

MINUTES OF THE
JEFFERSONVILLE BOARD OF ZONING APPEALS
May 28, 2024

Call to Order

Chairman Mike McCutcheon calls to order the Board of Zoning Appeals meeting. It is Tuesday, May 28, 2024, it is 5:30 pm in the City Council Chambers, Jeffersonville City Hall, 500 Quartermaster Ct., Jeffersonville, Indiana. The meeting was held in person and streamed live on the City's website and City's Facebook page.

Roll Call

Chairman Mike McCutcheon was present. Other members present were Duard Avery, Dennis Hill, and Kelli Jones. Also present were Planning & Zoning Attorney Mr. Merkley (via Zoom), Planning and Zoning Director Chad Reischl, and Secretary Zachary Giuffre. David Stinson was absent at the time of roll call.

(Secretary's Note: All drawings, letters, photos, etc. presented before the Board of Zoning Appeals on this date can be found in the office of Planning & Zoning.)

Approval of Minutes

Approval of the minutes from April 30, 2024. Mr. Hill made a motion to approve the April 30, 2024 minutes, seconded by Ms. Jones. Roll call vote. Motion passed 4-0.

Approval of Findings of Fact

Approval of the Findings of Fact. Mr. Hill made a motion to adopt the Findings of Fact for the April 30, 2024 docket items, seconded by Ms. Jones. Roll call vote. Motion passed 4-0.

Approval of the Docket

Approval of the Docket.

Mr. McCutcheon stated we are striking BZA-24-23 from the docket as the applicant withdrew their application.

Ms. Jones made a motion to approve the amended docket, seconded by Mr. Hill. Roll call vote. Motion passed 4-0.

Mr. Stinson entered the room at 5:32 PM.

Oath

Chad Reischl administered the oath. When you speak, please state your name and acknowledge you took the oath.

Old Business

None

New Business

BZA-24-24 Development Standards Variance

Harding Enterprise, LLC filed a Development Standards Variance for the property located at 1503 E. 10th Street. The applicant requests a variance from the standards for cumulative signage area. The property is zoned C1 (Commercial – Medium Scale). The docket number is BZA-24-24.

The applicant failed to appear.

Mr. Stinson made a motion to move this docket item to the end of the docket to allow extra time for the applicant to appear, seconded by Ms. Jones. Roll call vote. Motion passed 5-0.

BZA-24-25 Development Standards Variance

Scott Aldridge filed a Development Standards Variance for the property located at 1204 Aldridge Lane. The applicant requests a variance from the standards for minimum residential unit size. The property is zoned M1 (Multi-Family Residential – Small Scale). The docket number is BZA-24-25.

Scott Aldridge, who lives at 1710 Charlestown New Albany Road, stated he did not take the oath.

Chad Reischl administered the oath.

Scott Aldridge stated my father grew up in a log cabin that had less than a 700 square feet footprint. Zach Aldridge wants to put up a home on the lot that is below the 700 square feet minimum requirement. We want to add to this in the future and will apply for permits at the time.

Chad Reischl stated there are pictures of the structure in the staff packet. This is a large wooded property and the proposed structure should not be injurious to the public health or the general welfare of the community.

Open public comment

No comment

Closed public comment

Ms. Jones asked does this have sanitary sewer connections?

Scott Aldridge stated we did pay for the sanitary sewer connection. We have a plumber and electrician working on this project to make the proper connections. The concrete foundation will be redone. The City will inspect this as we go.

Ms. Jones asked is the plan to have this as the primary structure and not to construct any more houses on the property?

Scott Aldridge stated yes this will be the sole house on the property.

Move to findings

The Board of Zoning Appeals of the City of Jeffersonville, having heard the application for variance described above, and all opposition from parties claiming to be adversely affected thereby, does now enter the following findings:

1. The variance of the development standards 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 strict application of the terms of the Zoning Ordinance will result in a practical difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction of economic gain.

Based on the findings described above, the Board does now approve this application. So ordered this 28th of May, 2024.

BZA-24-26 Development Standards Variance

Santiago Martinez filed a Development Standards Variance for the property located at 1210 Sunshine Lane. The applicant requests a variance from the standards for maximum number of driveways. The property is zoned R1 (Single Family Residential – Large Lot). The docket number is BZA-24-26.

Emmanuel Angeles Martinez stated he did not take the oath.

