

MINUTES
BOARD OF ZONING APPEALS
JULY 27, 2020

The Warsaw Board of Zoning Appeals met for regular session on Monday, July 27, 2020 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, Dan Smith, Tammy Dalton, Jeff Johnson, Scott Reust (City Attorney), Justin Taylor (Senior Planner), Johnny Latsko (Assistant Planner), Kim Arnold (Recording Secretary)

Absent: None

CALL TO ORDER

Allen called the meeting to order.

APPROVAL OF MINUTES

The June 22, 2020 meeting minutes were reviewed and presented for approval. Keeven made a motion to approve the June 22, 2020 meeting minutes as presented. Smith seconded the motion. The motion carried unanimously by roll call vote of all members.

ORAL OR WRITTEN COMMENTS OR REPORTS

None

OLD BUSINESS

None

NEW BUSINESS

2020-07-01--Variance from Development Standards- Allow a 10' Variance from Front Sign Setback in a C-2 District- Allen turned the meeting over to Assistant Planner Latsko for a brief explanation of the request. The petitioner has requested a Variance from Development Standards to allow for a sign to be placed with a 0' setback from the property line. Existing regulation requires a 10' setback. Image 1 shows the plan for the updated location.

The petitioner plans to move the existing sign 46' east of the current location and maintain the existing setback. This change would not dramatically change vision clearance for drivers. Image 2 shows the current sign.

The corridor is zoned for commercial use, with some legal non-conforming residential buildings present west of the property. Buildings along the corridor are generally built very close to the property line – including some with 0’ setbacks. Many of the existing signs within the corridor are closer to the front property line than 10’. Images 3 – 4 show existing signs in the region.

Sign Regulation:

s. In order to provide unobstructed vision along public rights-of-way, the following shall apply:

1. Property lines abutting a public right-of-way. Within ten feet of the property line, no visual obstruction shall hereafter be erected between three feet and eight feet above the ground.

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 adjacent properties **will not** be negatively affected.
3. The strict application of the terms of the zoning ordinance **will** result in practical difficulties.

Based on the information provided and the Findings of Fact Latsko recommended the Board approve the Variance from Development Standards, and that the petitioner be permitted to place a sign closer to the Front Setback than 10’.

Allen opened the meeting to any person wishing to speak in favor or against the petition. Bruce Woodward, the petitioner, was present to explain the request and answer any questions. He explained he is doing renovations and provided handouts to the members showing what he wished to change. He stated he has installed sidewalks against the building and would like to move the sign 46’ to the West in order to leave the area open for the sidewalk. He stated the three buildings have one address. Allen asked if it would create a visual issue. Woodward stated it would not. Keeven asked if the Traffic Commission would need to be involved. Senior Planner Taylor stated it is not an issue for them to consider as the sign meets the vision triangle requirements. No other person was present to speak for or against the petition. Allen closed the meeting to the public. Latsko provided the phone number for any person wishing to text comments to the City for or against the petition. Two minutes were provided for any comment by text. Motion was made by Keeven to approve *2020-07-01-Variance from Development Standards- Allow a 10’ Variance from Front Sign Setback in a C-2 District*. Johnson seconded the motion. The motion passed unanimously by roll call vote.

2020-07-02-Use Variance-Allow a Home Occupation in an R-1- Allen turned the meeting over to Assistant Planner Latsko. The petitioner has requested a Use Variance to allow for a Home Occupation in an R-1. The occupation will consist of beauty services indoors – primarily hair styling and dying as well as some nail work. The only individual working would be the petitioner with no additional employees.

The petitioner has estimated two to six clients per day depending on the services provided. Hours of operation would generally be within the normal working day Tuesday through Friday as well as Saturday predominantly in the morning.

The petitioner would have clients park in the driveway of the house.

The neighborhood is mostly residential. On the east side of the neighborhood is Weed Septic Tank Services (504 E Baker). Baker Street is often used by Weed Septic Tank Service vehicles to enter and leave the business. Because of the existing traffic from the business, as well as the lower number of clients, home occupation at 119 E Baker would generate negligible additional traffic.

The petitioner has been made aware of the one square foot maximum sign allowance for home occupation.

Home Occupation Definition - Article 11

Home occupation. An occupation, carried on by a member of the family residing on the premises, in conjunction with which no commodity is sold or stock in trade is kept on the premises; no person is employed other than a member of said family; and no sign, other than a nameplate, not exceeding one square foot in area, is displayed, and no change in the external appearance of the building shall be caused thereby, and that no accessory building shall be used for such home occupation.

