

## **MINUTES**

### **City of Franklin, Indiana BOARD OF ZONING APPEALS**

**December 2, 2015**

#### **Members Present:**

Tim Holmes	President
Phil Barrow	Vice-President
Jim Martin	Secretary
Brian Alsip	Member
Rev. Richard Martin	Member

#### **Others Present:**

Alex Getchell	Associate Planner
Lynn Gray	Legal Counsel
Julie Spate	Recording Secretary

#### **Call to Order:**

Tim Holmes called the meeting to order.

#### **Approval of Minutes:**

Jim Martin made a motion to approve the November 4, 2015 minutes as submitted. Richard Martin seconded the motion. The members voted to approve the minutes.

#### **Swearing In:**

Lynn Gray swore in the audience en masse.

#### **Old Business:**

##### **ZB 2013-11 (UV & V) – Donnie Bunch Termination**

Mr. Holmes identified this as a public hearing and introduced Ms. Gray to oversee the hearing as Mr. Holmes will vote on the matter. Ms. Gray explained the case to be a request for termination of a previously granted variance and explained the procedure for the case presentation for the evening. The criteria being reviewed this evening is set forth in the City of Franklin Zoning Ordinance, Chapter 2.5. It specifically states "Upon determination by the planning director that possible grounds for termination exist, the matter shall be placed on the Board of Zoning Appeals agenda for public hearing. The planning director shall notify the applicant of the hearing via certified mail a minimum of 10 days prior to the hearing." Ms. Gray confirmed that has been completed. Continuing, "At the public hearing, the variance or special exception shall be revoked if a finding is made by the board that one or more of the following is true:

1. The execution of the approval is not consistent with any requirement of this ordinance.
2. The execution of the approval is not consistent with any condition of approval.
3. The execution of the approval is not consistent with any written commitment.
4. The approval was the result of fraud or the misrepresentation of facts.

Ms. Gray summarized the board's options as terminating the variance if evidence supports or not terminating the variance. She has prepared Findings of Fact for both terminating and not terminating.

City of Franklin Associate Planner Alex Getchell introduced Franklin's case for termination of the variance approval for ZB 2013-11 (UV & V) approval. On October 2, 2013, the BZA conditionally approved ZB 2013-11. At that hearing, Mr. Bunch, through his attorney, Mr. Young, made commitments and agreed to conditions outlined a-m in the Findings of Fact. Specific to tonight's proceedings are condition c stating "A maximum of 13 vehicles shall be on display at one time and shall be parked within the delineated parking spaces." Condition f was that "No additional outdoor lighting would be provided." Condition g, "No additional signage would be provided." Condition h that "Three (3) trees consistent with the site development will be provided." And condition m, "The existing sign face would be changed but the structure will remain in its current location with no additional lighting added." The Department of Planning and Engineering has found grounds for termination in the violation of these conditions. Mr. Getchell submitted Exhibit A, the BZA staff report requesting termination, and Exhibits 1-16 as outlined in the staff report. Ms. Gray added Exhibit A was four pages and signed by Travis Underhill, Joanna Myers & Alex Getchell. Mr. Getchell further explained that Exhibits A and 1-16 were sent to Mr. Bunch by certified mail and was returned to the Department of Planning & Engineering office, unclaimed, after delivery attempts on Oct. 24<sup>th</sup>, Nov. 4<sup>th</sup> and Nov. 10<sup>th</sup>. The Board of Zoning Appeals members also received the exhibits and it was posted online on Oct. 23<sup>rd</sup>, 2015. A notice of public hearing was also sent to Mr. Bunch via first class mail with certificate of mailing. On Oct. 27<sup>th</sup> Mr. Young contacted the planning department requesting a continuance of the termination hearing. Mr. Getchell also submitted exhibits 17-20 which were all reports of staff inspections made between Nov. 11th-30th.

At this point Ms. Gray returned to Exhibits 1-16 already admitted for identification purposes.