Chad Reischl administered the oath.

Emmanuel Angeles Martinez stated I am Santiago's son. We have too many cars that are in the street. We want to put the driveway in to prevent bothering other neighbors.

Chad Reischl stated the second driveway is unlikely to bother any neighbors or be injurious to the public health; however, Staff is not sure what the practical difficulty is for building a second driveway as there is already a driveway and garage space.

Chad Reischl stated there is a letter from Shelley Ireland in the staff packet.

Planner Shane Shaughnessy stated there was a phone call from an anonymous neighbor who was opposed to the project because the applicant frequently works on cars in front of the home in the existing driveway.

Open public comment

No comment

Closed public comment

Mr. Stinson asked are these your cars or other people's cars?

Emmanuel Angeles Martinez stated no these are our cars. They are our family member's cars.

Ms. Jones asked do you have space to park cars in your garage?

Emmanuel Angeles Martinez stated the cars we have do not fit in the garage.

Ms. Jones stated that it seems like a lot of cars for the property. I am torn on this one because there is already a lot of space to park vehicles.

Mr. McCutcheon stated I am not happy that it goes past the back of the house. Though, if I was a neighbor, I would not want them to block my driveway by parking on the street.

Ms. Jones asked what type of impact will this have on the adjacent neighbor?

Chad Reischl stated they have lot coverage requirements that they appear to be meeting. They can build the driveway up to the property line which could create runoff onto the neighbor's property.

Ms. Jones stated the photo in the report shows that there could be a swale. Just ensure that you leave enough space for drainage to work.

Move to findings

The Board of Zoning Appeals of the City of Jeffersonville, having heard the application for variance described above, and all opposition from parties claiming to be adversely affected thereby, does now enter the following findings:

1. The variance of the development standards 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 strict application of the terms of the Zoning Ordinance will result in a practical difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction of economic gain

Based on the findings described above, the Board does now approve this application. So ordered this 28th of May, 2024.

BZA-24-28 Special Exception

Shane Calkin filed a Special Exception for the property located at 213 Jackson Street. The applicant requests an Exception to allow for a Home Occupation #2 to provide infant and toddler swimming lessons. The property is zoned R1 (Single Family Residential – Large Scale). The docket number is BZA-24-28.

Shane Calkin, who lives at 213 Jackson St., stated he took the oath. I allow an ISR trainer to teach toddlers to learn how to swim and float. She is located in New Albany and has limited time to teach kids. I have an indoor pool on the property that is contained. The trainer wanted to do training in the pool during the winter months. A neighbor complained of increased traffic and turning around in the cul-de-sac. There are 4 kids per hour coming in. No one is parking in the neighbor's yard.

Chad Reischl stated Staff does not have an issue with the special exception request. This is a temporary use and is only for a few months out of the year.

Shane Calkin stated this operates from February to the beginning of June. I also have a petition of about 22 signatures from community members advocating to allow this use.

Chad Reischl stated there is one letter from Bob and Bea Caudill and one letter from Bill and Cindy Keeny in support of the project.

Open public comment

No comment

Closed public comment

Mr. Hill stated is your property properly fenced?

Chad Reischl stated the pool is indoors.

Ms. Jones stated as an intermittent swim instructor, I applaud what you are doing. How many kids are in the class at one time?

Shane Calkin stated there is one instructor and one child in the pool at a time. We are looking to help 100-200 families per year.

Move to findings

The Board of Zoning Appeals of the City of Jeffersonville, having heard the application for variance described above, and all opposition from parties claiming to be adversely affected thereby, does now enter the following findings:

1. The special exception will not be injurious to the public health, safety, moral, and general welfare of the community; and
2. The requirements and development standards for the requested use prescribed by this Ordinance will be met; and
3. Granting the special exception will not subvert the general purposes of the Zoning Ordinance and will not permanently injure other property and uses in the same district; and
4. The proposed use will be consistent with the character of the district therein, the spirit and intent of the Zoning Ordinance, and the Jeffersonville Comprehensive Plan

Based on the findings described above, the Board does now approve this application. So ordered this 28th of May, 2024.

BZA-24-29 Development Standards Variance

Robert Samuel Riley filed a Development Standards Variance for the property located at 2525 E. 10th Street. The applicant requests a variance from the standards for maximum sign height. The property is zoned C2 (Commercial – Large Scale). The docket number is BZA-24-29.

