

**MINUTES
BOARD OF ZONING APPEALS**

April 28, 2014

The Warsaw Board of Zoning Appeals met for regular session on Monday, April 28, 2014 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, Rick Keeven, Jack Wilhite, Ron Shoemaker, Tammy Dalton, Mike Valentine (City Attorney), Tim Dombrosky (Assistant City Planner), Kim Arnold (Recording Secretary)

Absent: None

CALL TO ORDER

Allen called the meeting to order.

The March 24, 2014 meeting minutes were reviewed and presented for approval. Keeven made a motion to approve the March 24, 2014 meeting minutes as presented; Wilhite seconded the motion. The motion carried unanimously.

ORAL OR WRITTEN COMMENTS OR REPORTS

None

OLD BUSINESS

None

NEW BUSINESS

Item 2014 – 04 - 01 – Use Variance- to allow manufacturing in a C-3- Joseph Fenoglio-3507 Commerce Dr.

Director's Comments:

The petitioner has requested a Use Variance for the property located at 3507 Commerce Dr.

As large scale Greenfield commercial developments chose to leave their buildings behind for newer developments, we as a community are left with empty real estate that has a limited pool of

compatible uses. We have to be flexible in finding and accommodating users with the demand for the specific type of space available.

This request will allow greater flexibility in the reuse of this somewhat specialized property, and be of benefit to the community. The use will not have an effect on adjacent properties. The condition imposed by retailers leaving behind specialty buildings creates a need for variances. The strict application of the zoning ordinance would provide no beneficial protection and therefore be a hardship in the use of this property.

The Comprehensive Plan recommends uses along US 30 be buffered from residential uses to the west and south. This location is already significantly separated from the residences in the area, and no new construction is planned.

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 allow manufacturing in a C-3 zoning district located at 3507 Commerce Drive.

Allen opened the meeting for any person to speak in favor or against the Use Variance.

Joe Fenoglio and Tom Fenoglio of Trigon International, from Aurora, IL were present to explain the facility will be used as a design facility for orthopedics. Upon purchase of the building, they wish to employ approximately six to eight employees.

The meeting was closed to the public, as there was no one else to speak in favor or against the petition.

Discussion followed between Board members. Keeven asked Fenoglio what the outside of the building would look like. The outside appearance will remain the same as it is presently. Concern was expressed on semi delivery of raw material and the access to the facility. Per

Dombrosky the district is capable of handling semi traffic.

Shoemaker made a motion to approve *Item 2014 – 04 - 01 – Use Variance- to allow manufacturing in a C-3-Joseph Fenoglio-3507 Commerce Dr.* Dalton seconded the motion. The motion passed unanimously.

Item 2014 – 04 - 02 – Special Exception-To allow a tattoo parlor- Enrique Hernandez-2124 E. Winona Avenue

The petitioner has requested Special Exception to allow a tattoo parlor in a general business district. The petitioner wishes to lease the property for his business.

Tattoo parlors are regulated by the Health Department, so there are no health concerns. The building is existing, so there are no safety concerns.

The special exception guidelines state that:

Tattoo parlor[s] shall be permitted in C-2 districts, provided that [such parlors shall]:

1. Be located a minimum distance of 400 feet from any church building, licensed day care center, public park, school building, school playground or school parking lot, public library or residentially zoned district or residential usage within a commercially zoned district, whether single[-family], two-family or multifamily usage.

There is a residential district behind this property within 400 feet of the requested use. This special exception guideline attempts to preemptively mitigate potential negative effects by requiring an arbitrary setback to some uses. If there is a negative property effect caused by tattoo parlors, it is not limited to effecting specific uses. This restriction is capricious because it only attempts to protect some uses from an undemonstrated negative impact, while not protecting others.

The argument for negative effects is also predicated on the concept that this type of use has a negative property value impact. This has not been documented in any substantiated way. The principle idea for this complaint is that the use attracts negative behavior. Restricting a business because of the patrons of that business is unjust.

The impact it will have will be a result of the perception of the use in relation to the area. As tattoos have become more mainstream, tattoo parlors have also become more commonplace. A tattoo parlor in an old strip retail center will have no more of a negative impact than a retailer with large deliveries, noisy operations, or high traffic demands.

In cases like this, the hardship applied by the zoning ordinance creates more of a negative impact by keeping a commercial space vacant than by allowing it. The vacant space is more likely to detract from nearby retail, attract crime, and become blighted.

The Comprehensive plan recognizes the need for a use buffer between the railroad and the residences on the lake. The commercial corridor on Winona Ave is projected to continue in its current state.

Recommendation:

- The approval 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 included in the variance will not be affected in a substantially adverse manner.
- The strict application of the terms of the zoning ordinance will result in practical difficulties 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 Special Exception to allow a tattoo parlor in a C-2 zoning district located at 2124 E. Winona Ave.

Allen opened the meeting to any person wishing to speak in favor or against the Special Exception-to allow a tattoo parlor.

Laura Wagoner spoke in favor of the relocation of the business as a customer.

Sterling Watkins asked if there was an ordinance of any type prohibiting tattoos. Dombrosky stated there was not.

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.

Keeven asked Dombrosky if there were any limitations on signage. Dombrosky stated there was not.

Dalton made a motion to approve – *Item 2014 – 04 - 02 – Special Exception-To allow a tattoo parlor- Enrique Hernandez-2124 E. Winona Avenue.* Keeven seconded the motion. The motion carried unanimously.

OTHER MATTERS THAT MAY COME BEFORE THE BOARD

- Next meeting will be Tuesday, May 27, 2014

Keeven made a motion to adjourn the meeting; Dalton seconded the motion. The motion carried unanimously. Allen adjourned the meeting.

Tom Allen, President

Kim Arnold, Recording Secretary