

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
July 25, 2022 at 6:00 P.M.

PLEDGE OF ALLEGIANCE:

MEMBERS PRESENT: Terry Dayvolt, Chairman, Mike Moesner, Jeff Willis, Paul Keller, Doris Horn, and Mike Winge.

MEMBERS ABSENT: Jeff Valiant

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, Kim Eden, staff.

MINUTES: Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held June 27, 2022 were approved as circulated.

Chairman Dayvolt explained the Rules of Procedure.

VARIANCES:

VARIANCE: BZA-V-22-23

APPLICANT & OWNER: Jeffrey F & Amy J Titzer

PREMISES AFFECTED: Property located on the N side of 3rd Street approximately 215 feet W of the intersection formed by 3rd Street and Oak Street. Lynnville Township 4-4-8. 206 W 3rd St

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 for an addition to an existing 6x18 porch to make it 8x23 being 6' into the 25' building setback line. All located in "R-1A" One Family Dwelling Zoning District. *Advertised in The Standard on July 14, 2022*

Chairman Dayvolt asked is there anybody here, and could you please come up to the podium and sign the sign-in sheet and state your name and then Molly will give us a staff report.

Jeff Titzer approached the podium and stated his name.

Chairman Dayvolt said Molly staff report please.

Mrs. Barnhill said they mailed their notices to the adjacent property owners, we have all of the return receipts except for one from a Thomas Jones but we do have the white pay receipt and it was mailed correctly. She continued, existing land use is a single family dwellings, all directions are zones "R-1A" One Family Dwelling with single-family dwelling and there is no flood plain. She said they have an existing residential driveway onto 3rd Street and they want to build onto their

front porch, it will be 6' into the building setback line. She continued the applicant's statement says, "I want to make my porch a little bigger, and put a roof on it."

Chairman Dayvolt said ok, do you have anything to add to this Mr. Titzer.

Jeff Titzer replied no that pretty much states it all.

Chairman Dayvolt asked is there any questions by the Board.

Attorney Doll asked do we have a drawing.

Mrs. Barnhill replied yes, there is a plot plan in there, right there. She said the existing porch comes out 6' so it was already into that building setback line which should be 25' from the road right of way, so he is adding 2 more feet out into that building setback line and making it wider.

Chairman Dayvolt asked is there any questions by the Board and if not I will entertain a motion.

I, Doris Horn 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 replacing the existing porch that is already encroaching the building setback line that is going to protrude 2' further into the setback.
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.

Motion was seconded by: Mike Winge and carried unanimously.

Mrs. Barnhill said Mr. Titzer if you want to give us the day to get the approval typed up and then you can come in Wednesday and we can issue the permit.

Mr. Titzer said ok thank you, I appreciate it, can I leave now or do I need to stay.

Chairman Dayvolt said you can go and have a nice evening.

VARIANCE: BZA-V-22-24

APPLICANT: Fastsigns by Leighla Taylor, Account Executive

OWNER: GPH Newburgh by Kelli Collins, Mg. Mbr

PREMISES AFFECTED: Property located on the S side of Ruffian Ln approximately 0 feet SE of the intersection formed by Ruffian Ln and Frame Rd. Ohio Township 27-6-9. 4088 Frame Rd

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 a 3x10 monument sign located within the 25' building setback line (only being 5' from said property line). All located in "R-2" Multi-Family Zoning District. .
Advertised in The Standard on July 14, 2022

Chairman Dayvolt asked if anyone was here for this and please approach.

Leighla Taylor approached the podium.

Chairman Dayvolt asked are the owners here.

Leighla Taylor replied no I do not see them.

Chairman Dayvolt asked do you have a POA from them.

Leighla Taylor responded I believe it was in the packet that I had sent in.

Mrs. Barnhill asked you believe it was with the return receipts.

Leighla Taylor said yes.

Mrs. Barnhill said well I don't see it and it is not in here, was it recorded.

Leighla Taylor said oh shoot well umm..

Mrs. Barnhill said I have just been sitting here going through the file and there is note that you were going to get something to us but I don't see it.

Leighla Taylor said unfortunately I don't think that I have that with me either.

Mrs. Barnhill asked did you get it recorded.

Leighla Taylor said I believe.... Wait was it that... I apologize, I thought this was it and this is definitely not it, this is just the statement of Variance applied so I apologize I do not have that.

Chairman Dayvolt said Ms. Taylor we cannot proceed with a Power of Attorney or the owner here.

Leighla Taylor said ok so do I need to redo....

Chairman Dayvolt said we can table it for one month, it won't cost you anymore filing fees or anything...

Leighla Taylor asked do I need to resubmit the mailings.

Mrs. Barnhill replied no, we have it on record now and if it gets tabled that will be part of the record, and did anybody send you an example. She said we have a POA prepared that you would just fill in the blank on a word document, you can record that.

