

BOARD OF ZONING APPEALS
MEETING MINUTES
October 13, 2020

Kris Schwickrath: Good evening, everyone. The October 13, 2020 meeting of the Board of Zoning Appeals is now called to order and we'll start with a roll call.

Adam Rude: Mr. Lisher - here, Mr. Lewis - here, Ms. Schwickrath - here, Mr. Clark - here, Mr. Cassidy - here.

Schwickrath: For the purpose of speaking clearly, I'm going to take my mask off and Mr. Rude probably will just so everyone knows and then board members, if you wish to take your masks off when you're asking questions, otherwise we should have them on. Thank you. So this evening, we have just so everyone knows, we have several months of minutes to approve but we would like to move that to our next meeting to give our board members time to review them. The circumstances being that the person who does transcribe them is unable to do so. She was injured for several months and so we're catching up but that'll be next month. There are no items under Old Business tonight and we have three under New Business. The first one is the Burnside Sumerford Land Trust and I imagine that several of you that are in the audience are here tonight because of that, but there has been a change. So I've asked Mr. Rude to speak to that so everyone's clear what's going on. Thank you.

Rude: Thanks, Ms. Schwickrath. So yeah the first case tonight is BZA 2020-12. It's an administrative appeal. It's in regard to a series of zoning violations the staff had sent out to the owners of Burnside, LLC and the Sumerford Land Trust. Two properties on North Riley Highway that a majority of the violations were in regard to not following proper procedures, proper reviews and approvals for alterations on the land. And then there were a few other violations in regard to outdoor storage and outdoor (?). This morning the attorney of the petitioner sent along the letter that you all should have a copy of and I'll read this into the record. They're essentially asking for a continuance of one month so the letter reads. Dear Adam, per our discussion this morning, we have agreed to continue the hearing before the Shelbyville Board of Zoning Appeals scheduled for this evening, October 13, 2020. This continuance is being requested on behalf of the petitioners, Burnside, LLC and Sumerford Land Trust 1, collectively Petitioner so that Petitioner and the planning department may meet in order to come to an amenable(?) resolution to this matter. It is requested that the continuance be to the next scheduled BZA hearing and will be without further notice being required. If that does not conform with your conversation this morning, please let me know as soon as possible. In addition, please let me time and date for the next scheduled hearing. Thank you again for your cooperation. Signed Donald J. Smith. I did speak with Mr. Smith this morning about continuing the hearing. We would both, the planning staff and the petitioners would like a chance to sit down and try to come to some resolution outside of these legal proceedings. So we are, staff is supporting this request for continuance but as we discussed in the pre-meeting, we advertised a public hearing so that can occur tonight. Neither of the parties will speak on the matter and then

the board can(inaudible)....the best step forward you can vote on continuing the petition to the next hearing.

Schwickrath: Thank you.

Rude: Yes.

Schwickrath: So at this time, I will not take questions from the board, but I will open this up to the public. If anyone wishes to step forward and you may ask a question or make a comment, but as Mr. Rude just said, there's no one here to speak to either side of it. Just want everyone to know that this changed rapidly and a continuation really gives both sides time to consider options. So I, is anyone from the public, does anyone wanna come forward and say anything about this, about the Sumerford Trust?

No reply.

Schwickrath: It doesn't look that way. Okay just checking. Alright I will close public commentary. I just made an assumption, close public commentary since there's been no movement toward asking a question about the first petition. So now we are ready to go to a motion.

Jim Lisher: I would move to approve the request for a continuance of the appeal to next month's meeting to allow the parties to reach some possible agreement. I've always been in favor of compromise 'cause that's in the best interest of both parties.

Schwickrath: Okay, there's a motion.

Chris Clark: I'll second.

Schwickrath: Okay please cast your ballot then for BZA 2020-12.

Lisher:(inaudible)...to the continuance.

Schwickrath: This is the continuance, correct. Thank you. Oops....

Rude: This is a motion to continue for BZA 2020-12. Mr. Cassidy - yes, Mr. Lisher - yes, Mr. Lewis - yes, Mr. Clark - yes and Ms. Schwickrath - yes. Motion carries.

