**Minutes**

**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting to be held in the Commissioners Meeting Room,

Third Floor, Historic Courthouse,

Boonville, Indiana

January 24, 2022 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE:**

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

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

**MEMBERS ABSENT:** Paul Keller

**ELECTION OF OFFICERS:**

Mrs. Barnhill stated the first order of business was to elect a Chairman of the Warrick County Board of Zoning Appeals to serve during 2022.

Mike Winge nominated Terry Dayvolt to serve as Chairman of the Warrick County Board of Zoning Appeals during 2022.

Mike Moesner seconded the nomination.

Jeff Valiant nominated Doris Horn to serve as Chairman for the Warrick County Board of Zoning Appeals to serve during 2022.

Jeff Willis seconded the nomination.

Jeff Valiant made a motion to close the nominations and the motion was seconded by Mike Winge

Mrs. Barnhill asked Morrie how does that go exactly.

Attorney Doll stated it will be put up to a vote. He said all of those in favor of …

Mrs. Barnhill stated all of those in favor of Terry Dayvolt. The vote was three for. She asked all of those in favor of Doris Horn. The vote was three for.

Attorney Doll stated well it is tied.

Jeff Valiant asked do we have to wait for Paul.

Attorney Doll said pardon me.

Jeff Valiant asked do we have to wait for Paul.

Attorney Doll stated no, we have a quorum.

Doris Horn stated Terry wants it.

Terry Dayvolt replied I don’t want it.

Attorney Doll stated it would seem to me that we would call the question a second time and we will see what happens the second time.

Mrs. Barnhill asked so open the floor back up.

Attorney Doll stated yes, either open the floor back up for re-nomination or you open it for a vote a second time.

Mrs. Barnhill stated I will open the floor back up for another vote.

Mike Winge stated I nominate Terry.

Jeff Valiant and Jeff Willis asked are we going to vote or nominating.

Mrs. Barnhill stated voting. She asked all of those in favor of Terry Dayvolt. The vote was five in favor of Terry Dayvolt. She stated the motion would carry five in favor.

Attorney Doll responded correct.

Mrs. Barnhill stated Terry this is your meeting now.

Mike Moesner asked do you want to switch chairs with me.

Chairman Dayvolt stated that the Chair will entertain nominations for Vice-Chairman of the Warrick County Board of Zoning Appeals to serve during 2022.

Jeff Valiant stated I nominate Doris Horn to serve as Vice-Chairman of the Warrick County Board of Zoning Appeals during 2022.

Jeff Willis seconded the nomination.

With no other nominations, Moesner made a motion to close the nominations. The motion was seconded by Jeff Willis and carried unanimously.

**MINUTES:** Upon a motion made by Jeff Valiant and seconded by Mike Winge the Minutes of the last regular meeting held December 27, 2021 were approved as circulated.

**SET MEETING DATES, TIME, AND PLACE:**

Chairman Dayvolt stated that the next order of business was to set the meeting dates, times and place. He stated that everyone has a schedule in your packet.

Mrs. Barnhill said they all fall on Monday except for December 27, 2022 and it is on a Tuesday due to Monday being a holiday.

Mike Moesner asked do we have to move to approve these dates.

Attorney Doll replied yes,

Jeff Valiant made a motion to accept the dates as presented.

Attorney Doll stated dates, time, and location.

Jeff Valiant stated yes.

Chairman Dayvolt stated they will start at 6:00 p.m. He asked are we moving the December meeting to Tuesday is that what we are doing.

Mrs. Barnhill replied yes, that Monday is a holiday.

Attorney Doll stated it has already been moved. He said the 27th is the Tuesday.

Chairman Dayvolt replied okay.

The motion was seconded by Mike Moesner and unanimously carried.

**ADOPTION OF RULES AND REGULATIONS:**

Chairman Dayvolt said adoption of rules and regulations.

Mrs. Barnhill stated nothing has changed from last year.

Attorney Doll asked so you are recommending the adoption of the 2021 Rules as the 2022 Rules and Regulations for the BZA.

Mrs. Barnhill replied yes.

Jeff Valiant made a motion to accept the Rules & Regulations. Jeff Willis seconded the motion and it carried unanimously.

Chairman Dayvolt stated tonight before us there is a Special Use and a Variance so we will start with the Special Use.

