Meeting Minutes

Whitestown BZA

Date: 12/4/2014, 2014

Time: 6:30pm

Location: Whitestown Municipal Complex, 6210 S 700 E, Whitestown, IN 46075, (317) 769-6557

Call to Order:

6:41pm

Pledge of Allegiance

Roll Call

- ☑ Greg Semmler, Chairman
- ☑ Matthew Doublestein, Vice-chair
- ☑ Jim Cunningham
- ☑ Mike Roberts
- ☑ Kyle Weathers

- ☑ Staff:
  - Deborah Luzier, Town Planner, GRW
  - John Molitor, PC/BZA Attorney

Approve Agenda

1) **December 4, 2014**

Comments.

Motion to approve by Doublestein. Second by Semmler. Motion passes unanimously.

Minutes

2) **October 2, 2014**

Motion to approve by Semmler. Second by Roberts. Motion passes unanimously.

Public Comment for Items Not on the Agenda

None.

Old Business

3) **2015 Meeting Schedule.** The Commission to consider adoption of the 2015 meeting schedule.

Motion to approve by Semmler. Second by Cunningham. Motion passes unanimously.

4) **Rules and Procedures.** The Commission to review amendments to their Rules and Procedures.
   1. **Molitor –** some of the amendments parallel those that the WPC has also made.

Motion to approve by Roberts. Second by Doublestein. Motion passes unanimously.

New Business – Public Hearing

5) **Docket BZA14-009-DV - Dimensional Variance – Indianapolis Car Exchange sign variance.** The petitioner is requesting approval of a Dimensional Variance for the purpose of Increasing permitted height and area for a new sign. The subject property contains 37 acres and is located at 5161 S Indianapolis Rd. The property is zoned I-1 Light Industry. The petitioner and owner is Indianapolis Car Exchange.
   1. Staff and Public Official's Report - Luzier
   2. Presentation
      a. Mike Andreoli, attorney for the applicant. The property owner, Danny Hockett is present as well. The property has been well-operated and maintained for many years. The property is zoned I-1, which doesn't really fit the current use. We are requesting a variance for height and area to allow the proposed sign. The sign will be brick and stone as shown in the application. There will be no LED illumination or carry any other signage/messages. The sign will be externally illuminated. This will be a high-quality sign compared to others in this area and similar to the Anson signs. The proposed sign parallels the AB-Accommodation Business district standards. Currently, there is no signage along the interstate for this business.
   3. Public Discussion – none.
   4. BZA Discussion
      a. Roberts – Luzier, how does this compare to the Anson Sign?
      b. Luzier – the proposed sign structure is about the same size and mass, but there is only one business on it rather that multiple tenants like Anson's.
      c. Roberts – why 40' tall?
      d. Andreoli – we want visibility along the interstate. The site is extremely large, so the sign would be in proportion to the amount of property/business it represents. We aren't trying to attract customers from the interstate like the truck stop. We wanted to make it significant enough to help locate the

Motion to approve by Cunningham. Second by Doublestein. Motion passes unanimously.

CONDITIONS:

1. *The sign would resemble the image and design submitted.*

6) **Docket BZA14-010-DV - Dimensional Variance – Westwood Landing bufferyard.** The petitioner is requesting approval of a Dimensional Variance for the purpose of decreasing the planting and fence standards for a bufferyard. The subject property contains 94.5 acres and is located in the vicinity of 7250 S Indianapolis Rd for Westwood Landing subdivision. The property is zoned R-3 Medium-density Single-family and Two-family Residential. The petitioner is Timberstone Development and the owner is Wrecks.
   1. Staff and Public Official's Report – Luzier
   2. Presentation – Mike Andreoli, attorney for the petitioner. Introduces Jim VanNess with Westport Homes. The buffer would be on the adjacent site and would have a 5' mound and 6' vinyl-coated chain link fence. The plantings would be in addition to existing significant plantings along the fence row. There is a 15-foot landscaping easement in addition to this bufferyard to protect the property owners who are adjacent to the bufferyard. The required 8' masonry wall would be nearly half-mile long and would be cost prohibitive. In addition, we feel that the wall wouldn't be necessary in this development situation. Wrecks is in the process of remediating the site and will eventually be complete. The existing salvage yard has been completely removed, so there is no longer an attractive nuisance on the site. Also, it will

be a couple of years before this section of the subdivision is developed, which will allow time for remediation to continue and hopefully be completed. There were several emails received in opposition to the petition that came from Eagles Nest residents/property owners that lies to the south. This subdivision is nearly a half-mile away and the bufferyard cannot be seen from this area. A fence is definitely needed to separate future development. The density of this subdivision is well-below what is normally permitted, therefore, the quantity of residents ultimately impacted by the fence is limited.