1. Meeting minutes
2. Findings of Fact authorizing the variance with conditions and commitments
3. Property Diagram
4. A letter from the Planning Dept. to Mr. Bunch advising of the violations.
5. A complaint submitted to the Planning Dept.
6. May 2<sup>nd</sup>, 2014 second notice of violation with
7. Google Streetview pictures dated June, 2014
8. Inspection pictures dated July, 2014
9. Third notice of violation dated July 14<sup>th</sup>
10. Google pictures from 2015
11. Inspection pictures from May, 2015
12. May 15<sup>th</sup>, 2015 notice of violation with certified mailing
13. July 2015 photograph showing number of vehicles at the property in question
14. September 12<sup>th</sup>, 2015 photograph showing 20 cars on the premise
15. September 28th, 2015 indicating 37 cars visible on the premise
16. October 1st, 2015 showing 26 cars visible, seven cars and a car carrier

Ms. Gray continued on with the next exhibit offerings,

17. November 11th, 2015 photograph showing 16 vehicles
18. November 20th, 2015 photograph showing 16 vehicles on the property, one in grass and two out of parking spaces

19. November 26th, 2015 photograph showing cars out of parking space and new lighting on the building

20. November 30th, 2015 photograph of two cars displayed outside of the parking spaces within the entrance drive

Mr. Getchell explained that exhibits 17 and 18 were emailed to Mr. Young on November 25<sup>th</sup>. The staff report and first 16 exhibits were reposted online November 25<sup>th</sup> for the December meeting and email sent out to Mr. Young and the BZA members of this second posting. Exhibit 19 was provided to Mr. Young on November 30 and added to the agenda. Exhibit 20 was e-mailed December 1 to Mr. Young and also posted on line the same date.

Mr. Getchell stated, at this point, seven written letters, notices and/or reminders have been provided to Mr. Bunch since the 2013 approval, but Mr. Bunch continues to be in violation, even at last check just two days ago. Even after the May 2015 notice of violation informing Mr. Bunch of possible termination for any future violations, submitted photographs show 20 vehicles in July, 20 in mid-September, 37 vehicles at the end of September and 26 at the beginning of October. Even after the Notice of Termination Hearing letter was sent on Oct. 23rd, violations of the conditions of approval continued, specifically with the number of vehicles on display. Mr. Getchell highlighted through photograph slides shown on council chamber screens some of the previously submitted exhibits to show these continued violations.

Mr. Getchell concluded that for all the reasons in the staff report and associated exhibits one through 20, the Planning and Engineering Department staff respectfully asks the Board of Zoning Appeals to terminate the variance approval for ZB 2013-11 (UV & V) based on the criteria that the execution of the approval is not consistent with any condition of approval and the approval was the result of fraud or the misrepresentation of facts.

Mr. John Young began his response by asking what Mr. Bunch was in violation of due to the lighting under the building awning. Because Ms. Gray was in possession of Mr. Getchell's staff report, she answered designating commitment "f", "no additional outdoor lighting shall be added". Mr. Young saw that as ambiguous. Mr. Young also stated that "m" stated the existing sign face could be changed but the existing structure would remain in its original location with no additional lighting added so asked if Mr. Bunch had changed the sign face and then changed it again or had he actually altered the structure. Senior Planner, Joanna Myers, explained that Mr. Bunch actually altered the structure because the original square footage of the signage was different. It was smaller, separated signs vs. the one panel as part of the structure. Mr. Young asked if the size of the new panel was not permitted under the ordinance or not in compliance. Ms. Myers explained the sign is not a permitted size per the zoning ordinance because it's residentially zoned property.

Mr. Young went through the timeline stating Mr. Bunch was granted the variance to operate his car lot in October 2013. On March 11, 2014, Mr. Bunch received his first letter from the Plan Commission staff reminding him of conditions needing to be met. Exhibit five from April 9, 2014, is a complaint regarding 26 cars observed on Mr. Bunch's car lot. Mr. Young asked who the complaintant was. Mr. Getchell identified Miss Angie Mardis. Mr. Young asked where Miss Mardis lives. Ms. Gray redirected Mr. Young to make his presentation, not conduct an inquiry or deposition. She further advised Mr. Young of the lack of relevance as to who the complaintant was. Mr. Young cited Exhibit six as the next contact on May 2, 2014 describing the formal meeting between staff and Mr. Bunch where an agreement was reached that he received 30 days to correct violations at that time. On June 14, 2014 (Exhibit seven) there is another photo of 18 cars on the property and three in the grass. July 10, 2014 (Exhibit eight)

staff makes an inspection showing 24 cars visible. Finally, on July 14, 2014 (Exhibit nine) the staff sent a notice of violation letter to Mr. Bunch. The next staff contact is not until an inspection 10 months later on May 12, 2015.

