

ROLL CALL

Rose Ann Barrick  
Jerry Petzel, President  
Jerome Markley  
James Schwarzkopf  
Keith Masterson

Michael Lautzenheiser, Jr., Secretary

President, Jerry Petzel, called the September 27, 2011 meeting for the Board of Zoning Appeals to order at 7:00 p.m. five members answered roll call.

Rose Ann Barrick made a motion to approve the minutes from the August meeting. James Schwarzkopf seconded the motion and the minutes were approved by a 5-0 vote.

**NEW ITEMS:**

**B11-09-19 JEFFERSON TWP., SE/4 09-28N-12E Jason Meyer requesting a variance for the height of a proposed sign to be increased from 20' to 30' and an increase of sign face from 16 sqft to 300 sqft. The proposed sign will be located on St Rd 1 south of 1050N, Ossian. Property is zoned R-1.**

Jason Meyer stated that the request for the variance is located on property that is about 3/10 to 6/10 of a mile north, outside of the Town of Ossian. He provided the Board with a map of where the sign would be located on the property and a mockup of what the sign would look like with the size of the structure labeled. Mr. Meyer explained that the advertisements on the sign would be through annual contracts between himself and the companies. He stated that they spoke with a sign company and that there was no difference in the brightness between internally and externally lit signs. He would like to have the sign be lit internally for a more professional look.

Michael Lautzenheiser, Jr stated that the diagram that Mr. Meyer presented to the Board showed the sign's location as 75'ft from the center of the road. He advised that the sign would have to be 104'ft from the center of the road to meet the setbacks. The setback is 60'ft from the edge of the road right of way. The right of way is measured off of the section line and not the center line of the pavement. The section line is 4'ft off of the center of the striping on the road. He advised that on the diagram it does not show the distance from the proposed location of the sign to the north and south property lines. He stated that the measurement would be needed for a permit to be issued. The sign would have to fall 10'ft within one of the lots.

Jason Meyer advised that the light on the sign would be shut off at a point during the night. He stated that they were thinking around the time of 11PM or midnight to 5AM. This is due to the low traffic flow during that time. Mr. Meyer stated that with the sign located in the middle of the lots, the nearest house would be either the north or south neighbor due to each being about a lot and a half away. He explained to the Board that his reason for wanting a sign was initially for his

company, but he later decided to go meet with the Town of Ossian's Revitalization Committee to have a "Welcome to Ossian" placed on the sign. He stated that he then brainstormed and thought about multiple businesses on the sign rather than just his.

Denny Meyer, owner of the property, stated that he has owned the land anywhere from 12 to 15 years. He advised the Board that he does not live on the site. At the time of purchase, he was unsure what his plans were going to be with the property.

Linda Heyerly, neighbor directly to the north of the site, commented that at the APC meeting the sign was only for 100sqft and now it is for 300sqft. She stated that she spoke with a realtor and if the property were to be rezoned to a B-3, the property value would be damaged. However, with a big lit sign next to the property, it is going to do even more damage to the value.

Michael Lautzenheiser, Jr explained that the APC meeting was on the zoning change of the property and that the 300sqft size of the sign was discussed, but that the Meyers would have to get a variance for the size change. The 100sqft sign size is for a commercial property and the 16sqft sign size is for a residential property.

Leliani Mahnensmith, neighbor directly to the south of the proposed site, commented that she had a copy of the Ossian Revitalization Committee meeting minutes from November 2, 2010. She read from them and stated that the Committee met with Jason Meyer about the sign. The cost of the sign is \$1600 and the Committee is not in favor of paying money for the sign. Mrs. Mahnensmith stated that Mr. Meyer said that the Revitalization Committee supported him. She advised that the "Welcome to Ossian" signs, that the Committee has planned, are for in town.

Tim Kaehr, neighbor, commented that since the proposed site is on a state highway the Department of Transportation should have regulations on signs. He advised that he spoke with Tom Claire, of the State Department of Transportation, and it does not sound like the sign is going to pass the state. Mr. Kaehr stated that if there was a sign on the property with no business at the location that the state would not approve the sign.

Michael Lautzenheiser, Jr explained that the Department of Transportation has a permitting process for commercial signs and that the petitioner would have to submit information to determine if a permit would be needed. He advised that the approval by the Board would be a conditional one, based on if the petitioner can obtain the State permit. He clarified that if the BZA approves a variance and the state said that the petitioner could not build a sign due to the Highway Beautification Act rules, then the sign cannot be built. It does not matter what the BZA does, a sign cannot be built on a state road without a state permit.

Rose Ann Barrick stated that she spoke with the Ossian Town Council members after their September 26, 2011 meeting. She advised that 4 out of the 5 Council members were not in favor of the sign. They did not feel that, in an R-1 zoning, it was the right place to put a commercial sign.