3. Public Discussion
   i) Kevin Russell, City Council member and a resident of Eagles Nest – many Eagles Nest residents have contacted me in opposition to this variance request. The chain link fence variance should not be granted. The land to the north is still in remediation and there is no indication of how long it will be before it is completed. Expecting a 6' chain link fence to keep kids out of the property to the north is unreasonable. We want neighbors. We expect there to be children in this neighborhood and we do not want them to be hurt by wandering on to the Wrecks site. This variance will also set precedence for future bufferyard variances. Will there be more variances for this site? How will this variance affect property values for this development and neighboring development. This subdivision could be built-out within a few years given the demand for homes in this area. It may be years before the Wrecks property is developed. Until that land is declared safe by IDEM, it could never be used for a park. The buffer should protect the residential instead of protecting the industrial. The fence should be on the north side of the buffer, not the south side of the buffer.
   ii) Samuel Grubs, 7821 Eagles Nest Blvd and Parks Board Member – Russell summarized all of my issues. The masonry wall is definitely needed. Children couldn't climb a masonry wall as easily as a chain link fence.
   iii) Don Tier, 7727 Eagle Crescent – I've lived here about a year. Eagles Nest has set a precedence for quality residential development in this area. They got Concept Plan review by the WPC and now they are changing things already. We do a lot to maintain property in Eagles Nest and we don't think a chain link fence will preserve property values.
   iv) Brandon Cavanaugh, 7720 Eagle Point Circle – I am in opposition to this variance. The developer previously agreed to a masonry wall for the site – why are they changing their minds? Masonry walls are harder to climb and are easier to maintain than a chain link fence. The wall would also be more aesthetic because you can't see through it.
   v) Russell – please ask those who are in support to stand up vs those who are against and see how the decision should be made.
   vi) Semmler – I will not. That does not go along with our Rules and Procedures.
4. Rebuttal
   i) Andreoli – there is no indication that the reduction in the mound height and a chain link fence will have a negative impact on property values in this area, let alone a negative impact on Eagles Nest. There is no significant fence currently around this property, so there is nothing preventing area residents or children from entering the property now. We submitted the environmental information and received a Comfort Letter from IDEM before proceeding with the rezoning of this site for residential development to prove that there is no danger present. There doesn't seem to be a clear understanding of how the bufferyard standards in your ordinance works. A "masonry wall" is only required for certain width bufferyards. If the bufferyard was wider, there would be no fence or wall required. We have proposed a residential-appropriate bufferyard that achieves the necessary separation.

ii) Jim VanNess – we informed everyone that a variance from the northern bufferyard requirements at the beginning. A fence is not required for the 125-foot bufferyard alternative for Bufferyard K. We could provide the 125-foot bufferyard and not even put in a fence, so we could amend our variance request and continue the discussion to next month.

iii) Semmler – I would not be interested in tabling this petition at this time.

5. BZA Discussion

i) Roberts – for clarification, have we received any indication about completing remediation on the property?

ii) Tom O'Gara, council for Wrecks – there is not a definitive time frame. At this point, there is long-term ground water monitoring required by IDEM. We cannot tell you when IDEM will tell us to "stop sampling". Of the 80+ wells on the site, IDEM has already told us to stop sampling on 15 wells. We expect 2-3 more years of regular monitoring and then annual monitoring after that. Anything beyond that is speculative. The vehicles and parts have long ago been removed from the site.

iii) Roberts – will there be other remediation work on site that will involve heavy machinery? The required wall could negate any noise that may be generated.