**SPECIAL USES:**

**SPECIAL USE:** BZA-SU-21-07

**APPLICANT & OWNER:** Reads, LLC by Gianender Rathee, Secretary

**PREMISES AFFECTED:** Property located on the north side of High Pointe Drive approximately 650 feet west of the intersection formed by High Pointe Drive and Park Place Drive, Lot Numbers 12 & 13 in Park Place Phase IV PUD Subdivision. Ohio, Twp. *8180 High Pointe Dr.*

**NATURE OF CASE:** Applicant requests a Special Use, SU 15, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an ILP to be issued for a School/Childcare facility in a “PUD/C-4” General Commercial Zoned District with a planned unit development. (A*dvertised in The Standard on March 11, 2021)* Approved March 22, 2021

Chairman Dayvolt asked if the owner is here.

Sandeep Dhawan stated Mr. Rathee isn’t here but we are owners also.

Sandeep Dhawan and Hemang Shah with Reads, LLC were present.

Mrs. Barnhill asked them to sign in. Mrs. Barnhill stated there is a letter in your packets on this one. She said this was approved back March 22, 2021 and a Special Use is good for one year to start pulling permits and establishing the business, however they have been unable to get this done and they are asking for an extension of two years to be approved to start pulling permits on the project.

Chairman Dayvolt asked if there was anything to add.

Sandeep Dhawan stated I think that there are three reasons and that covid has affected our startup quite significantly. He said we have actually gone and interviewed several Kiddie Academy’s in the area and had zoom calls with several others. He stated essentially everyone has recommended that it is prudent to delay rather than open something and not be able to complete it in time so because of that we would like to delay it. He said the (inaudible) and the supplies issues and the challenge with construction and also the work from home still in hybrid. He stated the enrollment in daycare is significantly below par. He said if we would open it, it would cause more hardship than not.

Chairman Dayvolt asked is there anything else that would not allow you to move forward if we do approve something for you tonight.

Sandeep Dhawan replied no, we are committed to the project. He stated this is an extremely interesting project for us and also for the area. He said just to give you a clean word Kiddie Academy is a franchise system of early learning centers. He stated they have over 250 learning centers in America in three different states. He said they are known very well for childhood education, community commitment, and life essentials with their philosophy for teaching young kids and frankly we really raise the bar in terms of what we will do in the Warrick County area. He stated it will also employ 25-30 teachers so we think it is still the right thing to do and is just a matter of doing it at the right time and with covid significant challenges are in place and we think it is prudent to delay.

Chairman Dayvolt asked can you explain the scope of the teaching that we are talking about.

Sandeep Dhawan replied sure. He stated it goes all of the way from infants to 5-6 year old kids. He said Kiddie Academy takes care of them and gives them teaching in terms of hands on development. He stated it is similar to Montessori I would say.

Chairman Dayvolt asked the types of teaching what are you teaching for like Kindergarten and up or …

Hemang Shah stated it is to prepare kids for school. He said it is educational childcare. He stated it is just like childcare with just more education.

Chairman Dayvolt said basic education. He said we are talking about teaching them the alphabet and things like that, right.

Hemang Shah stated it is a standard curriculum that the Kiddie Academy has beyond just the alphabet and numbers that they encourage the kids to learn by doing stuff.

Sandeep Dhawan stated it is like a Montessori if you are familiar with what a Montessori is.

Jeff Valiant stated this project has already been approved and we are just looking at extending the deadline.

Hemang Shah and Sandeep Dhawan replied yes

Sandeep Dhawan stated we are already committed to it and we have also invested a lot of money in it. He said this is just when do we start it is basically that.

Chairman Dayvolt asked you are asking for a two year extension, correct.

Sandeep Dhawan replied yes.

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

Jeff Valiant made a motion to grant a two year extension until March 22, 2024 on this project. The motion was seconded by Doris Horn and unanimously carried.

**VARIANCES:**

**BZA-V-21-36**

**APPLICANT:** JR Promotions by Richard Sprague, Member

**OWNER:** John & Danielle Eggers

**PREMISES AFFECTED:** Property located on the west side of Dassel Dr. approximately 772’ west of the intersection formed by Dassel Dr. and North Rd. Greer Twp. 18-4-9 *11155 Dassel Dr.*

**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 672 sq. ft. off premise advertising sign within the 75’ minimum setback from a controlled access thoroughfare in a “C-4” General Commercial Zoning District. *Advertised in The Standard on December 16, 2021 (Continued from December 27, 2021)*

Jillian Reed, from Krista Lockyear’s office, Raymond Lady, with JR Promotions, and Danielle Eggers were present.