Mr. Young queried regarding what attempt staff made to have contact with Mr. Bunch between July 14, 2014 and May 12, 2015 to enforce the violations noted. Ms. Gray couldn't answer the specific question but stated that there is no requirement to communicate regarding violations more than once. Mr. Getchell stated follow up inspections were done. He stated, that typically at the last minute the property would be back in compliance again. Then another complaint would be received and another inspection made, citing May 12, 2015.

Mr. Young returned to Exhibit nine, the first notice of violation, July 14, 2014, reading from the end of the document. "In summation, the commitments Mr. Bunch had made needed to be addressed and that the property needed to be brought into compliance with the zoning ordinance. Failure to comply with the commitments agreed to with a use variance constitutes a violation and then advises him failure to comply could result in further enforcement actions including but not limited to fines of \$100 per day per violation of legal action." Mr. Young reported no action was ever taken to enforce this initial notice of violation. Mr. Young maintained the second inspection and notice of violation occurring in May 2015 was prompted by an undated photograph (Exhibit 10). Mr. Getchell pointed out the May 12<sup>th</sup> inspection was not prompted by Google maps imagery but by a complaint. Mr. Young highlighted Exhibit 10 showing the trees in full bloom so appears to be in spring or summer. Mr. Getchell explained that Exhibit 10 was provided solely for a timeline. It wasn't available to staff at the time because Google doesn't upload images real time. Exhibit 10 was not used to determine the need for an inspection. Ms. Gray gave a procedural explanation that BZA is an administrative agency and that the formal rules of evidence don't apply. Ms. Gray instructed Mr. Young to simply make his points and if Mr. Getchell has rebuttal he can respond. And if the board members who are making the decision have questions regarding points made, they can ask. Mr. Young's point is that it appeared no enforcement action was taken on the first violation.

Mr. Young asked Mr. Bunch to join him at the podium. Mr. Young asked if Mr. Bunch admitted to not being in compliance with the number of cars permitted on his lot. Mr. Bunch responded in the affirmative. Mr. Young asked if he also acknowledged they weren't always parked in the approved, designated spaces. Mr. Bunch's response, "Evidently not." Mr. Young asked Mr. Bunch why he had so many cars on his lot. Mr. Bunch explained that the cars they purchase are delivered to this location to move eventually on to the Columbus location or back to auction. Mr. Young led Mr. Bunch through a discussion of where he buys his cars and how the auction proceedings and results work for their business. Mr. Young asked if Mr. Bunch willfully violated the commitments he made for the variance granted to him. Mr. Bunch responded it was not, he had no other place to put them due to the Columbus lot being at capacity, so would have to keep them at this location for anywhere from a day up to two weeks depending on having the help to move them. Mr. Young reviewed the communications from staff and also walked Mr. Bunch through all the complaints for his explanation:

1. Are all lots paved and striped? Yes.
2. Do you have the trees out front? "I set three trees and two of them died."
3. Is the light under the awning new? "It's been there for years, sir, but I'll glad take it down and throw it in the trash if it bothers them."
4. And the sign? There was a miscommunication. The sign is about five feet to the north from the one Ms. Myers is referring to. Mr. Bunch understood the sign had to stay the same size. Mr. Bunch is sorry he moved the sign location but it's not any bigger.

Mr. Bunch doesn't recall having any contact with Franklin staff after July 2014 about the notice of violation letter or his compliance. Mr. Bunch doesn't dispute any of the findings. Mr. Young asked Mr. Bunch regarding his previous relationship with Angie Mardis. Mr. Bunch explained she used to work in the bail bond business with them. She had filed a lawsuit against Mr. Bunch that cost him approximately \$40,000 but hasn't talked to her in years. Mr. Young asked if some of the pictures entered as exhibits pictured three cars at least parked employee and personal cars not on display for sale to which Mr. Bunch concurred. Mr. Bunch says he is willing to do whatever the BZA wants. Mr. Young asked what assurances Mr. Bunch could give that his past history of non-compliance would cease if the BZA did not terminate his variance. Mr. Bunch said it's up to the board especially now that he has two other properties he didn't have at the beginning. Mr. Bunch maintained there has been significant misunderstanding, apologized to the BZA, the taxpayers and his neighbor and spoke of his desire to be allowed to maintain this location but will submit to the Board's authority. Ms. Gray clarified that this matter is not a zoning question but a variance issue.

