

BOARD OF ZONING APPEALS
September 27, 2021
MEETING

ROLL CALL

The meeting was called to order at 7:00 p.m. and the assemblage was invited to stand and recite the Pledge of Allegiance.

Members Present:

Chairman Nick Nochevich, Vice Chairman Jeremy Taylor, John Marshall, Dick Sauerman, Daniel Rohaley

Members Absent: None

Staff Present:

Commission Attorney Joe Irak, Executive Secretary Anthony Schlueter, Assistant Planner Grace Roman, Recording Secretary Jenni Pause

APPROVAL OF MINUTES

Chairman Nick Nochevich asked if there are any corrections, deletions, or modifications to the August 23, 2021, meeting minutes. Dick Sauerman stated there is a small correction involving the need for capitalization to the word View. Sauerman motioned to approve minutes with correction. John Marshall seconded the motion. With 5 Ayes, 0 Nays, and 0 Abstentions, the minutes were approved.

OLD BUSINESS

None

NEW BUSINESS

21-21 Michael Graniczny Petitioner/Owner

Request: Variance from Development Standards

Purpose: Allow a lot without its entire frontage abutting a dedicated public street in an I-1 Industrial District

Location: 1412 E. North Street

Michael Graniczny, of Rock Hard Concrete, 1412 E. North St. and Ryan Marovich, of DVG, 1155 Troutwine, came before the Board. Marovich provided an overview of the petition. Marovich reported on the Finding of Facts.

Executive Secretary Anthony Schlueter reported on the location and surrounding properties. Schlueter reported that the parcel is a meets and bounds description. Schlueter reported on what is required by ordinance. Schlueter reported the Planning Dept. feels creating this flagship type of lot would have an adverse reaction on the use and value of the adjacent properties as well as causing traffic safety issues along North St. Schlueter recommended denial of the petition

Rohaley asked the petitioner if he checked with the city before he bought the property to see if there was anything needed for this parcel. Graniczny stated Doug from DVG reached out to Schlueter and Jim from Red Key claimed he sat down with Schlueter and went over the plan to see if the property was buildable before he listed the property. Graniczny stated Doug and Jim stated there would be no issues with the property when Graniczny went to purchase the property. Rohaley asked the petitioner if he would have bought the property had he known he would not be able to build on it. Graniczny stated he would not have. Rohaley asked Graniczny to verify that he just plans to put a shop back on the property. Graniczny stated he plans to put a shop and a storage yard for his trucks and materials.

Sauerman stated he knows North St. is a busy road. Sauerman asked Schlueter to verify that the entire width of the lot should have frontage. Schlueter confirmed. Sauerman asked Schlueter if there is a minimum amount that they would allow. Schlueter stated there is not a minimum amount, that is why a petitioner goes for a variance is to see if there something reasonable. Sauerman stated the petitioner doing his due diligence before he purchased the property is better than asking for forgiveness later

Marshall asked Schlueter if he told them the lot was buildable. Schlueter stated he is trying to recall the discussion that was had regarding this property. Schlueter stated looking at the property now it does not appear to be buildable, if he told them it was buildable, maybe he did not see all the issues. Schlueter stated he is not sure. Marshall stated he is aware of Graniczny's business, and he appears to be a good businessman. Marshall asked the petitioner how many employees and trucks he has. Graniczny stated they have 17 employees and 7 trucks. Graniczny stated most of the trucks would be leaving the yard between 7-8am and returning 4-5pm. Graniczny stated they would have some deliveries of materials. Marshall asked how wide the drive would be. Marovich stated the frontage will be 40' and the drive will be a standard 24' wide.

Marshall asked Marovich to verify that it will be a two-lane road. Marovich confirmed. Marshall asked how far the proposed entrance is to the stop light at Bulldog Park. Marovich stated probably at least 500'. Marshall stated he worries about the traffic on North St. and it getting backed up at the light. Marshall stated he worries about the weekends when they have tournaments. Graniczny stated Saturdays are not normal working days for his company. Marshall asked if the petitioner has spoke to his neighbors. Graniczny stated he spoke with the neighbor to the directly south and agreed to put up a berm and plant some trees to give that neighbor some privacy. Marshall stated traffic is a concern for him.

Taylor asked about the history of the property and how this lot has come about with only 40' of frontage. Graniczny detailed what he has heard from the real estate agent about the property and how it came about. Staff, Marovich and Graniczny discussed the history of the property. Schlueter stated this parcel was separated from the residence and created a meets and bounds parcel but did not create a legal lot on record. Taylor asked Rohaley how that would work for title. Rohaley detailed how it would work and gave examples of similar properties. Taylor asked the petitioner if he has looked into utilizing the public works road at all. Graniczny stated Jim from Red Key had reached out to the property owner to the east and he was not interested in selling or working with the petitioner. Graniczny stated they spoke with the tattoo shop as well and they are not interested either. Taylor asked the petitioner if they were to move forward what kind of screening does he plan to put up between the home, the road, and the tattoo parlor. Graniczny stated between the property and the home he already agreed to a berm and landscaping. Marovich stated that is where the pond would be located because it is the low spot. Marovich stated due to the I-1 zoning there would be a robust screening required between the property and any residences. Taylor stated he struggles with creating another cut on this road.