Leighla Taylor said I don't have any of that with me unfortunately.

Mrs. Barnhill said well I can send that to you if you need it, that is what I was saying.

Leighla Taylor said that would be great if you don't mind.

Attorney Doll said can I ask you a question though since you are here.

Leighla Taylor said absolutely.

Attorney Doll said there is brick base under where the sign is going to go and it is a pre-existing brick base; that means there was a pre-existing sign here at this exact location.

Leighla Taylor said correct.

Attorney Doll continued, so the brick base hasn't moved and all you are doing is taking the old cabinet off and setting a new cabinet on.

Leighla Taylor responded that is correct.

Attorney Doll said so isn't this a pre-existing non-conforming use.

Mrs. Barnhill said no because they are putting a new sign on the top.

Attorney Doll said they are not changing the base.

Mrs. Barnhill said but there was no permit on file...

Jeff Willis said there never is on a pre-existing non-conforming use...

Mrs. Barnhill said so if they want to change anything, and get anything from our office they have to bring it into compliance.

Attorney Doll said the better practice would be to bring it into compliance that way in the future if they widen Frame Road or something your sign will be protected, alright.

Mrs. Barnhill said and it can be pre-existing non-conforming all they want until they change something.

Attorney Doll said the Supreme Court case on pre-existing non-conforming dealt with an aerial sign, it was a Cracker Barrel sign that was up in the sky, and it was in the wrong spot pre-existing non-conforming. He said for many years it was allowed by the Supreme Court to stand there, the only time it came into question was they set the cabinet on the ground for maintenance, they had to rewire it, so they used a crane and set the sign cabinet on the ground. He continued the Supreme Court said that might have violated the pre-existing non-conforming use, but this has a base and it is the same size sign going back on there, it is just a new sign.

Leighla Taylor said correct.

Attorney Doll asked same colors or different colors.

Leighla Taylor responded different colors, they have rebranded so it is a different color.

Attorney Doll said but it is exactly the same size in exactly the same location.

Leighla Taylor said yes.

Chairman Dayvolt asked are you just changing the face of the sign...

Leighla Taylor said we have to put in a new cabinet because of the way the old sign was constructed, it's a routed aluminum sign which means that the letters are cut out of the face so we have to build a whole new cabinet for the new sign.

Doris Horn asked there won't be any lighting or anything on it.

Leighla Taylor said it is internally illuminated.

Attorney Doll said I think this is a pre-existing non-conforming use but...

Chairman Dayvolt said well if we go by what you are saying as Cracker Barrel, they are taking the cap off and setting it on the ground and it doesn't make a difference what the base is going up to it.

Attorney Doll said well they didn't move the base of the Cracker Barrel sign but they took the cabinet off because of the need to rewire it as I read the case many years ago, and the Supreme Court said that calls into question whether it was continuously in use.... Pre-existing non-conforming use has to be continuously in existence, umm... is the old sign still sitting on this one.

Leighla Taylor said yes.

Mrs. Barnhill said they are going to take that cabinet off...

Attorney Doll interrupted and put this one on, all in the same day.

Leighla Taylor said correct.

Mrs. Barnhill said a lot like Cracker Barrel huh.

Chairman Dayvolt said do you want protection for your sign.

Attorney Doll asked is it an expensive sign.

Leighla Taylor said yea, it is not cheap.

Attorney Doll said it is going to be delayed one month and I am not so sure it is not a pre-existing non-conforming use.

Chairman Dayvolt said if they would ever widen...

Attorney Doll interrupted if it didn't have the.... The interesting question about this is the brick base, it is not being moved and it is not being expanded, I was confused about the application talked about it protrudes, its only 5' away from the property line etc. etc. etc. but when I saw the pictures I thought you were building a new base, but you are not.

Mike Winge said well I don't know since you have a brick base how you can call it pre-existing.

Attorney Doll said Mike that is why I am having a problem as to why they need a permit.

Mike Winge said well that is the way we do a building permit.

Attorney Doll said if it was a new one there they would have to have a permit, if they were changing the base they would have to have a permit, if they are expanding the base... they would have to have a permit, but isn't that sign base part of the sign.

Mike Winge said we look at the Building Department like if it's got a foundation that is there it is pre-existing. He said that is something that doesn't move.

Attorney Doll said that base is part of the sign and it aint moving, it ain't going away it is there.

Mrs. Barnhill said so if that was a sign that had been permitted and was in the correct location and they were replacing the cabinet then we would have them get a permit. She said if they were just replacing the plastic fascia we would say no you already have a permit for it, that's what we have always done. She said all of these signs that go on the outside of the buildings that they have to get a new cabinet, it's a new permit, we distinguish between the cabinet and the fascia and that is where we drew the line historically.

