

## **MINUTES**

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

**March 1, 2017**

#### **Members Present:**

Tim Holmes  
Phil Barrow  
Jim Martin  
Brian Alsip

Chairman  
Vice Chairman  
Secretary  
Member

#### **Members Absent:**

Rev. Richard Martin

Member

#### **Others Present:**

Alex Getchell  
Joanna Myers  
Lynn Gray  
Julie Spate

Senior Planner  
Senior Planner  
Legal Counsel  
Recording Secretary

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

Tim Holmes called the meeting to order at 7:00pm.

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

Jim Martin made a motion to approve the January 4, 2017 minutes. Brian Alsip seconded the motion. The minutes were approved, 5-0.

#### **Swearing In:**

Lynn Gray swore in the audience en masse.

#### **Old Business:**

None.

Ms. Gray explained in detail the process for Board actions with four Board members in attendance. She also reviewed the time guidelines for all petitioners and remonstrators speaking, indicating 20 minutes will be given for the Petitioner of each request, followed by 20 minutes for remonstrators, and finally, 10 minutes for Petitioner's rebuttal.

#### **New Business**

##### **ZB 2016-11 (UVV) – Homeview Health & Rehabilitation Center**

##### **ZB 2016-12 (V) – Homeview Health & Rehabilitation Center**

Mr. Alsip physically recused himself from the discussion, by stepping down from the bench and joining the audience, after stating he has a direct conflict of interest, since Homeview is his wife's employer. Ms. Gray explained that with only three voting members this now requires a unanimous vote or it will automatically be continued.

Petitioner Steve Huddleston, attorney with Huddleston and Huddleston and representing Homeview, began by requesting to be allowed to consolidate his time for both requests and to present both cases at the same time, as both requests are all related to the same project. Phil Barrow made the motion to accept this request and Mr. Martin seconded. The motion passed unanimously, 3-0. Ms. Gray explained that the petitioner for Homeview would now have 40 minutes to present both requests at the same time, then, any remonstrators or anyone wishing to ask questions would also be given 40 minutes to speak, and finally, the petitioner would be allotted a 20 minute rebuttal.

In attendance were Jesse Ott of the family owners of Homeview, land surveyor Steve Bourquein from Land Focus Consulting and designer for the site plan, Cameron Bourquein, owner of Manifest Realty Design, building designer Robert Allendale with AET and Homeview manager Mark Gavorski. Mr. Huddleston explained Homeview's property to be divided by Palmer Street, a dead end street with one residence, the Brown family. Expansion of the Homeview facility is difficult when the right-of-way of a public street must be taken into consideration. This prompted the requests being presented to BZA. Upgrading Homeview will cost the petitioners approximately \$2 million. Variances include a request for a use variance on the north side of Palmer for a parking lot and for developmental standards dealing with parking partially located within the right-of-way. On the south side of Palmer Street, they are asking for variances relating to loading berths, dumpster enclosure, distance between entrance drives, parking partially within the right-of-way, and a new building entrance setback.

Mr. Huddleston described Homeview's history and current business, highlighting that after the updates they will still have their current 140 employees and 119 beds. He further commended Senior Planners Alex Getchell and Joanna Myers for their work with the petitioners and the help they offered. Mr. Huddleston also mentioned former Mayor McGuinness and current Mayor Barnett's support for the project. He stated a boundary dispute with Indiana Masonic Home to the south was discovered and resolved with the Masonic Home deeding over the area in dispute. Mr. Huddleston stated the Indiana Masonic Home submitted a letter stating no opposition to the variance requests.

Mr. Huddleston proceeded to give an overview of the project complete with accompanying pictorial slides from a PowerPoint presentation. The property is bounded on the East and West by State Street and the railroad tracks, respectively. The library is to the North and the land resolved with the Masonic Home is to the South. Petitioners have acquired four parcels with houses on the north side of Palmer Street, which petitioners later removed. Mr. Huddleston stated Homeview also owns three parcels south of Palmer Street where the building sits and where the building expansion will take place. He stated everything east of State Street is zoned Institutional (IN), including Mr. Brown's house, and an assisted living facility is an approved use within IN zoning.