Nathan Grimes, with Renaissance Design Build, stated he took the oath. We are the engineers of the project. We are seeking this variance due to the high cost of bringing the sign into compliance. We will be removing the electronic message board. We are converting this property from a car wash to a dentist office.

Chad Reischl stated we have had a number of cases like this before. I question whether this sign could have been modified; however, I do not think that the sign is detrimental to the community as the sign has been standing for years in that location.

Mr. McCutcheon asked is the current sign within the standards?

Chad Reischl stated the current sign is 12ft tall.

Nathan Grimes stated we are simply reskinning the sign.

Open public comment

No comment

Closed public comment

Ms. Jones stated, for the record, Dr. Thornton is my dentist.

Move to findings

The Board of Zoning Appeals of the City of Jeffersonville, having heard the application for variance described above, and all opposition from parties claiming to be adversely affected thereby, does now enter the following findings:

1. The variance of the development standards 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 strict application of the terms of the Zoning Ordinance will result in a practical difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction of economic gain

Based on the findings described above, the Board does now approve this application. So ordered this 28th of May, 2024.

BZA-24-30 Special Exception

The City of Jeffersonville Planning and Zoning Department filed a Special Exception for the property located at 314 E. Charlestown Avenue. The applicant requests a hearing regarding the permissibility of an Accessory Dwelling Unit on the property. The property is zoned R3 (Single Family Residential – Small Scale). The docket number is BZA-24-30.

Chad Reischl stated the owner is here as well. The City of Jeffersonville got an application to remodel an existing structure at the location. Our building code official was familiar with the property and stated that this had been a house for a long time and granted permits for construction. After permits were given for construction, a neighboring property owner contacted my office. It was my understanding that, unless one can prove that this structure was continuously inhabited and did not have a lapse of someone living in it for more than 6 months that it would be considered a legal nonconforming structure in the community. If not, then a special exception would be required. The neighbor was suggesting that this property had been

uninhabited for a long time. I have spoken with the owner who stated otherwise and has presented me with some information which is in your packet. There is a lease document and a work order. There are two letters from adjoining property owners saying that this house has been continuously inhabited. Our job here tonight is not to have an argument over the special exception, but to hear from the owner and any parties who are adjacent to this property as to whether this structure is grandfathered in as an accessory dwelling unit. If we could, I would like to hear from the owner of the property and open up for a public hearing to make that determination.

Chris Nolan stated he took the oath. My family built the house 100 years ago. It has always been a house and a back house. When my great grandmother passed away, my father purchased it and, over time, we rented the front house and the back house together. It may not have always looked the best or the prettiest; however, it has always been rented. We got the necessary permits to remodel the house. I will give you all photos that show the siding and asphalt improvements for the property. In October of last year, the tenant complained of a leaky roof, and I put a new roof on it. Then when he moved out at the beginning of the year. That is when we did the rest of the remodel. I was surprised and confused as to why I had to come here today as I have provided everything that has been asked of me but I am glad I am here. Chad needed information about the lease and information from the neighbors that confirm that I rent the house and I supplied that. The drain lines underneath the house are 70 years old.

Chad Reischl stated I have had long calls with Kenneth Morris, a next door neighbor, who is in opposition.

Mr. McCutcheon stated there are letters from Brian Couch and Chuck Moore in our staff packet.

Chad Reischl stated yes, those were provided by the owner.

Open public comment

Donna Reed, City Council District 5 Representative, stated she took the oath. I have packets for the council and for the record. We support rentals in our area; however, Pinnacle Properties have been a blight upon our City and our district for several years. In the packets, you will see Google Reviews with complaints about roach infestations, mold, people being evicted, etc. I love a home that has been in someone's family for 100 years; however, a shed in the back without proper sewage should not be considered a rental property and should not be in our community. We have to watch out for our kids and our families. I kept it under 3 minutes.

Lorraine Matthews stated she took the oath. I live across the street from this really horrible home. He says that this is a family home. I have been in front of the City Commission on this house last year. This has been the dirt bag house for 7 years. There has never been anyone living in the shed on the back of the property; there was a huge hole in the side of the shed for many years. I know everybody on my street; if there was someone living in a shed, I would know. I asked the people who were renting the house what was going on with the shed and no one gave the tenants notice that they were redoing the shed. The owners threw out their grill, bicycles, and their lawn mower. They had an \$800 water bill as there was a water leak under his historical grandmother's house. He never paid them for the water and never fixed that water. He did not care that the tenant had to pay the \$800 water bill. Do not tell me this is a family treasure as this has been the dirt bag house for 7 long years, and you should be ashamed of yourself.