Rohaley asked the petitioner if he would be willing to help with a deceleration lane along that section of North St. Graniczny stated he would be ok with that.

Marshall stated he respects Schlueter's opinion and takes it seriously and knows he does not recommend denial very often. Marshall asked if besides the traffic if there are any other concerns. Schlueter stated if they create this scenario, he feels it is overlooking the residential properties. Schlueter stated someone went through a meets and bounds description to parcel this property off as opposed to going through a subdivision which would have been the proper procedure. Schlueter stated he feels it is unfair to the surrounding residents. Graniczny stated the homeowner in front of the property purchased the home after Graniczny purchased the property and was aware of what his plans were.

Sauerman stated he has not heard a definitive no and feels the petitioner was given the impression before buying the property that they would be able to build on it. Sauerman stated there is a sense of fairness here. Sauerman stated the petitioner reached out for direction and based on what he heard acted on it, invested in something that they are now going to tell him no he can't build on it, it is a land locked parcel. Sauerman stated he has a real issue with that.

Rohaley agreed with Sauerman that they must try to be reasonable because the petitioner did what he was supposed to. Rohaley stated the petitioner should not be stuck with a piece of property he cannot use.

Taylor stated they regularly get landowners before the Board on behalf of purchasers where if the variance is not approved the purchase of the land does not go through. Taylor asked why that policy wasn't followed for this property. Taylor stated everything regarding this is word of mouth by the realtor selling the property and the landowner. Graniczny asked if that would have satisfied. Taylor stated he feels there would have been the same issues but if the approval had not gone through Graniczny would have probably not purchased the property. Attorney Irak asked the Petitioner if he purchased the property already or if the deal is contingent upon the variance approval. Graniczny stated he already purchased the property. Taylor stated technically the due diligence was not thorough because they did not come before the Board for the approval. Marovich asked what would have happened if the petitioner would have previously tried to get the variance and it was not approved so the sale did not go through, how else would this parcel have been able to be used. Marovich stated it seems this parcel could end up being undevelopable.

Marovich and Schlueter discussed the division of the property and the history of the parcel.

Graniczny asked Taylor if he spoke to someone with the town and were not told you needed to go before the Board for a variance and were told what you want to do sounds like it would work, would he have proceeded down the path. Taylor stated he does not know the position the petitioner was in at the time, but he cannot tell him yes or no. Taylor stated with the experience he has had with the Board, his due diligence would have been to put it forth under the current owner before he purchased the property. Taylor stated the Board has seen many petitions that have been approved they have never come to fruition, but they have been approved so the lots can be sold. Taylor stated this is a tough situation. Taylor stated there have been very few times that staff has recommended denial. Graniczny stated had he been advised to do what Taylor is recommending then he would have done that. Schlueter stated his biggest mistake is that he should have made that recommendation that they go through all city approvals before purchasing the property.

Nochevich opened the public portion of the meeting. With no public coming forward, Nochevich closed the public portion of the meeting.

Taylor asked if it would help to defer the petition to allow time for some of the lingering information on the history of the property and the discussions that were had. Nochevich stated he does not know if that will help due to the concerns associated with this property and the cut on North St. Nochevich asked the petitioner if there is any viable possibility of tapping into the property to the side or rear to tap into existing roads.

Marovich stated he spoke to the neighbor to the east who was not willing to work with him and Madelyn Estates is to the West so that is not a possibility. Graniczny stated they looked into the two possibilities, and neither would work with them. Nochevich asked Graniczny to verify that he investigated purchasing adjacent property for just a road and was denied the possibility. Graniczny confirmed.

Sauerman stated he is predisposed to coming up with a solution. Sauerman stated he feels they need to look into this because there was miscommunication with this property. Graniczny stated he has a random thought that he could do that does not solve the issues today but could down the road. Graniczny stated he could leave a stub in the rear on the east of the property if that they could tie into a road if the land ever comes available and would give up the access on North St.