Ms. Gray called for any members of the public who wish to speak. Mr. Ron Grose, resident of 1661 Terrace Ct., spoke in support of Mr. Bunch's property. He always keeps it clean and doesn't feel the number of cars affects anything. Mr. Grose further inquired as to why the county was not involved and Ms. Gray identified the property as in the buffer zone. Mr. Bob Hebenstreit, resident across from the car lot, reported Mr. Bunch only two or three times since opening has had the appropriate number of cars on the lot. The lights on the roof and south side of the building are new. He has caused traffic problems. He unloads semi's at the lot for his produce department. Prospective buyers have been seen parking on the road since there was no room on the lot for them to park. The public hearing was closed.

Mr. Getchell offered his rebuttal. Three trees were to have been placed in the front between the parking lot and 31. Speaking to the July 14<sup>th</sup> first notice of violation, there was no follow up because when staff inspected, he was in compliance. Mr. Getchell pointed out that Mr. Bunch has acknowledged that his business has not and will not comply from one-14 days at a time. The sign has changed several times since the variance approval and never with a sign permit approved, which could be considered a failure to comply with the zoning ordinance. Regarding the timeline with the Mardis complaint, a complaint had already been received and a reminder letter already sent to Mr. Bunch for his May 2<sup>nd</sup>, 2014 deadline to comply. The May 2<sup>nd</sup> site visit found him to still be out of compliance. In response to Mr. Gross, Mr. Getchell stated the car count matters, due to required drive aisle widths for public safety. And though some confusion about which light it was, there are lights there now that weren't there originally.

Mr. Young took issue with the comment made that Mr. Bunch had no intention of ever complying, reminding of Mr. Bunch's earlier testimony. Mr. Young's chief argument was the unfairness to anyone to go from no enforcement to the "death penalty" of termination. Mr. Young appealed to the Plan Commission to consider alternatives such as fines as stated in the first letter Mr. Bunch received, maintaining that Mr. Bunch would comply this time and if not would be fully aware of what would happen to his business. Mr. Young asked the variance not be terminated.

Brian Alsip asked for the other options available if not termination. Ms. Gray referenced what was cited in the first staff letter. There is no such thing as a legal waiver or the demand to continue to notify repeatedly of non-compliance. City ordinance only requires one notice. It is simple compliance or non-compliance. Mr. Alsip highlighted Mr. Young's statement that it was reasonable for Mr. Bunch to believe he was in compliance. Mr. Alsip asked if at any time after letters received and the May 2014 meeting were there more than 13 cars for sale on the lot. Ms. Gray stated that the exhibits speak to

that. Mr. Alsip already understood the information available through the exhibits and thus was asking how it was reasonable for Mr. Bunch to believe he was in compliance with 30 cars on the lot. Mr. Young clarified to say the lack of staff enforcement may have reasonably led Mr. Bunch to believe that staff wasn't going to enforce it or staff thought he had brought his lot into compliance enough.

Mr. Bunch spoke that he will not be handling the volume of cars going forward that he was in the past as a stop off on the way to Columbus. Mr. Alsip asked how long the Columbus lot has been in existence. Mr. Bunch responded about four months. Phil Barrow point out that Mr. Bunch had a Columbus lot when he originally applied. Mr. Bunch clarified that was a different lot in Taylorsville.

Mr. Barrow asked Mr. Bunch if he had no idea when the variance was granted that he intended to unload all these cars at his Franklin lot. Mr. Bunch explained that they originally were to all go straight to Columbus and that they changed their process which brought them through the Franklin lot. He maintained he did not know the variance did not permit that. Mr. Barrow asked if the seven letters sent didn't clarify that for him. Mr. Bunch stated not remembering the seven letters. Rev. Martin asked if Mr. Bunch could shorten the one to 14 days cars are on his lot. Mr. Bunch responded with a promise that if the board would like there would never be more than 10 cars on his lot ever again.

