

MINUTES
BOARD OF ZONING APPEALS
August 26, 2013

The Warsaw Board of Zoning Appeals met for regular session on Monday, August 26, 2013 at 7:00 p.m. in the City Council Chambers, 102 S. Buffalo Street, Warsaw, Indiana. The following members were present or excused:

Present: Tom Allen, Tammy Dalton, Jack Wilhite, Ron Shoemaker, Elaine Call (Common Council Liaison), Mike Valentine (City Attorney), Jeremy Skinner (City Planner), Tim Dombrosky (Assistant City Planner), Kim Arnold (Recording Secretary)

Absent: Rick Keeven

CALL TO ORDER

Allen called the meeting to order.

The June 24, 2013 meeting minutes were reviewed and presented for approval. Dalton made a motion to approve the June 24, 2013 meeting minutes as presented; Wilhite seconded the motion. The motion carried unanimously, 4:0.

Oath of Office

Mike Valentine administered the Oath of Office to Ron Shoemaker, who will be taking Mary Ellen Jordan's position on the Board.

ORAL OR WRITTEN COMMENTS OR REPORTS

None

OLD BUSINESS

None

NEW BUSINESS

Item 2013 – 08 -01 – Use Variance- Donovan Engineering/Rainbow Rascal II-Lot B & C, Capital Dr.

Director's Comments:

The petitioner has requested a Use Variance for a daycare center in a C-3 district, on behalf of the property owner. Currently, daycare centers are only permitted as special exceptions in R-2 and R-3 districts.

Primary access to the development will be from Capital Drive which has more than enough capacity to handle any increase in traffic. No dangerous or harmful activities would be occurring with this use, so there are no public health or safety concerns.

The properties to the West, South, and East are heavy commercial uses, and will not be affected in an adverse manner. The property to the North is residential, and as such may be impacted slightly. However, this use request is less intense than potential permitted uses for these lots. In order to buffer commercial and residential uses, the Comprehensive Plan recommends screening between uses in this area. The zoning ordinance would prescribe a six-foot high continuous screen.

The need for this variance is created by the evolving nature of day care facilities and outdated sections of the City Zoning Ordinance. The proposed day care is a commercial facility with large parking, delivery, trash storage, and other needs. It fits appropriately in commercial center, but is not permitted by the Zoning Ordinance. In this case, the ordinance is creating a peculiar condition and a hardship for the property.

Recommendation:

- The requested use will not be injurious to the public health, safety, morals, and general welfare of the community.
- The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
- The need for this variance does not arise from some condition peculiar to the property involved.
- The strict application for the terms of the Zoning Ordinance will constitute an unnecessary hardship in the use of the property.
- The approval of this use variance will not interfere substantially with the comprehensive plan.

Based on the information provided and the Findings of Fact, Dombrosky recommended the Board approve the Use Variance to permit a Commercial Daycare Center in a C-3 zoning district located at Capital Drive, lot B & C.

Greg Donovan, of Donovan Engineering, representing the Rainbow Rascal II, was present to answer questions from the board members.

Allen opened the meeting to any person wishing to speak in opposition to the Use Variance.

Bradley Shumaker, resident from Ivywood Dr., expressed concerns about noise. He also requested the natural barrier of trees be left in tact. He specifically asked for no tree removal.

Nancy Damer, also a neighbor, asked for a sound barrier, possibly around the entire pond.

Ravi Shetty, resident of Ivywood Dr., asked for a sound barrier as well.

Adam Small, resident of Ivywood Dr., asked for a written agreement guaranteeing no removal of trees in the barrier area.

Allen opened the meeting to any person wishing to speak in favor of the Use Variance.

With no one else to speak in favor or against the petition the meeting was closed to the public.

The board members discussed the petition.

Wilhite made a motion to approve, with the condition of leaving the 40 foot easement in tact with natural tree husbandry- Item 2013-08-01-Use Variance- Donovan Engineering-Lot B & C, Capital Drive. Dalton seconded the motion. The motion carried unanimously, 4:0.

Item 2013 – 08 -02 – Use Variance –Stephen Snyder/Growing Kids Learning Center-501 N. Harrison St.

