

**MINUTES
BOARD OF ZONING APPEALS
AUGUST 26, 2019**

The Warsaw Board of Zoning Appeals met for regular session on Monday, August 26, 2019 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, Scott Reust (City Attorney) Jeremy Skinner (Planning Director), Justin Taylor (Senior Planner), Kim Arnold (Recording Secretary)

Absent: Jeff Johnson

CALL TO ORDER

Allen called the meeting to order.

The July 24, 2019 meeting minutes were reviewed and presented for approval. Keeven made a motion to approve the July 24, 2019 meeting minutes as presented. Smith seconded the motion. The motion carried unanimously.

ORAL OR WRITTEN COMMENTS OR REPORTS

None

OLD BUSINESS

Item 2019-07-02- Use Variance- 112 E. Center St. - Allow a Tattoo Parlor in a C-4-NathanPriesshoff- Allen turned the meeting over to Senior Planner Taylor. The petitioner is requesting a Use Variance to allow a tattoo parlor in a C-4 zoning district. The property, located at 112 E Center St. was previously occupied by the Lil' Seamstress clothing alterations and repairs for 13 years followed by Lake Area Promotional Specialties for just under 2 years. The building is surrounded by a mix of commercial and service uses.

The petitioner would like to have an art gallery in the front of the store and an area in the rear for tattooing. The petitioner stated that he does tattoos by appointment and generally sees one client a day. The typical hours of operation will be 12:00 PM to 8:00 PM Tuesday – Saturday. The petitioner has operated his business for the past 15 years and sees the value in relocating to downtown Warsaw. The petitioner says that his business attracts a more professional client than other establishments because he does custom designs and appointments must be made weeks in advance.

The argument regarding negative effects of tattoo parlors is predicated on the idea that this type of use has a detrimental impact on adjacent property values. This idea has not been documented in any substantiated way. As tattoos have become more main stream, tattoo parlors have also become more commonplace. A tattoo parlor in an urban center will have no more of a negative impact than a retail store or a restaurant.

12.1.4. - C-4 CBD commercial district.

12.1.4.1. Description of district. The C-4 CBD commercial district is intended to provide areas for the major retail commercial uses serving the community and the general market area of the City of Warsaw. A combination of retail services and commercial, office, professional, financial, governmental and upper floor residential uses shall be permitted. The provisions of this chapter are intended to encourage renewal activities and restore the central business district as a viable major retail center within the community.

A variance may be approved only upon a determination in writing that:

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;
3. The need for the variance arises from some condition peculiar to the property involved;
4. The strict application for the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
5. The approval does not interfere substantially with the comprehensive plan.

Based on the information provided, it is the opinion of the Planning Department that this case could be viewed favorably, when measured by the criteria delineated within the Findings of Fact.

Allen opened the meeting to any person wishing to speak in favor of the petition. Nathan Prieshoff, the petitioner, was present to explain his request and answer any questions. He asked the members to keep an open mind. Tattoos have become a part of our culture despite negative connotations. He wishes to be welcomed to the location and embraced by the community. He stated he has a petition with approximately 120 signatures, which he obtained in person. He presented the list to City Attorney Reust. He stated he is presenting a true art form and he keeps the undesirable clientele out. He only works with individuals respectful of his work. He provided members with photos of his work. He stated he signed the lease for the location before he was aware of the zoning restriction. He has obtained permits for signs and has invested quite a bit of money on the studio and art museum. He provided photos of the updated space to the members. Prieshoff answered questions from the members. Keeven asked if he had spoken with Councilwoman Dobbins. Prieshoff stated he had met with Dobbins and Jerry Opperud for approximately an hour and a half. Dobbins stated she felt better about it to him. Several days after that meeting she sent a letter in opposition to the members of the BZA. He feels the concerns stated in the letter are a mute point. He feels each usage should be considered independently and not lumped into one large group due to the "what if" factor. Prieshoff stated he volunteers in the community and is dedicated to it. He does not wish to be considered guilty by association. He has a boutique not a tattoo parlor. City Attorney Reust stated the City does