Chairman Dayvolt asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts except for one from Rosemary Stratman Trust. She said we do have the white pay receipt showing it was mailed correctly. She said the existing land use... She asked is there anything on the property right now.

Jillian Reed replied no.

Mrs. Barnhill asked so it is a vacant piece of property.

Jillian Reed responded yes, aside from the other sign.

Mrs. Barnhill stated to the north and east are zoned “R-1A” One-family dwelling zoning district with either single-family dwellings or vacant. She said to the west is zoned “A” Agricultural with a single-family dwelling. She stated to the south is zoned “A” Agricultural being I-64. She said there is no flood plain. She stated there is an existing drive on Dassel Dr. She said their additional information says they have received approval from the State on the billboard. The State doesn’t require a certain distance just that it cannot be on or overhang the right-of-way. She stated there is a copy of those emails in your packets stating their approval on this billboard. She said the applicant’s statement says the *Request for relaxation of the size limitation for a billboard/off-premise sign to allow a sign 672 square feet in size (as opposed to the maximum 500 square foot provided by Ordinance)*

*Request for relaxation of distance from a controlled access right-of-way (I-64) from required 75’ to 5’. Former sign was located on edge of right-of-way, Applicant seeks to replace former sign in same location.*

*Attached hereto and made a part of this application, I submit the following (items checked in margin):*

1. *Floor Plan, Vertical Section, and front elevation of building with all necessary dimensions.*
2. *Plot Plan (7 copies) and Block Diagram, each drawn to engineer’s scale on sheet 8 ½ inches by 14 inches, with dimensions and points of compass., and with other information as follows:*
3. *Plot plan showing premises in question with existing and propose buildings and illustrating clearly the points in question and existing conditions on nearby lots (one lot each side, two lots each side, lot or lots across street that best illustrate the point.)*
4. *Block diagram with street numbers and lot numbers showing lot in question and character of improvements on all lots in block (one or both sides of street, the four corners of intersection or as requested.)*

She stated the application is in order.

Jeff Valiant asked why such a big sign.

Raymond Lady stated that is basically what Drury had… He said there was a Drury sign up there before.

Jeff Valiant stated I remember the sign. He said I live right down the road from that.

Jillian Reed asked do you want to see it, I have a picture.

Jeff Valiant asked do you have a picture.

Jillian Reed stated I can show you a picture if you would like one.

Jeff Valiant stated yes, if you submit it, it will be…

Attorney Doll stated part of the record.

Jillian Reed stated that way you can just glance at it.

Jeff Valiant said okay, now I remember it. He said I remember it now.

Chairman Dayvolt asked is it my understanding that you are wanting to replace the sign that was there with a sign the same size.

Raymond Lady replied yes.

Jillian Reed stated I believe the square footage will be slightly larger. She said it is going from requesting it be a 672 square foot sign instead of a 500 square foot sign.

Raymond Lady stated I believe it was the same size wasn’t it.

Jillian Reed stated I believe it was zoned 500 square feet but….

Raymond Lady replied I know it was zoned but the sign was…

Jillian Reed stated so to replace it would make it non-conforming but currently it is non-conforming so we are requesting to replace it within the boundaries but it shouldn’t be actually physically larger sign than what is already there.

Mike Moesner asked is this a double side. He asked I mean can you see it from both directions.

Jeff Valiant replied yes, it is angled.

Attorney Doll stated so you are really asking for two things. He asked you are asking for the larger sign to be approved and you are also asking that the location of the sign, which is five feet from the right-of-way.

Raymond Lady responded that is what we are asking for and that is about basically where they had their sign before.

Attorney Doll replied okay, for that to also be permitted. He said so tell me why the five foot.

Raymond Lady replied if we set back 75’ you have your divided highway and it is a safety issue the further off of the road you get the further the east bound traffic would have to look off to the left to read the sign.

Attorney Doll asked are all of the other signs out there 75’ off.

Raymond Lady responded no.

Jeff Valiant asked you said the current sign was approximately this five foot off, right.

