



BOARD OF ZONING APPEALS
Minutes

**Brownsburg Town Hall
61 North Green Street
Brownsburg, Indiana 46112**

Monday, January 09, 2012

The Brownsburg Board of Zoning Appeals convened at 7:00 PM with the Pledge of Allegiance. Eric Willman, 2011 president opened the meeting. A roll call was taken.

Members Present: Brett Scowden, Tom Lacy, Chuck Walker, Al Wolting, and Eric Willman

Also Present: Todd A. Barker – Director of Planning, Tricia Leminger – Town Attorney, and Jonathan Blake – Planning Technician

C. Election of Officers

1. 2012 President

Motion: Eric Willman made a motion to **ELECT** Tom Lacy as President for the 2012 Board of Zoning Appeals, seconded by Al Wolting, motion carried 5-0.

Tom Lacy, 2012 president took over the meeting.

2. 2012 Vice-President

Motion: Tom Lacy made a motion to **ELECT** Chuck Walker as Vice President for the 2012 Board of Zoning Appeals, seconded by Al Wolting, motion carried 5-0.

3. 2011 Recording Secretary

Motion: Eric Willman made a motion to **ELECT** Dawn Brown as Recording Secretary for the 2021 Board of Zoning Appeals, seconded by Tom Lacy, motion carried 5-0.

D. Consideration of Previous Minutes:

1. December 12, 2012 – Regular Meeting

Motion: Eric Willman made a motion to **APPROVE** the December 12, 2012 regular meeting minutes, seconded by Al Wolting, motion carried 5-0.

E. Approval of Findings of Fact

1. BZSE-10-11-1089 Sawmill Creek, LLC 1650 E Northfield Dr

Motion: Eric Willman made a motion to **APPROVE** the Finding of Facts for BZSE-10-11-1089, seconded by Brett Scowden, motion carried 5-0.

2. **BZDV-9-11-1086** **CVS Pharmacy** **21 West Main Street**

Motion: Al Wolting made a motion to **APPROVE** the Finding of Facts for BZSE-10-11-1089, seconded by Eric Willman, motion carried 4-1. Chuck Walker **DENIED**.

F. **Old Business:**

1. **BZUV-10-11-1088** **C.Hart Landscaping** **645 N. Green Street**

A request for a USE VARIANCE from 155.209 (B)(1) of the Brownsburg Zoning Ordinance, entitled "Permitted Use: to allow Outdoor Storage as a permitted use on the property. This property is currently zoned 'I-1". **ADVERTISED PUBLIC HEARING**

Chris Hart was not present when they called for his case.

Todd Barker stated he received an email from Chris Hart's attorney stating he will no longer be representing Mr. Hart.

Eric Willman asked if the petitioner had submitted landscaping plans. Todd Barker stated yes, the landscaping plan was received from Mr. Hart.

Tom Lacy asked when the attorney contacted Todd Barker. Mr. Barker stated last Thursday.

Tricia Leminger stated if the Board chooses to continue the case you will need to open up the Public Hearing, recess the Public Hearing to the date and time specific of the next meeting.

Eric Willman stated the petitioner himself has never appeared before the board.

Tom Lacy asked if Chris Hart contacted Todd Barker or did his attorney contact Todd Barker. Todd Barker stated his attorney contacted him.

Chuck Walker said he knows there are issues with the property and he is not being very responsive.

Al Wolting stated he is disappointed we have never had the petitioner here at a meeting. Mr. Wolting asked if there has been any correspondence from the petitioner.

Todd Barker stated the landscaping plans arrived Tuesday or Wednesday of last week from the petitioner.

Eric Willman stated Mr. Hart did do what the Board asked him to do, presented the landscaping plans, cleared the materials off his lot, and removed the signs but we also asked him to be here.

Tom Lacy asked Tricia Leminger if the case is dismissed will the petitioner have to wait a year before they could file again.