iv) O'Gara – the well drilling has already occurred on site, so additional work is not expected. Mowing will continue to occur on site to maintain it. Our expectation is that most of the wells in this area will be abandoned before the residential development occurs. There are only two wells that exist in the off-site proposed bufferyard and they have tested clean with IDEM. On the northeast portion of the Wrecks site, there is some ground water remediation currently occurring. IDEM will have to make the final determination about any other work that occurs. Regardless, it would be at the northern end of the Wrecks site. The wells are capped, locked, and sealed, so no one can access them.

v) Roberts – is the location of the fence correct?

vi) Andreoli – the fence is along the property line between the residential property and Wrecks. The bufferyard is on the Wrecks site.

vii) Doublestein – why a 5' tall berm and not a 6-foot berm in the bufferyard?

viii) VanNess – there is not enough fill material from the site to create a 6' tall berm the length of the property.

ix) Doublestein – why the variation in required plantings?

x) VanNess – When the Wrecks site is developed, they may have to supplement this bufferyard as well. There is natural vegetation that we plan to utilize in order to maintain.

xi) Weatherly – did you explore any other types of fencing options?

xii) VanNess – A wood fence would not be very slightly. The chain-link would be almost invisible from the residents' backyards.

xiii) Roberts – would the bufferyard be installed with the adjacent development? Nothing would stop people from earlier sections to cross there.

xiv) Doublestein – there is nothing stopping them now from entering the site.

xv) Semmler – I take issue with your request to alter the planting requirements. I applaud you for trying to utilize the existing vegetation in the fence row. If the property to the north develops, they may clear it out.

xvi) VanNess – we will be preserving the substantial trees and shrubs that exist.

xvii) Andreoli – the bufferyard will also be preserved in a permanent landscape easement, so it cannot be removed or altered by future development.

xviii) Doublestein – are there barriers on the north side of the Wrecks property?

xix) O'Gara – there is a corrugated metal fence between Wrecks and the Traders Point church on the north side. The bulk of the salvage yard activities were on the northern half of the property. The remediation area is almost entirely on the salvage yard site and they're also looking at the ditch beyond the fence line. The western property line has a fence row line with some vegetation. The east property line has a corrugated metal fence along Indianapolis Rd.

xx) Andreoli – we reviewed the remediation details and environmental concerns at the WPC and Council meetings at the time of rezoning.

xxi) O'Gara – as part of the voluntary remediation program with IDEM, Wrecks submits to off-site sampling. This is a standard procedure with IDEM.

xxii) Doublestein – is Wrecks currently responsible for someone who would get injured on their property?

xxiii) O'Gara – that's why we want the fence on the property line so that there is no confusion as to where one lot ends and the next begins. This is part of the agreement that Wrecks required with the developer. The farm fence has served as the barrier while the property was is being used agriculturally.

xxiv) Roberts – could IDEM expand their study area to this site?

xxv) O'Gara – no, that's why IDEM issued their Comfort Letter for this site, which was key for development. Wrecks installs and maintains the security of the wells on the site as required by IDEM. The wells are about 4" in diameter and flush with the ground. When abandoned, the wells are filled and capped off.

xxvi) Molitor – To complete a member's question, in the northwest corner of the site, how far would the chain link fence be extended to prevent the end lot-owner from going around the end of the fence?

xxvii) VanNess – a right-of-way is proposed along the western property line for the extension of a roadway. We can extend it to the property line if desired.

xxviii) Molitor – another question clarification, is the subject ditch on the church property?

xxix) O'Gara – the fence is on the Wrecks property and the ditch is beyond the fence. There is unfenced remediation area near the church, but it's still on the Wrecks property. It is an irregularly shaped property (shows survey drawing to members).

xxx) Cunningham – I would like to address the potential for health hazards. I have been on the site and was an employee in the 80's. Describes Wrecks salvage yard layout. The area between the salvage yard and this site was unused. There was no

xxxi) Doublestein – kids will climb what they will climb. I don't see any difference between masonry vs chain-link when it comes to preventing kids from trespassing. The only issue is a fence or no fence. What is there now is far less restrictive than what is being proposed. I realize there is a purpose for the bufferyard standards, but the points brought up in the emails are not substantiated.

