

PLYMOUTH BOARD OF ZONING APPEALS

August 1, 2023

The Plymouth Board of Zoning Appeals met in regular session in the Council Chambers of the City Building, 124 North Michigan Street, Plymouth, Indiana on August 1, 2023, at 7:36 p.m. Board President Art Jacobs called the meeting to order for Board Members Mark Gidley, Brandon Richie, Paul Wendel and Alternate Member Linda Secor. Alternate Fred Webster was in attendance but not needed. Board Member Alan Selge was absent. Others present were Building Commissioner Dennis Manuwal Jr., City Attorney Sean Surrisi and Plan Consultant Ralph Booker. The public was able to see and hear the meeting through Microsoft Teams.

Board Members Wendel and Richie moved and seconded to approve the minutes of July 5, 2023. The motion carried.

The following legal notice was advertised in the Pilot News on July 20, 2023:

<p>NOTICE OF PUBLIC HEARING</p> <p>The Board of Zoning Appeals of the City of Plymouth, Indiana will hold a public hearing on August 1, 2023 at 7:30 p.m. in the Council Chambers of the City Building, 124 N. Michigan St. (Garro St. entrance), Plymouth, Indiana on the following matters:</p> <p>BZA 2023-16: Bowen Center, 2621 E. Jefferson St., Warsaw, IN 46580: A Variance of Development Standards to reduce the parking stalls to eighteen (18) by nine (9) feet and reduce the drives to twenty (20) four (4) feet on parcel 50-41-36-000-021.000-020, Miller Drive, Plymouth, IN 46563, zoned C-3 Corridor Commercial District.</p>	<p>BZA 2023-17: Plymouth Indiana Retail Management LLC, 30200 Telegraph RD, Suite 205, Bingham Farms, MI 48025: A Variance of Development Standards to reduce required five (5) foot landscape buffer strip to a 1.3 ft landscape buffer on parcel 50-42-29-303-022.001-019, 1547 Pilgrim LN, Plymouth, IN 46563, zoned C-3 Corridor Commercial District.</p> <p>BZA 2023-18: Kevin Sauer, 11631 12th RD, Plymouth, IN 46563: A Variance of Development Standard to have a twenty (20) foot pole sign on parcel 50-32-96-000-002.001-018, 11631 12th RD, Plymouth, IN 46563, zoned R-1, Rural Residential District.</p> <p>Information on these matters</p>	<p style="text-align: center;">116 Legals</p> <p>may be obtained at the office of the Clerk-Treasurer, 124 N. Michigan St., Plymouth, IN, and telephone #574-936-2124. Written objections to the proposal filed at the Clerk-Treasurer's office will be considered and oral comments will be heard. The hearing may be continued from time to time as may be found necessary. If you are disabled and need special accommodations, please call the ADA Coordinator at 574-936-2948. Kyle Williams, Recording Secretary, Board of Zoning Appeals, July 20, 2023</p> <p style="text-align: right;"><small>July 20, 2023 PN348128 hspaxlp</small></p>
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BZA 2023-16: Bowen Center, 2621 E. Jefferson St., Warsaw IN 46580: A Variance of Development Standards to reduce the parking stalls to eighteen (18) by nine (9) feet and reduce the drives to twenty (20) four (4) feet on parcel 50-41-36-000-021.000-020, Miller Drive, Plymouth, IN 46563, zoned C-3 Corridor Commercial District.