Jillian Reed stated yes, it is approximately the exact same location the approximate same sign. She said the reason we are asking for this is to comply with the current rules and so it is not to create a safety issue with the people that are driving cross over into the other lane when they have to turn their head and look and create a safety issue.

Attorney Doll asked okay, if you are putting the same size sign up and you are putting it in the same location as the existing sign is, why are you here.

Raymond Lady responded the sign has been down for two or three years.

Attorney Doll asked so you currently don’t have permission to have a sign there because it was non-conforming.

Jillian Reed replied that is what we are requesting the variance for.

Attorney Doll said yes.

Jillian Reed stated that is why we have the permission from the State.

Attorney Doll stated that was an important piece of information. He said the Cracker Barrel case in Indiana set the precedence that if you have a non-conforming sign and you take it down even to repair it and put it back up you have lost the right to erect the sign. He stated currently there is no permission for the sign to be there if it is down.

Raymond Lady stated it is down.

Attorney Doll stated okay, so this is just like a brand new application.

Raymond Lady replied okay.

Attorney Doll stated practically speaking it is going to look a lot like the old one, I’m guessing.

Raymond Lady said yes, yes just a different advertiser.

Attorney Doll stated so that is why…

Raymond Lady said we are going to ….

Attorney Doll stated okay.

Jeff Valiant asked how long has the old one been down.

Raymond Lady replied I really don’t know.

Someone from the chairs stated at least 3-4 years.

Mike Moesner asked did it fall down, blow down, or did someone take it down.

Raymond Lady replied there was a ditch agreement between… her husband’s grandfather owned the property and there… (inaudible) in the industry sometimes the industry comes to you and says I paid you too much money I want to reduce your pay. He said he tried that with him and he said just take it down. He stated we don’t do that but some….

Jillian Reed stated at one point I would like to make a statement. She said they already have the approval from the State for this outdoor sign. She said it has already been… they don’t have the same exact rules for the setback provision but it is the same location, the same sign, and they do have the State approval to do it. She stated it has just been down because a bit of money dispute about they thought it was more fair to have certain payments but otherwise it wasn’t an issue with the actual sign itself or any safety issues that arose in result of this sign.

Attorney Doll asked but that disagreement has been resolved.

Raymond Lady replied money issue disagreement.

Someone from the chairs started talking and Chairman Dayvolt asked them to come to the podium.

Jillian Reed stated she is the current landowner. She said but it has been owned by different companies.

Raymond Lady stated the billboard was not owned by J…

Chairman Dayvolt said JR Promotions.

Jillian Reed and Raymond Lady replied no.

Danielle Eggers stated it was previously owned by…

Chairman Dayvolt asked ma’am will you state your name.

Danielle Eggers said I am Danielle Eggers and I am one of the owners of the property. She said the sign was previously owned by the Drury Inn and they wanted to reduce the pay and my husband’s grandparents, who previously owned the property were not in agreement with that so they took the sign down. She stated we have since purchased it from them and entered into an agreement with a different company so that is how the series of events has transpired.

Doris Horn asked so it’s a little bit larger sign and the sign was taken down and they are putting up a new one and their application is still in order.

Attorney Doll stated it is the same size sign that was originally there is what the facts are alleged, is that accurate.

Jillian Reed replied yes.

Doris Horn replied okay.

Attorney Doll stated it is approximately the same. He said what was there exceeded the County Ordinance limitation as well, okay. He stated it was non-conforming for a couple of different reasons previously. He asked I guess there was no variance, right.

Jillian Reed replied there was. She said it was in 1996 I think. She stated which is part of the reason now it is non-conforming. She said it is different owners now for the sign and the property. She stated no one who was part of that variance is here today.

Jeff Willis asked do we know…are other signs on the interstate there…are they that close to the right-of-way. He said I don’t know how far the right-of-way comes off of the interstate…

Raymond Lady stated the right-of-way is right there off of the road but we are talking about the fence back.

Jillian Reed stated the access.

Raymond Lady stated the right-of-way fence that marks the States property and that’s I’m going to say at least 30 if not 40 feet to…

Chairman Dayvolt asked is the sign going to overhang their fence.

Raymond Lady respond oh no, no, no.

Attorney Doll replied the State won’t permit that. He said they can’t.