Linda Heyerly stated that she is not in favor of the sign. She feels that her property value was already decreased by the ditch being moved closer to her property and she does not want the sign drop the value any further.

Jason Meyer explained that a member of the Revitolization Committee wanted to advertise her business on the sign. He stated that he spoke with the Committee about the sign and about funding the "Welcome to Ossian" part of the sign, but at that time he stated that they did not say one way or the other if they would pay. Mr. Meyer advised that the Committee supports the project. He stated that members spoke about possibly putting bricks around the base of the sign to tie in with the new brick along the sidewalk downtown.

Kathy Braner, neighbor, commented that the home owners' biggest concern was the rezoning of the property to B-3 and that the variance for the sign on R-1 is preferred.

Denny Meyer stated that the rezoning petition was tabled and that the variance was petitioned this way to keep the neighboring property owners happy and get the project approved.

Jason Meyer advised the Board that he had spoken with a state member and with a sign company who advised him that, in that area on State Road 1, he did not need to have a state permit.

Michael Lautzenheiser, Jr explained that a state permit still might be needed due to the fact that State Road 1 is part of the Highway Beautification Act, but that State Road 124 going through the county is not. He advised that a written statement would be needed to show that a state permit is not required.

Rose Ann Barrick commented that she would not want a sign like the proposed to go up between her and her neighbors' houses. The owners purchased these properties and knew what they were getting. This sign would change things for them. Even though it is not rezoning, this sign is more than just a temporary real estate sign going near these houses. After speaking with the Ossian Town Council and listening to the neighbors, she stated that she is not in favor of this.

Jason Meyer stated that he could place one 20'ft tall 16 sqft sign per lot, for a total for four, without having to have a variance. However, he feels that the proposed sign looks more professional.

Michael Lautzenheiser, Jr explained that both state and federal Supreme Court cases have clarified that what is advertised on signs cannot play a part in the decision. It must be based off of the signs size, physical location or other physical mater.

James Schwarzkopf clarified that without the variance there could be four signs at this location, one sign per lot. The said signs would have to be 20'ft tall and 16 sqft per face or less and could be lit, as long as they met the setback requirements.

Rose Ann Barrick made a motion to deny based off the fact that the sign is not appropriate for being located in an R-1 zoning; plus the impact that it would have on the property value of the neighbors. There was no second given by the board.

Conditions: The State permit must be approved first.

Motion to Approve: Jerome Markley

Second: James Schwarzkopf

Vote: 4-1 (Rose Ann Barrick)

**B11-09-20 LANCASTER TWP., SE/4 21-27N-12E RTT Investments, LLC requesting a variance to reduce the front yard setback from 30' to 20'; reduce the side yard setback from 10' to 1'; increase the height of a sign from 20' to 30'; increase the sign from 100 sq. ft. to 200 sq. ft. per face; and increase the number of signs on the property to 3. The property is located at 2200 N. Main St. Bluffton, IN 46714. Property is zoned B-3.**

Tony Crowell, legal counsel for RTT Investments, questioned the variance request to increase the number of signs on the property. He believed that the request was to increase it to two signs on the property.

Michael Lautzenheiser, Jr explained that, for the 2200 N Main location, there was another sign variance petition last month that was approved, which would have been sign number two because of the Villa North Motors sign that was already on the property.

Mr. Crowell provided the Board with photos of signs located at adjacent properties to the proposed location along with a mockup of the proposed sign. The sign will be a "V" shaped sign (not flat) with only two faces, which will face north and south at an angle. He advised that the variance request for this sign is very similar to the variance request approved last month for the sign at the south end of the property. Mr. Crowell stated that having the two signs be 450'ft apart along State Road 1 is not something that is new or out of line. He explained the hardship would be not to allow the sign just because it is on one piece of property rather than two parcels. The reason for the sign would be to generate revenue. He commented that the variance, for the third sign on the property, could be justified by the fact that the two advertising signs would be 450'ft apart. Plus the first sign that was on the property is for on premise advertising of the business, where the two other signs would be for advertising purposes for off premise companies.

Rob Troxel, manager of RTT Investments, advised that the sign would be built professionally. The structure will be a big steel billboard. He stated that it would be similar to the sign out at Westland.

Tony Crowell gave the Board additional examples of similar style signs, such as the billboard next to Doughnut House or by the railroad tracks near the old Centennial building.

Mr. Troxel stated that he is the owner of the property and that it is currently for sale or lease. He advised that he had contacted Mark Steffen, the neighbor directly to the north of the property,

and explained to him what his plans were. He stated that Mr. Steffen did not have any problems with the project as long as it did not affect his sign.