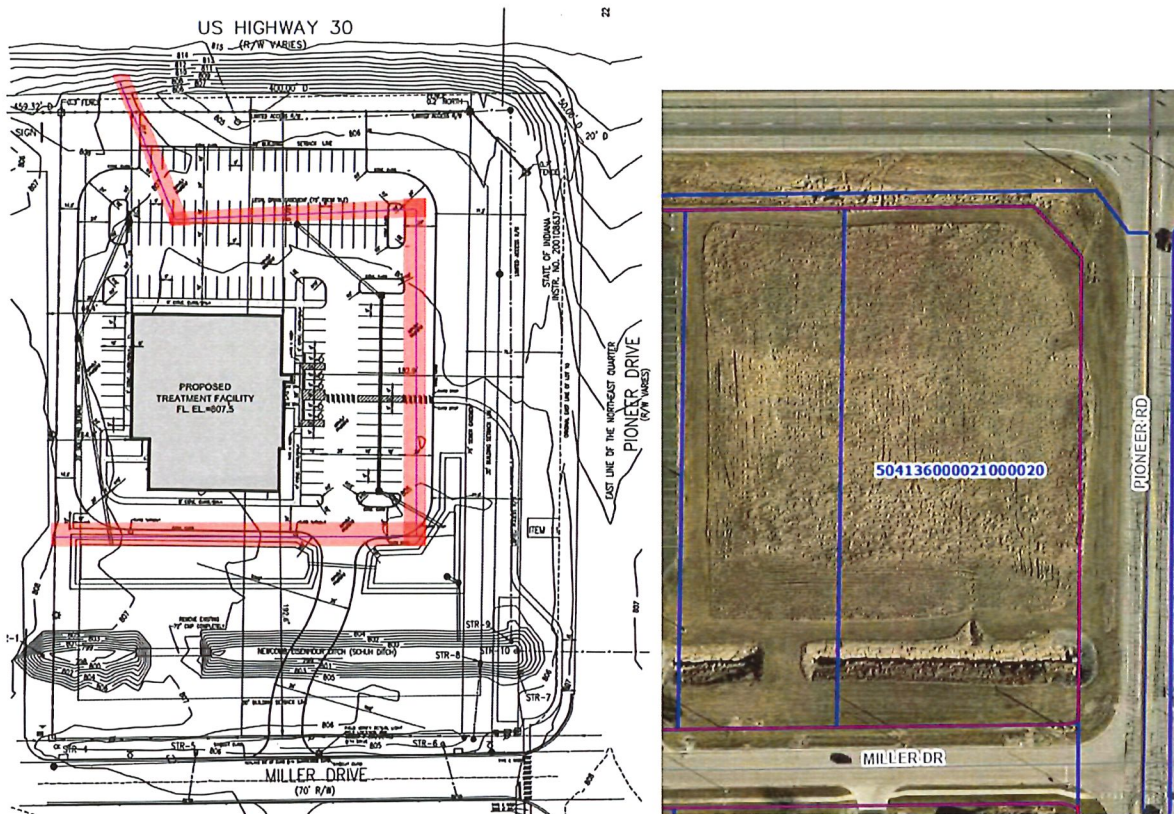
Plan Consultant Booker reviewed the findings of fact and the request from the applicant. He read the applicant's letter aloud. See attached letter below.

Letter of Intent

The Otis R Bowen Center for Human Services, Inc. hereby requests a variance from the City of Plymouth parking standards to allow for 9'x18' parking stalls, and 24' drive lanes for the new proposed facility located at the Northwest corner of Pioneer Drive and Miller Drive. The current ordinance calls for 10'x20' spaces with 25' drive lanes.

It should be noted that the required parking count per the City ordinance is 83 spaces, and due to the Bowen use in and around Northern Indiana this design contains 140 spaces. The Bowen center has a greater than average need for the amount of spaces, due to the nature of their business, and the design is based on the new standard design for future Bowen facilities. We believe that this variance being based on a unique set of circumstances, and a history of the Bowen facilities needs will not be a danger to anyone, and will not be a detriment to the area.

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Gidley asks if they just appeared before the Drainage Board and what that request was for.

Booker responds by stating he cannot answer that question as it is not a part of the variance.

Michael Vodde (1324 Henry Avenue, Fort Wayne, IN 46808):

Vodde states he is here with Anderson Surveying. He explains they did go before the Drainage Board and they did approve the plan as it exists. He mentions the drains on the site plan, which I have highlighted in red, and mentions they go well into our parking area. He states that was approved two weeks ago at the Drainage Board. He explains this plan is based on the new Bowen Plan for their five primary counties. He states this building will be going in at Wabash County as well. He states the Bowen Center already has a very large footprint in this area and this is what they want for a parking lot. He explains their architects designed this and they did the civil design and it works for them. He states the 24-foot drive lanes are acceptable in all nine counties he works in except for here.