Joy Morris, who lives at 312 E. Charlestown Avenue, stated we have been there for 54 years. I knew Francis well as he was the original owner. The problem that I have is that there has not been anyone in the house as long as I can remember. At one point, a window was installed in

the front of the shed; however, I do not believe it was livable at that point. Whoever lived at the house at some point, they were letting someone stay in the back and they would come back to the big house to take a bath or do laundry or whatever. I have never seen people coming and going to the house from the back of the lot. They have improved the exterior and I am not against that. I just want to make sure that the property owners stay within what is required and to have inspectors ensure that everything was done right. This won't affect us unless they go into our sewer line. There were roaches in the big house after someone moved out and we had to spend a lot of money to have our house sprayed to get rid of the roaches. This is the second time that this has happened. Perhaps, people need to be screened better before they move in.

Lorraine Matthews stated I had to call Mary in Code Enforcement who has a secret phone number that nobody else has. None of the other renters can have that phone number to get their help or to get their property serviced.

Todd Brown, who lives at 315 E. Charlestown Avenue, stated I have not taken the oath.

Chad Reischl administered the oath.

Todd Brown stated I have lived on the street since 2002. I walk my dog back there and I coach baseball back there. This is simply a shed and it has always been a shed. I am not sure how they could turn this into living quarters. The shed is very small. I do not believe this shed ever had electric before now. The front property has been rented out; however, the shed has not been rented.

Closed public comment

Chris Nolan stated Lorraine Matthews, I have never seen her before in my life. The only thing I know about her is that she posted in the Clarksville, Indiana Facebook page, stating she needed letters to show how terrible our company is. She was soliciting people to paint a negative picture of us. I do not even know who she is. All of that soliciting is a bunch of people that owed me money or were evicted. As far as Ms. Reed's reviews, how many people move out of an apartment and leave you a good review? Unfortunately, the only ones who leave reviews are typically the ones I evict. You will see that every single one of them owe me money. I cannot get the reviews taken down because of freedom of speech. I have done everything I was supposed to do. Mr. Morris showed the plumbing company, Roto-Rooter, where to dig. We were not aware that this was a Siamese pipe. Mr. Morris called the City and stated we were illegally trying to tie into the pipe. It is not a shed; it is a house. It is not up for negotiation on that. You cannot take the sewer pipes from underneath the house or the electric or plumbing.

Chad Reischl stated I also have Linda Mills here who has worked in Code Enforcement for many years.

Mr. McCutcheon stated I have no clue... Are there two residences on the property?

Ms. Jones asked does this have a bathroom, kitchen, and bedroom?

Chad Reischl stated I have not been in the structure.

Mr. Merkley stated there are two issues

1. Has the ADU been grandfathered in? We had inconclusive evidence as to whether or not it is grandfathered in. Obviously, it is not currently occupied as they are doing work on it. If it has not been occupied in the past 6 months continuously, it will lose its grandfather status.

2. If it loses its grandfather status, the next step would be whether or not to grant the ADU variance in this district.

Mr. McCutcheon asked how do we determine that?

Mr. Merkley stated I am going to ask the applicant and remind everyone that they are under oath. When is the last time that the property was occupied by a human?

Chris Nolan stated the most recent occupant moved out in January of 2024. Then we started the process of remodeling.

Mr. Merkley stated so it is your testimony that the building was occupied as of January 1, 2024 that the building was occupied.

Chris Nolan stated yes, that is when the lease ended and he moved out.

Mr. Merkley stated that is not my question. My question is your testimony is that the building was occupied as of January 1, 2024?

Chris Nolan stated yes, I had a written lease until January 1st of 2024. It is on the lease and signed by the tenant.

Mr. Merkley stated that is where we are getting controversy from neighbors who are saying otherwise. If it has not lost its grandfather status, then he does not need the variance. If he has lost its grandfather status, then he needs the variance before moving forward with the project. Is that correct, Chad?

Chad Reischl stated yes that is correct. If it does not have a grandfather status, he will need a special exception to proceed.

