jack Jenkins replied yes.

Chairman Moesner asked if there are any questions from the Board.

Terry Dayvolt asked do you live near this building.

Janet Jenkins responded our house is right next to it, so yes.

Terry Dayvolt stated so your house on the lot right next to it then.

Janet Jenkins replied yes.

Chairman Moesner asked you are not really doing any kind of business or anything it is just need more room.

Janet Jenkins said it is just for storage, yes.

After ascertaining there were no more questions from the Board and no remonstrators for or against Chairman Moesner called for a motion.

I, Jeff Valiant, 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 building was built on the property with no residence prior to current ordinance.

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.

The motion was seconded by Bill Byers and carried unanimously.

Mrs. Barnhill stated we will have your approval ready on Wednesday and you can come and get the permit.

BZA-V-20-34
APPLICANT: Matt R. Lehman, CIO of R. Lehman and Son Consulting
OWNER: Pathil Amin
PREMISES AFFECTED: Property located on the south side of SR 66 approximately 225 feet west of the intersection formed by Bell Road and SR 66, Ohio Township. Lot 2 in Bell Oaks Place Subdivision. *8566 Ruffian Ln.*
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 for: a message board to be used as an off premise sign located in a legal drain and not meeting the minimum spacing requirement of 1,000 feet between signs, being approximately 580 feet from the nearest off premise sign. All in "C-4" General Commercial Zoning District. *Advertised in The Standard December 17, 2020*

Matt Lehman, with Lehman and Son Consulting, Kip Husk, with Husk Signs, and Pathil Amin were present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts for the notice mailed to the adjacent property owners. She said the existing land use is Nellie's restaurant, where the old Pizza Hut used to be. She stated the surrounding land use in all directions is zoned "C-4" being Wal-Mart to the north, Hardees to the east, Old National Bank to the south, and Gerber Collision and Glass is to the west. There was an A flood zone but they have a LOMA on file for this property. She said they have an existing drive on Ruffian Lane. She stated the proposed message board is 30' 5.3" x 8'7.2" and stands 30' 8.72" tall. She said they have received approval from the Drainage Board on November 23, 2020 to be located 27.44' in the legal drain. Owner's statement *The owner wishes to erect an off premise message board to provide digital information to the community. Digital message boards are more aesthetically pleasing and provide a better product. This sign will be smaller than a major billboard in the area and will automatically dim at dusk.*

Chairman Moesner asked the applicant and owner if they had anything to add to the report.

Matt Lehman said as she stated we are proposing a sign that's really less than half the square footage of a typical billboard sign that you would see. He said as she mentioned we did meet with

the Drainage Board and did get a request to scoot the sign back towards the building, which we complied with. He stated we received our INDOT permit on October 8, 2020 from the State. He said we are just here today to ask for the approval of our variance so Husk Signs can pull the necessary permits to get our sign up.

Chairman Moesner asked you said this is a community message board are you going to do advertising as well for different companies, your company, or what is the objective of the sign then.

Kip Husk stated this is an off premise sign, the plan is to be able to advertise off premise billboard advertising as well as doing public type of messaging and inspirational type of messaging. He said that is the focus of this particular type of billboard.

Chairman Moesner responded okay. He asked if there were any other questions from the Board members.

Attorney Doll stated if you talk about the proximity of Bell Road, the intersection with Bell Road and the location of the sign.

Matt Lehman asked the distance.

Attorney Doll responded yes.

Matt Lehman stated it is roughly 250'.

Attorney Doll asked when you applied to the State did you have to address the issue of that proximity to the site location under the Indiana administrative code.

Matt Lehman replied since it is not an interstate, no.

Attorney Doll stated but it is a limited access road. He said it is a fenced road. He stated it is a limited access road, it is fenced in both place but it is limited access. He said so in consequence that section still applies to this location.

Matt Lehman stated the State received the same site plan that you guys did. He said and it didn't bring any of those issues.

Kip Husk stated and we do have a State permit.

Attorney Doll asked did you tell the State of Indiana that you were 227'….

Kip Husk and Matt Lehman responded yes, sir.