Schwickrath: I should say this publicly. I know I've said it before or twice today. I wish to thank the staff for their work on this. This is a complicated, multi-layered petition or I guess not even a petition but just a case that you need to follow and you've done a really good job in preparing us as a board, so thank you for that work and I mean it was evident that it was time consuming, so thank you.

Rude: Thank you and hopefully we can come to an agreement and the board doesn't have to hear this in a month, but....

Schwickrath: That's why we're here.

Rude:yes, we have that staff report just in case we do.

Schwickrath: Okay. Alright, thank you. So then we can move on to our second petition this evening, it's the Zaxby's pole sign.

Rude: The second item on the agenda tonight is BZA 2020-13 Zaxby's pole sign special exception use. The petitioner's name is Gallis(?) Shelbyville, LLC. The owner's, the current owner's name is Indiana Land Trust. The petitioner's representative tonight is Jeff Furlin(?). The address of the property is 1792 North Riley Highway. Current zoning classification is BH, business highway and the action requested, the first action requested is approval of a special exception to allow a pole sign in the interstate corridor.

Schwickrath: Thank you. Please state your name for the record and tell us a little bit about the project.

Jeff Furlin(?): Sure. My name is Jeff Furlin and I manage (?) real estate company, Gallis Shelbyville, LLC and then the operating company which would be (?) dba Zaxby's. (?) currently is owns two franchise Zaxby's in Greenwood, IN. Zaxby's has approximately 900 units. They're out of Athens, GA and very popular in the southeast. We're opening what is considered a pioneer market. We have rights to seven markets, including Shelbyville. And this development came up, we're a, if you don't know anything about Zaxby's, we're a quick service restaurant. The drive-thru specializing in chicken. So chicken tenders, grilled chicken, wings. We have zalads. Like to use a lot of z's. But we got approved by the Plan Commission to develop on the southeast corner of Rampart and St. Rd. 9 or Riley Highway. The(inaudible)....will have a right in, right out off of Riley and then also an entrance onto Rampart and it was moved to line up with Casey's entrance. And so being in the business highway, you know a highway sign 100' or less in height is 200 square feet of face signage is allowed with a special exception from the Board of Zoning Appeals so that's the first part of it. You've seen the sign but we are proposing the sign to be perpendicular to Riley and we will take down the old structure. Any questions on....

Schwickrath: We'll go through each member to ask questions on the first one about the allowance of the sign, the special exception. So, thank you. Mr. Cassidy, if you're ready, I'll start with you.

Cassidy: I have no questions.

Schwickrath: Mr. Clark?

Clark: I don't have any questions. Thank you.

Schwickrath: Mr. Lewis?

Lewis: No questions.

Schwickrath: Wow, a sterling presentation. Mr. Lisher, surely you do. I know I do.

Lisher: First of all, I want to say I wanted to welcome Zaxby's to the community. Look forward to it and I think the application for a pole sign in this area is what we were anticipating it in our change that we made in our ordinances. So I really don't have any questions. I just appreciate your coming to the community.

Furlin: Thank you.

Schwickrath: I do have a question. Is there or has there been any consideration of a monument sign?

Furlin: Yes, we would also like to have a monument sign at the corner and that would be 8' in height. We do it, kind of my understanding on that(inaudible)....go through typical sign ordinance

Schwickrath: Sure.

Furlin: Right on that corner is where we envision it. There's a sidewalk that wraps around there. It really (?) placement and see the.....(inaudible)....

Schwickrath: Yes.

Furlin:is where the monument sign would go.

Schwickrath: Okay.

Furlin: And then further to the east, just outside this entrance is where

Schwickrath: The pole sign would go, sure.

Furlin:the pole sign would go. It wouldn't be....as Adam said in the pre-meeting, it wouldn't be too far from the antique structure that's currently on (?).

Schwickrath: So my question then, I think this is related, although it might seem to fit more with the second petition tonight but I'm gonna ask this now I think just to understand the scope of the project. So when I look at the Zaxby's sign here, are we taking into account to begin with, not

after the fact, adding to the pole sign, that's my understanding, a space for future tenants possibly? Or are we gonna add that later or is that part of the monument sign which is (?).