xxxii) Roberts – I take issue with it. Remediation is still occurring and I don't think a chain-link fence is adequate.

xxxiii) Weatherly – will this decision set precedence?

xxxiv) Doublestein – we address each petition on their own merits. Precedence is not important to me.

xxxv) Semmler – I do not want to hold development up because of a fence. There is an option for the developer to widen the bufferyard and not even put in a fence and it would not require our approval. The developer has worked with the town and public throughout the process in order to keep us informed.

xxxvi) Molitor – a board member may request a continuance.

xxxvii) Doublestein – to what end would a continuance achieve?

xxxviii) Semmler – the developer could chooser a different bufferyard option that does not require a fence. Then they wouldn't even need to come to the Board.

xxxix) Roberts – it would be irresponsible to not require a fence.

xl) Andreoli – a fence in this situation makes sense for legal, practical, and aesthetic issues. We need a clear demarcation of the property line and the fence achieves this.

xli) Molitor – a continuance would not achieve anything in this situation with regard to the fence issue.

xlii) Cunningham – could Staff re-read their recommendation.

xliii) Luzier – reads recommendation from Staff Report.

xliv) Andreoli – we would also commit to extended the fence all the way to the property line until such time as the area is needed for a future roadway.

xlv) Doublestein – my job and passion is the protection of children in this community.

xlvi) VanNess – the 50-foot bufferyard is on the Wrecks site in a permanent easement.

xlvii) Weathers – what about a wood fence instead of a chain-link fence? This would buffer any sound much better.

xlviii) VanNess – when a new use comes on to the site, they'll need to supplement the bufferyard if the ordinance requires it. A wood fence would block the landscaping that is being installed. It would close those properties in.

xlix)Andreoli – when the Wrecks property develops, they'll need to install a bufferyard as required anyway.

l) Doublestein – describes fencing around other neighborhoods in the area.

li) VanNess – we could extend the fence an additional distance beyond the lot lines.

lii) Doublestein – can the Rules allow the Town Manager to speak?

liii) Molitor – he is not prevented from speaking

liv) Dax Norton, Town Manager – this is a unique development next to a unique site. From Staff's prospective and Council's perspective a continuance may be in order to allow time for neighbors to discuss the fence issue with the developer. The existing corrugated metal fence is undesirable.

lv) Cavenaugh – we aren't concerned so much with the safety as we are with setting precedence of waiving the requirements. Will the buffer on Wrecks be preserved?

lvi) Molitor – Mr. Chairman, you need to allow the petitioner to respond to the comments.

lvii) Andreoli – we feel that our proposal is best solution for achieving the separation between properties. We know what the environmental studies have shown and what is happening with the property. We have not heard anyone suggest that a child has ever gotten hurt, injured, or poisoned on this site. We cannot and will not install a masonry wall on this site. We understand the issues and concerns and we feel that we have presented a reasonable compromise under your current ordinance.

lviii) VanNess – the bufferyard, whether 50' or 150' is entirely on the Wrecks site.

lix) O'Gara – Wrecks will confirm that they will grant a permanent easement on their property to serve as the bufferyard for this development. Any future owners are bound by this easement.

lx) Andreoli – all of the plans and easements must be reviewed by Staff and Molitor before it can be approved as part of the subdivision process and development of the site.

lxi) Cavanaugh – if this is a permanent easement, why isn't the land sold to the developer?

lxii) Andreoli – some of the land is part of the remediation, so it is ground that cannot be sold. An easement is recorded and cannot be altered. This is a permanent agreement.

lxiii) Semmler – the open discussion is closed, so Board members can resume discussion.

lxiv) Doublestein – the petitioner has the option of utilizing another alternative of the bufferyard if they choose.

lxv) Cunningham – with my historic knowledge of the property, the chance of children being poisoned is nil. I believe that a solid wood fence would hurt the value of the property.

Motion to deny the variance by Semmler. Second by Roberts. Motion passes 3/2 (Doublestein and Cunningham dissenting).

Adjournment

8:40pm

Greg Semmler, President

Deborah Luzier, Secretary