Kip Husk stated it was the same site plan you have in front of you.

Attorney Doll asked did they have this picture that our office created.

Matt Lehman stated we have our own that we created.

Mrs. Barnhill asked is that what we have on file.

Attorney Doll asked can you show us what you showed the State.

Matt Lehman stated I don't have the State application in front of me but the State was given a site plan (shuffling through papers).

Kip Husk stated a site plan with dimensions on it that shows a measurement.

Attorney Doll responded good.

Matt Lehman stated cattycornered from us there is a billboard that is approximately 500 and ….

Attorney Doll stated that is not my question.

Matt Lehman replied right but in proximity to the intersection that's where that is at.

Attorney Doll stated well, the one that is 500 might be fine, I don't know, and the one that is 1,000 as you go east, that is clearly fine. He stated those were measured from different points on Bell Road. He stated the administrative code for Indiana, which I think you were informed about this afternoon, says outside of a municipality on a limited access or interstate highway you cannot locate a sign within 500' of the nearest edge of any intersection that is at grade with the highway. He said since State Road 66 is such a highway and the intersection with Bell Road is at grade so I'm curious is this what you gave the State.

Matt Lehman stated yes, they either received that one or …actually I don't think they had a directional measurement to the corner sign, which I had mentioned to Molly earlier. He said if that was the case then the billboard that is cattycornered to us wouldn't have been able to be built either because it is 250' off the road and it sits about 20' off of Bell Road.

Attorney Doll asked I guess you are talking about Ubelhor's billboard.

Matt Lehman stated it is the three sided there at the storage facility.

Attorney Doll replied yes.

Matt Lehman stated it is a lot closer to the road than ours is.

Kip Husk stated ours is farther away than that one.

Attorney Doll asked when you say closer to the road is it closer to … if you come due south to the edge of State Road 66 is that what you are saying.

Matt Lehman responded it is probably… it sits right next to that structure, their little office building there. He stated we went and looked at it today.

Attorney Doll replied sure, I understand where it sits. He stated he is just curious…we don't know its measurement though do we.

Matt Lehman responded no.

Attorney Doll stated to State Road 66.

Matt Lehman responded we are here in reference to… we aren't questioning that one.

Attorney Doll stated but you are asking for the same kind of treatment that you think that billboard received then we would actually need to know its measurement to know if it is greater than or less than… He said all I know is we don't have the authority to approve an application that is in violation of either a State law or an Administrative regulation, which carries the same weight as a State law.

Matt Lehman responded sure.

Attorney Doll stated and the possible recourse.

Kip Husk stated if I may, the State permit that was approved had people come out and do all of the same research and measurements themselves before they allow for their permit. He said we actually have billboards in multiple places and they do their due diligence, as far as the State goes. He stated they would not grant the permit to us unless it met all of their codes.

Attorney Doll asked do you have the permit with you.

Matt Lehman replied I do.

Attorney Doll stated you probably don't want to give us that but a copy of it.

Matt Lehman replied this is a copy here.

Attorney Doll asked you have another copy of it.

Matt Lehman replied yes, this isn't the original.

Kip Husk stated we do have a picture of the other billboard if you would like to see it.

Attorney Doll asked Ubelhor's.

Kip Husk responded yes.

Attorney Doll replied I think we all know where that is.

Matt Lehman stated I can draw a measurement up real quick on my computer to show you exactly how far it is.

Chairman Moesner asked you are saying that guys from the State actually came down and took measurements.

Matt Lehman responded yes, just like folks here if someone is going to build a pole barn they aren't going to say…it's not a show me the Carfax type deal they are going to go out and physically look at it. He said INDOT is the same way. He stated we were just notified of this at 2:30 this afternoon as well so we didn't have time to even begin to address this. He stated this wasn't an issue and wasn't brought up to us before...

Attorney Doll stated it was brought up by me when I was reviewing it for APC.

Matt Lehman stated in his thinking we have been doing this long enough that if we received a State application for anything, just like a CDR for a building a construction and design release, they go through those with a fine tooth comb.