Ms. Gray closed the public hearing and reviewed again the decision particulars before the board.

Mr. Holmes called for the motion, reminding again that if termination, grounds must be cited. Mr. Getchell added that only one of the four stated grounds is required for termination. Ms. Gray explained to the public that for a motion to pass it requires three like votes.

Mr. Alsip moved to deny the request to terminate. The motion failed to receive a second; therefore, the motion failed.

Mr. Holmes moved to approved termination based on findings of items a, b and c as previously stated. Second was made by Mr. Barrow. The motion passed 4-1, with Mr. Alsip as the lone dissenting vote.

Ms. Gray read into the record Findings of Fact.

## **CITY OF FRANKLIN BOARD OF ZONING APPEALS**

### **REQUEST FOR TERMINATION OF ZB 2013-11**

#### **Use Variance and Variance from Developmental Standards**

### **FINDINGS OF FACT**

Comes now the City of Franklin Board of Zoning Appeals and after due notice being given to applicant/Petitioner, Don Bunch, and this matter being duly noticed and public hearing conducted on the 2<sup>nd</sup> day of December, 2015 does hereby find that the previous use variance and variance from developmental standards granted to Petitioner subject to written commitments of approval and conditions shall be revoked and terminated and in accordance with Article 2, Chapter 5, of the City of Franklin

Zoning Ordinance and in accordance with said provisions finds that one (1) or more of the following has been proven for the termination of a variance or special exception by the Board of Zoning Appeals:

1. The execution of the approval is not consistent with any requirement of this Ordinance
2. The execution of the approval is not consistent with any condition of approval;
3. The execution of the approval is not consistent with any written commitment; or
4. The approved was the result of fraud or the misrepresentation of facts.

The Board of Zoning Appeals after hearing the presentation of the Staff, presentation of Petitioner, taking public comment, and reviewing exhibits and evidence thereon, does hereby find and determine as follows:

- a) The grounds for termination set forth in items 1,2,3 have been established and therefore the Use Variance and Developmental Variance granted to Petitioner as Case Number ZB 2013-11 is revoked and terminated in all respects and Petitioner shall immediately cease operation of all business previously conditionally authorized pursuant to said Variance.

DATED this 2nd day of December, 2015.

**New Business:**

**ZB 2015-16 (V) – Meijer Store**

Mr. Getchell introduced ZB 2015-16, a developmental standards variance request at 2390 N Morton Street for the proposed Meijer store. The request is to allow a wall sign to be larger than the maximum wall sign area of 200 sq. ft. in the MXR and Gateway Overlay zoning district. The petitioner is proposing a wall sign at 321.06 sq. ft. in size which is 121.06 sq. ft. larger than is permitted. The application is complete, the public notification requirements have been met and the petition is ready for the board's consideration and action.

Mr. John Sheidler with Woolpert, the civil engineering consultant representing Meijer, presented their sign variance request. The request is for a variance from Article 8.3, the non-residential sign chart. The required maximum wall sign size is 200 sq. ft. and Meijer is proposing 321.06 sq. ft. Mr. Sheidler walked through the decision criteria:

General welfare—It is not injurious to the public health or general welfare of the community. It would be the largest wall sign in the city if approved but consistent with the neighboring large retail stores, particularly Lowe's and Walmart. Mr. Sheidler gave descriptive information of the other retail signs, store locations in relation to US 31, referencing the diagrams submitted.

Adjacent property—It will not be adversely affected if approved. They felt it to be a high quality design and an asset to the area. And a larger sign will better identify their desirable store, benefitting the neighboring businesses as well without adversely affecting the neighboring residential areas.

Practical difficulty—Mr. Sheidler maintained the strict application of the ordinance will provide a practical difficulty as the store sign will not be adequately visible from US 31 and not proportional to the building. The larger sign gives a more commercial and inviting look.

Mr. Holmes sought clarification that the total square footage is less than the maximum but the one sign is larger than the maximum. Mr. Getchell confirmed.

Mr. Getchell presented staff's recommendation for approval of this request with the condition that sign permits be obtained prior to installation of all signage. Mr. Holmes asked Mr. Sheidler if that was an acceptable condition, and Mr. Sheidler affirmed.