Ms. Jones stated that is something he will have to apply for and something that we are not talking about today. All we are talking about is whether this use is nonconforming or not.

Chad Reischl stated yes, the applicant has not entered a special exception application. I would need a formal application.

Mr. McCutcheon stated it is my opinion only that anyone could have filled out the first page with information on the Pinnacle Properties lease agreement. In my opinion only, it appears that the signatures on the last page look like they could have been copy and pasted on the paper.

Chris Nolan stated there are multiple neighbors saying it is a house. I do not have any idea why the neighbors that say this is a house than the neighbors who are saying it is not a house.

Mr. Merkley stated that is why the BZA is a quasi-judicial body. You are to hear the evidence and testimony and make that decision.

Mr. McCutcheon asked what is considered the back house and what is considered the front house?

Chris Nolan stated it is two separate houses?

Chad Reischl stated that the back house is on the alley.

Chris Nolan stated it is not an alley.

Chad Reischl stated you are correct it is actually a street.

Mr. Avery stated we have representation that this was leased and that the property is in repair. There are two letters from property owners nearby that claim the property has always been rented.

Chad Reischl stated one of the letters provided to you is also from a landlord. One could question whether they actually know since they are only renting the property.

Mr. Avery asked could there be a caveat that this could be used as a rental property with certain requirements and a certificate of bug inspection?

Ms. Jones stated those conditions would have to go along with a special exception application; however, today we are determining whether the property has lost its nonconforming rights.

Mr. Avery stated according to the testimony, it is occupied and is intended to be brought up to established standards. I believe we also need to require a bug referendum. Are these crawling into other people's houses? Do we have lie detector tests?

Ms. Jones stated Chad, you indicate that the property lacks the sewer tie in. The applicant states that it has the tie in. Is the tie in through the main house?

Chris Nolan stated the front house, Mr. Morris's house, and the back-house all tie in to the Siamese line. Roto-Rooter came out and started digging. We did not know where the line was. Mr. Morris's showed us the line location; however, we did not know it was a Siamese line. We thought it was a private line and I did not know we could put a fitting on it. When we found the line, Mr. Morris called the City and stated we were illegally doing work on the line; however, we did not even know the line was there.

Ms. Jones asked is there a full bathroom in the building?

Chris Nolan stated yes, we are remodeling now; however, it had a toilet, bathroom, and kitchen. The plumbing is still under the house. It is an old cast iron pipe. Anything new would be a PVC. There has always been a line there. Code Enforcement stated we could not tie into the line.

Mr. Avery asked would you have to make a new tap into the line off the street or will it be repaired as the old ones deteriorate?

Chris Nolan stated there is an old clay pipe. There is an existing line underneath the house. The Building Commissioner stated I could use the existing line and do not need a permit for that part.

Ms. Jones stated Chad, you said there have been years of code enforcement issues. Is there anything in the Code Enforcement records that would indicate that this was used as a residence?

Mr. McCutcheon asked can we call Linda up?

Chad Reischl stated sure.

Linda Mills stated I took the oath and I work for the City. I live at 1512 Northaven Drive.

Mr. McCutcheon asked are there any documents that show that the structure has been unoccupied for 6 months?

Linda Mills stated every time I went to the house, it was never occupied.

Mr. McCutcheon asked can you give us some type of timeline?

Linda Mills stated I started back in 2014 and I did not go last year. We did have to send letters to the property for tall grass as there was no tenant in the big house. That was in June or July of last year.

Chad Reischl stated we have pretty substantial pictures from mid-2016/2017 where the house was boarded up; however, we have pictures later showing it not boarded up. It is possible at some point in time in the mid-2010s that there was no one living there, but maybe it got fixed up. It is very hard to tell.

Mr. McCutcheon asked so the City has not followed this close enough in a timeline to say that in the last 6 months there has been no one occupying the structure?

Chad Reischl stated we just know that there has been a long history on this property...

Mr. McCutcheon stated I understand that. And Linda's position has changed over time to where she was not out in the field as often. Though she can confirm for us that, for a certain period of time, there are documents and photographs that would allude to the possibility that there was no one occupying the property.

Linda Mills stated yes, that is correct.

Mr. Merkley stated I do not have a copy of the lease. What are the dates of the lease? Who was the tenant?

Ms. Jones stated the lease shows occupation from 7/01/23 to 1/01/24. Shawn Kennedy was the tenant. There is a DocuSign signature. Without having the time to vet whether the document is legit...