Mr. Crowell advised that if the property sold there are typically leases for third party owned billboard style signs through ground leases. He stated that the size of the structure was "normal" for the steel single post, two faced, billboard style sign. There will be lighting on the sign and it will be a direct lighting onto the sign.

Rob Troxel stated that the property is a single parcel and not divided. He has not thought about dividing the property. Mr. Troxel advised that Larry Owen would be contacting the state for the appropriate permit needed to have the sign along State Road 1.

Tony Crowell confirmed that even with an approval by the BZA the project would be subject to the state's requirements.

Michael Lautzenheiser, Jr commented on the mobile signs that are on the Steffen's property were a violations that was corrected by a variance, under a previous ordinance.

Mr. Crowell explained that the sign would be 20'ft off of the right of way line, which is the 10'ft variance that is requested, and it would only be 1'ft off of the north side property line. The previously approved sign is on the south side in a gravel lot and this proposed sign would be in the grass. The sign would be about 34'ft from the pavement of State Road 1.

Michael Lautzenheiser, Jr stated that there were previous instances where there had been approval of three signs on a single property. The development plan for Outdoor Concepts was approved with three signs at its location. He advised that after that development plan was approved, the sign ordinance was amended to regulate that down to one sign per property, unless there was an extensive need for an additional sign.

Tony Crowell commented that the sign ordinance does not address the construction materials for the sign. Nor does the ordinance state the size of the lot, when it addresses multiple signs on a lot. He stated that the Board has previously allowed variances for revenue generating signs along State Road 1.

Michael Lautzenheiser, Jr advised that there is nothing in the ordinance about distance from one sign to another. The only concern for distance from the signs would be property value impact on a sign. This is so one sign would not negatively affect another sign. His concern is that the proposed sign is strictly revenue related and that is not a hardship. The variance requires a hardship in order to be approved.

Mr. Crowell stated that to not allow the variance would be the hardship because it would not allow the property to be developed consistently with other properties along State Road 1. He commented that the Board has set precedence by previously allowing variances for revenue generating signs.

Michael Lautzenheiser, Jr reiterated that the sign ordinance is not concerned with whether the sign is revenue generating or on or off premise. There are court cases that state what is advertised on the sign can have no bearing on the decision.

Bob Troxel commented that the building has set empty, therefore, there is no revenue coming in. The sign would help with the revenue that has been lost.

Michael Lautzenheiser, Jr explained that the definition of a hardship is something caused by the property and not by financial or esthetic value. The property would have to be causing the need for a variance.

Conditions: The State permit must be approved first.

Motion to Approve: Jerome Markley

Second: Keith Masterson

Vote: 3-2 (Jerry Petzel & Rose Ann Barrick)

**B11-09-21 LANCASTER TWP., SE/4 33-27N-12E Villa North, LLC requesting a variance to reduce the front yard setback from 30' to 4'; reduce side yard setback from 10' to 1'; increase height of sign from 20' to 32'; and increase sign face from 100 sq ft to 200 sq ft per face. The property is located at 650 N Main St. Bluffton, IN 46714. Property is zoned B-3.**

Tony Crowell, legal counsel for Villa North, LLC, provided the Board with photos of signs located at adjacent properties to the proposed location, which is the vacated Movie Gallery, along with a mockup of the proposed sign. The proposed location of the single steel post sign will be just west of the base post of Derek Myers', owner of the property directly north, sign. This is so that the post will not block any of Mr. Myers' sign. The height variance is requested to have the face of the sign above Mr. Myers' sign, so the proposed sign will not block his sign. Mr. Myers did not have a height variance for his sign; therefore, it should be 20'ft height or less. The bottom of the proposed sign face would be at 21'ft and extend up to 32'ft. It has a 10'ft by 20'ft face. The sign will extend east to 4'ft off of the right of way and would be 1'ft off of the north property line. Mr. Crowell stated that they would also like to ask for a variance to increase the number of signs on the property from one to two. The existing single pole sign on the property is to advertise for the Movie Gallery and the removal of it has not been discussed.

Bob Troxel, owner of Villa North, LLC, stated that the existing sign will stay due to the property being for sale and it would be used to advertise which ever business would go into the location. However, it is possible that the Movie Gallery sign may come down and a future business may just have to advertise with a sign that is flush with the building. He is still not sure at this time.

Mr. Crowell stated that the hardship is the same as for the RTT Investments' sign, which is to allow the property to be developed consistently with the surrounding properties

Michael Lautzenheiser, Jr explained that the variance for Mr. Myers' sign was granted because it was where the old Clark gas station sign was located. The old gas station sign was down for over

a year, it was no longer grandfathered as a legal non-conforming structure. Therefore, it was granted a variance for the sign to be placed in a similar area, but with a different type of sign.

Mr. Troxel stated that the single steel post type of sign would not fit in the area of the property that the Movie Gallery sign is currently at.