Jacobs states we go by ours.

Vodde states he understands but they are building a standard for a larger area. He understands it is quite narrower but he provides an example of a mile north of town the State Roads are 24 feet wide. He states they only have a few areas with conflict in backing up into another car and the 18-foot depths only affect the middle parking spots because they have curbed areas. He apologizes for his comment that our ordinance is different but he has not done a lot of work in Plymouth. He

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explains you are normally allowed two feet of overhang in Fort Wayne, Columbia City, etc. so a spot with a 6-foot curb face walk and an 18-foot stall is effectively the same because they allow 2-foot overhang because most people pull up over the curb slightly when they park. He states they do not anticipate any trouble and they do not have trouble with this layout anywhere else. He states they have 140 spots and there is a lot of use. He adds there are times they have a counselor and four people coming in for a counseling session and possibly if it is minor, you could have mom coming from work, step-dad coming from work and a student with another four waiting so they need a lot of stalls. He states they have not had an issue with the 9-foot stalls in the other counties.

Jacobs asks if there is not enough room for the 20 x 10.

Vodde responds by stating the problem they run into with the 20 x 10 is the 20-foot depth and the 25-foot isles pushes closer to the legal drains because they would have to widen the parking lot.

Jacobs asks if there is room there for that.

Vodde responds by stating not according to the drainage board.

Gidley asks if they got a variance from their 75-feet.

Vodde responds by stating down to 20-feet. He explains they still have their 75-feet but they are allowing them to pave down to 20-feet. He states if they have to destroy our pavement then we have to pay for it and we understand that.

Gidley clarifies if they have to maintain the ditch then you are responsible for fixing your own lot.

Vodde agrees and states in this case the ones that are really affected are the tile and maintaining a tile does not require a whole 75-feet but that is the State Statute. He states if they chose to maintain it that they could without a whole lot of pavement damage but we have agreed that if they do that it is our problem and not theirs.

Gidley asks if they have done the math if they were to abide by our parking standards. He explains Plymouth is very proud of our 20 x 10 parking spaces. He asks how many spots out of the 140 would be given up if you meet Plymouth's standards.

Vodde responds by stating if they were to meet Plymouth's standards and the Drainage Board standards then they would have half the parking spaces.

Gidley asks if he has done that math to know that half have gone away.

Vodde responds by stating he is only allowed to be so close to the tile on the north so that whole north would have to go away. He states they would still have a problem on the east side even though they have the three drive over there that only is single loaded. He states you have a whole 24 feet and then a curb that you can go a couple feet over before you bump your tire on it to get out on that east side. He believes it would be a hinderance. He states they spoke to the Building

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Commissioner and this seemed like a reasonable approach to ask for this variance after talking with your staff.

Gidley asks if any of this overhang over onto a sidewalk.

Vodde responds by stating they are but the sidewalks still have a four-foot clear space in which three feet is required by the ADA. He states if you had an 18-foot spot and you park an F350 in it that it may hang over two feet that you would still have four foot of clear space in which ADA requires three.

Jacobs states and a broken shine with his hitch.

Vodde states hopefully you pull into your spot instead of backing into it so nobody in a wheel chair hits your hitch.

Jacobs states his daughter never has because she sees it.

Gidley asks Jacobs if three feet is a standard for a wheelchair.

Vodde responds by stating that three feet is the ADA standard.

Surrisi states it is three feet but you have to have a five-foot section every so many feet to be able to pass somebody but three feet is the minimum.

Jacobs states three feet is fine as his daughter could fit through it with a powered chair. He asks if you could put the right size in other areas or do you have to make them all 18 x 9. He asks if we could only make that back row 18 x 9.

Vodde responds by stating if he was to go with 25-foot driveway isles and 20-foot spaces on the north side.

Jacobs states you are asking for 24-foot drive lanes.

Vodde responds by stating that is one foot narrower so that is two feet on those two drives and two-foot longer spaces makes you lose that whole northern spaces at minimum because he cannot go any closer to the tile that is on the north property line.