Furlin: No the monument sign would have nothing to do with....(inaudible)...

Schwickrath: Okay it would just be Zaxby's.

Furlin:just us. Would you like me to expand on the second part of it now?

Schwickrath: No, no. That's okay. At this point, yeah we can hold off on that. Thank you, though.

Furlin: Okay.

Schwickrath: Until the second petition. Right, okay. 'Cause when I looked at this, I thought well I see the chicken and I know it's you. I just....

Furlin: I do have a rendition on my laptop. It'll pull up.

Schwickrath: No, no that's okay.

Furlin: It will just be maybe a single tenant, just Zaxby's.

Schwickrath: Well that's fine. For fifteen years, I've been doing this so I think I know what that one looks like. Thank you. It's just it's a very congested intersection and I wondered if possibly one sign could be eliminated as far as a pole sign. I know what everyone else here is saying and I'm just simply asking if it's a possibility or is there really a need for it is just kind of a reflex? Let's put up a pole sign because we can with close to the interstate. Just asking the question.

Furlin: So my view on the pole sign, if I'm understanding the question, when people get off on 9 Wendy's, Cracker Barrel, McDonald's and Casey's will have pole signs to attract people to businesses so a pole sign we feel will give us the best chance for success at that corner by getting the pole sign.

Schwickrath: The only other thing that I wanna throw out there, because I've traveled a lot, I've driven.....

Furlin: Sure.

Schwickrath:is I know there are the blue signs on the highway which I've come to rely on and then when I go to a place where there where I could go in either direction, there usually are smaller directional signs as to the five restaurants that we've advertised ten miles back. You can go to the right and the other five are to the left. So I'm simply I wanna add that to the conversation here if it's a possibility because we have lots of pole signs.

Furlin: The yes, so the highway signs from the State of Indiana we will petition to try to get on that.

Schwickrath: Okay.

Furlin: It's not guaranteed. We do have that in Greenwood. So we're at County Line and I-65 and it's just like you said. We're on those blue signs. You get off. You know it directs you to the different restaurants, hotels, gas stations and then (?).

Schwickrath: So that's something that you're company would have to work out with INDOT or with the state?

Furlin: That's correct, with the state.

Schwickrath: Okay, alright. Okay that's all I have then. Thank you.

Furlin: Yep.

Schwickrath: Okay any more questions, any questions? Have any questions arisen?

No reply.

Schwickrath: Alright, so I'll close this now to the board questions and if anyone from the public wishes to step forward and ask a question or make a comment about this first petition, you're welcome to do so at this time. Yeah, please step forward and state your name for the record.

Michael Neu: My name is Michael Neu. I live at 1677 N. Riley Highway and in the past when things have been built up there one of the concerns we have is an excessive amount of light....

Schwickrath: Yes.

Neu: ...that comes from the businesses. And it's always been brought up but it doesn't seem to be getting taken care of. So that's my concern.

Schwickrath: Hence my question.

Nue: I know we can't stop it, but you if something is done to help control it a little bit, I mean there's a lot of light out there.

Schwickrath: Yes.

Nue: We're starting to get a lot of businesses right in a row which is fine, but you know from the residential side that's a concern I have.

Schwickrath: Yes. Thank you. Thank you. Anyone else?

No reply.

Schwickrath: I think this is something, a legitimate point that we need to consider. That's why I brought up what I did. So anyone else from the public?

No reply.

Schwickrath: Okay then I'll close public commentary at this time. Any discussion about the problem of lighting? Excess lighting?

Cassidy: With his pole sign being on actually on Rampart, that's going to eliminate lighting on 9 and he's not gonna get lighting. I mean I know where you live, Mike. It's not going to get lighting from that sign towards it 'cause isn't the (?) look at it, isn't the sign actually on Rampart?

Furlin: The sign is at Rampart but there's a I'd say a good, I made a blow up of the plan. I'm gonna say 230, a good 100' east. Does that sound about right, Adam? Riley Highway?

Rude: Yeah.

Furlin: Inaudible comment.

Cassidy: He questioned about lighting. He lives right across the road from where you are building, so....

Furlin: Right.