Rob Troxel commented that if the Movie Gallery sign face was changed for advertising that it might confuse people. Some might think that the building was open with a new store.

Tony Crowell advised that the sign could not be put on the south side of the property due to the fact that is where the drive into the property is located.

Michael Lautzenheiser, Jr advised that the one sign per property rule is followed by all of the businesses located near this property as the ordinance was designed. This makes for better aesthetics in the community and preserves property values because the area is not over crowded with too many signs. He stated that a BZA variance does not run on precedence, it is based off of individual cases. He explained that the sign ordinance is dealt with in kind of two phases. The first is one free standing sign per property. The second is that the preferred signage is to be flush mounted to the building and there is no limit on the number of signs on the building. The purpose of this was for co-locating tenants so that there could be one free standing sign with both names on it and then each business could have their sign on the building to indicate the location.

Derek Myers, owner of 656 N. Main the property to the north of the proposed location, commented on the location of the proposed sign in relation to his sign. He believes that the new sign will have a negative effect on his sign, even though it won't directly block his sign. The proposed sign would cast a shadow on the south face of his sign during certain points of the day. Mr. Myers advised that this could cause sales for advertising on the south face of his sign to suffer. He stated that he is in advertising and supports the sign approval for Rob Troxel's location. However, he is concerned with the over stacking of signs in the area near his property would negatively impact him.

Mr. Crowell stated that with a variance petition the Board looks at what the effect of the variance would have on neighboring properties. He commented that from previous statements that the Board has made, it does not appear that they consider a sign as the property. The ordinance considers the property as real estate. Therefore, the effect of the proposed sign on Mr. Myers' revenue stream on his sign is not really what the ordinance is addressing.

Michael Lautzenheiser, Jr explained that the ordinance does address the values of the neighboring properties structures, which does include signs. The property value is the value that is similar to the assessed value, which is what is taxed. He clarified the two parts of the variance request. The first being the hardship, which is something that is created by the actual property. The second being the protection of the public from the variance having a negative impact on the community, whether it is health, safety, morals or general welfare, which would involve the property values.

Bob Troxel stated that as a businessman he does not feel that the proposed sign would negatively affect any of the neighboring properties. The proposed sign would not obstruct the view of Mr. Myers' sign.

Rose Ann Barrick commented that this petition is different from the RTT Investments' petition. There is a difference between a 100'ft lot with multiple signs versus a 400'ft lot with multiple signs.

Conditions: The 1<sup>st</sup> sign (Movie Gallery sign) must be removed, the state permit must be approved, and a written commitment must be recorded stating that the location is restricted to have only one free standing sign on the property.

Motion to Approve: James Schwarzkopf

Second: Jerome Markley

Vote: 3-2 (Jerry Petzel & Rose Ann Barrick)

**B11-09-22 ROCKCREEK TWP., NE/4 25-27N-11E Kenneth Gasper requesting a special exception for placement of a Mobile Home on 0040 W 200N, Bluffton, IN 46714. Property is zoned A-1.**

Kenneth Gasper stated that he is requesting a special exception for a mobile home to be placed on his property for his parents. He advised that his mother has fallen and broken her hip. Plus his father is legally blind. They are having difficulties and cannot take care of their own property. Mr. Gasper advised the Board that his property is five acres.

The Board advised Mr. Gasper that he would need to check with the health department to determine if the septic system would need to be updated.

Michael Lautzenheiser, Jr explained that the septic system check is required of all new dwellings or additions to dwellings. It is a condition that is automatic and not necessarily applied by the BZA.

Conditions: Once Mr. Gasper's parents no longer need it, the mobile home will be removed in a timely manner.

Motion to Approve: Rose Ann Barrick

Second: James Schwarzkopf

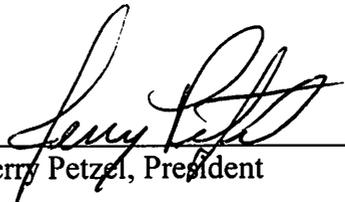
Vote: 5-0

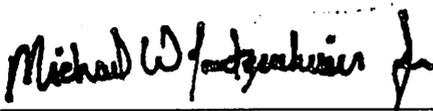
#### **Discussion:**

The Board discussed the opinion letter that Michael Lautzenheiser, Jr had provided for them. They were in favor of having an opinion letter before each meeting.

**ADVISORY:**

Rose Ann Barrick made a motion to adjourn the meeting. Keith Masterson seconded the motion and the motion passed with a vote of 5-0. The September 27, 2011, meeting of the Board of Zoning Appeals adjourned at 8:45pm.

  
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Jerry Petzel, President

ATTEST:   
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Michael Lautzenheiser, Jr., Secretary