Attorney Doll asked did you prepare the permit application or was this something from the State.

Matt Lehman stated that is something from the State.

Attorney Doll responded okay. He said they have on line 6C a measurement the distance to nearest intersection is 150, that has to be feet, to the west specifically the intersection of Bell Road. He said so the State actually has it closer than Warrick County's Think Map measures it to be. He stated it appears when the State was there at the site they noted on line 6C…

Jeff Valiant said so it sounds like we are good.

Attorney Doll stated where the State is wrong on this application is line 10. He said the State indicates that the sign lies within the City limits of Newburgh but State Road 66 is not within the City limits of Newburgh that is in Ohio Township. He stated that slightly changes the rules because if it is in an incorporated municipality under this section of Administrative Code it cannot be located closer than 300'. He said what he is concerned about is that the State permit doesn't match the facts that really exist at the site.

Matt Lehman said correct me if I am wrong but the State is actually showing it closer.

Attorney Doll replied yes, they said it is 150' and we said 227'.

Mrs. Barnhill responded yes.

Matt Lehman stated 227' is actual.

Attorney Doll stated but it is still not enough under the Administrative regulation subsection B qualified ICC 7-4-17 subsection A subsection 1 subsection B if the location of the sign is outside the incorporated municipality no sign shall be located within 500' of the nearest edge of an intersection or interchange at grade or rest area within 500' of measurement along the interstate system or other limited access control route from the closer of the beginning or ending of the pavement widening at the exit from the entrance or ending of the main travelled right-of-way. He said that is the right-of-way.

Matt Lehman asked if there was any reference to an Interstate tract.

Attorney Doll replied yes, limited access or interstate both. He said subsection 1 on the interstate system and limited access facilities on the controlled routes. He stated that is State Road 66. He said it is both a controlled route and limited access highway.

Kip Husk stated as far as our knowledge of the code and the rest of it we met all of the State's requirements whenever we applied by this. He said since they granted the permit to us and we have a copy of the blue tag that goes on it, which makes it a legal and conforming sign that is why we moved forward with this with you all. He stated basically have been through about a year's worth of hoops as well as spent about $10,000 trying to get all of this put in place. He said we wouldn't have done this without the knowledge that this would be possible.

Chairman Moesner asked what recourse, I mean if the State has approved the permit what recourse is there one way or the other.

Attorney Doll stated well the permit was approved under the wrong category because it believes that the commercially zoned property, Nellies, is located in the corporate limits of the Town of Newburgh. He said that is on the permit and that is obviously not correct. He stated it is in Ohio Township, which in not within the corporate limits of the Town of Newburgh. He said the Town limits are further back to the south. He stated the permit is incorrect from the State. He said now is it our job to worry about the State's mistakes that is up to the Board I guess to decide but it is my advice to the Board as legal counsel that this site does not meet the criteria of Indiana Administrative Code for the erection of a sign like this. He stated now if the Board wants to approve it that is up to the Board but you are building it at your own risk because there is a provision in the Administrative Code that they can force you to take it down if it violates the State law.

Matt Lehman stated since it is on them for the incorrect….

Attorney Doll stated I am not getting into who is liable for the payment of the cost of taking it down…

Matt Lehman stated I'm not either but they issued us a document, a legal document, so if it is….

Attorney Doll stated I don't know what your application told them so I'm not getting into pointing fingers. He said I'm simply saying the permit in my hand doesn't match the facts on the ground at that location. He stated I wish it did but it simply doesn't and so as a consequence of that at

some future date if somebody, a citizen, a neighbor, or anybody complains about this to the Department of Transportation and they come out and say okay let's look at this and they see you could have a problem with this sign. He said if the Board wants to approve it here that doesn't exempt you from these State requirements. He stated you could still have to take that sign down if the State of Indiana decided to do that.

Kip Husk stated at the advice of our clients they still want to move forward with this with all of the effort and time that has gone into this and the monies that have been spent. He said we have spent a tremendous amount of money with the State getting this permit to this place where we can actually move forward with it. He stated he would be interested in other questions that the Board members might have to answer in case you have any concerns as far as that goes.