Mr. Huddleston highlighted project plans include parking lot expansion, complete reconstruction of Palmer Street, a new building entrance, remodeling of some existing rooms, enlargement of physical therapy area, construction of new loading berth, dumpster enclosure and storage building and planting of new landscaping.

Mr. Huddleston went on to review why a use variance was needed for the north side of Palmer Street. A parking lot is permitted for a business, but when the parking lot is separated by a public street, a use variance is required, as the freestanding parking lot is not attached to the business. A parking lot as a primary use is not permitted in the IN zoning district.

Mr. Huddleston maintained that all evidence provided for this presentation, as well as, that evidence previously submitted in 2016, supports a positive finding for the statutory criteria for a use variance, that of general welfare, adjacent property, peculiar condition, unnecessary hardship and comprehensive plan. Mr. Huddleston stated the petitioners agree to all conditions as outlined in the staff report, including the buffer with Browns' property and Homeview's addition, site development plan approval, lighting intensity, ingress/egress between the Brown home and State Street will never be impeded, there will be no on-site delivery vehicles idling on-site nor within the right-of-way overnight, and the newly created parking spaces in the right-of-way will be open to anyone and not limited to Homeview only.

Mr. Huddleston then addressed the two developmental standards variances for right of way parking and maneuvering. Though some of the parking spaces require pulling in and out of the right of way on Palmer Street, it's not far enough to impede traffic flow. It is the petitioner's belief that Homeview again meets all the statutory criteria with this request, and is in agreement with the staff report.

Mr. Huddleston went on to address the requests for the south side of Palmer Street, stating there are 12 variances covering front and rear setbacks, new entrance drive, loading berths, dumpster enclosure, new storage building setbacks, design and access to parking spaces in the right of way, and the distance between the drives going into the loading area and dumpster. He stated the current entrance and the proposed new entrance are both in the right of way, so there would be no change. They propose new parking on the south side of Palmer Street, an extension and enclosure of the two wings of the building for physical therapy, and as a result, a reduction of the back parking lot. He stated they also designed a new loading area to get trucks off Palmer Street and new landscaping. Mr. Huddleston utilized 3D renderings to compare how things are now with how they will be changed if granted the list of variances.

Ms. Gray cited that the petitioner had requested throughout the presentation that the identified exhibits provided, along with the staff reports, be part of the record. Ms. Gray further reiterated that the petitioner had agreed in full to the conditions as set forth in the staff report.

Mr. Holmes asked Mr. Getchell if notification and publication was done in a timely manner, and Mr. Getchell confirmed it was. Mr. Holmes opened the public hearing, by asking if there was anyone in attendance who wish to speak for or against the requests.

Alan Brown, owner of the home at 540 Palmer Street, read a letter he had previously submitted in opposition to the requested variances by Homeview. Ms. Gray assured it would be included as part of the public record of the meeting. He stated concerns about the deteriorating value of their home, the busy traffic patterns, the requirement to drive through Homeview's proposed parking lot for Palmer Street to get to their home, backing into Palmer Street from parking spaces on both sides of the street and the specific desire to be on a dead end street for safety purposes. Many of the trucks are semis, not just small delivery trucks.

Mr. Brown then went on to specifically address the variances:

Move the main entrance to Palmer Street – They object because it will make it even harder to get to and from their house. It will also affect the safety of visitors who will practically have to go out in the street. Move the dumpster enclosure to Palmer Street – They object because it will only make it more difficult to get to their home. There is not enough room for the garbage truck to not block the street. It also

affects the appearance of the street. Mr. Brown was unsure why the dumpster enclosure was not going to stay at the back of the facility.

Move the garage and storage building – This doesn't affect the Brown family.

Parking spaces cannot be in the right of way and curbs on both sides of the street –

Vehicles cannot maneuver in the right of way, blocking traffic –

These are safety concerns for the Browns.

Aaron Brown, Alan Brown's son, asked the distance between Palmer Street and the proposed new dumpster location. Based on the length of a standard semi-tractor without trailer, he observed they will still have to back out unless they are circling around the parking lot which they can do currently.

Mr. Huddleston responded that currently they have to back out on Palmer Street but with the new plan they will circle through the parking lot.