Board Members Richie and Gidley moved and seconded to open the public hearing. The motion carried.

There were no comments at this time.

Board Members Wendel and Richie moved and seconded to close the public hearing. The motion carried.

Gidley states if Doug Feece were here that he would be all over this right now because he has been so adamant about having this 20 x 10. He states he has been on this board for close to 20 years now

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and he has been on longer and he is always pushing that but it looks to him that there are a lot of things unique to this lot with having county regulated drains on three sides. He understands how many know how he feels about precedent and he does not believe this would set a precedent for the next guy who comes and says you gave Bowen Center this so now you have to give me one.

Board Members Richie and Wendel moved and seconded to approve BZA 2023-16 as presented. The motion passed by roll call vote.

Yes: Gidley, Richie, Secor and Wendel
No: Jacobs

BZA 2023-17: Plymouth Indiana Retail Management LLC, 30200 Telegraph RD, Suite 205, Bingham Farms, MI 48025: A Variance of Development Standards to reduce required five (5) foot landscape buffer strip to a 1.3 ft landscape buffer on parcel 50-42-29-303-022.001-019, 1547 Pilgrim LN, Plymouth, IN 46563, zoned C-3 Corridor Commercial District.

Plan Consultant Booker reviewed the findings of fact and the request from the applicant. He read the applicant's letter aloud. See attached letter below.

STONEFIELD

July 13, 2023


Clerk-Treasurer
City of Plymouth
124 N. Michigan St.
Plymouth IN 46563

RE: Letter of Intent
Proposed Restaurant with Drive-Thru
Parcel ID: 504229303008000019
1564 Pilgrim Lane
City of Plymouth, Marshall County, Indiana

Kyle,

Plymouth Indiana Retail Management LLC is requesting a variance from City of Plymouth Zoning Ordinance Section 140.G.2.a; "Lots larger than nine-thousand six-hundred (9,600) square feet must have a landscape strip at least five (5) feet wide" (abutting adjacent lots). The proposed plan proposes a 3.7 FT reduction in the 5 FT buffer (minimum 1.3 FT buffer proposed). With a narrow property width of 110.0 FT, it is not feasible to comply with all ordinance requirements (building setbacks, buffers, parking) while providing adequate site circulation. The building was placed on the minimum side yard setback line as to not create a building setback variance. With all sidewalks, drive aisles, and parking stalls at the minimum dimensions, it creates a portion of the east greenbelt of 1.3 FT width. To comply with the 5 FT greenbelt a building setback variance would be required. Proper lot separation is still provided with a reduced greenbelt and is more consistent with neighboring properties (property to the west has a 0 FT buffer). Aside from this variance request, the proposed plan complies with all zoning ordinance requirements.

Best regards,



Erin McMachen
ecmachen@stonefieldeng.com
Stonefield Engineering and Design, LLC

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AERIAL MAP

SCALE: 1" = 200'±

Booker states Arby's parks all the way up to their property line as there is no landscape buffer there at all. He suspects they built that before their present ordinance and it was not required at that time. He believes Goodwill has put in a landscape buffer in which they did comply with the ordinance. Booker states someone has been mowing on the Arby's side near their parking lot but he believes the property line ends right after the pavement.

Wendel asks if they are looking for relief because Arby's put their parking too close.

Booker responds by stating Arby's didn't have to put a buffer but Goodwill did. He states he will let the applicant speak to it but they are proposing to put a 1.3-foot buffer along there which would be more than what we have now.

Jacobs says we have a whole field now.

Kevin Heffernan (607 Shelby Street, Suite 200, Detroit, MI 48226):

Heffernan states he is with Stonefield Excavating and they are the civil engineering firm and consultants for this project. He appreciates the very thorough introduction so he will cut most of his presentation that was planned. He states they are here on behalf of the applicant and yes, they are proposing a 2,560 square foot drive thru restaurant on site with 27 parking spaces while there is only 25 required. He states in terms of the variance it is a little less on the Arby's side even though he is aware that is where some of the focus was. He states the variance they are requesting is actually on the very southeast corner of the site directly next to the Goodwill detention basin.