Tricia Leminger stated they have to wait a year after a petition has been defeated but it does not address if the case is dismissed how long they have to wait.

Tom Lacy asked the Board if it would be a burden on the Board to continue this case in thirty (30) more days. Mr. Hart did provided landscaping plan. Mr. Lacy asked Ms. Leminger if there were any policies being violated.

Tricia Leminger stated she does not believe any policies are being violated. Ms. Leminger stated in regards to the dismissal, it does not state certain duration of time that the petitioner has to wait if the

board dismisses the case but it does state after two (2) consecutive requests of continuance the case will need to be re-submitted and re-advertised as presented as new business. Ms. Leminger stated the board could make a decision based on the information that has been presented so far.

Chris Hart, the petitioner arrived at the meeting.

Tom Lacy stated are you done clearing the front lot which was the focus of concern and submitted landscaping plans.

Chuck Walker asked Mr. Hart what he planned to have in the front lot.

Chris Hart stated he would ideally have some nursery stock and landscaping displays. Mr. Hart stated the bulk mulch will be in bins in the back of the building.

Tom Lacy asked to see page seven (7) of the synopsis.

Chuck Walker asked if the pole sign will be changed.

Al Wolting asked where the parking will be located.

Chris Hart stated there are four (4) spaces by the front door and six (6) additional spaces on the side, a total of eleven (11) parking spaces.

Al Wolting asked if this meets the requirements for parking. Todd Barker said he needs a total of fifteen (15) parking spaces.

Tom Lacy asked if the fifteen (15) parking spots are for customer parking only. Todd Barker said yes.

Tom Lacy asked where employees and service trucks would park. Mr. Hart stated they will park in the back

Tom Lacy asked what the object is in the middle of the picture. Mr. Hart indicated that was a fire pit.

Tom Lacy asked if both sides were surrounded by a forty-two (42) inch fence. Mr. Hart stated yes.

Todd Barker stated there is an issue with overhead trellis structure, there is a fifty (50) foot setback at this location. The trellis would require a building permit therefore it would not be permitted in the 50' setback.

Al Wolting asked what kinds of equipment was in the back of the building and how many of each.

Chris Hart indicated there was a tractor and fork lift in the back of the building along with some of the items for sale.

Tom Lacy asked Mr. Hart if he offered deliveries. Mr. Hart stated he will offer deliveries.

Tom Lacy stated on December 12, 2011 there were racing types of trailers in the lot and asked if they will stay. Mr. Hart stated they have always been there and they belong to Mr. Carter.

Chris Hart stated this is a Commercial Landscaping Company and the goal is to reach out and serve residents and business around town.

Tom Lacy asked if Mr. Hart intension was to be open year around. Mr. Hart said yes.

Eric Willman asked Mr. Hart if he had a chance to read the five (5) recommendations in the synopsis. Mr. Willman asked if Mr. Hart would you be able to accommodate all five (5) points. Mr. Hart said yes he could accommodate all five (5) points.

Tom Lacy asked Mr. Hart to explain what he was going to do with the sign.

Chris Hart stated the plan for the sign is to wrap the sign with a new exterior. Mr. Hart indicated it is not temporary. Mr. Hart stated it is the same sign but with a new front and back on it.

Tom Lacy asked if the sign would be grandfathered in. Todd Barker stated the sign can be refaced as long as the square footage does not change it can be done without a sign permit.

Brett Scowden asked Mr. Hart to describe his stock. Mr. Hart stated the stock would consist of trees, shrubs, and maybe some flowers. Mr. Hart stated no bulk materials in the front.

Brett Scowden asked what sample type displays of his bulk materials would be displayed in the front of building. Mr. Hart stated it would be included in the display in the front.

Brett Scowden asked if there were plans to move the concrete barriers in the northwest corner. Mr. Hart stated the ones to the north are not his.