Attorney Doll asked does the ordinance contain language about the cabinets.

Mrs. Barnhill said oh I don't know.

Attorney Doll said I don't think so, I think we just use the word sign, you probably wish you hadn't ever brought this up.

Chairman Dayvolt said so much for quick....

Leighla Taylor said so sorry.

Attorney Doll read the definition of signs out of the ordinance;

SIGN Any advertisement, announcement, direction or communication produced in whole or in part by the construction, erection, affixing or placing of a structure on any land or on any other structure or produced by painting on or posting or placing any printed, lettered, pictured, figured or colored material on any building, structure, or surface. Signs places or erected by the State or local governments for the purpose of showing street names or traffic directions or regulations or for other municipal or governmental purposes shall not be regulated by this Article.

Attorney Doll continued it doesn't differentiate between sign and the cabinet containing the sign, um.... You could take a vote on whether or not you think this is a pre-existing non-conforming use and requires a sign if there is motion made to that effect and seconded, and then you might be giving Molly's office some direction about how to handle this in the future. He said it appears to me that the base isn't as big as the sign cabinet but it is pretty darn close to being as big.

Chairman Dayvolt said I have one question... now it has slipped my mind.... Is the sign permitted now.

Jeff Willis said no it's pre-existing non-conforming.

Chairman Dayvolt said so it is pre-existing non-conforming so there is no permit for the sign now.

Attorney Doll asked how old is the facility.

Leighla Taylor said I will try to find it for you.

Mrs. Barnhill said they have done a plat so it wasn't prior to 64.

Attorney Doll said this ordinance was written in 2005.

Mrs. Barnhill said I know we definitely have signs permits older than that.

Jeff Willis said does it say on that plat...

Mrs. Barnhill said no when they did the plat it was vacant, I don't have the plat in front of me though.

Mike Winge said well in the Building Department if it's there it has a permanent foundation, that's how we look at it in the Building department. He said I remember I had a guy that didn't have enough ground to put a new house up so we just told him to leave one wall standing on the house on the foundation, until he gets the rest of it up there and he was fine.

Mrs. Barnhill asked he didn't have room.

Mike Winge said he didn't have enough ground to put in a septic system for that house, so everything was pre-existing so we just kept his house pre-existing and that foundation is what

determined the whole thing legally, which is what we have here I think, she has the base that isn't being touched.

Chairman Dayvolt said well here is a question if they would decide to widen Frame Road or Ruffian Lane, and they have to take the sign down would they have to get a new permit and all of that...

Attorney Doll said well she would have to anyway, the key here is not to move the sign...that is the key.

Mrs. Barnhill said so it is a new cabinet, old cabinet coming down and new cabinet going up...

Attorney Doll said on an old foundation.

Mrs. Barnhill said ok are we talking poles or are we just talking brick foundations....

Attorney Doll said I think if they move the base of the pole then they have changed it, if they haven't moved the base they are just using the existing pole they don't need a permit.

Chairman Dayvolt said I think that clears a lot of stuff up that you would run into in the future.

Attorney Doll said but here, I mean look at this picture....

Mrs. Barnhill said we do a lot of cabinets on poles...

Attorney Doll interrupted but this one isn't, it is on a brick foundation with tapered edges...

Chairman Dayvolt said Molly he is talking about a brick foundation not about working the pole.

Mrs. Barnhill said well he just said it would be similar.

Attorney Doll said well I don't think you can hypothetically compare this to a pole, the question here is almost half of this sign is brick foundation, not quite but if you look at the pictures the brick foundation is almost the same size as the blue portion of the sign and that didn't go away and its not being changed etc. so, is the foundation a pre-existing non-conforming use, yes without a doubt it is... alright does that change the nature of this sign. He continued well I think it probably does because you couldn't have the cabinet sitting there without what..... the foundation it sits on...I think you have to look at this together and in this case, I think it's a pre-existing non-conforming use but I don't get to vote but that's what I think.

Jeff Willis said it would be really hard to argue that is isn't pre-existing non-conforming legally when our attorney is sitting here saying that it is.

Attorney Doll said well no we can have differences of opinion Jeff, but nobody has said hey I make a motion that this is a pre-existing non-conforming use that doesn't require a new permit.

Chairman Dayvolt asked so she doesn't need the Variance.

Attorney Doll said if this Board finds that it is a pre-existing non-conforming use and therefore doesn't need a permit, she doesn't need a permit. He said she can go out there and set this cabinet sign off and put the new one on and be done. He said you haven't bettered the status of the sign if that would come to pass it still, its almost like trespassing, its still a pre-existing non-conforming use, its there, everybody knows its there and nobody can legally make you change it or move it or do away with it but it isn't quite legal. He continued now you wait a month and come back, get a power of attorney sign, take it across the street to the brick Judicial building and go to the Records office and bring Molly the proof of the recording of that POA where whoever is the manager of this LLC says you get to speak for them tonight or about this application, then the Board can consider giving you a permit for this and then it would be forever legal.... It is your call.