Director’s Comments:

The petitioner has requested a Use Variance for a daycare center in an R-1 district. Currently, daycare centers are only permitted as special exceptions in R-2 and R-3 districts.

The adjoining streets are designed to handle an increase in traffic and no dangerous or harmful activities would occur with this use, so there are no health or safety concerns.

The properties to the North, West and East are residential and may be impacted. The zoning ordinance would prescribe a 6’ high continuous screen, recommended to the North and West. There may be additional activities associated with the use that could be offensive to residential neighbors such as outside trash storage and lighting that need special consideration. Restrictions can be placed to protect neighboring properties.

The Zoning Ordinance would restrict this property to single family residential use almost exclusively. Whether or not this constitutes an unnecessary hardship is difficult to evaluate as it is surrounded by a unique mix of uses. There is a major medical park to the north that is growing, a municipal police station and garage to the southeast, and a commercial corridor to the south. However, directly adjacent on three sides are single family homes. One street on the corner lot is a low volume local street, but the other is an urban collector carrying a medium volume of traffic from US 30 and KCH.

The Comprehensive Plan recommends buffer uses in between commercial and residential areas as a heavy screen. The relevant section of the Comprehensive Plan is attached. It has separation recommendations, but also acknowledges the commercial advantages.

Recommendation:

- The requested use will not be injurious to the public health, safety, morals, and general welfare of the community.

- The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
- The need for this variance arises from some condition peculiar to the property involved.
- The strict application for the terms of the Zoning Ordinance will constitute an unnecessary hardship in the use of the property.
- The approval of this use variance will not interfere substantially with the comprehensive plan.

Based on the information provided and the Findings of Fact, Dombrosky recommended the Board approve the Use Variance to permit a Daycare Center in an R-1 zoning district located at 501 N. Harrison Street.

Stephen Snyder was present to answer questions from the board members.

Allen opened the meeting for any comments in favor of the Use Variance.

Jan Orbin, licensed Realtor spoke. She expressed concern, while giving her professional opinion, as to the salability of the home as a residence. She feels the view, from the home, of the surrounding commercial properties will have an adverse effect on the sale of the property. She also feels the employee childcare needs of the nearby medical campus, future YMCA, and nearby school would be a positive reason to approve the Use Variance for the daycare.

Stephen Snyder, representing Growing Kids Daycare spoke in favor of the Use Variance. He referenced the volume of growth at the medical campus and the amount of traffic on Harrison Street. He also referenced the Orthoworx study concerning needs for daycare in our area. He expressed his opinion of “a good fit” in the location requested.

Mike Garatoni, President of Growing Kids Daycare, answered questions of the Board. He explained the details of his business, including hours of operation, number of kids, number of staff, etc. He felt it would be a “good fit” with the convenience of the location and the shortage of licensed daycare in the City of Warsaw.

With no one else to speak in favor of the petition, Allen opened the meeting to any person in the audience wishing to express opposition to the Use Variance.

Jeff Grose, spoke in favor of daycare but felt an R-1 zoned residential neighborhood would not be the proper place to have one. He stated the property is surrounded on three sides by residences for single families. He feels the introduction of a business would bring parking lots, outside lights, and possibly 240 children, as well as a large building. The removal of a residential home, the non-existence of sidewalks in the area, and the fact that there is the possibility of the business not thriving and closing, which would have an impact on the neighborhood, were concerns he expressed to the Board as well.

Stephen Snyder responded with specifics of the building size, style and policies of the business that would resolve issues of safety for the children. The business conducts extensive research when choosing a location for each center and knows its needs. They do not wish to build in a

commercial district. It is not just a daycare but also a learning center and they feel it would be compatible in an R-1 zone.

Allen closed the meeting to public comment.

The board members discussed the petition.

Dalton made a motion to deny *Item 2013– 08-02 – Use Variance –Stephen Snyder/Growing Kids Learning Center-501 N. Harrison*. Wilhite seconded the motion. The motion carried unanimously, 4:0.

OTHER MATTERS THAT MAY COME BEFORE THE BOARD

- Next meeting will be Monday, September 23, 2013

Dalton made a motion to adjourn the meeting; Shoemaker seconded the motion. The motion carried unanimously, 4:0. Allen adjourned the meeting.

Tom Allen, President

Kim Arnold, Recording Secretary