

## **MINUTES**

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

**September 4, 2019**

#### **Members Present**

Jim Martin  
Phil Barrow  
Charlotte Sullivan  
Brian Alsip  
Richard Martin

Chairman  
Vice Chairman  
Secretary  
Member  
Member

#### **Others Present**

Alex Getchell  
Lynn Gray  
Julie Spate

Senior Planner I  
Legal Counsel  
Recording Secretary

#### **Call to Order**

Jim Martin called the meeting to order at 6:00 pm.

#### **Roll Call & Determination of Quorum**

#### **Approval of Minutes**

Phil Barrow made a motion to approve the August 7th minutes. Brian Alsip seconded the motion. The motion passed unanimously.

#### **Swearing In**

Lynn Gray swore en masse anyone planning to speak.

#### **Old Business**

#### **New Business**

**ZB 2019-11 (V) – IMCU** – Alex Getchell introduced two developmental standards variances by Indiana Members Credit Union for 1073 W. Jefferson Street. The property is zoned MXC (Mixed Use: Community Center), and the Comprehensive Plan calls for this area to be a community activity center. The first variance request is to allow a primary structure to encroach into the front setback along West Jefferson Street. Fifty feet is required and IMCU is requesting 26.6' setback. The second variance request is to not be required to provide a 10' parking lot separation and the associated landscaping for a portion of an interior drive along Jefferson Street. The property is on the corner of Drake Road and Jefferson and is the former First Financial Bank, next to the City View Shoppes to the east and the hospital to the west.

Tom Vander Luitgaren, attorney with Van Valer Law Firm, represented IMCU. Mr. Vander Luitgaren highlighted the irregular shape of the lot and also pointed out how Jefferson Street runs east to west in a northerly direction. There is also a lane on the south side, running west to east, allowing entrance into the City View Shoppes.

Mr. Vander Luitgaren addressed the decision criteria:

General Welfare: He stated there is no evidence that the previous structure was injurious at all, and IMCU proposes to move the building 11' to the south. In actuality it is only a .6 acre parcel. The size of the building has been reduced. And the reduction of the landscaping area does not negatively influence the general welfare. It won't be evident as you drive by.

Adjacent Property: He stated it will actually improve the value of adjacent properties, and there will be no use change.

Practical Difficulty: He stated because of the direction Jefferson Street runs and the lane open for public access to City View Shoppes, there is a practical difficulty in IMCU's use of the lot.

Chairman Martin opened the public hearing by asking if there was anyone wishing to speak for or against the request. No one came forward, so the public hearing was closed.

Ms. Gray asked if this is the property with the right of way the state has never used to date and won't release. Mr. Vander Luitgaren explained that First Financial developed over into the right-of-way, and IMCU is removing those items from the right-of-way.

Chairman Martin asked the Board if they had any questions or comments; there being none, Chairman Martin requested staff's recommendation.

Mr. Getchell gave staff's recommendation for approval as outlined in the staff report, with one condition, as follows:

- a. All applicable federal, state, county, and local permits/approvals are required; including, but not limited to, Site Development Plan approval, Improvement Location Permits, and compliance with all building, fire, and health codes.

Mr. Vander Luitgaren stated the condition was acceptable to the petitioner. Charlotte Sullivan made a motion to approve ZB 2019-11 with staff's recommended condition. Richard Martin seconded the motion. The motion passed unanimously, 5-0.

**ZB 2019-12 (UV) – KIC-IT** – Mr. Getchell introduced the use variance request by Kids in Crisis- Intervention Team (KIC-IT). The property is on the west side of Umbarger Lane, immediately south of the Franklin Cove Apartments. The property is zoned RM (Residential: Multi-Family). The Comprehensive Plan calls for the area to be a Community Activity Center. The use variance request is to allow an administrative, professional office use in connection with and supporting a permitted multi-family apartment complex use. Mr. Getchell went on to review PowerPoint slides available if needed during the discussion. He stated the petitioner has not yet submitted for site development plan approval, as they are seeking the use variance prior to doing so.

Attorney Eric Prime with Van Valer Law Firm represented KIC-IT. They want to bring office space into the multi-family building as well, so they are seeking a use variance from the current zoning of the property. Mr. Prime explained that many KIC-IT clients have transportation issues, so having all their necessary services under one roof would be of benefit.

KIC-IT Executive Director Kimberly Spurling spoke of KIC-IT's purpose and programming with statistics regarding the need for this outreach in the greater Franklin area.

Mr. Prime stated petitioner's agreement with staff's findings of fact on four of the five decision criteria as presented in the staff report. Petitioner disagrees with staff's findings on the Unnecessary Hardship criteria. Mr. Prime addressed each criteria, as follows:

General Welfare: Mr. Prime stated the request will enhance the public health, safety and morals of the community.

Adjacent Property: He stated there is a diversity of uses already in the area and that putting in another apartment building, as it will appear from the outside, will blend in with the surrounding properties and their uses.