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Booker explains he must have got that mixed up because he thought he wanted it on that side. He asks if he is going to put the right variance on the west side.

Heffernan responds by stating he will as the actual variance in question is on the southeast corner because they are fairly close to the property lines. He states they were correct however that the property line on the west side does abut the parking lot for Arby's as it is almost directly on top of the pavement.

Gidley asks if they can have the landscape buffer on that side.

Heffernan responds by stating on the Arby's side they will. He states they are a little tight on this site because of a number of existing nonconformities with one being the lot width. He states they have 110 feet to work with where 150 feet is typically required for parcels within this zone. He explains they are significantly smaller than parcels around us and those that are typical of a C-3 Zone. He states secondly, they are limited by the buffers of our existing neighbors. He states on the west we have the Arby's site that is paved lot line to lot line and they are 145 feet width and then they have a double row of parking as well as the drive way with a bypass lane on the west side. He states if they were to go further to Bob Evans that they have about a five-foot buffer in the northeast corner and then they are paved almost all the other lot lines. He adds they are also 145 feet wide. He states if the Wendy's has the 5-foot buffers but their property is 175 foot wide which is almost 1 ½ more than what they are working with.

Gidley states when the road was improved that Bob Evans had to give up some frontage along there in order to get the road widened. He explains that is why they do not have as much space on that side. He states he is unsure if Wendy's had to do the same but he knows Bob Evans did.

Jacobs asks if they will have the five-foot greenspace along the Arby's side but it is actually on the southwest side where you are asking for the variance.

Heffernan responds by stating along the Arby's side they are actually proposing a 10-foot-wide buffer due to the slim nature of the site they had to choose the lesser of two evils. He states they tried to use more of their narrow prototypes for the building while they still felt confident in the overall square footage for back of house, kitchen, restaurant seating and things of that nature. He states they then had to account for just a single row of parking rather than the double row you would see on some of these other sites. He explains they were still getting very narrow so they decided it was more important to abide by the building setbacks so they placed the building as far west as possible and they are allowing 24-inch overhang into the building setback only for the awnings of the drive-thru while the building is only setback another foot and a half or so within the setbacks. He states they really try to design the whole site and you will see a slight jog to where they tried to abide by the minimum requirements. He states it is just in the small portion of southeast side that they do not abide by the five-foot buffer and what they did was push the building as far west as possible and chose this spot as they would much rather have the green space between the existing Arby's pavement and their site as well as the Goodwill parking and their site. He states if they had to dip into the buffer at any point, they figured next to the green space near the detention pond would be the most conducive for onsite patrons, the public and their neighbors. He states they tried to do most with what they inherited in facing these challenges and this is where they ended up after iterations. He believes they are providing a very welcoming site

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to this last piece on US 30 northwest. He states they do believe they are designing a site that is fully compatible with their neighbors that makes the most of the challenges that are inherited.

Jacobs asks what restaurant he said.

Heffernan responds by stating the tenant is not known yet.

Jacobs states a Chick-Fil-A would be good.

Heffernan responds by stating this is way to small for Chick-Fil-A. He states they would need five of these.

Board Members Wendel and Gidley moved and seconded to open the public hearing. The motion carried.

There were no comments at this time.

Board Members Wendel and Gidley moved and seconded to close the public hearing. The motion carried.

Board Members Richie and Gidley moved and seconded to approve BZA 2023-17 as presented. The motion passed by roll call vote.

Yes: Gidley, Richie, Secor, Wendel and Jacobs
No: None

BZA 2023-18: Kevin Sauer, 11631 12th RD, Plymouth, IN 46563: A Variance of Development Standard to have a twenty (20) foot pole sign on parcel 50-32-96-000-002.001-018, 11631 12th RD, Plymouth, IN 46563, zoned R-1, Rural Residential District.

Plan Consultant Booker reviewed the findings of fact and the request from the applicant. He read the applicant's letter aloud. See attached letter below.



This letter is to give my authorization to have a pole sign placed on my property Parcel # 50-32-96-000-002.001-018 also known as Plymouth Motor Speedway and Event Center.