Rohaley stated in a sense of fairness to the petitioner he motioned to approve Petition #21-21. Rohaley stated he feels the petitioner did everything he was supposed to do, and it would be tough on the Board to say no you cannot have any access now that he purchased the property. Sauerman seconded the motion. Nochevich asked Rohaley if he is adding the agreement from the petitioner to work on a deceleration lane. Rohaley stated yes, the petitioner agreed to that so it would be added to the motion. Irak asked if they have the right of way to do that. Schlueter stated he does not know. Irak stated that would need to be looked at. Irak asked Schlueter if there is an Engineering distance those have to be put in. Rohaley stated Engineering would have to set the distance. Marovich stated he is unsure of the right of way there on North St. Schlueter stated he would like to see this come back in 30 days to allow time to look at everything. Marshall asked if they would consider a residential house for the property since it is mostly surrounded by residential properties. Marovich stated he feels a subdivision would create more traffic. The Board, Staff and petitioners discussed different options for the property and access. Graniczny asked what the difference between using one of the existing access roads or putting in a road. Schlueter stated adding another cut on to North St. is the issue. Sauerman stated he is confused with what they have right now because he seconded a motion that did not include a deceleration lane and now, they are talking about a deceleration lane. Sauerman asked what the motion is. Nochevich stated the petitioner agreed to the deceleration lane that is part of the motion that is on the table which has been seconded. Nochevich asked if there are any further motions or discussions. Schlueter reported he would like to see the motion defeated and be brought back in 30 days so they can try to work with the petitioner to come up with something that works for everyone. Rohaley stated he thought the petitioner had already reached out to the adjacent properties. Nochevich stated they may change their mind if they find out part of their property is going to be taken up with a deceleration lane. Taylor stated if they defeat the motion, it cannot come back for a year but if they defer it, it will allow time to look into all this.

Sauerman asked Graniczny if he is moving his entire office from St. John. Graniczny stated he is only moving the concrete operations.

Marovich detailed what he thinks they have for right of way on North St. and stated he does not think they would have to take from any property owner down to the east.

Nochevich stated there is a motion on the table and asked if there is any further discussion. Nochevich asked Irak if they could defer the petition for 30 days. Irak stated with a motion and a second on the table, the motion would need to be withdrawn and a new motion to defer would need to be made. Irak stated the risk is the current motion is a motion to approve and if it gets defeated then it may not serve the purpose of trying to resolve this. Marovich asked for clarification on if the current motion gets defeated does that kick the petition to not being able to be heard for a year. Schlueter stated they would need to come back with something different. Marovich asked if a deceleration lane would qualify as something different. Schlueter stated he believes it would.

Rohaley withdrew his motion. Sauerman withdrew his second.
Rohaley motioned to defer Petition #21-21 for 30 days. Taylor seconded the motion. With a roll call vote of 5Ayes, 0 Nays, and 0 Abstentions Petition #21-21 was deferred for 30 days.

21-22 Carl & Kristen Huizenga, Petitioner/Owner

Request: Variance from Development Standards

Purpose: Allow a garage to encroach the side setback in an R-3 Residential District

Location: 515 East Joliet Street

Carl & Kristen Huizenga came before the Board and provided an overview of the petition. Kristen & Carl reported on the Finding of Facts. Kristen stated they did ask the Historic Preservation Commission if they would be required to get approval from them and they said they would not since the garage would not be visible to the street. Kristen stated there are several similar garages in their neighborhood.

Schlueter reported on the location and proposed garage. Schlueter reported the proposed garage is consistent with other neighboring garages nor will it have a negative effect on neighboring properties. Schlueter reported the Planning Dept. does not have any issues with this petition.

Taylor stated he drove through the area and this pretty consistent with other garages in the area. Taylor asked Schlueter if there is an ordinance that allows for an average for a setback. Schlueter explained how it works to Taylor and the board. Schlueter stated these types of rules apply to the older neighborhoods like this one.

Marshall stated he drove through the area as well and all the neighbors have similar garages and setbacks. Marshall stated he does not have any issues with this.

Sauerman stated he drove through as well and agrees with the previous comments. Sauerman stated he feels this is a pretty large 2 car garage. Carl stated the garage will also help with storage and was designed around the back door.

Rohaley recommended allowing more than 2' from the property line to allow for proper maintenance.

Nochevich opened the public portion of the meeting. With no public coming forward, Nochevich closed the public portion of the meeting.

Nochevich entertained a motion. Taylor motioned to approve Petition #21-22. Marshall seconded the motion. With a roll call vote of 5 Ayes, 0 Nays, and 0 Abstentions Petition #21-22 was approved.

21-23 Aminderjit Sing, Petitioner/Owner

Request: Variance from Development Standards

Purpose: Allow a building addition to encroach the front, rear and side setbacks in a B-2 Business District

Location: 318 North Main Street

Schlueter informed the Board that the petitioner had a medical issue and needs to defer for 30 days.

Nochevich entertained a motion. Taylor motioned to defer Petition #21-23 for 30 days. Marshall seconded the motion. With a roll call vote of 5 Ayes, 0 Nays, and 0 Abstentions Petition #21-23 was deferred to the next BZA meeting.

