**Minutes**

**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting to be held in the Commissioners Meeting Room,

Third Floor, Historic Courthouse,

Boonville, Indiana

September 25, 2023 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE:**

**MEMBERS PRESENT:** Terry Dayvolt, Chairman, Doris Horn, Mike Moesner, Mike Winge.

Members absent Paul Keller, Jeff Valiant and Jeff Willis

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, Jen Hollander, staff.

**MINUTES:** Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held August 28, 2023 were approved as circulated.

Chairman Dayvolt stated we have a guideline of 20 minutes for presentation and we have a guideline also for rebuttal of 20 minutes. He said seeing that there is only the one thing tonight I think we might be able to make that a little bit longer if need be.

**VARIANCE:**

**BZA-V-23-26**

**APPLICANT:** Evansville Outdoor Advertising by Ron Nelson, GM

**OWNER:** St. Mary’s Building Corporation by Zach Zirkelbach, VP of Finance-South Region

**PREMISIS AFFECTED:** Property located on the north side of SR 66 approximately 1390’ east of the intersection formed by SR 66 and Epworth Rd. Ohio TWP 20-6-9. *10222 SR 66*

**NATURE OF THE 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, SU-8, digital billboard exceeding the maximum size requirement of 500 square feet and also encroaching into the 75’ setback from a controlled access right-of-way. All in a “C-4” General Commercial Zoning District. *Advertised in The Standard September 14, 2023.*

Chairman Dayvolt called for a staff report.

Mrs. Barnhill said we have all the green cards except for two, however we do have the white pay receipts showing they were mailed correctly. She continued the existing land is vacant, I believe it is being farmed right now it is a field. She said to the north, south and west are “C-4” General Commercial consisting of a single family dwelling or vacant, to the east is “A” Agricultural or vacant. She added a small portion in the northeast corner of the property does lay in the AE floodplain, however a majority of the property is not located in the floodplain including the location of the proposed billboard, and they have an existing access off of SR 66. She said their applicant’s statement says “The existing billboard located on the adjacent property owned by Ethan Mounts will be removed and the new digital billboard will be located approximately 95’ to the southeast. Since a billboard has been located within 95’ of the proposed location, for the last 18 years, the new billboard and removal of the existing billboard would not affect the use of the subject property or the adjoining properties*”*, the application would be in order.

Chairman Dayvolt asked do we have anyone here from St. Vincent.

Ron Nelson with Evansville Outdoor Advertising and Scott Stone Attorney for Evansville Outdoor with Stone and Stratman were present.

Chairman Dayvolt said please sign in. He asked sir you are the Attorney for St. Mary’s.

Attorney Stone said no for Evansville Outdoor.

Chairman Dayvolt said for Evansville Outdoor, do we have anybody here from St. Mary’s.

Attorney Stone said no, we do not. He said I spoke with…are you Molly.

Mrs. Barnhill said yes.

Attorney Stone said I spoke with her this morning and maybe this afternoon, unfortunately we didn’t know the owner had to be physically present until over the weekend. He continued we worked on trying to get a Limited Power of Attorney today, unfortunately the processes of getting approvals for that were such that we couldn’t get that by today. He added we think we can with in maybe a few days, we do have a letter that they provided a few months ago at the beginning of this process essentially doing the same thing authorizing Evansville Outdoor and Ron Nelson to proceed on their behalf and at Molly’s suggestion I brought a copy of what we think the Limited Power of Attorney would look like, I am happy to provide those to you.

Chairman Dayvolt said okay, Morrie what is your advice on this.

Attorney Doll said I would like to see those. He asked you don’t have a stamp.

Mrs. Barnhill said no, it is in the box.

Attorney Doll asked is St. Mary’s Building Corporation indicated a willingness to sign this Limited Power of Attorney they just haven’t gotten back to you.

Attorney Stone said I actually sent a different draft this morning and they said they want to tailor that back, in talking to their Council what I arrived at was the language….basically just tied to this application they wanted to make sure there was nothing we could do beyond that, my best guess is that they will sign that or something close to it but I could not guarantee that 100%.

Attorney Doll said our rules state that either the owner has to be present or we have a signed and recorded Power of Attorney.

Mrs. Barnhill said yes.

Attorney Doll said we don’t have either.

Mrs. Barnhill said we have approved them contingent on getting that, with that condition before we will issue the permit we would have that.

Mike Winge said I have some questions for them.

Chairman Dayvolt said we need to get rid of this first.

Mrs. Barnhill said yeah.

Attorney Doll said well, we don’t know when this could be pursued or brought to us or….

Attorney Stone asked the signed and recorded…not with certainty, I would hope this week, it is somewhat out of my hands.

Attorney Doll said yeah.

Attorney Stone said as you might imagine.