I Kevin Sauer lessee / owner of this property want to apply for a variance to allow the pole sign on the cover of 12th and Michigan.

Thank you 

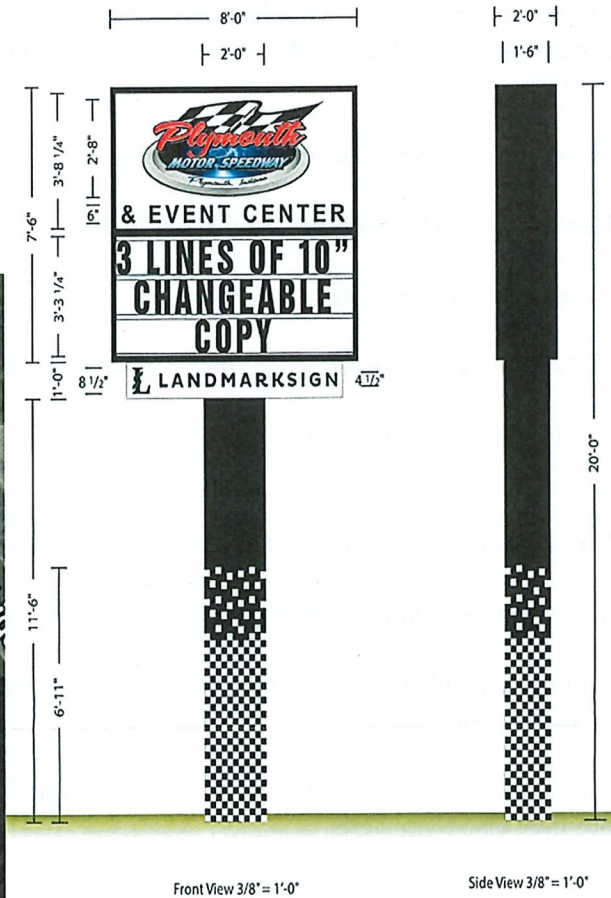
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1. Requesting a Variance from Development Standards to have a 20 foot Pole Sign (approx. 65 sq ft) in area zoned R-1. However currently housing a motor speedway.

City Zoning Ordinance Article 6, Chapter 200, Section E, Subsection 2-V (pg 197)

2. Because the motor speedway sits a significant distance off Michigan Road, patrons often have difficulty locating the exact egress on to 12th Road
3. The location of motor speedway and Michigan Road created difficulty for some patrons in locating the appropriate turn-off, particularly north bound traffic turning west. Patrons who miss the turn are forced to continue north bound to find a place to turn around. Of more concern are patrons that realize too late that the turn is approaching and then rapidly decelerate, creating a risk for traffic behind them and potentially for oncoming traffic. These limitations were not created by the current, or past owner.
4. Previously a 4 ft x 8 ft (32 sq ft) sign was utilized. However, given the speed of travel on Michigan Road and lack of adequate public lighting, a sign of that size and location was rejected as being insufficient.
5. This variance will
 - a. create smoother traffic flow
 - b. reduce danger to all travelers on Michigan Road
 - c. will have no significant impact on adjacent properties, particularly in light of the speedway itself
6. This variance will serve the property owners in the district by improving road safety, decreasing traffic congestion, while minimally impacting the enjoyment of the surrounding properties



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Booker states because this is a rural residential district they have to come in here for this variance. He states if this was in another district, they would be allowed to do this. He states there are three signs there currently at this location. He believes they wish to replace the two older signs with the newer one but he has not asked the applicant.

