

**BOARD OF ZONING APPEALS OF
EVANSVILLE AND VANDERBURGH COUNTY**

**Regular Meeting - City Council Chambers - Room 301
Administration Building - Civic Center Complex
Evansville, Indiana**

February 17, 2005

ROLL CALL

Mr. McCarthy: I would like to call the February 17, 2005 meeting of the Board of Zoning Appeals to order. Will the secretary please call the roll?

MEMBERS PRESENT

Derek Dunigan, Alan Groves, Roger Herrin, Wayne Washington, Burkley McCarthy, Jr.

MEMBERS ABSENT

Bill Harrison, Erika Taylor

AREA PLAN STAFF PRESENT

Bradley G. Mills, Executive Director; Beverly Behme, Zoning Administrator; Janet Greenwell, Zoning Enforcement Officer; Joe Harrison, Jr., Counsel.

APPROVAL OF MINUTES

Mr. McCarthy: May I have a motion to approve the minutes of the January meeting? (Upon unanimous voice vote, the minutes of the January meeting are approved.)

Mr. McCarthy: I would like to welcome you on behalf of the Board of Zoning Appeals and the staff of the Area Plan Commission. The Board of Zoning Appeals is an appointed seven member Board established by State Legislature. It is given the responsibility to hear and act on all appeals, requests for variances from the zoning code and establishment of special uses. Since there are seven members of the Board of Zoning Appeals, to establish a quorum, we must have four members present in order for a petition to be approved or denied. If you do not have four votes to either approve or deny the request, you have the opportunity to go before the Board the next month and be heard again. The denial of a petition for a variance, special use, or an appeal by the Board of Zoning Appeals or the withdrawal of such a petition by the petitioner shall prohibit the Board of Zoning Appeals from hearing the petition for a variance, special use, or an appeal for the subject property or a part thereof for 12 months from the date

of the denial or withdrawal. An exception may be made upon unanimous vote of the Board of Zoning Appeals. In granting a variance or special use, the Board may set any conditions, requirements or limitations that it deems necessary and which are appropriate to implement the principles and purposes of the zoning ordinance. The Board keeps minutes of official action of its proceedings. These minutes and files are public records and are kept in the Area Plan Commission office in Room 312 of the Civic Center Complex. When you come before us, we ask that you state your name and address into the microphone, since everything is recorded and kept as record. The next meeting of the Board of Zoning Appeals is Thursday, March 17, 2005 at 4:00 p.m. in Rom 301 of the Civic Center Complex.

This Board, which by State law, is a quasi judicial body that cannot be contacted by the public prior to the Board of Zoning Appeals hearings, has jurisdiction over two types of petitions. One is special use and the other is variance. Neither of these categories is a rezoning. They are special waivers or special conditions that this Board has authorization to grant to the petitioner. A variance is an application to waive or modify certain requirements of the Zoning Ordinance. It is not a rezoning of the property. In order to receive approval, the following criteria must be satisfied.

The six conditions necessary to grant a variance are summarized as follows:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property;
4. The variance is not a variance of the use of the property;
5. The property is not located in a Planned Unit Development; and
6. The need for the variance is not created by the applicant.

In our review of variance requests, the Zoning Code [Section 15.153.164(B)] establishes the criteria that must be applied to each petition. The Code specifically requires that these criteria must all be met for a variance to be granted.

The second category that we have before this Board would be special uses. Certain uses are necessary to the life and economic health of the community. But they have characteristics of the operation that do not readily permit classification in the usual residential, commercial or industrial districts. Special uses are secondary classifications. They are not rezonings. In

order for a special use to be approved, the following criteria are used:

1. whether the specific site is the appropriate location for the use;
2. whether the use, as developed, will adversely affect the surrounding area;
3. whether there will be a nuisance or a serious hazard to vehicles, pedestrians or residences;
4. whether adequate and appropriate facilities will be provided for proper operation of the use;
5. whether the use is in harmony with the Evansville and Vanderburgh County Comprehensive Plan; and
6. whether the use is essential or desirable to the public convenience and welfare.

The Board of Zoning Appeals approval or modification of a special use classification may include whatever reasonable conditions, limitations, or temporary uses necessary for the protection of the public interest.

To protect public interest and to ensure compliance with requirements to be included in the site plan, the Board of Zoning Appeals may require whatever evidence and guarantees are necessary to assure compliance with conditions, limitations, and temporary uses.