Other references to home occupation in the code 12.4

p. Home occupations shall be permitted in any principal residential building or structure located in R-2 and R-3 zone districts, provided that:

1. No persons other than members of the family residing on the premises shall be engaged or employed in such occupation.
2. The use of a dwelling unit or private garage for a home occupation shall be clearly incidental to its principal use for residential purposes.
3. There shall be no change in the outside appearance of the building or premises or other evidence of such occupation other than one sign, not exceeding one square foot in area, nonilluminated and mounted flat against the wall of the principal building.
4. There shall be no outside storage.
5. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors or electrical interference outside the dwelling unit in amounts greater than present under normal circumstances.
6. No commodity shall be sold on the premises.
7. No mechanical equipment shall be installed except that which is customarily used for purely domestic or household purpose.
4. The approval **will not be** injurious to the public health, safety, morals, and general welfare of the community.
5. The use and value of the adjacent properties **will not** be negatively affected.
6. The strict application of the terms of the zoning ordinance **will** result in practical difficulties.

Based on the information provided and the Findings of Fact Latsko recommended the Board approve the Use Variance to permit the home occupation in an R-1 zoning district located at 119 E. Baker.

Allen opened the meeting to any person wishing to speak for or against the petition. Sandra

Foreman, the petitioner, was present to explain the request and answer any questions about it. She stated she would have two to six clients per day. She will be open on Tuesday, Friday and Saturday mornings. Her clients will use Baker Street which also has traffic from Weed Septic Tank Service utilizing it. She stated she will have a one square foot sign mounted to the house. She wishes to be home with her young children and continue to run her business. No other person was present to speak for or against the petition. Latsko presented the phone number for text comments. Two minutes were given for comments. No texts were received. Allen closed the meeting to the public. Discussion followed. Motion was made by Johnson to approve *2020-07-02-Use Variance-Allow a Home Occupation in an R-1*. Dalton seconded the motion. The motion passed unanimously by roll call vote.

2020-07-03- Variance from Development Standards-105 Gilliam Drive- Allen turned the meeting over to Assistant Planner Latsko for a brief explanation of the request. The petitioner has requested a Variance from Development Standards to allow two Accessory Structures to be built on a lot with no primary structure. The lot is on the south side of Gilliam Drive S. The petitioner's primary structure is built on the lot across the street on the north side of Gilliam Drive S. **(See attachment 1)**

If granted a variance, the petitioner intends to build a 10'x12' shed near the tree line and the lake as well as a 12'x12' pergola near the lake. For the petitioner's plan see **attachment 2**. The shed would be used primarily for personal paddle board and kayak storage. No driveway would be built.

The ordinance does not allow the erection and operation of accessory structures prior to the principal use. It does, however, provide for operation of accessory structures maintained under the same ownership of an adjoining lot providing a restrictive covenant is provided requiring the adjoining lots will not be sold separately.

The neighborhood is characterized by lake houses. The property east of the undeveloped lot is owned by The Kosciusko County Soil and Water Conservation District, and is primarily covered by a PSS1/EM1C wetland (Woody wetlands; forested swamp, shrub bog, seasonally flooded). **(see Attachment 3)**

This property is particularly unique in the comprehensive plan as it is in an area marked for conservation. **(See Attachment 4 and 5)**. Conservation Classification does not remove development rights, but encourages land uses that protect existing environmental features and promote recreation. The proposed structure both minimizes potential environmental impact and promotes a recreational focus for the land.

Relevant Accessory Structure Regulations:

12.0.4.1 .Accessory structures. Accessory structures may be allowed in all districts in accordance with this section.

- a. Accessory buildings, defined as a structure at least six feet in height and 30 square feet in area:
 1. Shall be incidental to, subordinate to, and commonly associated with the operation of the principal use of the lot.

2. Shall be operated and maintained under the same ownership and on the same lot, or adjoining lots, as the principal use. If the accessory building is on an adjoining lot, the owner shall provide a restrictive covenant, which stipulates that the adjoining lots will not be sold separately from each other. The restrictive covenant shall be recorded at the Kosciusko County Recorder's Office. A copy of the recorded document must be provided to the plan director before the issuance of an improvement location permit.

4. Shall not be permitted before the erection and operation of the principal use, except as a temporary use as permitted in section 4.4

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 adjacent properties **will not** be negatively affected.
3. The strict application of the terms of the zoning ordinance **will** result in practical difficulties.

Based on the information provided and the Findings of Fact Latsko recommended the Board approve the Variance from Development Standards, and that the petitioner be permitted to build two accessory structures on a lot with no principle structure.

Allen opened the meeting to any person wishing to speak in favor of against the petition. Lillian Fleming, the petitioner, was present to explain the request and answer any questions. She stated she would like the shed near the water for recreation. She stated it is a long distance from her home to the water and it would make things easier if she had storage near the water for items like kayaks. Discussion followed. Motion was made by Johnson to approve *2020-07-02-Use Variance-Allow a Home Occupation in an R*. Smith seconded the motion. The motion passed unanimously by roll call vote.

OTHER MATTERS THAT MAY COME BEFORE THE BOARD

- Next meeting will be August 24, 2020

Keeven made a motion to adjourn the meeting. Dalton seconded the motion. The motion carried unanimously by roll call vote.

Tom Allen, President

Kim Arnold, Recording Secretary