under statute consider each case independently. Reust gave Prieshoff a list of the five consideration criteria each decision is based on. Keeven asked if approved would it be an approval for the location or the person. Reust stated the variance is for the location. Keeven asked if the variance could be restricted to Prieshoff only. Reust stated the petitioner has to meet the hurdles presented by the five criteria. Smith agreed with Keeven. Reust asked Prieshoff to go over the five criteria. Prieshoff stated #1 had been basically covered by Senior Planner Taylor. #2 had also been covered by Directors Comments and other communities have done away with restrictions on tattoo businesses. Allen asked if that location needed the variance. Prieshoff stated it did not but he picked the location based on his needs after looking at many other locations. #4 Prieshoff stated he has improved the property. Allen stated some things are out of the control of this board's vote. Reust stated anybody could make a case for the five criteria, petitioner or other. Mike Klondaris, owner of the building, was present to speak in favor of the petition. He stated there are twelve empty storefronts in the downtown. He stated the City needs diversity and viable business. Keeven asked Klondaris in reference to criteria #3 and #4, how long the location had been empty. Klondaris stated it had been empty for about three months. Keeven asked about the difficulty of filling the open spaces. Klondaris stated parking may be an issue. Klondaris also stated his family has owned the building for almost seventy years and they have maintained the building. Peggy Prieshoff, mother of the petitioner, vouched for his character. She stated she and her husband have invested a lot of time of themselves, with Nathan, on the improvements at the location.

Allen closed the meeting to any person wishing to speak in favor of the petition and opened it to any person wishing to speak against it.

Paula Bowman, store owner of 22 years, and long time resident, stated she has seen businesses come and go. She is into diversity and Prieshoff did speak to her in person. She stated he did not clarify he would need a variance. She also stated she was never told she was providing her signature as a petitioner. She feels he skirted the truth. She feels he can pick a different zoning district. This location is close to a church and residential. She stated Prieshoff's bud tried to open a tattoo parlor next to B-Mac's. She claims Prieshoff skirted the issue about having children in a tattoo parlor and the age limit is eighteen. She asks the Board consider a C-4 plan and whether it is going to make the City better and the downtown a place to go. She spoke of the occupancy status of the buildings and states she wants to draw good businesses. She does not know if this business is worth negating the rules. City Attorney Reust reminded the members the decision for this case is based on a C-4 and the five criteria. Bowman's reference to the proximity of a church and residential references a C-2 zoning district according to our City ordinance. It is not a hurdle in a C-4.

Allen closed the meeting to the public as no other person was present to speak against the petition. Keeven asked Prieshoff the name of his business. Prieshoff responded the name is "Moving Pictures" and added he has obtained two sign permits from the City. Keeven asked if the signs were going to mention the word "tattoo". Attorney Reust stated the word "tattoo" is protected by freedom of speech and cannot be prohibited. Keeven stated he was in favor of Prieshoff but wished to limit the variance to him. City Planner Skinner explained the variance is based on property, not a person. Keeven stated he felt we had made restrictions in the past. Skinner stated according to case law examples we can't put that restriction on a variance. Allen

stated as a reminder to the members the decision must meet the five criteria. Discussion among the members followed. Dalton made a motion to approve *Item 2019-07-02- Use Variance- 112 E. Center St. - Allow A Tattoo Parlor in a C-4*. Smith seconded the motion. Keeven opposed. The motion passed 3 to 1 in favor of the petition.

2019-08-01-2312-2312 Highlander Dr.-Variance from Development Standards-Stonehill Homes of Indiana- Allen turned the meeting to Senior Planner Taylor. The petitioner is requesting a Variance from Development Standards to allow an 8-inch variance on a 25-foot front yard setback. The residence on this property is constructed, however, due to a surveying error the foundation was placed too close to the front property line.