Aaron Brown understood that if Palmer Street went to not being a city street, it would lower its fire protection classification rating. Ms. Gray explained that not to be true and that the street and surrounding area would still maintain its fire safety ratings, as Palmer Street will still be a city street with its safety rating.

Mr. Holmes stated his observation that Homeview will lose 18 parking spaces. Mr. Huddleston asked Homeview Administrator Mark Gavorski to speak to the current parking on Palmer Street. Mr. Gavorski confirmed the Brown family also parks on Palmer in addition to the Homeview staff and visitors. Mr. Huddleston reiterated that even with the parking spaces into the right of way, there is still plenty of room for traffic to go up and down the street, that it will become a much better street and that it will be safer than it is now. Mr. Huddleston stated Palmer Street will never be blocked per the agreed upon conditions. He further maintained that the traffic closer to the Brown house will be less as most people will park in the north parking lot and not the back.

Mr. Barrow asked if the city will still maintain Palmer Street. Mr. Huddleston stated it would still be a public street, so whatever responsibility the City had in the past, the City will still have. Ms. Gray explained that this is why the staff designated it must be built to city standards. Mr. Holmes requested staff's recommendation.

Mr. Getchell first addressed ZB 2016-11 for the property on the north side of Palmer Street. Staff recommended approval of the use variance with the conditions outlined in the staff report, but with a revision of condition "b." to match petitioner's revised landscape plan, and the addition of condition "h." that would require the petitioner to provide a fence six feet in height, as depicted by the petitioner in his presentation, between the parking lot and 540 Palmer Street, for as long as 540 Palmer Street exists as a residence:

- a. Site Development Plan approval required prior to construction.
- b. Petitioner shall provide, and keep well-maintained, a contiguous landscape buffer between the parking lot and 540 Palmer Street, which is equal-to, or greater-than the proposed landscaping (2-Chanticleer Pear trees; 10-Emerald Arborvitea; and 9-Annabelle Hydrangea) on the Site Landscape Plan with a revision date of 02/03/2017, for as long as 540 Palmer Street exists as a residence.
- c. All parking lot lighting shall result in 0.0 footcandles at property lines of 540 Palmer Street.

d. Petitioner shall ensure that no vehicle associated with their operation, whether an employee, visitor, or delivery vehicle, parks on the street directly in front of, nor impedes or prevents ingress/egress of 540 Palmer Street.

e. Petitioner shall maintain viable ingress/egress for 540 Palmer Street at all times, including during construction/re-construction of the parking lot and Palmer Street.

f. Delivery vehicles shall be prohibited from idling, on-site and within the right-of-way, overnight.

g. Parking spaces partially within the public right-of-way of Palmer Street shall not be restricted to Homeview guests and/or employees.

h. Petitioner shall provide, and keep well-maintained, a fence six feet in height, between the parking lot and 540 Palmer Street, as depicted by the petitioner in his presentation, for as long as 540 Palmer Street exists as a residence.

Mr. Huddleston expressed continued support of staff conditions, including the two updates.

Mr. Getchell expressed staff's recommendation for approval of the development standards variances with conditions as outlined in the staff report:

a. Site Development Plan approval required prior to construction.

b. All parking lot lighting shall result in 0.0 foot candles at property lines of 540 Palmer Street.

c. Petitioner shall maintain viable ingress/egress for 540 Palmer Street at all times, including during construction/re-construction of the parking lot and Palmer Street.

d. Parking spaces partially within the public right-of-way of Palmer Street shall not be restricted to Homeview guests and/or employees.

Mr. Getchell continued with staff's recommendation for ZB 2016-12 for development standards variances on the south side. Staff recommended approval with the conditions outlined in the staff report:

a. Site Development Plan approval required prior to construction.

b. All parking lot/exterior lighting shall result in 0.0 footcandles at property lines of 540 Palmer Street.

c. Petitioner shall ensure that no vehicle associated with their operation, whether an employee, visitor, or delivery vehicle, parks on the street directly in front of, nor impedes or prevents ingress/egress of 540 Palmer Street.

d. Petitioner shall maintain viable ingress/egress for 540 Palmer Street at all times, including during construction/re-construction of the parking lot and Palmer Street.