Chairman Dayvolt said you can say yay or neigh.

Attorney Doll said you can say table it or I have a customer that wants that darn sign up right away and so long as I get to put it up (I'm sure they would tell you) we would just do it that away, but it is your call.

Leighla Taylor said so is it my call. She said so if they were ever to widen the road like you are speaking of before and we were required to move the sign then we would have to come back and do the permit.

Attorney Doll said yea, you will either way, and the Board would be more sympathetic to let you put it in the easement because of the widening of the road. He said we are more sympathetic because the Government took it, we have done this on 261. He continued we have houses that are now too close to 261 and we have said that is not a violation because the State Highway Department condemned your front yard to widen Highway 261.

Chairman Dayvolt said yes but they had a permit for the house being built prior to the highway doing that.

Mike Winge said what we are talking about is the same thing as the Building Department, pre-existing is pre-existing.

Mrs. Barnhill said so isn't pre-existing non-conforming by ordinance prior to 1964, what is our date for this because it was after 1964 that it was constructed.

Leighla Taylor said I mean I would love to go ahead and put it up but I respect the process.
Chairman Dayvolt said well you have the say...

Attorney Doll interrupted you simply say please table the application if you respect the process and you want it to be or you can say let's consider it tonight. He asked do you need a 5-minute break.

Leighla Taylor said sure that would be great.

Chairman Dayvolt asked do you want to call somebody.

Leighla Taylor said yea I want to go call the owners.

5-minute recess was called at 6:38

Meeting resumed at 6:41

Leighla Taylor said I spoke with the owner and they are asking if we can just move forward with the sign.

Chairman Dayvolt asked do you want an answer tonight.

Leighla Taylor said if possible.

Attorney Doll asked can you bring in a POA tomorrow.

Leighla Taylor replied umm, probably not unfortunately, I am in Bloomington and the owners are in Indianapolis and that may not be doable.

Attorney Doll said well you could email POA.

Chairman Dayvolt said can we make a motion based on that POA.

Mrs. Barnhill said she doesn't have to use our Records Office they don't record via email. She said she can have it recorded elsewhere and email that to me.

Mike Winge made a motion to give a permit with no variance due to pre-existing non-conforming use based on Mrs. Taylor getting a POA and Doris Horn seconded motion.

Attorney Doll said we are only doing this because its not moving, it is where it is and where it has always been.

Chairman Dayvolt said a motion has been made and a second, all in favor and it carried unanimously. He asked are there any remonstrators here.

Leighla Taylor said thank you guys so much and I apologize.

Mrs. Barnhill asked so do you want me to email you a draft copy, I will get that to you tomorrow, you get it back to me recorded, and then we can do the permit.

Leighla Taylor said thank you guys again so much, again I am sorry to keep you late.

Attorney Doll said we just really need to think about signs, it is real confusing. He said Molly's office is doing the best it can but you know, what about a building sign, what about a pole sign, what about a monument sign, what about a pre-existing sign that we are going to change...you mean to tell me if we change the face of a pre-existing sign that's ok but if we change the cabinet of a pre-existing sign to the same dimensions as the original sign, not one bit bigger in any way shape or form, than that requires a permit, that makes no sense.

Chairman Dayvolt said well from time to time there are things that come up that don't make any sense.

Attorney Doll said that is not conducive to good Government, we should figure out what the recommendation ought to be, APC then would make a recommendation.

Chairman Dayvolt said Molly why don't you all hash that out in your office a little bit....

Attorney Doll said different counties have different sign ordinances, we looked at this once before, Sherri and I did, we looked at Columbus, Indianapolis, and Evansville. He said why we looked at it was Deaconess Hospital here because they have signs all on the outside of the building on poles and in the parking lot.

Chairman Dayvolt said I think a simple clause in there would alleviate a lot of that if you define general maintenance. He said you need something in black and white.

Attorney Doll said well we need to know so we can tell people what they can and can't do, and the general public needs to know what the process is but right now we debated this for 30 minutes or more and I am sure that there for a while everyone has different opinions as we went through so we ought to fix sign. He said my vote if I was a voting member is to outlaw signs, have you ever been to Hilton head.

(Multiple Board Members were talking, holding different conversations, inaudible.)

ATTORNEY BUSINESS:

Attorney Doll said none.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Barnhill said nothing.

Doris Horn made the motion to dismiss at 6:46 p.m. Mike Winge seconded the motion and it carried unanimously.

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 July 25, 2022.

Molly Barnhill, Executive Director