Peculiar Situation: He stated the Comprehensive Plan and zoning district are in conflict and will not allow housing with the office uses. He stated putting housing and offices together on the same property is the peculiar condition, even though both are in the surrounding areas.

Unnecessary Hardship: Mr. Prime stated that staff's reading of this criteria is that the hardship has to apply to the ground. He stated staff reads it to mean there has to be a hardship particular to that ground that makes this variance needed. He stated he respectfully disagreed. He stated staff's position is that the apartments could still be built without the office. He stated that would be a bad outcome, because the dwelling units without the office space on site does not address the logistic concerns with regards to helping the clients. It would also require the petitioner to pay rent on an office building when they would have a residential building that could house the office space as well. He stated the criteria he just read is from the staff report, but the statutory criteria, as outlined in IC 36-7-4-918.4, states: "The strict application of the terms of the ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought." He stressed the "if applied" versus the "as they are applied" as the key distinction. He stated they believe that distinction is important, because they are interpreting it to say if you look at the strict application of the zoning and apply it to the use that is intended, it would constitute a hardship. The hardship is not applied to the property, but applied to the request. The petitioner believes the hardship to be on them with not being able to use the property as intended. He stated the staff report actually says that staff finds petitioner's findings of fact demonstrate a hardship for the petitioner, but not for the property. Mr. Prime reiterated he respectfully disagrees with how staff is interpreting the criteria.

Comprehensive Plan: He stated the Comprehensive Plan calls for mixed use facilities in the area. Based upon the area and the Community Activity Center, the City actually encourages first floor retail use with residential above it.

Chairman Martin opened the public hearing by asking if there was anyone wishing to speak for or against the request.

Fred Paris spoke in support of the case. He stated he knows this group has looked all over the community to find a place they would fit in and cause the least amount of disturbance to the neighbors. He stated he believes it to be a phenomenal location and wholeheartedly supports this location for the project.

Beverly Martin as chair of the KIC-IT Board spoke in favor of the project. She wanted to point out that this project is supportive housing. They are using the Federal idea of housing first, then provide the other services. She stated that it is for families in need and others that simply cannot make the ratio of rent to earnings. The idea is to have the services there on a one-on-one basis.

Jan Jones Reichel stated she has no affiliation with KIC-IT or the project. She spoke in support of the project as a representative of the trust that owns an adjacent property. She believes it is a great community project and that they try to help everyone. As a property owner next to it, she would like to see it approved.

Chairman Martin asked if there were any remonstrators. No one came forward. The public hearing was closed.

Ms. Gray stated she disagreed with Mr. Prime's interpretation of Unnecessary Hardship. She stated she spoke with staff prior to writing the staff report on how it applies and she believes it applies to the property. She stated the point of planning and zoning and the criteria is based on, is there a hardship in the use of the property as it is currently zoned. She stated from a legal standpoint staff was appropriate in their interpretation.

Ms. Sullivan spoke in strong support of KIC-IT's work but expressed concern over the potentially precedent-setting decision to allow office and housing to be together.

Ms. Gray asked if funding has been secured. Petitioner stated it has not.

Mr. Barrow supported KIC-IT's work and asked if the housing was permanent or temporary. Petitioner stated it is permanent.

Mr. Getchell provided staff's recommendation that petitioner must demonstrate a hardship for the property due to the strict application of the terms of the Zoning Ordinance. He stated, however, if the Board were to find evidence to approve the use variance, staff recommended the following four conditions of approval:

- a. Use Variance approval for an administrative/professional office use is limited to, and runs with the applicant, Kids in Crisis-Intervention Team (KIC-IT), at the subject property.
- b. The gross square footage of all portions of the administrative/professional office use, including flex space, kitchen, bathrooms, reception areas, common areas, etc., is limited to no more than eleven percent (11%) of the gross square footage of the entire facility, and is not permitted on upper floors of the building.
- c. Parking must be provided consistent with the requirements of 1 parking space for every employee on the largest shift, including shift overlap, 1 parking space for every 250 sq. ft. of the administrative/professional office use, and 1 parking space for each business vehicle stored on-site for the office use. These parking space requirements must be provided in addition-to the requirements for the multi-family use.
- d. At least one parking space reserved for disabled persons is required for every 25 parking spaces provided, consistent with the requirements of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Chapter 4.1.2 (5)(a) and all applicable revisions.

Mr. Alsip made a motion for denial based on the staff report and hardship decision criteria. Ms. Sullivan seconded the motion. The motion for denial passed, 4-1, with Rev. Martin as the one vote against the motion. The request is denied.

**ZB 2019-13 (V) – 4386 E 100 N** – Mr. Getchell introduced the developmental standards variance request by JR Promotions, LLC, for the property at 4386 E 100 N also known as Upper Shelbyville Road. The zoning for the property is MXN (Mixed Use: Neighborhood Center), and the property falls within the city's extra-territorial Buffer Zone area. It is immediately adjacent to the south of the city limits. The Comprehensive Planned Land Use Plan calls for the property to be part of a Neighborhood Activities Center. There are four developmental standards variances to vary from the following:

1.) Maximum number of freestanding signs permitted. Because this property is over five acres and has multiple frontages, it is permitted two freestanding signs. The petitioner is requesting one additional sign which would take them to four due to legal non-conforming signage at that location.