ZB 2016-12 (V) Page 7

e. Parking spaces partially within the public right-of-way of Palmer Street shall not be restricted to Homeview guests and/or employees.

f. When a delivery vehicle is present, Petitioner shall maintain at least one full open lane of traffic on Palmer Street at all times.

g. Delivery vehicles partially or fully parking in the right-of-way shall not be on-site for greater than two (2) hours at a time.

h. Delivery vehicles shall be prohibited from idling, on-site and within the right-of-way, overnight.

i. Delivery vehicles shall be prohibited from loading/unloading from Palmer Street, if an adequate area is available in the loading berth or dumpster approach areas.

Mr. Huddleston expressed the petitioner's acceptance of the conditions.

Mr. Martin made a motion to approve ZB 2016-11 (UV/V), with staff recommended conditions. Mr. Barrow seconded the motion. The motion passed unanimously, 3-0.

Mr. Martin made a motion to approve ZB 2016-12 (V), with staff recommended conditions. Mr. Barrow seconded the motion. The motion passed unanimously, 3-0.

Whereas the requests for Homeview Health & Rehabilitation Center were settled, Mr. Alsip rejoined the Board for the remaining requests.

**ZB 2017-01 (V) – Ross Dress for Less**

Mr. Getchell introduced ZB 2017-01 (V) as a request by Ross Dress for Less, represented by Greenfield Signs. The property is located at 1030 N Morton Street. The overall property is 8.14 acres with their individual tenant space at roughly 22,000 square feet. The property is zoned MXC (Mixed Use Community Center) and is also in the Gateway Overlay zoning district. The Comprehensive Plan calls for this area to be Community Activity Center.

The developmental standards variance request is to exceed the total permitted sign area of 250 square feet, and be permitted up to 306.35 square feet of total signage area. The property is north of the new Kroger Marketplace, behind the Goodwill, PNC, Arby's, Meineke, Sherwin Williams and in front of the Canary Creek Cinemas. Ross Dress for Less requested four total signs and they are permitted five with no more than 250 square feet. They have two small signs, one wall sign at eight square feet and a 7 square feet hanging sign underneath the overhang above the front door, perpendicular to the building. The major signage is the two signs on the upper part of the building. The "ROSS" sign is proposed at 144 square feet and the "DRESS FOR LESS" is proposed at 147 square feet. Notification was completed satisfactorily, and the request is ready for consideration and action by the Board.

Phil Walsh of Greenfield Signs presented, highlighting Ross's sign as more overall square footage than the other storefronts but smaller letters than some of the other businesses. Mr. Walsh maintained only short windows of visibility to the store's signage traveling at 45 mph due to the other storefronts and set back in behind other businesses along the route. He further explained the distances between storefront and Morton Street and the calculated visibility distance of letter sizes. Mr. Walsh responded to each of the three decision criteria. General Welfare: It won't hurt anyone to have a few extra feet of signage. Adjacent Property: It won't hurt any of the surrounding businesses or steal any business from them. Practical Difficulty: It will not result in that situation.

Mr. Holmes opened the public hearing by asking if anyone in the audience wished to speak for or against the request. No one came forward.

Mr. Alsip sought clarification as to the need for larger lettering given the freestanding sign out on 31 as well. Mr. Walsh explained that the road signs are primarily directional once people turn in to the property and that the building signs are the main advertisers for drive by traffic.

Mr. Holmes reviewed what amount of reduction it would take to meet the required sign standards. Mr. Barrow sought verification of sign comparisons by staff from the other businesses in the same strip and neighboring businesses. Mr. Getchell presented slides from Exhibit "B" showing visual comparisons the requested Ross Dress for Less signage, overlaid with superimposed images of the approved signage for Marshalls and PetSmart, and the largest installed signage for Kroger Marketplace, Meijer, and Walmart.

Mr. Holmes reviewed that they could have the larger and two smaller signs as long as the total is within 250 feet. Mr. Holmes then requested staff's recommendation.