Now, let's move on to the first item on the agenda tonight.

Mr. Joe Harrison: Mr. Mills, on all petitions tonight, do you swear or affirm that the testimony you give is true and accurate so help you God? (Mr. Mills has been sworn in.)

NEW BUSINESS **VARIANCES**

Docket No: 2005-5-BZA Applicant: Gordon T. Shelton

Address: (Complete legal on file.) 1304 W. Missouri Street

Nature of Case: Applicant requests relaxation of maximum lot coverage from 40% to 56%, relaxation of the distance between the residence and the garage from 10 feet to 7 feet for an addition to the detached garage.

Mr. Mills: Gordon T. Shelton is requesting variance approval to allow an addition to his detached garage on his property located at 1304 W. Missouri Street. Currently Mr. Shelton

has a 1,464 sq ft residence and a 650 sq ft detached garage on a 4,320 sq ft lot. He proposes construction of a new 311 sq ft addition to the garage. Mr. Shelton was granted variance approval (2004-74-BZA) on November 18, 2004 for the existing garage on the site which was constructed in 1992 at the wrong location on the lot: too close to the eastern (side yard) property line. This prior variance approval was to bring the property into compliance with zoning code setback requirements, allowing the garage to legally remain as is currently situated and constructed on the site. This is a small 30' x 144' residential lot. The existing residence and garage meet or exceed the 40% maximum allowed lot coverage. No new structures or additions may be constructed on the site without variance approval. This is a request for variance approval to allow a new 311 sq ft addition to the existing garage. The proposed new addition complies with minimum side yard setbacks, but encroaches into the minimum 10-foot setback requirement from Mr. Shelton's residence. This is a request for relaxation of maximum lot coverage from 40% to 56 % and relaxation of the distance between the residence and the garage from 10 feet to 7 feet for an addition to the detached garage.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Shelton has been sworn in.)

Mr. Shelton: Gordon Shelton, 1304 W. Missouri Street.

Mr. McCarthy: Are there any questions?

Mr. Dunigan: What are you going to use this additional square footage for?

Mr. Shelton: I just need more room for my garage.

Mr. Dunigan: No commercial sales?

Mr. Shelton: No.

Mr. McCarthy: Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Dunigan, Mr. Groves, Mr. Herrin, Mr. Washington, Mr. McCarthy

Nays: None

There being 5 affirmative votes, Docket No: 2005-5-BZA is approved.

Docket No: 2005-6-BZA Applicant: 4B Development, LLC

Address: (Complete legal on file.) 8601 Baumgart Road

Nature of Case: Applicant requests relaxation of front yard green space from ten feet to 0 feet for maintenance of paved parking spaces.

Mr. Mills: 4B Development, LLC is requesting variance approval for their property located at 8601 Baumgart Road. Currently there is a 12,000 sq ft commercial building with a 25-space paved parking lot on the 1.28 acre lot. 4B Development is requesting the variance to allow maintenance of 4 parking spaces paved within the green front yard setback. 4B Development was granted permit approval for a 4,000 sq ft addition to their existing business on December 20, 2004. At the time of issuance of the permit for the addition, it was noted by staff that the parking area had been installed within the ten-foot minimum green front yard setback. The issuance of the permit (#042263) was subject to applicants applying for variance approval to maintain the parking as detailed on the site plan. Parking requirement for applicants' use is minimum 20 spaces plus adequate for visitors; 25 paved parking spaces are installed on the site as shown on applicants' site plan. This is a request for relaxation of the front yard green space from ten feet to Zero feet for maintenance of existing paved parking spaces.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Bryant has been sworn in.)

Mr. Bryant: My name is David Bryant, 8601 Baumgart Road.

Mr. McCarthy: Are there any questions?

INAUDIBLE QUESTION

Mr. Bryant: They are in the front. It was there prior to me purchasing the building.

INAUDIBLE

Mr. McCarthy: Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Groves, Mr. Herrin, Mr. Washington, Mr. Dunigan, Mr. McCarthy

Nays: None

There being 5 affirmative votes, Docket No: 2005-6-BZA is approved.

Docket No: 2005-7-BZA Applicant: Alton L. Rolley

Address: (Complete legal on file.) 705 Washington Avenue

Nature of Case: Applicant requests relaxation of side yard setback from 5 feet to 1 foot 4 inches for an enclosed porch.