A motion to approve with condition was made by Mr. Martin. It was seconded by Rev. Martin. The motion carried.

### **ZB 2015-17 (V) – Meijer Fuel Center**

Mr. Getchell introduced this developmental standards variance at 2354 N Morton Street for the Meijer Fuel Center. This variance is to allow a freestanding sign to be larger than the maximum free standing sign area of 100 sq. ft. in the MXR and Gateway Overlay district. The variance is needed because the petitioner is proposing a freestanding sign at 119.38 sq. ft. which is 19.38 sq. ft. larger than permitted. The application is complete and public notification requirements have been met.

Mr. Scheidler presented again and went through the decision criteria:

General welfare—They believe it will not be injurious to the public health or welfare of the community. The sign is 20 ft. less than the neighboring Walmart sign.

Adjacent property—They don't believe there will be any measurable effect on the adjacent property resulting from this variance.

Practical difficulty—They maintained there would be a practical difficulty without this variance. Visibility is key for retail. There are six different entrance points from three different streets and their free-standing sign allotment has been used. The sign size has been reduced from the Meijer norm.

Mr. Holmes asked if this is two different properties, with the fuel center separate from the Meijer store, and what is considered an off-site or on-site sign. He also asked, if this freestanding sign is for the Meijer store, for the fuel station, or together. Mr. Getchell confirmed the properties are separate. He explained that if this sign were considered a multitenant sign, all the businesses in this subdivision would only be allowed signage on this freestanding sign; no other freestanding signs would be permitted. He anticipates the future businesses on the adjacent lots will want their own freestanding sign. Therefore, this sign is being viewed as not a multitenant sign, but as a sign just for the fuel center; as such, it is required to be within the 100 sq. ft. limit.

Mr. Holmes stated, in theory, the Meijer store has no freestanding sign along 31. Mr. Sheidler confirmed, technically, by the ordinance, this is a sign just for the fuel center. Mr. Holmes asked if this sign could be used by the other lots if they wanted to. Mr. Getchell stated they could not. If this was used as a multitenant sign, the Meijer store and other lots could not have any other freestanding sign. He corrected himself, by saying Meijer could have two signs because there are multiple frontages; however, Meijer is also proposing two monument style signs on Simon Road and Commerce Drive. He stated Meijer would not be allowed to have both monuments, if this was a multitenant sign.

Ms. Myers added that the out lots would not be allowed a free standing sign. They would have to be a panel on one of the two multi-tenant signs. Mr. Sheidler confirmed that this is the sign layout preference of Meijer. It is not Meijer's intent to add other businesses to this sign. Mr. Getchell reported



that staff is in agreement with Meijer's overall sign package proposal, except for the square footage of this sign.

Rev. Martin asked if a compromise can be reached. Mr. Sheidler suggested that originally they planned to ask for a larger sign but downsized for this variance request so a compromise would only result in a 10-foot reduction, but he is open to that should the Board desire. Ms. Myers gave the staff recommendation of 100 sq. ft. per ordinance.

Mr. Barrow wondered if part of staff's reasoning was other vendors coming in and wanting a sign the size of Meijer's as well. Mr. Getchell confirmed and added that this would be the first free-standing sign exceeding the maximum sign area since the sign ordinance was enacted in 2013. Walmart was approved under a different ordinance. He stated, that if the top section of the freestanding sign is reduced by 1 ft. 7 inches in width and 8 inches in height, it would be the ordinance. He stated Meijer could still utilize the fuel price sign, as proposed, with the digital letters the size they proposed. With the sign being only 10' from ROW and only 40' from edge of pavement, there is not a visibility issue. He went on to mention the proposed landscaping on the approved site plans will not create a visibility issue for the sign. He further stated, the Fuel Station Canopy will be approximately 20 feet tall, 100 feet in length along 31, and will have the Meijer logo on three sides, including the Meijer "Award Blue" color band across the whole canopy. There will be visibility of the canopy and this sign within about 100 feet of 31.

Ms. Gray asked the reduction requirements to be repeated. Mr. Getchell responded with 1 ft. 7 inches in width and 8 inches in height, would get it just below the requirement, and still use the fuel price sign, as proposed. Mr. Holmes asked if that kept the fuel sign the same and Mr. Getchell said yes.