Mr. Getchell presented staff's recommendation of denial for failure to meet the criteria of general welfare and practical difficulty. Staff maintains there is no practical difficulty whatsoever in meeting the sign standards. Ms. Gray asked what facts that decision is based on. Mr. Getchell reviewed again what was cited in the staff report, that the amount of reduction required to meet the standards is minimal and the resulting signage would be comparable with neighboring business tenants. He also stated other storefronts in the same strip, setback the same distance from 31, and behind the same buildings apparently had no difficulty meeting the sign standards. Mr. Getchell stated the Ross Dress for Less store and storefront are significantly smaller than Kroger Marketplace, Meijer and Walmart, yet the petitioner is requesting greater main store identification signage. Ms. Gray asked if economic gain was part of staff's recommendation for denial, and Mr. Getchell responded that it was not.

Mr. Barrow made a motion to deny ZB 2017-01 (V), based on a failure to meet criteria for a practical difficulty. Mr. Alsip seconded the motion. The motion passed unanimously, 4-0.

#### **ZB 2017-02 (V) – Buffalo Wild Wings**

Mr. Getchell introduced ZB 2017-02 as a developmental standards variance request by Peterson Architecture on behalf of Buffalo Wild Wings located at 2330 North Morton Street. It is the lot immediately south of the Meijer fuel station. The Buffalo Wild Wings property is 1.04 acres and zoned Mixed Use Community Center (MXC) and is in the Gateway Overlay district. The Comprehensive Plan calls for this area to be Community Activity Center. Both requests are for variances from the Gateway Overlay standards. The first is to provide less than 60% display windows on the south façade. Applicants are proposing 46.6%. The second variance is to not provide weather protection features such as awnings or arcades over sidewalks within 10' of customer entrances. The east elevation is where the entrance is proposed and the south elevation would be the location of the display windows in discussion. The grouping of windows on either end of the south elevation will be faux windows with the grouping of windows in the middle of the south façade being real windows. Mr. Holmes asked what the rationale is for the 60% display window allocation. Mr. Getchell explained this to be a requirement of the GW-OL district and required along all facades that have a pedestrian walkway adjacent to it, then a five foot landscape strip followed by a five foot walkway. Anywhere this occurs there is a requirement for 60% display windows. Joanna Myers further explained it to be more welcoming and comforting to pedestrians walking along the sidewalk, than simply a solid wall.

Dan Holland, franchisee for central Indiana and owner of 17 stores, presented. He began by highlighting their community involvement and supportive efforts.

Darren Peterson of Peterson Architecture followed up highlighting the attempt at balance between city ordinances and corporate brand. Addressing the practical difficulty of the windows on the side, it's a sports bar and too much light interferes with the functioning of the audio-visual equipment. Additionally there is the kitchen, bathrooms, the back of the take out area and server station so impossible for them to add more real windows. They do not think it adversely affects their neighbors. Having studied some of their neighbors, they feel others do not meet the 60% criteria either. Further, they have the landscape strip to soften the side of the façade which some of their neighbors do not have. With regard to the weather protections over public entries, Buffalo Wild Wings is attempting to get away from the dated look of awnings and become more modern. Instead they've added the shroud

over and around the front door extending 18 inches. When addressing general welfare, Mr. Peterson featured Buffalo Wild Wing's sophisticated maintenance plan to keep sidewalks clean.

Paul Jordan of Peterson Architecture addressed staff recommendations. A clerestory was determined by the company to be very expensive due to maintenance issues and energy costs, so they did away with this stipulation. Installation of it costs \$85,000.

Mrs. Myers pointed out that the majority of the parking is offsite so people will be coming from the west adjacent to the façade with the display window deficiency, and more so than from the east.

Ms. Gray asked Mr. Getchell what size window would be needed to meet the requirement. Mr. Getchell stated an additional 12 feet of real or faux window is needed to reach the requirement for the south façade. Fifty-six feet is required and they are currently providing 44'.

Mr. Jordan stated a lot of the surrounding buildings they believe they don't meet the 60 percent standards. Mrs. Myers discussed the buildings in the GW-OL that do not appear to adhere to the ordinances. She stated they were either built prior to the Gateway Overlay requirements, or received a variance like Meijer, who requested also added additional faux windows in order to be more compliant. She went on to state there is a significant difference in size, interior layout and pattern of pedestrian traffic between the Meijer and Buffalo Wild Wings structures.