Todd Wallsmith (7424 Industrial Avenue, Chesterton, IN 46304):

Wallsmith states he is the majority owner of Landmark Sign Group and they were contracted by Sauer to build this sign. He states he wishes to clarify something as this was an abnormal situation. He states they were hired to build a sign and under the original terms of the contract they were going to build the sign and deliver it to the customer and put it up. He states we got the sign done more quickly than he or I expected and had an available day for install and his salesman contacted him to put it up and got the go ahead. He explains they operated under the assumption, which it was their own fault, that they had pulled a permit. He states a permit had not been pulled, they put a sign up and found out the following week or so that the permit had not been pulled and to come in and ask for a variance. He states the 4 x 8 sign which is presently there about 2-4 feet off the ground will be gone and the temporary trailer sign will be gone. He states he couldn't tell them to pull that down before he knew if he had to pull down the new sign. He states the new sign has a changeable copy board on it so he can put letters in it but it is not a flashing sign. He states it is also not a sign that has an electronic message center in it but instead a standard road sign. He states from personal experience he can tell you coming off of US 31 and pulling in there that he almost drove by it knowing he was going to be looking for it. He explains given the trees and other things that it is a difficult intersection to find especially if you are somebody coming to a race at night.

Jacobs asks Sauer if he owns Swan Lake as well.

Kevin Sauer (22085 Riley Road, Lakeville, IN 46536):

Sauer responds by stating he does not.

Wendel asks Wallsmith where his company is based.

Wallsmith responds by stating they are located in the City of Portage but they have a Chesterton address.

Wendel asks if they do work across northern Indiana.

Wallsmith responds by stating they have signs in 49 states.

Wendel asks if they are well aware of communities that have these procedures to follow before a sign is installed.

Wallsmith responds by stating they are and what he tried to explain was they install a lot of signs but they also ship signs.

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Wendel states you should know that Marshall County has rules in place so that you cannot just walk in and put up a sign. Wallsmith agrees. Wendel states it isn't really their fault as it is your responsibility as a Sign company to make sure things are done beforehand.

Wallsmith responds in agreeance and states they accept they put that up without a building permit.

Gidley states he does not want to put you through to much but when he saw your address was Chesterton on your drawing that he knew Chesterton's sign ordinance is 18 pages long so he knows you were not new to requirements in getting variances from sign ordinances. He adds he knows it is tougher there than it is here but yet you come to Plymouth and it gets missed.

Wendel states he doesn't blame the applicant at all as they wanted their sign put in but you know better. He states you shouldn't have put a sign up without knowing what the procedure is.

Wallsmith agrees and states they do know the procedure. He states their problem in this case was they had not intended.

Wendel interjects and states that is all fine but you should have asked them if a permit was in place as you know since you were the one installing. He explains this isn't different from how things operate in any other state. He states he cannot fault them at all as this is strictly on your company. Wallsmith agrees.

Sauer states he did ask a few people and he didn't look into it long enough. He states he was told if there was a pole sign there that he could replace it with another pole sign and not by anybody here. He states he does want to take some of that as being his blame and he did wrong by not looking long enough. He states he owns a roofing company and should have known as he has to get permits all the time. He states he does want to say there was some blame on him and not fully on them.

Jacobs explains they want to be sure as it happens quite a bit to them that people do things and then they come and ask for forgiveness and they do not want that to become a habit.

Gidley asks if the sign will be lit.

Sauer responds by stating they have not run electric to it as they were waiting on the permit.

Gidley asks if is their intention to light it.

Sauer responds in agreeance and states that is their next step once they get this approved here. He states it will not be a blinking light but instead a switch light.

Gidley asks if it will be lit all throughout the week or just on event days.

Sauer responds by stating they just plan on event days because they will be able to see the lettering throughout the day.

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Gidley asks who is going to go out there after an event and switch it off.

Sauer responds by stating he will.

Board Members Richie and Secor moved and seconded to open the public hearing. The motion carried.

Dennis Manuwal Jr. (16357 14th Road, Plymouth, IN 46563):

Manuwal states this got brought to his attention right after he became the Building Commissioner. He explains he is in favor of this for the fact that they will be getting rid of the other two signs. He states he spoke with Sauer and he did come into his office. He states he apologized they jumped the gun on this and that is the reason it has never been lit. He states his suggestion would be to put a dusk to dawn with the switch so if someone forgets that it will actually shut off.

Jacobs states if it is dusk to dawn then it will stay open all night long. He states there would need to be more of a timer, he would think. He adds a timeframe of 7:00 P.M. to midnight.

Manuwal restates he is primarily in favor of this to get rid of the other two signs.