2.) Maximum sign area for property. In the MXN zoning district, 200 square feet of signage is permitted for those properties at maximum if the building frontage allows it. The petitioner is requesting approximately 2872 square feet.

3.) Maximum freestanding sign size (sq. ft.). In the MXN zoning district, the maximum freestanding sign size is 40 square feet. The petitioner is requesting 1344 square feet due to the configuration of the billboard.

4.) Maximum freestanding sign height. In the MXN zoning district, 10 feet is the maximum height permitted, and they are requesting 34 feet.

The property is located immediately adjacent to I65 on the north side of East 100 North or Upper Shelbyville Road across from Franklin Community Church. He stated Paris Estates is also to the south. Mr. Getchell stated they are proposing a V-shaped sign. Each side would be 14 feet tall by 48 feet wide, or 672 square feet for each side, arriving at the total requested of 1344. Because the signs are not within two feet of each other, it doesn't qualify as a two-sided sign, and must be considered cumulatively.

Rick Sprague, representing their company JR Promotions, presented. He began by giving an introduction to their company and the background current signage on property in Paris Estates. They have received no landowner requests to remove the sign, but the petitioner felt it might be best to move it up to Green's Mini-Storage. He stated the billboards located at the subject property were constructed as a result of a lawsuit with a company called American Outdoor and the City of Franklin. JR Promotions now owns those signs. He stated they are 60 feet tall, and the same size they are proposing.

Ms. Gray asked if JR Promotions owns the signs or the properties. Mr. Sprague confirmed signs only.

Mr. Sprague continued by stating the petitioner feels the signs would be best all together in a commercial area. They would build a new one at Green's and take down the existing sign. He stated they also have a sign on the Masonic property on US31 he would additionally be willing to take it down in order to get this one approved. They would then be removing more square footage then they are proposing to build new. Mr. Sprague explained the benefit of the site. He questioned the basis for the city being against billboards but putting up their own as a city on a farmer's field, in reference to a Discover Downtown Franklin sign outside of the City's jurisdiction.

Mr. Sprague addressed the decision criteria, as follows:

General Welfare: He stated they are moving the billboard from a residential area and moving it into a commercial area and believes that to be a positive impact on the community.

Adjacent Property: The same as the explanation of the general welfare.

Practical Difficulty: The ordinance does not allow for the billboard, but the property is unique with only one long, narrow entrance. The sign would be placed right along the interstate just west of the overpass. It is a very difficult property to develop.

Mr. Sprague sent out 18 letters to homeowners in Paris Estates informing of their plan and asking if they would like to see the billboard removed and replaced at Green's Mini Warehouse. He stated they received seven responses back in support and one against.

Chairman Martin opened the public hearing by asking if there was anyone wishing to speak for or against the request.

Mr. Paris gave background on the original billboard location as the owner of the property where the sign is currently located. He also clarified that resident response stated lack of opinion on whether it was moved or not, not requesting that they move it. He summarized the petitioner has not been requested to move it and if the current sign cannot be replaced with a new one. Mr. Paris also stated surprise at not being included in the communication process and not receiving a letter.

Chairman Martin asked if there was anyone else wishing to speak for or against the request. There being none, the public hearing was closed.

Ms. Gray was the counsel of record on the past litigation and explained the two existing signs were done by agreement and resolution of the case. Those entities were not present at the meeting, and she would be concerned that they have agreed one way or the other. She stated staff appropriately pointed out IC 36-7-2-5.5 in the staff report, which clearly states that the Board cannot require the removal of a sign in consideration for granting of another sign without very specific indications including that the property owner agrees to that, though still not bound. Ms. Gray advised that some of the things the petitioner is asking to do cannot be legally permitted. She stated the removal of the current signs cannot be related to the putting up of a new sign.

Rev. Martin questioned how far over the limit the current signage on the property is. Mr. Getchell stated he believes they are approximately 1900 percent over what is permitted. Two hundred square feet is allowed and they have 672 sq. ft. on each of the existing billboards, as they were originally permitted, and 1344 sq. ft. proposed, plus the signage for Green's Mini warehouses.

Chairman Martin requested staff's recommendation.

Mr. Getchell offered staff's recommendation of denial based on general welfare, adjacent property and practical difficulty, as outlined in the staff report.

Mr. Alsip made a motion for denial based on all three decision criteria, as outlined by staff. Mr. Barrow seconded the motion. The motion for denial passed unanimously, 5-0. The request is denied.

### **Other Business**

### **Adjournment:**

There being no further business, the meeting was adjourned.

Respectfully submitted this 2nd day of October, 2019.

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Jim Martin, Chairman

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Charlotte Sullivan, Secretary