Mr. Holmes opened the public hearing by asking if there was anyone in attendance who wished to speak for or against the petition. No one came forward.

There being no further questions, Mr. Holmes requested staff's recommendation.

Mr. Getchell offered the staff recommendation for denial of the weather protection features for the front of the building, as staff does not find a practical difficulty in extending some sort of canopy over the front entrance doors, including the "Take out" door. Mr. Getchell went on to state that staff is reversing its staff report recommendation of denial for the display windows, and staff is now receptive of petitioners stated practical difficulties in adding addition display windows. Staff recommends approval of the variance for display windows, with the condition that all other standards of the Gateway Overlay district are met.

The petitioner asked if the canopy is to come out 10' or farther. Ms. Myers answered that from the entrance doors, anywhere there is a sidewalk within 10' of that entrance, weather protection needs to be provided. There is the option of determining where the sidewalk will be in order to determine the length of the canopy. The petitioner changed their request to include protection over the takeout door to come out to the shroud 18". Ms. Myers maintained that 18" isn't really enough to constitute protection. When opening the door, there needs to be protection from the elements. 18" is not enough to provide protection but rule of thumb must be at least the three foot width of the door. The petitioner suggested their ability to cover the sides and top of the entrance at least three feet out, and ability to redesign the sidewalk.

Mr. Martin made a motion to approve the display window variance with the condition that all other standards of the Gateway Overlay District will be met. Mr. Barrow seconded the motion. The motion passed unanimously, 4-0.

Mr. Alsip made a motion to deny the weather protection variance request, due to lack of practical difficulty. Mr. Barrow seconded the motion. The motion passed unanimously, 4-0.



**ZB 2017-03 (V) – 49 W Wayne St.**

Mr. Getchell introduced the developmental standards variance requests at 49 W Wayne Street, approximately 1.1 acres, zoned MXD (Mixed Use Downtown Center). It is currently used as a single family residence, which is a legal non-conforming use in the MXD district. The comprehensive plan calls for the area to be downtown. There are three variances requested: 1) to allow a new structure in connection with a legal non-conforming use, a new 24'x30' detached garage; 2) To allow an expansion of a legal non-conforming use, relocating the existing the driveway off the alley and the new driveway accessing off Wayne Street, along with an expansion of the driveway; 3) Access and location requirements, vehicles maneuvering the right of way. This is a requirement because it's in the MXD zoning area. Residential districts don't have this requirement. Public notification was satisfactory.

Marla Clark, Judge of Superior 4, and Greg Hayes presented. Ms. Clark went through the decision criteria:

General welfare – They only want to improve their property by adding a safe and secure, lit parking area which would also free other vehicles and emergency responders from having to maneuver around vehicles parked on the street.

Adjoining properties – The property owners to the east where the garage will go are in favor of the project. Surrounding properties have garages as well and with the alley behind the house, their project should help to alleviate some of the congestion for adjoining properties as well.

Practical difficulty – A strict application of the ordinance will result in a practical difficulty as they intend to use this as their primary residence, and it doesn't allow access for two cars and impossible to place the garage so two cars can enter and exit the property from the alley as it is currently.

Mr. Holmes opened the public hearing, by asking if there was anyone in attendance that wished to speak for or against the petition. No one came forward.

Mr. Alsip asked if petitioners were aware and accepting of staff conditions. Ms. Clark stated they were aware of and they do accept staff conditions.

There being no further questions, Mr. Holmes requested staff's recommendation.

Mr. Getchell gave staff recommendation for approval with conditions as outline in staff report.

Mr. Martin made a motion to approve the three variance requests with staff recommended conditions. Mr. Alsip seconded the motion. The motion passed unanimously, 4-0.

**Other:**

Mr. Getchell introduced the new city engineer, Mark Richards, in attendance.

**Adjournment:**

There being no further business, the meeting was adjourned at 9:23pm.

Respectfully submitted this 5th day of April, 2017.

---

Tim Holmes, Chairman

---

Jim Martin, Secretary