Matt Lehman stated when applications are filled out, I mean if any of you have office experience with this jurisdiction as Molly can attest to this the application has the said property is located within the city limits. He said you don't just read that and say okay it is within the city limits obviously they come out and this… yes they go off of what is on the application but that is not gospel at what the applicant processes so…

Kip Husk stated they follow their own protocol.

Matt Lehman stated exactly. He said I'm not saying…could we have marked that incorrect, sure. He stated do I think we did, no because we do our due diligence when we fill out the applications as well. He said with over 30 years with local government experience between my father and I, actually over 40 years, we take our time to thoroughly go through the applications and we don't rush through things. He stated with that being said that is a legal document right there, we all know that. He said if for some reason that comes back and the State makes us take the sign down then that is something that will have to go through a lot bigger proceeding than this that is a court issue there.

Mike Winge asked Morrie, if we did make a motion to pass this could we have the hold harmless put on this to keep us separate from that.

Attorney Doll stated we could do that, yes.

Mike Winge asked and that would take us totally out of it. He said it should.

Attorney Doll stated it just means the applicant has to pay the expenses and cost and hold Warrick County harmless for approving this application. He said if someone files a complaint and they name not only the applicant and the property owner but they also name Warrick County as part of the complaint you may have some costs and expenses and if you do, then the hold harmless would entitle you to look back to the applicant to reimburse Warrick County for those costs and expenses. He stated that is all it does.

Doris Horn stated if you have done this for 40 years you should have caught this.

Matt Lehman asked this one.

Doris Horn stated I don't think that we should be making a motion or even voting on this because of what our attorney has advised us.

Matt Lehman stated I was notified of this at 2:30 this afternoon.

Attorney Doll stated we don't have to act on it today if you want more time to ….

Matt Lehman stated I'm just responding to her comment saying that….

Attorney Doll stated if you want to talk to the State about it and get supporting documentation to show what your application was, what you told the State, and get verification from Mr. Carrie or whoever it was that approved it and that they were aware of that and they think it is fine the way it is. He said then it is on the State that they are violating their own Administrative Code but in my opinion you are asking Warrick County to also violate State Administrative Code, which we don't do.

Kip Husk stated we aren't asking you to violate any ordinance that you have we are asking for a variance on that code. He said that is all we are asking from you.

Attorney Doll stated you are asking for a variance from our Zoning Ordinance that is not the same thing as a State Administrative Code. He said that is two separate rules.

Kip Husk replied I understand.

Attorney Doll responded okay.

Matt Lehman stated we are asking for a variance from sign distance. He said we are not asking for a variance from the intersection.

Attorney Doll stated they are both a sign distance question. He said they are both from the same section…

Matt Lehman stated but that is not part of the…we were not told about that until 2:30 this afternoon. He said the State did not bring that up.

Attorney Doll stated the code we are talking about this evening, just to be clear for anybody that is questioning, is 105 of the Indiana Administrative Code 7-4-17 and the name of the code is sign spacing criteria and that is the section that we are talking about. He said it is to my recollection it used to be more stringent than it currently is but in 2019 it was watered down or lessened, which is fine because that is what the State can choose to do. He stated it has been on the books for a year and a half and the 500' limitation is new in the 2019 section of the code.

Kip Husk asked according to the State.

Attorney Doll responded according to the printing of the code so yes.

Kip Husk stated it has been 500' for years, decades actually.

Attorney Doll stated it used to be 1,000' and then it became 500'.

Kip Husk stated that is incorrect.

Attorney Doll stated we will see. He said it is up to the Board if they wish to act on your application that is their business they can choose to do that if your client wishes to proceed (inaudible).

Kip Husk stated it was actually 300' for a decade and then it was actually amended to 500'.

Attorney Doll stated it is still 300' in an incorporated municipalities.

Matt Lehman asked would you mind to provide the code reference again.

Attorney Doll stated it is section 105 IAC 7-4-17.

Matt Lehman replied thank you.

Kip Husk asked if we could take any other questions from anyone else that might have concerns about this. He said I would like to entertain any questions that anybody would have here.