Ron Nelson said usually when I do a BZA hearing in Evansville they don’t require the property owners, so we didn’t know until late Friday afternoon and it sounds like the local representatives who do the real estate were all in Indy for a meeting so that made it even tougher today once we found out.

Attorney Stone said yeah, we did try to find someone with boots on the ground here who could sign, but their process just wouldn’t allow us or allow them to move that quickly.

Attorney Doll said well, I guess it is up to the Board whether you want to relax the rule or not. He said Molly is right, we have done it before, but we haven’t quite had the uncertainty.

Doris Horn said we haven’t done it, have we…we have always…

Mike Winge said I think we have.

Attorney Doll said I think we have done it.

Chairman Dayvolt said I think we have with hold harmless.

Attorney Doll said very limitedly, and normally…Molly correct me if I’m wrong, it’s with great certainty that it is coming in the mail or it’s coming tomorrow.

Mrs. Barnhill said yeah, it’s in the works.

Chairman Dayvolt said it’s in the works.

Mrs. Barnhill said yeah.

Attorney Doll said well I guess I’m unclear that’s actually what we have here, this is a proposed draft, but we don’t know for sure that this has been accepted by St. Mary’s.

Attorney Stone said not 100%, I did talk through it with their attorney and I have a good feeling, so I can’t give you a…

Ron Nelson said then I’m not going to purge myself.

Attorney Doll said we all have good feelings some time or another.

Ron Nelson said so I met with Molly back…it’s been a lot time ago 8 or 9 months ago…with Scott about the issue so it’s taken me about 13 months to get to here. He continued now everything going…their biggest thing is the current billboard that I have has Deaconess and Deaconess has been on the billboard since 2004…5… and their biggest thing is I think it’s going to be we want this territory, we want Deaconess off this corner…you know, so I can’t say 100% but I’m pretty confident they want Deaconess billboard to go away.

Attorney Doll asked how soon would you attempt to replace the billboard.

Ron Nelson said so, with INDOT it has all been approved the only thing that I have to do to get acceptance there is take the head off the existing billboard and they will issue the permit, so that has went through that whole process. He continued once approved all I will do is probably take the head off and then we will start the construction, you are probably looking at depending on where we are in the year you are probably looking at 2-3 months to get it switched out, but with INDOT I have to take the head off, which you know if connected at the top so I will take the faces off and then disconnect it, take the head off and then we will get the pole.

Attorney Doll said okay, so you can do all of that without having this approved.

Ron Nelson said I can, but I have a paying advertiser up there and if I take it down that is probably $8-10,000, and if for some reason that doesn’t get approved…you know we were going to just build on the same existing spot…as Molly pointed out…there is a little INDOT thing that somehow the surveyor when we built this somehow missed. He continued so we could still put it on a small sliver that is on the existing and just replace that, but after talking to St. Vincent I think they are going to want to try to take that whole corner and I said that is going to be in the middle of your stuff so that is how we got to where we are at now.

Attorney Doll said up to the Board whether you want to…

Chairman Dayvolt said we don’t even know who is supposed to sign this power of attorney.

Attorney Doll said no we don’t…it will be somebody, an authorized agent of St. Mary’s Building Corporation who will sign it.

Mike Moesner said I think if it has taken several months to get to this point I think one more month…

Ron Nelson said that is why I called and said if it’s possible we can meet if not we can move it till next month and I can get everything signed that needs to be signed.

Mike Winge said that is probably going to be the best thing that you move it because right now as I was saying earlier every time we approve one that is outside the boundaries of 500 square feet…now it’s 6, almost 700 square feet, and unless I see something drastic I am probably not going to vote for it. He continued I had several questions for you like you got that billboard 48 feet long.

Ron Nelson said correct.

Mike Winge said why can’t you just go 5 feet higher or something and shorten that. He added I am looking at the distance from that billboard to that easement and if you have big machinery in there that is going to be kind of tight.

Ron Nelson asked as far as.

Mike Winge said operating.

Ron Nelson said so, as far as that goes, St. Vincent being the other property that’s where…if they for some chance buy the rest the two lots there or whatever they plan on doing I don’t know what their plan is but they bought it for a reason, then they kind of want it out of their way because that is probably not going to be part of their plan, so that is what we have discussed with St. Vincent. He added as far as the set back the reason we were going to apply on the original, I had to make it on a little sliver, the new proposal is 21 foot setback, which is 75 feet from the road because of the INDOT property or to the INDOT road so that is why.

Mike Winge said I’m not so much concerned about the road as I am the easements if they have to get in there and work, looking at your plot here those easements are awfully close to that sign so how high off the ground is the initial…bottom of that sign.

Ron Nelson said oh, it will be 35 feet.

Mike Winge said okay, and some of those big track hoes they get up there.