Mr. Mills: Alton L. Rolley is requesting variance approval to allow a residential addition on his property located at 705 Washington Avenue. Currently, Mr. Rolley has a 1,782 sq ft residence & 80 sq ft yard barn on a 6,480 sq ft lot. He is requesting approval for a new 256 sq ft enclosed patio addition to the residence. Mr. Rolley was contacted by staff after a complaint was filed regarding construction without any permit(s). Variance approval is required prior to issuance of permits to allow the addition. This is a request for relaxation of the side yard setback from 5 feet to 1'4" for an enclosed patio.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Rolley has been sworn in.)

Mr. Rolley: My name is Al Rolley, 705 Washington Avenue. We had a 24 x 10'8" concrete patio that had been fenced in for over 30 years. We sit out here in the late afternoons and early evenings. The mosquitoes are eating us up. So I decided to put the lattice and screen wire up there so we can sit there in comfort, not realizing that since the concrete block was there, the house bordered on one side, I got a six foot wooden fence on the side and then they got a six foot chain link fence, so I put it up not realizing I had to have the permit for it. That is the reason for the problem.

Mr. Dunigan: It doesn't stick out any further than your deck did initially?

Mr. Rolley: No. Matter of fact, it is built on part of the deck itself.

Mr. McCarthy: And your neighbors are comfortable with it?

Mr. Rolley: They are now. She called me last night and said she wouldn't be down here. She asked me to put gutters up which I put up now and I got it drained over into my side for the flower garden.

Mr. McCarthy: Are there any questions of the board? Are there any remonstrators? (None.)

Motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Herrin, Mr. Washington, Mr. Dunigan, Mr. Groves, Mr. McCarthy

Nays: None

There being 5 affirmative votes, Docket No: 2005-7-BZA is approved.

Docket No: 2005-8-BZA Applicant: University of Evansville

Address: (Complete legal on file.) 201 S. Rotherwood Avenue

Nature of Case: Applicant requests relaxation of the front yard green space requirement from 20 feet to 3 feet to allow a paved parking lot.

Mr. Mills: The University of Evansville is requesting variance approval for their property located at 201 S. Rotherwood Avenue. Currently, there is an open, gravel parking lot on the site. U of E proposes to upgrade their parking area by installing a new, paved parking lot on the site. This site was previously the National Guard Armory. In the late 1980's, the Armory "swapped" land with the University of Evansville and relocated to Lloyd Expressway. In 1989, the University of Evansville vacated Rotherwood Avenue adjacent to the former Armory site. University sports fields and parking are adjacent east of the site. The University of Evansville proposes to pave and install a new parking lot on this site for use by the university. On December 20, 2004, Site Review Committee approved the proposed new parking lot subject to Board of Zoning Appeals approval of relaxation of the green space along Olive Street. This is a request for relaxation of the front yard green space requirement from 20 feet to 3 feet to allow a paved parking lot.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Mr. Wallace has been sworn in.)

Mr. Wallace: My name is Matt Wallace with Morley & Associates. I represent the University for this project. The parking lot, at the time the aerial photo was taken, there does appear to be some grass between the edge of the gravel parking lot and the right-of-way line. It is not a clearly defined line at this time. There is some gravel, weeds and some grass growing up through there. You can see in this picture that the sidewalk and then there is some grass. But the gravel seems to be pushing out. When the students park, they park wherever they feel like or where they can get in. I believe they are pushing the rock continuously out. When the University came to us to ask us to prepare a site plan and construction drawings for this project, we went with the best we could come up with as far as where that line was. To make full use of the parking lot, they wanted to get another row in to increase the parking on the site. So we are asking for that relaxation. The only contact I have had with the adjoiners were

calling to say they were glad the University wanted to pave that. They say in the summer there is a lot of dust and they were for it.

Mr. Groves: And you are proposing three feet of green space?

Mr. Wallace: Yes.

Mr. Groves: Anything more than that and you would lose a row of parking?

Mr. Wallace: Yes.

Mr. McCarthy: Are there any remonstrators? (None.) Motion for approval? (Motion was made and seconded.) Roll call.