Mike Winge asked what is your time frame…if you would have to get in touch with them again what kind of position does it put you in as far as scheduling.

Kip Husk stated we have been doing this for a year now so it is really tight. He said this is a $250,000 sign and the carrying costs on it are pretty heavy so we are trying to get this as expediently done as possible. He stated we already have a tremendous amount of carrying cost just in the State permitting and all of that up to this point, which we have been granted. He said we have also done a tremendous amount of work with Mr. Lehman and his father and the due diligence necessary to make this happen expediently.

Terry Dayvolt said Morrie, I have a question. He asked sign rules, you are talking this is all signed and written after October 4, 1971.

Attorney Doll responded yes, sir.

Terry Dayvolt asked how did Hardee's get their signs in place at the intersection.

Attorney Doll stated Bill may be able to answer that but I can't, I wasn't around then.

Bill Byers stated it is not a message board.

Attorney Doll stated it is not a billboard. He said it is not an off premise sign. He stated there is a difference between premise sign and off premise sign. He said you have greater flexibility for

advertising if the sign is located on the actual property of the business it is advertising. He stated if it is advertising for hire for others it has greater restrictions. He said it began under the highway beautification act in 1965 or 1964. He stated like highways that were built with some or partial Federal funding became subject to beautification.

Terry Dayvolt asked so a billboard is different from proprietorship or you know a business so that is the distinction here.

Attorney Doll replied yes.

Kip Husk stated that is correct and the Ubelhor sign fits the same criteria and it was allowed to be put on the corner there. Both by the State and the County.

Matt Lehman stated and the sign that I mentioned earlier that is closer to the intersection than ours is by a long shot, it is about 20' off the one there at the storage building also has a blue tag on it.

Attorney Doll responded that is the Ubelhor sign.

Matt Lehman replied okay, sorry. He said I didn't know the name of the storage business.

Bill Byers asked isn't there a message board at the Collision Center.

Multiple people responded yes, there is.

Attorney Doll stated yes, it is an off premise sign.

Kip Husk stated there is also a digital sign that is 500' beyond that.

Matt Lehman stated the sign probably the closest to ours is Lamar's.

Kip Husk stated yes, Lamar has one they just upgraded that to digital.

Attorney Doll asked is it digital like down in front of like the realtor's office or something.

Matt Lehman replied yes, that is correct.

Terry Dayvolt asked is your sign going to be the same height as a billboard.

Matt Lehman stated I think it is a little less as ours is about 20' and I think theirs is around 25'.

Terry Dayvolt replied okay (inaudible)

Kip Husk responded 20' to the bottom. He said that could be amended if necessary if anyone has any concerns about that.

Mrs. Barnhill stated the plot plan shows a 30' tall sign.

Terry Dayvolt said 30' tall.

Matt Lehman stated it at the top yes but 20' off the ground.

Terry Dayvolt stated so overall height is 50'.

Matt Lehman replied 30'.

Mrs. Barnhill stated 30' total.

Matt Lehman stated the sign is 10' tall.

Terry Dayvolt stated so 30' tall.

Mike Winge stated Morrie I have another question for you, it might be repetitive but you said a while ago that it isn't our job to monitor the State or for their actions I guess. He asked my feelings on this is how strong are we on this. He asked if we do make a motion with the hold harmless on it for them….

Attorney Doll stated once you realize there is a violation of the State statute or regulation and you approve it…

Mike Winge stated a certain amount of liability.

Attorney Doll replied yes, there is a lack of essence to it. He said I am not saying you are definitely in trouble if you approve it but I am saying it needs to be considered and it is part of the record now so it clearly is an argument that is in fact a violation of the administrative code. He stated I think your suggestion of a hold harmless if someone decides to make a motion to approve this and it passes, I think the hold harmless for Warrick County's benefit, the tax payer's benefit is a good idea.

Chairman Moesner asked if there was any further discussion.

A gentleman asked Board may I speak.

Chairman Moesner replied yes, state your name and sign in.