Brett Scowden asked if it will be a problem moving flat bed trucks. Mr. Hart indicated that most the bulk materials will be coming on pallets. Todd Barker stated the minimum aisle width is required to be twenty (20) feet and cannot go any less by the Fire Departments standards to maintain access.

Brett Scowden asked if the pallets storage is where the vehicles are parked. Tom Lacy stated when he was there the trucks were parked behind the large building. Todd Barker stated it would be consistent for an industrial lot.

Tom Lacy asked if the area will contain any more signs. Mr. Hart stated there will not be any more signs in the area at least no without a permit. Mr. Hart stated it looks like one (1) sign is in the patio and the other sign is two (2) feet outside of it.

Al Wolting asked if the area behind the landscaping is where the trees and shrubs would be showcased or stored. Mr. Hart stated he said where the pillars along the drive said is where he plans on showcases the trees and shrubs.

Tom Lacy asked if landscaping can be part of proposal. Todd Barker said yes, it would have to specifically stated as part of the approval.

Eric Willman asked if Mr. Hart wanted to update or modify the plans he would he have to come back to BZA. Todd Barker stated yes.

Brett Scowden asked if Mr. Hart is content with plan. Mr Hart said yes, it would be nice to put the trellis in different location.

OPEN ADVERTISED PUBLIC HEARING

Dr. Peter Chapman has a business at 18 Mofit Boulevard Brownsburg, Indiana 46112 Dr. Chapman owns lots three (3) and four (4). Dr. Chapman is concerned with the process as the Board just received the site plans and has had very little time to review the plans. Dr. Chapman stated the type of materials that will be stored is a concerned of his as mulch can cause combustion, it smells, insects, and this type of business will attract heavy traffic. Dr. Chapman has an undeveloped lot that extends to the back of where Mr. Hart stated the mulch would be stored. Dr. Chapman stated there is already a lot of traffic on

Highway 267. The buildings in this part of town are more for Commercial Professional area of the town. These types of business should be somewhere where there is less traffic.

Teresa Ray has a business at 701 N. Green Street Brownsburg, Indiana 46112. Mrs. Ray stated she has a business in Lot 1 in front. Mrs. Ray stated they have taken a lot of time to make it look as a professional place. Mrs. Ray stated there is a daycare on Motif and bus stops five (5) days a week two (2) times a day to take children to school and bring the children to the daycare, as this should be a concern for the safety of the children. Mrs. Ray also expressed concern due to the fact that there will be a lot more noise and the extra traffic. Why does a landscaping business have to be on the one (1) of two (2) main thoroughfares in the town. Mrs. Ray is asking the Board to reconsider this type of business at this location.

Dr. Todd Eder has a business at 8 Mofit Boulevard Brownsburg, Indiana 46112. Dr. Eder owns the building in between Teresa Ray's and Dr. Chapman. Dr. Eder stated his concerns are there will be extra traffic, it will smell, and there will be more bugs. Dr. Eder met Chris Hart and he seems to be a nice guy but does not want this type of business next to his dental office. Dr. Eder explained his clients are already stressed out from what procedures they will be undergoing. Dr. Eder indicated his other concerns are the extra noise, smell, and heavy traffic that would take place at Mr. Hart's place of business.

CLOSED ADVERTISED PUBLIC HEARING

Al Wolting stated he has concerns how this will affect surrounding businesses.

Tom Lacy asked Chris Hart if there was a fence around the bins.

Chris Hart stated there are some trees and shrubs and he does believe there is a smaller privacy type fence. Mr. Hart stated there is nothing he can do about the smell and indicated everything outside could have bugs around it or on it.

Eric Willman asked Mr. Hart what the storage bins look like?

Chris Hart stated the bins are made of concrete block and painted and the area to the north is for landscaping. The pallets will have brick or stones on them and the overstock of the nursery will consist of trees and shrubs. Mr. Hart wanted to state every business has chosen to use mulch around there landscaping including the apartments which is about three hundred (300) yards of mulch.