Mr. Merkley stated do we have any proof that it was a DocuSign signature? Under State law, there is a certain requirement for those to be good. You cannot just type in the name and make it a DocuSign. There is a procedure that you have to go through to make sure that the signature is true.

Ms. Jones stated there is a DocuSign envelope ID on the top of the document, but without having the time to vet whether this ID matches the DocuSign signature...

Mr. McCutcheon stated there are questions for me because it is inappropriately sized, the first page is missing the year on the top...

Mr. Merkley stated that one way to approach this is to okay this if Mr. Kennedy signs this under oath that this lease is legit.

Alex Gadis, representing Pfifer-Pulliam Law Firm, stated I think the most important facts to key in on are the dates of that lease. Per the code enforcement officer's testimony, she stated the last time she was there was in June or July. It makes perfect sense that the person would not have encountered that tenant as the lease started at the end of July. If you fast forward to 6 months, that puts us into July. We are well within the 6 months right now. The people in the back of the room have some disdain and bias against my client's company. We have the testimony that he had a tenant in there and that it had been used as a house for over 100 years with old clay pipes. This is a legal nonconforming use.

Mr. McCutcheon asked is there any document in the past, as a code enforcement officer that shows that, in checking on the property, that it may have exceeded the 6 months as discussed?

Linda Mills stated yes from 2014 to 2018 and 2019, I went by there numerous times and I never saw a tenant.

Mr. McCutcheon asked, even if we are talking about this 6 month period, what does it mean if it was unoccupied 2 years ago for longer than 6 months?

Ms. Jones stated if it was unoccupied at that time, they would lose their rights; they would lose the nonconformity.

Alex Gadis stated the current code was not enacted until 2021. The current prohibitions on ADUs did not exist until the UDO was enacted in 2021. So he could have gone 99 years up until the UDO was enacted without a tenant and it would not have extinguished those rights.

Mr. McCutcheon asked Mr. Merkley, do you agree with that?

Mr. Merkley stated but at the time our existing ordinance was adopted in 2021, I think it is undisputed, based on the testimony of Ms. Mills, that it was unoccupied.

Alex Gadis stated I do not think that is clear.

Mr. Merkley stated what is clear is that you have only produced a lease from 2023 until January of 2024. One could argue you lost your grandfather clause prior to that.

Alex Gadis stated the applicant produced what was asked for.

Mr. McCutcheon stated there are some unsettledness in some of the documents produced. Perhaps the client needs more time to show some locked-in consistency. We can move forward and vote on this or you can ask to table this to allow ample time to acquire proof. I would like to see pictures that prove this use existed.

Ms. Jones stated the burden is on you all to prove that this has been continuously occupied since the date that the ordinance took effect until whatever the date is less than 6 months from now and I do not feel that we have that in front of us right now.

Alex Gadis asked if we request to table this, could that impact his 6 month requirement?

Mr. McCutcheon stated we would assume that this is under litigation. We would be allotted to take that into understanding.

Ms. Jones asked Les, would you agree that if we get to the 6 months from the January 1st, 2024 date that they could still continue the grandfather clause because we are currently reviewing the matter?

Mr. Merkley stated the burden is on them to prove that, at the time that we adopted that Ordinance, that the structure was occupied. I think it is a legitimate request that Council has made that, if this is going to be tabled that that will not count against them for the 6 month ruling; however, that is the Board's decision.

Mr. Avery stated Les, this seems like it is very similar to a number of other units that we have approved in the City. Those sewer lines have deteriorated in the City. If they are in the process of bringing this up to standard, they should have the City review this to ensure it is up to certain requirements.

Mr. Merkley stated regardless of whether he is grandfathered in or not, he will have to meet those requirements. The issue before the Board is whether or not this property is grandfathered in.

Mr. Avery asked what happens if we make no decision on the grandfathered in part, but we allow the property owner to continue to upgrade the property, putting the sewer...

Mr. Merkley stated I would be leery of doing that. If you do that, and you say in 30 days that the property is not grandfathered in, now he has spent money on a project...

Ms. Jones stated that would be a risk for him. I think the stop work order has to stand until this is resolved.

Mr. Merkley stated he could just apply for a variance.

Chad Reischl stated yes, technically, he could just apply for the special exception.