Jim Stauber stated he is hoping to be the owner of the billboard. He said I do not own any other billboards. He stated I have been trying for five years to get a billboard and if you look at all of the good places for billboards a real big advertising company owns all of those locations. He said I am a local guy from Evansville, Indiana. He stated on our billboards each side will have eight advertisers. He said they each get seven seconds a minute to advertise that is 56 seconds. He stated that leaves me four seconds every minute. He said my goal, as being a local guy, is to put up things not only are we going to advertise for Kenny Kent, realtor's, and banks but my four extra seconds I want to put up on there good luck Castle Knight volleyball or good luck Castle Knight

football. He stated I want it to be a more personal type billboard than what you get from the world-wide advertising company that has dominated our spaces. He said I am a local guy and I am going to own one billboard and that is going to be my baby, and it is going to be a community billboard where I am wanting teachers, principals, and parents calling and saying hey will you put Johnny's name on there or Susie's name on there to recognize a special child. He stated I am not in it for the money I am just a guy that enjoys community, I enjoy the underdog, and in this case I'm him. He said that is what you are going to get with this. He stated you are not going to get a big, out of town, out of state conglomerate that is going to own it. He said I will give you my cell number and if there is something on there that you don't like call me and it will be off within 15 minutes. He stated that is the beauty of digital billboards we can control everything from a laptop.

After ascertaining there were no questions from the Board or any remonstrators Chairman Moesner called for a motion. Chairman Moesner asked one more time for a motion.

Attorney Doll stated not receiving a motion does not mean your application defeated it just failed to pass and there is a difference. He said if you can bring to us your application, perhaps, to the State or clarify in a document that you can get from the State showing that they fully took all of this into consideration and they understand. He stated and yet beside the fact that this regulation they approved this location and stand by that approval. He said you can ask for it to be reconsidered then because it wasn't defeated it just wasn't approved.

Matt Lehman responded okay.

Attorney Doll stated and we meet every month.

Mike Winge said Morrie, can I make a suggestion for the second time with what they are talking about moneywise and stuff. He asked could the Board make a motion to allow, if they provide the proper… for Molly to make the decision on that so they don't have to wait another month.

Attorney Doll stated Molly has the authority to meet in an Executive session but usually that is to review plats, plans, and things of that sort. He said he didn't know of any occasion that we have looked a variance in an Executive session.

Mrs. Barnhill stated a hearing officer is the closest thing that she has done.

Kip Husk asked if it was possible to approve it contingent upon that information comes back.

Attorney Doll stated the problem with that is sometimes if they want. He said it is a definitive act for a definitive fact that we are trying to pin down that is missing like the length of a driveway or something.

Kip Husk responded I understand.

Attorney Doll stated then we have done it before. He said sometimes we have approved applications not necessarily for a variance but subject to the rezoning being approved by the Commissioner's in their meeting. He stated but there again it goes to a plat. He said it is difficult

until we can see what you can bring us from your application to the DOT and their response. He stated I would ask…I saw there was a Mr. Carrie on there but I don't know if he was the one that approved it…

Kip Husk asked from the State.

Attorney Doll replied I'm looking.

Kip Husk stated that sounds right.

Attorney Doll stated Randy Carrie.

Kip Husk responded yes.

Attorney Doll stated I would suggest you ask Mr. Carrie if he could write something that would explain that yes, they looked at this section of code and determined that the approval of this was not a violation of this section. He said he also needs to tell us they are aware this isn't in Newburgh. He stated that is the big deal is the municipal corporate limits intention, okay.

Kip Husk asked where the corporate limits end at that point.

Attorney Doll asked I'm sorry.

Kip Husk asked where are the corporate limits.

Mrs. Barnhill replied way south.

Attorney Doll replied way south.

Mrs. Barnhill stated Newburgh is actually really small. She said the City of Newburgh.

Attorney Doll stated I live by the Post Office and I am not in the Town of Newburgh. He said the lot behind me is but I am not in the Town of Newburgh. He stated it is way south.

Mike Winge stated all of that area there is not in Newburgh.

Attorney Doll stated Newburgh has talked about annexing it but that is not a popular conversation.