The petitioner’s property is located within an R-1 zoning district. Being the most restrictive of the residential zoning districts, it is important that variations on the development standards are carefully evaluated case by case.

As constructed, the residence does not encroach on any utility easements or public right of ways. Considering that this is an asymmetrical lot and a relatively small deviation from the permitted setback, there should be no detrimental impact created as a result of the approval of this variance.

Table 3. Residential Uses and Requirements - One Family Dwelling

Zoning District	RR-1	R-1	R-2	R-3
with sewers	12,000	8,750	7,200	6,000
without sewers	20,000	20,000	20,000	20,000
with sewers	75'	70'	60'	50'
without sewers	100'	100'	100'	100'
Maximum Height of Buildings	35'	35'	35'	35'
Minimum Front Yard	35'	25' ⁽²⁾	25' ⁽²⁾	20' ⁽²⁾
Minimum Side Yard	10'	7' ⁽¹⁾	6' ⁽¹⁾	5' ⁽¹⁾
Minimum Rear Yard	25'	25'	*20'	*15'
Maximum Lot Coverage	45%	45%	50%	65%

12.0.1. - RR-1, R-1 residential district.

12.0.1.1. Description of district. This [R-1] district is the most restrictive of the residential districts and includes the low density single-family residential areas of the city and those open areas where similar residential development appears to be likely to occur. The intent of this [R-1]

district is to provide for an environment of predominantly low-density single-family development with certain additional uses such as schools, parks and other public uses which serve the residents living in the area. Based on the information provided and the Findings of Fact, it is my recommendation that the Board could reasonably provide a positive finding of fact in order to grant approval for the requested variance from development standards.

Allen opened the meeting to any person wishing to speak for or against the petition. No person was present. Allen closed the meeting to the public. Keeven made a motion to approve *2019-08-01-2312-2312 Highlander Dr.-Variance from Development Standards-Stonehill Homes of Indiana*. Dalton seconded the motion. The motion passed unanimously.

2019-08-02- 315 E. Market St. - Variance from Development Standards-N & J Auto Sales-

Allen turned the meeting to Senior Planner Taylor. The petitioner is requesting a Variance from Development Standards to allow a 14-foot sign with a 50 s.f. display area in a C-4 zoning district. The maximum permitted freestanding sign height is 8-feet per section 13.4.3.3 of the City's municipal code.

The site currently has an existing nonconforming sign that predates the current sign ordinance. The existing sign is also located within the right of way along State Road 15 and must be relocated to accommodate an intersection improvement project.

The petitioner is concerned that a height restriction of 8-feet in the current sign ordinance would limit the visibility of his sign due to the height of the cars in his lot. The petition is seeking to replace his existing nonconforming sign with a new sign of the same dimensions.

13.4.5. Administration. No sign, permanent or temporary, shall be erected or altered except in accordance with the provisions as set forth in section 13.4. a. The following signs shall not require permits:

Ordinary maintenance and repair to existing signs, provided that such work does not affect the structure to a degree greater than 50 percent of the current replacement cost, exclusive of the structural support of the sign.

C-4 Central Business District

A. One sign is permitted per lot. It shall not exceed 32 square feet in area and 8 feet in height. See Table 6 for types of permitted signs.

B. In addition, temporary signs are permitted, subject to section 13.4.3.1.

C. In addition, wall signs are permitted up to 1.5 square feet in area per linear foot of road frontage, up to a maximum of 30% coverage.

a. For lots with multiple businesses, wall signs are permitted up to 1.5 square feet in area per linear foot of the individual businesses' façade with a maximum of 30% coverage.

D. In addition, window signs are permitted up to 40% coverage of all windows combined.

E. In addition, one sidewalk sign is permitted for each business.

F. In addition, one projecting sign is permitted for each business. It shall not exceed 32 square feet in area.

Based on the information provided and the Findings of Fact, Taylor recommended that the Board

could reasonably provide a positive finding of fact in order to grant approval for the requested variance from development standards.