MOTION: NO MOTION was made.

Tricia Leminger indicated the lack of motion is an indecisive vote which means the Board would have to tabled this case and the case would be moved to the next scheduled meeting for further consideration.

Chuck Walker did not want to postpone for another thirty (30) days to make a decision. Mr. Walker asked for a meeting with Mr. Hart and the Board on-site. Mr. Walker stated he cannot tell much from the landscaping plans.

Tom Lacy asked Tricia Leminger if they would have to re-open the Public Hearing if the meeting was tabled.

Tricia Leminger stated if the Board conducts a meeting on-site the meeting would have to be recorded and would have to be an Advertised Public Hearing.

MOTION: Al Wolting made motion to **CONTINUE** the case until the next regularly scheduled meeting to Monday, February 13th regular scheduled meeting. No seconded was made. Motion fails.

MOTION: Eric Willman made the motion to **DENY** variance request BZUV-10-11-1088. Al Wolting seconded, the motion was carried 2-1-2.

Tom Lacy called for a roll call on the motion:

Tom Lacy – abstained from the vote.

Chuck Walker – abstained from the vote.

Al Wolting – in favor of motion

Eric Willman – in favor of motion

Brett Scowden – against the motion

Tricia Leminger stated there has to be some kind of decision made.

Eric Willman asked the Board what additional information is needed to make the decision.

Chuck Walker stated he has concerns are his first impressions with C. Hart Landscaping were negative when he started down there, the owner has not been over responsive, and there are three (3) land owners have legitimate concerns.

Tricia Leminger suggested how to proceed. Ms. Leminger indicated as part of the final decision the Board is required to adopt the Finding of Facts based upon the decision that is made. Ms. Leminger suggested for the Board to go back to the five (5) findings that the Board will be required to adopt.

Tom Lacy read the five (5) criteria to the Board and there was discussion in regards to the criteria.

Eric Willman stated he thinks the main concern of the surrounding property owners had was based on criteria # one (1).

Chuck Walker said that is one of his concerns.

Eric Willman said it is very telling when existing businesses do not want a business next to them.

Tom Lacy stated this was a Hardware Store before that there was a paver and patio stones business there after the Hardware Store. There was no outdoor storage before with the previous businesses.

Eric Willman stated a Landscaping Business cannot operate without product outside.

Chuck Walker stated if it was compared to Country Harmony, they only sale plants, trees, flowers, and shrubs. Mr. Walker said they sale mulch but they do not keep it at their store. Mr. Walker asked Mr. Hart if he would consider not offering mulch to sale on-site.

Chris Hart stated he prefer to have the mulch on-site. He explained mulch is a big seller and is in the business to make a profit. Mr. Hart stated at the same time he wants to be able to offer the same product as the other competitors in town. He indicated there would be twenty (20) yards and two (2) bins of mulch. Mr. Hart stated he would like to have mulch. Mr. Hart stated there is a lot of traffic in the entrance. He is not sure is supposed to be using the entrance There is a car business to the north that is using the entrance.

Tom Lacy asked the size of trucks that would be delivering materials to Mr. Hart's business and will the trucks have enough room to turn around. Mr. Hart indicated there is a lot of room back there.

Todd Barker stated it was identified in the synopsis as number five (5) the comprehensive does recognize this as a commercial corridor. Besides the noise and smell this would be consist with other areas in town.

Chris Hart stated Brownsburg would be his second (2nd) location. He currently has a location in Greenwood.

Tom Lacy stated we have other landscaping businesses in town but not in the downtown area. Mr. Lacy said they are in rural areas. Mr. Lacy said this business would have a hard time looking like Frazee's or Natures Choice. It is unique because it sits in the middle of other businesses.

Tom Lacy read staff reports and the conditions and what the Board added from tonight's meeting.

Brett Scowden asked for clarification of no bulk storage permitted on the west side.