Matt Lehman asked not to be redundant but I guess the first question is if there is an issue with us being too close to that 500' sign I understand but with the position to the intersection…

Attorney Doll stated that is what I would ask him about is the intersection.

Matt Lehman asked and we provide documentation that that's sufficient couldn't we possibly get a vote on that to keep us from coming back out here. He said we can come back absolutely.

Attorney Doll stated we can only vote at public hearings under the open door law.

Matt Lehman replied okay.

Attorney Doll stated okay. He said if you are asking for the Board to tell you their inclination, if you can bring them back some written documentation from DOT saying yes we did look at that and we don't think that is a violation for some reason or another, yes we were aware that this wasn't technically in the Town of Newburgh and we stand by the permit we have issued for that location, you can ask the Board if that will suffice in their opinion should you be able to produce that for them to positively act on your application.

Kip Husk stated thank you for the diplomacy of that. He said that is exactly what I was trying to get to when I was asking if anybody else had any questions that they might have.

Attorney Doll stated that is not promised that is just inclination of how they might review it…

Kip Husk stated I understand. He said all we are looking for is inclination.

Attorney Doll stated if you could bring that back to us. He said we need more proof, more substance so to say. He stated we are not trying to be difficult but we have a logger head here and we need to figure it out.

Matt Lehman responded sure.

Chairman Moesner asked can we approve this being subject to that being...

Attorney Doll replied I don't think so. He stated until we can see what Mr. Carrie may say how do we know what he said satisfies the Board.

Mike Winge stated it is a catch 22.

Attorney Doll stated we need to see what he says.

Mrs. Barnhill asked so would the simplest thing be a motion to continue.

Attorney Doll responded a motion to continue to the next monthly meeting and for you to bring us more information.

Mike Winge stated I will make that motion.

Kip Husk asked in the case that we should do that would that suffice the Board.

Attorney Doll asked is it the inclination of the Board….

Matt Lehman asked yes is that the inclination of the Board.

Chairman Moesner replied yes.

Mike Winge stated we don't want to slow business down, we just don't want people to be sued.

Attorney Doll stated the problem with this is I have no recollection of the Ubelhor's sign. He said I know it is there, I see it every day, but I have no recollection of the permitting process or the approval here. He stated we are just… the next time someone comes in and they want to put one 100' from an intersection and we deny it they are going to say but there is this billboard just down from a restaurant that you approved…

Kip Husk stated it will be an existing condition, yes.

Attorney Doll stated in 2020 that was within the distance, less than the State distance so how can we deny us. He said and then we get sued. He stated we have to judge everybody by the same yardstick is the problem.

Chairman Moesner asked if there was a motion to continue.

Attorney Doll stated I thought that was made.

Mrs. Barnhill stated Mike made a motion.

Mike Winge stated I made a motion.

Terry Dayvolt said second.

Mrs. Barnhill stated Terry second.

Chairman Moesner stated okay we have a motion properly made and second as a continuance to the next month's meeting. He asked for further discussion being none he called for a vote. The motion carried unanimously.

Attorney Doll told the applicant's to give us all you can get us.

Matt Lehman asked when is the next month's meeting January...

Mrs. Barnhill responded January 25, 2021.

The applicants and owners thanked the Board.

Chairman Moesner replied thank you we don't want to impede progress but we have to follow the rules.

Matt Lehman and Kip Husk wished the Board a Happy New Year.

Chairman Moesner asked if there was any attorney business.

ATTORNEY BUSINESS:

Attorney Doll stated we ended up having a hearing in late January for the coal mine Variance (Special Use) case again. He said Mike I will get that information to you again if you want.

Chairman Moesner replied okay, I will come up there.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Barnhill stated she didn't have anything.

Chairman Moesner stated that is music to my ears.

Mike Winge made a motion to adjourn. The motion was seconded by Doris Horn and unanimously passed. The meeting adjourned at 6:57 p.m.

_____
Mike Moesner, 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 the said Board at their monthly meeting held December 28, 2020.

_____
Molly Barnhill, Executive Director