Ron Nelson said they won’t get close to 35, that existing sign is probably 35 feet to the bottom.

Mike Winge said it just seems like every time we get these signs it seems like when you approve it, it was 500 feet and now its approaching 700 feet.

Ron Nelson said I have no problem if that is the case where I go to a 12x40 which makes it 480, but like the industry standard everything you see on the Lloyd that is digital is 14x48.

Mike Winge said well I understand if you got the room for it.

Ron Nelson said right.

Mike Winge said but the easements are there for a reason so I am just having a little bit of a problem with that.

Ron Nelson said it would be on their property so…

Mike Winge asked do they have it made up.

Ron Nelson asked what’s that.

Mike Winge said the sign it’s not made up or it is made up.

Ron Nelson said no, nothing is made up.

Mike Winge said okay.

Ron Nelson said that is why…to get the INDOT I have to take the head off the original and before I do that I would want approval here because INDOT is not going to issue me a permit without taking the head off the other one.

Chairman Dayvolt said before we get into a full discussion we got to decide on this first.

Attorney Doll said whether you want to relax the rules…

Chairman Dayvolt said whether you want to relax the rules or you want to…

Attorney Doll continued and conditionally consider the application, but without a deadline as to when it will be submitted that is troubling.

Chairman Dayvolt said yeah, and that could…

Attorney Doll said I mean if they said okay we will have it on Friday or some such thing and you may or you may not.

Attorney Stone said feel free to give us a deadline and we certainly try to meet that.

Attorney Doll said that is up to the Board

Attorney Stone said right, right.

Chairman Dayvolt asked what’s your pleasure.

Doris Horn said I think we need to table it to next meeting.

Mike Moesner said I’m with you.

Mike Winge said I don’t think it will pass tonight.

Doris Horn made a motion to table BZA-V-23-26 to the October 23, 2023 meeting. The motion was seconded by Mike Moesner and carried unanimously.

Attorney Doll said okay, next meeting if you bring a human being.

Attorney Stone said I think we are going to.

Ron Nelson said we will have a human being.

Attorney Doll said that is the sure fire way.

Ron Nelson said yeah, that is the plan.

Attorney Doll said it parts the language, well does it quite fit or not.

Ron Nelson said it was just Friday afternoon, we have to have a representative, well I never had to have that in Vanderburgh County.

Attorney Doll said I know, I understand…

Ron Nelson said I know you guys don’t make the rules and they were all in Indy this week.

Attorney Doll said the rules are online and it has always been in Warrick County that the owner of the property has to be present, because we don’t want to grant a permit, grant a variance, etcetera and the owner of the property go well wait a minute.

Ron Nelson said right and that shouldn’t be a problem next time, so when is the meeting.

Attorney Doll said a month from tonight.

Ron Nelson said okay.

Mrs. Barnhill said October 23.

Ron Nelson said October 23, okay.

Attorney Doll said and I’m not going to be here, October 23, I am not, Aaron will be here my son, he practices with me he will be here, okay. He continues I will be happy to answer any questions or what have you about the process or procedures between now and…

Ron Nelson said is there any other questions you have now for us or.

Attorney Doll said no, because the record really…it would be inappropriate once we have it properly before the Board then they can question you and etcetera, because this is recorded and it is all part of the record.

Ron Nelson said okay.

Attorney Doll said thank you.

Board said thank you.

Mike Winge said Morrie I have a question for you, if pertaining to that, like the easements, lines and sewer all that stuff does INDOT consider them, would they have given approval on that or is that our responsibility as a county.

Chairman Dayvolt said no that’s theirs.

Attorney Doll said well…

Mike Winge asked do they even look at that.

Attorney Doll said I don’t know, and only if they are aware of it and I’m not sure how much investigation INDOT does in these applications. He continued I think they view it only from the perspective of the state’s interest they don’t consider Newburgh’s interest or Warrick County’s interest or rights or areas, but from the State of Indiana’s perspective does it comply with the set back from the right of way and if it does they will grant the permit.

Mike Winge said okay, so anything else on the list is going to probably fall on our shoulders.

Attorney Doll said it has never been off your shoulders.

Mike Winge said that’s fine, so that is my concern that I have had with the whole thing it just keeps growing all the time.

Attorney Doll said well that’s….here nor there.

Chairman Dayvolt said yeah.

Mike Winge said we might as well not have a set of rules.

**ATTORNEY BUSINESS:**

Nothing.

**EXECUTIVE DIRECTOR BUSINESS:**

Nothing.

Chairman Dayvolt called for a motion to adjourn.

Chairman Dayvolt said a motion by Mike Winge and a second by Doris Horn. The motion carried unanimously. The meeting adjourned at 6:22 p.m.

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Terry Dayvolt, 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 September 25, 2023.

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Molly Barnhill, Executive Director