Cassidy:you know with Waffle House being there and he's concerned about light. Will some of that, maybe in the plan commission where you see more of it, we could talk about the lighting shining down towards the ground so much and not illuminating.....

Schwickrath: Yes.

Cassidy:across the road. That that's their concern on

(?): Back to the west.

Cassidy:on the west side of 9. That....

Furlin: ...(inaudible).... We wanna have....the lighting on the perimeter, I would think for how far east it is of Riley that I just don't think it would bring light to the west side.

Schwickrath: So....

Furling: I'm not an expert on that.

Schwickrath: No, that's alright. I think it's something we can't solve tonight, but I think it's something we need to be aware of because I'm just gonna give a quick example. I live in town and new LED lights were put in. So I think with the new technology, we really need to be aware of what we're doing. And so it's not your problem to solve, but I think it's a valid question and something for your company to be aware of of there is a residential zone. But the, yes I think in the PC you can probably address this more fully or you should. I would recommend that only because I mean I can't sit on my front porch at night anymore. It would be nice too kind of dial the lights down a little bit at a certain time instead of, but that's again, that's not your problem.

Furlin: Now I do know that photometrics for the light poles on the property that that is not bleeding onto (?). That is....

Schwickrath: Okay, sure.

Furlin:restricted to the property and so they'll you know I don't know how maybe 20 years ago, but now very strict (?) photometrics for the light poles. I

Lisher: Well the pole sign's gonna be 100' in the air.

Schwickrath: Sure.

Furlin: Does the, just curious what McDonald's sign illuminates at 'cause I think we will be further from that intersection(inaudible)....sign.

Lisher: And we got....(inaudible)...

Rude: Talking....

Furlin: And the other thing, not facing, the Waffle House sign faces Riley. We're gonna be perpendicular to Riley.

Schwickrath: Sure. Yeah yours is situated, yours will be situated differently, right.

Rude: And speaking of lighting in general, Doug kind of alluded to it in his comments. We do nowadays we have lighting standards, photometric requirements and significantly more landscaping buffer requirements, especially because they sit across the street from residentially zoned property so that landscape, those landscaping standards are higher than on the other sides of their property and the lighting requirements are even higher on the other sides of the property.

Schwickrath: Thank you.

Rude: It was something that was considered by the plan commission. It met the standards.

Schwickrath: Okay.

Rude: So it's addressed in the ordinance especially because it's a residential property.

Schwickrath: Well thank you. We need to work that out.

Rude: Yep.

Schwickrath: Thank you.

Clark: I'd like to make a statement that this is one of the reasons why we had Casey's scale down their sign slightly.

Rude: Uh huh.

Clark: We are aware of it and we are....

Schwickrath: Yeah we're doing what we can.

Clark:gonna do what we can.

Schwickrath: Okay are we, do we feel ready to move to a motion then after further discussion and public comment? Would someone like to make a motion?

Lisher: Yeah I move to approve the(inaudible)....I think that's what....

Schwickrath: Pole sign permitted.

Lisher:pole sign mentioned or at the height rather set forth in petition and per the staff recommendations and as to the staff, I'm not including that because I think that relates to the other one.

Schwickrath: Fine.

Lewis: Second.

Schwickrath: Okay, please cast your ballot then for BZA 2020-13 for the pole sign.

Rude: This is for petition BZA 2020-13. It's a special exception use for a pole sign. Mr. Cassidy - yes, Mr. Lisher - yes, Mr. Lewis - yes, Mr. Clark - yes and Ms. Schwickrath - yes. Motion carries.

Schwickrath: So we can now move on to the second one. Let's just give Mr. Rude a moment to read that.

Rude: Yes. Get situated here. The final petition tonight is BZA 2020-14. All of the petition information is identical except the action requested on this petition is for a development standards variance from UDO 5.58 Q3C which are the development standards for a pole sign in an interstate corridor.

Schwickrath: So now you could explain a setup. Thank you.

Furlin: So...(inaudible)...a project, a secondary plat. Primary plat is here and so there's an additional, I can't see the square footage, but....

Schwickrath: That's alright.