21-24 John Catona & Hong Anh Nguyen, Petitioner/Owner

Request: Variance from Development Standards

Purpose: Allow an accessory structure to be constructed prior to the principal structure and allow it to exceed size requirements in an R-1 Residential District.

Location: 815 West Joliet Street

John Catona, 814 Greenwood Dr., came before the Board and provided an overview of the petition. Hong Anh Nguyen came before the Board and stated in the future they would like to build an additional residence for her parents on the property. Catona stated there is enough room to eventually add a few lots.

Schlueter reported on the location, proposed use of the property and the proposed accessory building. Schlueter recommended an approval subject to a time frame agreement for the subdivision application is received within a reasonable time from the time the accessory structure permit is issued.

Rohaley stated he does not have any issues with accessory structure but there should be time certain on when they are going to have the house completed. Nguyen stated they plan to put their current house on the market in March and they will begin the new house then. Rohaley stated as long as they have a specific date set in the future, he does not have any issues with it.

Sauerman asked the petitioner for specific information on where the accessory structure will be constructed. Sauerman asked if there will be 2 lots with the accessory structure on one of the lots. Catona stated they plan to do a 1 lot subdivision and the house and the accessory structure on the same lot and then add lots later. Schlueter asked the petitioner to verify that they plan to subdivide the property in the future, but the home and accessory building will be on the same lot. Catona confirmed. Sauerman stated if they plan to get the house done in a year, they are going to want to start the subdivision process soon. Schlueter reported the petitioner does plan to go through the process of subdivision approval. Schlueter stated a year might be a little tight for the whole process. Irak asked for clarification of the process. Schlueter detailed the process. Sauerman stated he would like any motion to include a time certain for a subdivision request. Sauerman stated he wants to see a legal commitment for the house.

Marshall stated he does not have any issues with putting the building up. Marshall asked if they are going to store personal items in the building. Catona confirmed the building will store personal items, a boat, and a camper. Marshall agreed that this project needs a time limit, he does not want to see a large building on a lot with no house. Marshall stated any motion should include that no one can live in the building.

Taylor asked if the proposed driveway on the plat is the dividing line for the two proposed lots. Catona confirmed. Taylor asked if the two lots will share the driveway. Catona confirmed. Taylor asked Catona if they plan to use it for commercial use or plan to rent it out. Catona stated they do not plan to use it for commercial use or as a rental. Taylor stated he feels two years is more than fair to get the house built. Taylor stated he wants the petitioners to understand that if the house is not built within the time frame agreed upon, they will be fined and read the ordinance regarding the fees.

Nochevich opened the public portion of the meeting.

Michael Swanson, 3903 W. 109th., stated he is the neighboring property and does not have any issues with this.

Debbie & John Zupanic, 10831 Hendricks, came before the Board and asked how far back off the road will the structure be. Catona stated it will be in the rear of the property approximately 100'. Zupanic voiced her

concern with the traffic. Zupanic asked if they could go farther back. Catona stated they will go back as far as they can.

With no other public coming forward, Nochevich closed the public portion of the meeting.

Rohaley asked the petitioner if the state of Indiana has approved a curb cut for them. Catona stated they have called the state, had a conversation, and have received the paperwork. Catona stated they did not seem to have any issues but will only allow one access.

Taylor asked the petitioners asked if two years is a reasonable time for them to receive their Occupancy on the house. Catona stated after they finish the accessory building, two years will be enough. Taylor asked the petitioners to verify that two years from the Occupancy of the accessory building to the Occupancy of the house would be reasonable. Catona confirmed. Taylor asked Schlueter how he feels about two years. Schlueter stated he feels that is reasonable.

Nochevich entertained a motion. Taylor motioned to approve Petition #21-24 subject to Staff comments, the Certificate of Occupancy for the residence to be issued within two years of the Certificate of Occupancy of the Accessory building, no one can reside in the accessory building and the accessory building cannot be used for any type of commercial use. Nochevich asked the petitioner to verify that he understands all the conditions of the approval which include the Occupancy for the house being issued within 2 years of the completion of the accessory building, that the accessory building cannot be used as a residence or commercial use. Catona confirmed he understands the conditions. Marshall seconded the motion. With a roll call vote of 5 Ayes, 0 Nays, and 0 Abstentions Petition #21-24 was approved.

MISCELLANEOUS AND PUBLIC COMMENT

No Public.

No Misc.

ADJOURNMENT

At 8:44 pm, Nochevich entertained a motion to adjourn. Sauerma motioned to adjourn; motion was seconded by Marshall.

ATTESTMENT OF MEETING MINUTES.

The above minutes were approved and adopted by majority on the 25th day of October 2021.



Nick Nochevich, Chairman



Anthony Schlueter, Executive Secretary