Todd Barker stated Mr. Hart's detail statement of reason requested plant materials on the west side. Mr. Barker indicated our definition of bulk would be large quantities of materials mulch, stone, and dirt. Anything that is not plant materials.

MOTION: NO MOTION

Tricia Leminger stated if more evidence is added then the Board would need to continue the Public Hearing.

Chris Hart stated the sooner he knows the outcome the better for his business.

MOTION: Tom Lacy made a motion to **CONTINUE** the hearing with the public hearing until next regular schedule BZA meeting on Monday, February 13th at 7:00pm, seconded by Al Wolting, motion was 4-1. Eric Willman opposed the continuation of **BZUV-10-11-1088**.

Tricia Leminger stated it is required to mention the Advertised Public Hearing will be recessed and reconvened until February 13th, 2012 at 7:00pm.

Five (5) minute recess taken.

G. NEW BUSINESS:

1. BZDV-12-11-1090 John Capper 401 N. Green Street
A request for a development Standard Variance from 155.297 (B)(5)(d)(1)(b)(v) of the Brownsburg Zoning Ordinance, To reduce the minimum setback requirements for monument signs in the Historical District. This property is currently zoned 'R-2'. **ADVERTISED PUBLIC HEARING**

Rob Reimondo an Attorney in Crawfordsville, Indiana John Capper's law partner appeared before the Board. Rob Reimondo presented the sign setback request.

Brett Scowden asked for some clarification on the height of the sign. Rob Reimondo stated the sign was 6x4x1. Mr. Reimondo stated after talking with Todd Barker and Jon Blake the sign cannot exceed five (5) feet in height. What was request was a total of five (5) feet.

Eric Willman stated staff recommended two (2) conditions to the approval. If the Town ever decided to construct the Urban Trail Corridor would you be willing to incur the cost of moving the sign. Mr. Reimondo stated yes he would be willing to move it. Mr. Willman asked about the clear vision Triangle.

Todd Barker stated the triangle point is a clear vision area which is ten (10) ft to the east twenty-five (25) ft to the north or south. This point to the edge of the drive would need to stay clear for people in their vehicles exiting the site to maintain an unobstructed view of traffic on 267. Mr. Reimonda said that would not be a problem.

Tom Lacy asked if picture # ten (10) clarifies where the sign would go.

Al Wolting asked where the white pole and flag is located will this be where the sign will be placed. Rob Reimondo stated it will be in the front yard. Mr. Reimondo stated the surveyors had a hard time finding the pin on the south because of manhole. The sign lines up with the white line and it will still be blocked by pine trees.

Al Wolting asked if there were two (2) parking spaces in front. Mr. Reimondo stated the two (2) parking spots will stay.

OPEN ADVERTISED PUBLIC HEARING

CLOSED ADVERTISED PUBLIC HEARING

MOTION: Eric Willman made a motion to **APPROVE** BZDV-12-11-1090 and include the recommendations by staff, seconded by Al Wolting, motion was carried. 5-0.

H. **REPORTS FROM OFFICERS AND COMMITTEES**

Todd Barker wanted to remind everyone he sent out an email asking for dates of the year end review. Mr. Barker asked everyone to email Meegan with the dates everyone is available. Mr. Barker also reported the issue with Laserfiche has been corrected.

Al Wolting inquired about Laserfiche training and Todd Barker informed Mr. Wolting he would need to schedule this with Wendi Smith.

Brett Scowden asked if we could check to see if he has access to Laserfiche for both BZA and Plan Commission.

I. **COMMUNICATIONS & BILLS**

1. **NONE**

J. **ADJOURNMENT**

Motion: Eric Willman made a motion to ADJOURN, seconded by Brett Scowden, motion carried 5-0. 8:44pm.

This minutes of the January 09, 2012 Board of Zoning Appeals meeting are hereby approved:

Eric Willman, President

ATTEST:

Dawn Brown, Recording Secretary