Allen opened the meeting to any person wishing to speak in favor or against the petition. Clay Johnson of N & J Auto Sales was present to explain the request and answer any questions. He stated the current sign has been in place since 1967. INDOT is requiring them to move the sign back from the right of way. He stated the new sign will be as close to the old one as possible and they wish to keep it the same height. No other person was present to speak for or against the petition. Allen closed the meeting to the public. Motion was made by Smith to approve *2019-08-02-315 E. Market St.-Variance from Development Standards-N & J Auto Sales*. Dalton seconded the motion. The motion passed unanimously.

2019-08-03- 600 E. Winona Ave. - Special Exception-Michael Vest- Allen turned the meeting to Senior Planner Taylor. The petitioner is requesting a Special Exception to allow a tattoo parlor within a C-2 zoning district. Tattoo Parlor uses are permitted in C-2 zoning districts through Special Exception, provided they meet the requirements of (kk) in section 12.4 of the City's municipal code. kk. Tattoo parlor[s] shall be permitted in the C-2, C-3, C-5, I-2 and I-3 zone 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.12.1. - Commercial districts. The commercial district regulations are intended to govern the location, intensity, and method of development of the business and commercial uses needed to serve the citizens of Warsaw and its trade area. The regulations of each district are designed to provide for groupings of business and commercial uses that are compatible in scope of services and method of operations including small retail centers to serve the needs of residential neighborhoods. All business uses are contained in the following commercial district classifications. Currently, there is a church located within 400-feet to the south of the petitioner's location at 601 E Smith St. This church was required to receive a use variance in 2017 in order move to this location and has submitted a letter of support for the petitioner's case. Findings of Fact1) The special exception is consistent with the spirit, purpose and intent of the Warsaw Zoning Ordinance.2) The special exception will not substantially and permanently injure the appropriate use of neighboring property.3) The special exception will substantially serve the public convenience and welfare. Recommendation: There have been questions raised on a national level regarding whether or not a restriction on tattoo parlors is a violation of the business owner's civil liberties. The national trends have been inclined towards easing ordinance restrictions on tattoo parlors. Based on the information provided and the Findings of Fact it is the opinion of the Planning Department that the Board could reasonably provide a positive finding of fact in order to grant approval for the requested Special Exception.

Allen opened the meeting to any person wishing to speak in favor of the petition. Mike Vest, the petitioner, was present to explain the request and answer any questions. He explained he currently works in Plymouth and lives in Pierceton. He has some concerns at his present job and would like to be closer to home and would like to not have to worry about others not conducting themselves in a manner in which he has an issue with. He chose the location in Warsaw because it was a doctor office previously. It has the right set up for his needs. Sage Powell, spoke in

support of Vest. He has helped Vest prepare this location. He went with Vest to speak to the church located nearby. The church did submit a letter of support for Vest and Powell. Powell stated he works in Osceola and wishes to work in Warsaw. He has gone through the program at Serenity House and would like to be near individuals he mentors here. The hours will not be unreasonably late and Vest and Powell will limit the clientele to prevent problems, as he is aware of the stereo type a tattoo parlor brings. They have spoken with the neighbors and will adhere to rules and laws. Powell stated how important it is to be here personally. Steve Johnson, friend of Powell, spoke highly of Powell's character. Jarrett Brown of Team Rubicon, a volunteer organization, also spoke highly of Powell's character and willingness to help others. No other person was present to speak for or against the petition.

Allen closed the meeting to the public. Motion was made by Dalton to approve *2019-08-03-600 E. Winona Ave.-Special Exception-Michael Vest*. Keeven seconded the motion. The motion passed unanimously.

NEW BUSINESS

OTHER MATTERS THAT MAY COME BEFORE THE BOARD

- Next meeting will be September 23, 2019

Keeven made a motion to adjourn the meeting. Smith seconded the motion. The motion carried unanimously.

Tom Allen, President

Kim Arnold, Recording Secretary