Furlin:to get the idea this strip here off of Rampart and then also that's us off of Riley. This is primary plat. We'll have that and we'll have this shared easement for the access off of Riley and so the request is for that parcel that they have the right and we don't know who they may sell (?) around to if/when. You guys, I think are very familiar with the parcel. The request would be if that's sold to have the right to put another 200 square foot panel so virtually the same size as this one either below or side by side. And what we're doing is if approved, we'll build up a base and so if it was ever sold, there'd be a new pole would be constructed, either be (?) side by side or on top of each other. And either one is fine by me.

Schwickrath: Okay. Okay, thank you. Questions? Do you need a moment to study that or Mr. Cassidy, questions?

Lewis: Just talking about adding 200 square feet?

Schwickrath: That's right.

Lewis: Okay.

Schwickrath: Mr. Clark?

Clark: Inaudible reply.

Schwickrath: No? Okay. Mr. Lewis?

Lewis: No.

Schwickrath: No? Mr. Lisher?

Lisher: No questions.

Schwickrath: Alright. Do I see a sidewalk in this plan?

Rude: (?) sidewalks on this plan.

Schwickrath: That's exciting.

(?): All around.

Schwickrath: Actually that is exciting.

Rude: Yes. All new

Schwickrath: This is gonna be a major improvement, isn't it?

Rude: Yep.

Schwickrath: Did you hear me?

Inaudible reply.

Schwickrath: I said this'll be a.....yeah the fan went on. They both went on. It's the fans in here.

(?): Inaudible comment.

Schwickrath: No, I just happened to notice this is not part of the petition, of course, but the sidewalks out there. Yeah this is, I mean I see it's an improvement of course, the whole thing.

Furlin: Yes.

Schwickrath: Yeah, okay.

Rude: All new developments have to be brought completely to our standard.....

Schwickrath: Oh yeah.

Rude:with sidewalks. Casey's will have the same thing so you'll actually have some connectivity in the area finally.

Schwickrath: Good, sure. Okay I have no further questions so I'll close questions from the board at this time. If anyone from the public wishes to step forward and I'll open this up to public commentary or questions. Feel free to do so at this time.

No reply.

Schwickrath: Okay, hearing none and seeing no movement, I will close public commentary and ask the board then to make a motion.

Lewis: I would like to make a motion to approve the requested development standard variance from UDO 5.58 Q3C to allow a pole sign with an area up to 400 square feet pursuant to the Findings of Fact presented in the planning staff's report.

Schwickrath: There's a motion.

Cassidy(?): Second.

Schwickrath: Okay please cast your ballot for BZA 2020-14.

Rude: This is for BZA 2020-14, a motion to approve: Mr. Cassidy - yes, Mr. Lisher - yes, Mr. Lewis - yes, Mr. Clark - yes and Ms. Schwickrath - yes. Motion carries.

Schwickrath: Okay the motion carries. Best wishes with the project. Thank you.

Furlin: Thank you very much.

Schwickrath: Any items for Discussion?

Rude: I'll put it on the record as well. At a future meeting, I'll bring some information about increasing that interested parties definition or just amending it to some degree. It's a conversation we've had a number of times, more so at the Plan Commission than the BZA level but once we get through that process in Plan Commission, I'd like to start having that process here or that conversation here to amend that. Aside from that, (?).

Schwickrath: So a little bit of homework is to skim through or read through the minutes from the last few months as well as look at that paragraph or section 18 if you have time of the of our own BZA rules and procedures.

Lisher: Madam Chairperson?

Schwickrath: Please...

Lisher: Now that we're kind of online here, should we start making note that we check the Facebook to see if there are any public comments?

Schwickrath: At this time, Facebook commentary or....

Lisher: Oh it's not live?

Schwickrath:we're, yeah the governor actually removed that requirement so meetings are now in public.

Lisher: Okay.

Schwickrath: Thank you, though.

Lisher: I just noticed that it didn't seem to be.....

Schwickrath: Thank you. You're right. Yes and we'll look at it, but it....yeah thank you for mentioning that. Okay anything further?

No reply.

Schwickrath: So?

Cassidy: Motion to adjourn.

Schwickrath: I think it's time to go home and thank you.....

Meeting adjourned.