Mr. Sheidler stated, that while the reduction staff is proposing is true, it would be a 20 percent reduction in the size of the sign. He stated people will be looking for that sign for quite a distance, and needs to be visible from a great distance. He eluded to Walmart's sign across 31 being 20 percent larger than is proposed, and Meijer is not trying to exceed it, but essentially, to match it. Mr. Holmes stated he appreciated Meijer not proposing a sign much larger. Ms. Myers spoke to the comparison of Meijer's sign to Walmart's sign. Walmart's sign is not adjacent to any other structure as Meijer's sign will be to the canopy.

Mr. Getchell gave staff's recommendation for denial of the petition based on the general welfare and practical difficulty criteria.

A motion was made by Mr. Alsip to deny the request based on the lack of showing practical difficulty. Mr. Holmes seconded. The motion passed unanimously.

#### **ZB 2015-18 (UV) – Moonlight Automotive, Inc.**

Mr. Getchell introduced this use variance request at 599 Earlywood Drive for Moonlight Automotive. The request is to allow the operation of an auto-oriented use (medium scale) auto repair, service and machine shop. This variance is needed as the proposed auto-oriented use is a non-permitted use in all districts except MXC, MXR and IBD. The application is complete and public notification requirements have been met. It is ready for the board's action.

Ron Sodrell presented representing Moonlight Automotive, talking through drawings provided. He reported the site is currently zoned IG. An identified area will be encompassed by a wood privacy fence. In front of the fenced area, it will be paved for customer parking. Moonlight Automotive will store vehicles waiting to be worked on inside the fenced area. There is also a small machine shop. Endress Hauser has purchased their current property in the Greenwood/Whiteland area, so they must vacate

and have been unsuccessful in finding a suitable site that didn't require a variance. There is currently a dock on the property which will be removed and turned into a drive in door area. Mr. Holmes called for Mr. Sodrell to address the criteria for decision.

General Welfare—It wouldn't be injurious to the public health, safety, morals and general welfare of the community by putting up the 100% opaque fence.

Adjacent Property—It doesn't adversely affect any adjoining property owners because they are mostly of a larger scale and manufacturing use and also already automotive repair.

Condition of Property—It is a small structure so difficult for sellers to find a buyer for an industrial use. And for those buyers who might be interested, it is not zoned for their particular use.

Unnecessary Hardship—It does create an unnecessary hardship for Moonlight Automotive to find an automotive repair shop in the area. The owner has been looking for something in this greater area for approximately 18 months.

Comprehensive Plan—It doesn't substantially affect the comprehensive plan as this use fits in with what's there with granting of the necessary variance.

Ms. Gray asked if there is an owner representative present today. Mr. Sodrell confirmed there is. She asked if he has reviewed staff recommendations a. through h., is clear on what they are and has agreed to the terms. Mr. Sodrell affirmed that to be true. Mr. Holmes asked Mr. Sodrell a second time if he agreed to staff conditions a. through h., and Mr. Sodrell again confirmed their agreement. Mr. Getchell presented an amendment to the staff recommendation. On item d, "All areas of the existing gravel parking lot, north of the proposed wood fence, shall be paved with asphalt or concrete for customer ingress/egress and parking within 45 days of the asphalt plants opening in the spring." Ms. Gray asked Mr. Sodrell if he agreed to this term. Mr. Sodrell affirmed this to be their intent, and as long as the asphalt plants are not backed up, there should be no problem. He maintained it is definitely their intent to get it done immediately in the spring. A change was made from 45 days to 60. Ms. Gray asked if the west side dock removal is referenced in staff conditions. Mr. Getchell said it is not, it is irrelevant to the use variance request. Mr. Holmes called for the staff recommendation. Mr. Getchell said staff recommends approval with the conditions listed in the staff report with the amendment that the pavement be within 60 days of the asphalt plants opening in the spring of 2016.

Mr. Barrow made a motion to approve with staff's recommendations.  
A second was made by Rev. Martin. The motion passed.

**Other:**

**Adjournment:**

There being no further business, the meeting was adjourned at 9:15pm.

Respectfully submitted this 6th day of January, 2016.

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Tim Holmes, President

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Jim Martin, Secretary