Ayes: Mr. Washington, Mr. Dunigan, Mr. Groves, Mr. Herrin, Mr. McCarthy

Nays: None

There being 5 affirmative votes, Docket No: 2005-8-BZA is approved.

Docket No: 2005-9-BZA Applicant: Nuts and Bolts, LLC

Address: (Complete legal on file.) 426 Carpenter Street

Nature of Case: Applicant requests relaxation of the number of required parking spaces from 10 to 0 to allow change of use from an auto body shop to an upholstery shop/fabric store.

Mr. Mills: Nuts and Bolts LLC is requesting variance approval to allow a change-of-use to retail for their building located at 426 Carpenter Street. The existing 5,978 sq ft building at 426 Carpenter Street encompasses the entire site. It was constructed and previously utilized as an auto glass shop. The only parking provided for the auto shop usage was inside the building. The site was rezoned to M-1 in 1983 for use as an auto paint shop. The building has been vacant in recent years. Applicants propose to change the use of the existing auto repair building to an upholstery and fabric shop ("Grateful Threads"), a use requiring more parking by code than the previous use as an auto painting or repair shop. This is a request to relax the number of off-street parking spaces. The only parking currently available to the site is on-street parking along Carpenter Street. This is a request for relaxation of the number of required parking spaces from ten to Zero to allow change-of-use from an auto body shop to an upholstery shop/fabric store.

Mr. Joe Harrison: All those who will speak on this petition, raise your right hand. Do you swear or affirm that the testimony you will give is true and accurate so help you God? (Those

persons have been sworn in.)

Ms. Miller: My name is Tresa Miller. We purchased the building to open a retail establishment, a fine drapery and upholstery fabric store. We took a long-standing, vacant building that had been an Earl Sheib Body Shop and cleaned it up and put several thousand dollars into it to open a retail establishment. We have letters from all the neighbors saying that they are ecstatic that we are in the neighborhood cleaning up the property and it is no longer sitting vacant and dirty. We found out yesterday that Channel 9 and Channel 7 have both offered us off-street parking in their lots for our employees. So we will not have any on-street parking. The Safety Board has approved and changed the parking on Carpenter Street for the entire one block section from Second Street to Market Street by Raben Tire, from 15 minutes to two hour parking on-street. We are landlocked so we cannot create parking spaces. So that entire street is now two hour parking for our clients and six part-time employees. At the maximum, we think there will be two on board at one time, plus myself. We have those four parking already lined up with Channel 9 and Channel 7 and we have letters to that effect.

Mr. McCarthy: Are there any questions? So basically, you don't have the parking to start with.

Ms. Miller: We didn't create it. We are landlocked. Our building shares a common wall with Gus Doerner's to the west and Kentuckiana Vending to the east, and a city alley at our back door and city sidewalk to our front. So we have no property. Our building is on the footprint of the lot.

Mr. McCarthy: Are there any remonstrators? (None.)

Mr. Jarboe: My name is Keith Jarboe. I have had an opportunity to talk to the Millers over the last few days and went to the site today and looked it over. It is a wonderful addition to the downtown. When I went there today, I had no problem finding a parking spot. I parked right in front of the building. The signs are up for the two hour parking. With everything we are trying to do downtown, I think this is a wonderful addition and I think this is a great business. I would ask you to provide a remedy for the Millers. Thank you.

Mr. McCarthy: Is there a motion for approval?

Mr. Dunigan: I would make a motion subject to this owner and this use (Nuts and Bolts, LLC).

Mr. Herrin: I think it ought to go, but what are we accomplishing by putting that condition on it?

Ms. Miller: If I sold the business and they maintained the business as it is, would they have to

come to you for another variance?

Mr. Dunigan: If it was the same use and there wasn't a history of problems, it wouldn't be an issue.

Mr. McCarthy: We have a motion and second. Roll call.

Ayes: Mr. Dunigan, Mr. Groves, Mr. Herrin, Mr. Washington, Mr. McCarthy

Nays: None

There being 5 affirmative votes, Docket No: 2005-9-BZA is approved.

Meeting adjourned.

Burkley McCarthy, Jr., Chairman

Attest:

The undersigned secretary certifies that the foregoing are minutes and not intended to be a verbatim transcript. Audio tapes of the proceedings are on file in the Area Plan Commission office.

Bradley G. Mills, Executive
Director/Executive Secretary

Karen Yokel, Transcriber