

TOWN OF BROWNSBURG BOARD OF ZONING APPEALS



FINDINGS OF FACT

BZUV-5-11-1070
John Capper
Use Variance

CONCLUSIONS OF LAW AND RECOMMENDATIONS

In compliance with the appropriate provisions of the Brownsburg Zoning and Subdivision Control Ordinances, the Board of Zoning Appeals held a public hearing pursuant to notice at 7:00 p.m. on June 13, 2011, to hear Docket # BZUV-5-11-1070 a petition for a Use Variance from §155.201(B)(1) Permitted Uses within the "R-2" Single Family Zoning District of the Zoning Ordinance as presented by John Capper for:

1. Capper, Tulley & Reimondo

Petitioner, John Capper on behalf of owner Capper, Tulley & Reimondo, appeared and presented testimony and evidence in support of their petition.

FINDINGS OF FACT

The Brownsburg Board of Zoning Appeals, having this matter presented at a public hearing June 13, 2011, having considered the arguments of the Petitioner, and being duly advised in the premises, now finds and makes the following Findings of Fact:

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 as the property is located in a business corridor.
3. The need for the variance is that the property is zoned R-2 and has been on the market as a residence for approximately two years and has not sold. The property is in a business corridor with several adjacent or nearby properties also containing businesses via a Use Variance. The property will have no value or limited value unless a Use Variance is granted to allow a small business to occupy the property.
4. The strict application of the terms of the zoning ordinance R-2 will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought. Although the property is zoned R-2, the property is adjacent to state road 267, a north south business corridor and with said zoning, it would deprive the owner the right to the use of the property as is presently zoned.
5. The approval does not interfere substantially with The Comprehensive Plan. The Plan recommends commercial zoning.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Brownsburg Board of Zoning Appeals does now conclude:

1. That the Petition on file, with all notice requirements having been met, with the Petitioner having appeared before the Board of Zoning Appeals and having presented their Petition, and with members of the public having been given the opportunity to be heard in opposition or in support of such Petition, that the Board of Zoning Appeals is entitled to approve or disapprove said Petition.
2. That the property which is the subject of the Petition is within the Town of Brownsburg and is subject to the terms and provisions of the Town of Brownsburg Municipal Code, Zoning and Subdivision Control Ordinances.
3. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
4. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner as the property is located in a business corridor.
5. The need for the variance is that the property is zoned R-2 and has been on the market as a residence for approximately two years and has not sold. The property is in a business corridor with several adjacent or nearby properties also containing businesses via a Use Variance. The property will have no value or limited value unless a Use Variance is granted to allow a small business to occupy the property.
6. The strict application of the terms of the zoning ordinance R-2 will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought. Although the property is zoned R-2, the property is adjacent to state road 267, a north south business corridor and with said zoning, it would deprive the owner the right to the use of the property as is presently zoned.
7. The approval does not interfere substantially with The Comprehensive Plan. The Plan recommends commercial zoning.
8. That the variance is subject to and conditioned upon the following:
 - a. The hours of operation be limited to the following: 8:00 A.M. – 9:00 P.M.
 - b. This approval shall be valid only while Mr. Capper or Capper, Tulley & Reimondo, Attorneys at Law, own said parcel. Immediately upon the sale of said parcel to another owner, this approval will become null and void.
 - c. Signage be limited to a total of thirty-six (36) square feet in area and a maximum height of five (5) feet.

- d. Lighting of signage be compliant with 155.295(D) and other applicable sections of the Brownsburg Municipal Code.
- e. Only "Professional Legal Services" be permitted with this approval.
- f. No sub-letting or sub-leasing shall be permitted on this property.
- g. Those recommendations included in the staff report dated June 6, 2011.
- h. The approval of the Findings of Fact and Conclusions of Law.

ORDER OF APPROVAL

Based upon the preceding Findings of Fact and Conclusions of Law, the Brownsburg Board of Zoning Appeals does now **APPROVE** the request for a **Use Variance** for Capper, Tulley and Reimondo at 401 N. Green Street, Brownsburg IN 46112.

Date: _____ By: _____
 President, Board of Zoning Appeals

Date: _____ Attest: _____
 Secretary, Board of Zoning Appeals