Raymond Lady stated not even an inch.

Mrs. Barnhill stated Jeff, we just looked at within 1,000 feet to meet and make sure all of our requirements were met. She said I didn’t go beyond that.

Jeff Willis stated my only concern is that everybody else is 60-70 feet off of the interstate or even 30 feet off of the interstate and….

Danielle Eggers stated there are at least four other billboards on the north side of the highway that would be very nearly in line with this sign if they are not directly in line with it.

Jillian Reed stated it has to do with the location of the right-of-way not the location of the highway itself. She said that is why it is a five foot difference verses the 75 foot so if you are looking at it, it looks comparable it is just because the right-of-way triggers the need for the variance.

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

I, Mike Winge­, make a motion to approve the Variance Application based upon and including the following findings of fact:

* 1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
  2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
  3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is it is the replacement of prior sign of same size and location.
  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:

1. Subject to an Improvement Location Permit being obtained.
2. Subject to a Building Permit being obtained.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
4. Subject to all utility easement and facilities in place.
5. Subject to the plot plan on file and not to be altered or expanded.
6. Subject to their permit with INDOT.

The motion was seconded by Jeff Valiant and unanimously carried.

Mrs. Barnhill stated we will go back and type up these minutes and we can have the approval ready to pick up Wednesday.

Jillian Reed replied thank you so much.

Mrs. Barnhill responded you’re welcome.

**ATTORNEY BUSINESS:**

Chairman Dayvolt asked if there was any attorney business.

Attorney Doll replied no, sir.

**EXECUTIVE DIRECTOR BUSINESS:**

Chairman Dayvolt asked if there was any Executive Director business.

Mrs. Barnhill stated no, sir.

Chairman Dayvolt asked if anyone had anything to say.

Jeff Willis stated we have had a couple of off premise signs come in where they are wanting say 620 square feet or whatever. He asked is that something that we are needing to look at or do we like having them come in.

Jeff Valiant asked like a new standard.

Jeff Willis said yes is that the new standard. He stated I didn’t want to ask him because that wasn’t appropriate but if that is what signs are going to be do we need to…

Attorney Doll stated well, this one was 672 square feet…

Mrs. Barnhill asked allow bigger billboards.

Attorney Doll replied yes, I don’t know whether that is the new standard. He said it does seem to me just as a casual observer that the billboards are bigger.

Mike Moesner asked is that counting both sides or just one side.

Attorney Doll replied I think that is just one side.

Mrs. Barnhill stated just one.

Attorney Doll stated and our ordinance is limited to 500 right.

Mrs. Barnhill replied yes, 500 square feet.

Attorney Doll stated I mean perhaps we could reach out to the Department of Transportation, Indiana Department of Transportation and ask them what they are seeing as the new standard size billboard. He said if it is more than 500 then rather than have to pass a variance we need to talk to the Commissioners and make a recommendation or not depending upon the Board’s wishes, about mending our ordinance to reflect what the State is seeing. He stated apparently the State is approving 672 square foot billboards. He said I would like to maybe ask, would you mind doing that reaching to.

Mrs. Barnhill replied yes, I can do that.

Attorney Doll asked who is it, Cochran up at Vincennes District, who is it that is up there that you would…

Mrs. Barnhill replied we always talk to Randy Carie.

Attorney Doll responded yes, Randy Carie. He stated call Randy and ask him what the normal size is and see what he tells you.

Mike Moesner stated it is like 20’ x 30’. He said 20’ x 30’ is 600 and this was what 625.

Attorney Doll replied this was 672 square feet.

Mike Moesner responded big.

Mrs. Barnhill stated we know their setback they don’t have any.

Attorney Doll said yes, a big billboard.

Mrs. Barnhill stated I’ll get that done and report back to you next month.

Jeff Willis respond alright, sure.

Chairman Dayvolt stated I would like to request that we all keep our past Chairman in our prayers and thoughts. He said he is going in for surgery for his kidney next week and removal. He stated I know that he would very much appreciate that.

Mike Moesner stated yes, I would appreciate it.

Chairman Dayvolt asked for a motion.

Mike Winge made a motion that we adjourn. The motion was seconded by Jeff Valiant and the motion carried unanimously. The meeting adjourned at 6:32.

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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 January 24, 2022.

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Molly Barnhill, Executive Director