Alex Gadis stated as far as the upgrades are concerned, they are effectively almost done. The electrical is almost done.

Mr. McCutcheon stated there are no pictures; there is only paperwork. How do you expect me to vote with two sides of the table with no pictures? All we have today is paperwork and your words against someone else's.

Ms. Jones stated this paperwork does not even cover the entire window.

Chris Nolan stated I brought what Chad Reischl told me to bring.

Mr. McCutcheon stated this is not Chad's fault; he did not know how the Board would deliberate. Do you need time to provide further documentation or should we vote?

Mr. Stinson asked, if this is voted down, can they apply for a special exception?

Chad Reischl stated if you determine that there is not a legal nonconforming issue, he can come back and request a special exception immediately.

Mr. Merkley stated Chris, the question is whether this is an ADU not whether there is a house there which is not permitted under our code. Your testimony is that this has always been an ADU.

Mr. Avery stated we are only voting if it is a Special Exception or not.

Ms. Jones stated no, that is not what we are voting on. We are only voting on whether there is legal nonconformity.

Alex Gadis stated my client would like the board to vote on whether this property is a legal nonconforming use.

Kelli Jones stated what we have to do is say whether or not we believe that this has been used as an accessory dwelling unit from July of 2021 until January 1, 2024. If we believe that from July 2021 to January 1 2024, there was a continuous tenant with no gaps 6 months or greater, then we would agree that it has a legal nonconformity. If we feel that we do not have enough evidence to prove that there was not a gap in that timeframe of 6 months, then we cannot give it legal nonconforming use.

Mr. Merkley stated this will be a simple motion. The easiest thing to do would be to make a motion that this is a legal nonconforming use and then either vote yes or no. Would you not agree, Chad?

Chad Reischl stated yes, I usually like motions in the affirmative. You would make a motion that this is a legal nonconforming status, and, if the motion fails, it is not.

Mr. Merkley stated if you vote yes, he can move forward without a variance. If you vote no, then he would have to apply for a variance.

Mr. McCutcheon asked do we need to enter the documentation given to us into the record or is this mostly presentation material?

Chad Reischl stated I think that is mostly presentation material.

Ms. Jones stated Ms. Reed provided a copy for the file, so it will be in the record.

Mr. Merkley stated I would recommend that, at the next meeting, the Board adopt specific written findings.

Mr. Stinson asked how do I make the motion?

Chad Reischl stated the motion would probably be "I make a motion that the property 314 E. Charlestown Avenue is and has legal nonconforming status."

Mr. Stinson made a motion that the property at 314 E. Charlestown Avenue is a conforming residence, seconded by Mr. Avery. Roll call vote. 4-1 (Jones). Motion passed.

Chad Reischl stated motion carries; you may continue with construction.

BZA-24-24 Development Standards Variance

Harding Enterprise, LLC filed a Development Standards Variance for the property located at 1503 E. 10th Street. The applicant requests a variance from the standards for cumulative signage area. The property is zoned C1 (Commercial – Medium Scale). The docket number is BZA-24-24.

The applicant failed to appear.

Chad Reischl stated you could choose to move forward with this as it is a fairly easy issue. There is a small building on E. 10th Street. They are asking to exceed the total amount of signage area by 34 square feet.

Ms. Jones asked is this for the building signage?

Chad Reischl stated this is for the total area of signage. We are starting to see smaller restaurants post-COVID-19 which is where this request originates from as the signage allowance is based on the building size.

Open public comment

No comment

Closed public comment

Move to findings

The Board of Zoning Appeals of the City of Jeffersonville, having heard the application for variance described above, and all opposition from parties claiming to be adversely affected thereby, does now enter the following findings:

1. The variance of the development standards 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 strict application of the terms of the Zoning Ordinance will result in a practical difficulty. This situation shall not be self-imposed, nor be based on a perceived reduction of or restriction of economic gain

Based on the findings described above, the Board does now approve this application. So ordered this 28th of May, 2024.

Reports from Director and Staff

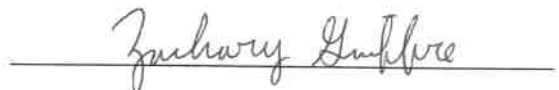
None

Adjournment

There being no further business to come before the Board of Zoning Appeals, the meeting was adjourned at 7:07 pm.



Mike McCutcheon, Chair



Submitted by: Zachary Giuffre, Secretary