Mike Delp (3746 W. Shore Drive, Bremen, IN 46506):

Delp states he is in favor of this as the Building Commissioner brought up cleaning up. He states they are not only doing Speedway events but they are doing other special events. He states their family plans to attend some of those and he really appreciates how they expanded to include other family events so he would give them the benefit of the doubt and be in favor of it.

Board Members Wendel and Richie moved and seconded to close the public hearing. The motion carried.

Jacobs states one of the things they could talk about in the motion if they make it is to have some type of a timer to start and stop after Midnight or whenever their events wrap up.

Richie states they are an attraction that attracts people to Plymouth and he appreciates they have been very forthcoming with programs in their community. He seconds Delp's statement that some leniency should be put on this for jumping the gun.

Jacobs asks what times events usually end.

Sauer responds by stating they try to be done by 11:00 P.M.

Richie states they want to put a timer on that so it automatically shuts off at midnight. Sauer agrees.

Gidley asks on event days or all throughout the week.

Sauer states he just wants it on event nights.

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Wallsmith states it could be similar to concert lights so it is lit up a couple days leading up to the event.

Richie states they do it where it shuts off a midnight anytime it is in use.

Jacobs states there is a concern with it running Monday-Friday so why not two days before an event.

Sauer states sometimes they do have an event on Friday just like they did three weeks ago. He states they had an event on Friday, Saturday and Sunday.

Gidley states two days before an event the light could go on and it has to be off midnight the night of the event.

Board Members Richie and Wendel moved and seconded to approve BZA 2023-18 with the stipulation the lights can be on two days prior to an event and that there has to be a shutoff at midnight on the day of usage. The motion passed by roll call vote.

Yes: Gidley, Richie, Secor, Wendel and Jacobs
No: None

Approval of BZA 2023-12 Findings of Fact:

Booker states he has Findings of Fact created by City Attorney Surrisi. He adds he is not planning on reading this.

Gidley responds by stating he is aware it is 14 pages long but a page and a half is the important part at the end. He believes for the public it should be read.

Booker reads aloud the Conclusions of Law as followed. Further additions were added after discussion.

CONCLUSIONS OF LAW

1. Under Indiana Code § 36-7-4-1103 and Zoning Ordinance Art. 6, Sec. 040R., the Board is authorized to prevent mining or other mineral extraction in urban areas. The quarter mile square depicted in Paragraph 7 above is an urban area. Considering the Board's findings of fact, the Board denies IMI's Application with respect to the Urban Area. All mining or other mineral extraction is prohibited within the Urban Area.

2. Indiana Code § 36-7-4-1103(b) prohibits a local zoning authority from the wholesale prohibition of mining or other mineral extraction "outside of urban areas". The portion of the Property to the south of the Urban Area depicted in Paragraph 7 above is "outside of urban areas". Accordingly, despite the Board's negative findings of fact in Paragraph 9 above, the Board lacks the authority to deny IMI's Application with respect to the non-urban area of the Property. Indiana Code § 36-7-4-918.2 charges the Board with the duty to approve or deny applications for special exceptions from the terms of the Zoning Ordinance and permits the Board to "impose reasonable conditions as a part of its approval". On that authority, as well as the authority of Zoning Ordinance Art. 6, Sec. 040R., and considering the Board's findings of fact, the Board approves IMI's Application for special exception with respect to the non-urban area of the Property, subject to the following conditions:

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a. Prior to beginning mining activities on the Property, IMI shall submit to the Plymouth Building Commissioner a revised Development Plan including revisions to the Reclamation Plan reflecting the exclusion of the Urban Area of the Property;

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b. Prior to beginning mining activities on the Property, IMI shall submit to the Plymouth Building Commissioner a financial guarantee adequate to secure the reclamation of the property set forth in the Reclamation Plan. Such financial guarantee must be approved by the Plymouth Board of Public Works and Safety;

c. IMI must construct a fence, an earthen berm, and landscape screening around the perimeter of the non-urban area of the Property, and an entry gate, substantially similar to that installed at IMI's other facility as depicted in Paragraph 2 above;

d. All mining operations shall maintain a 100-foot setback from adjacent non-mining property lines, including the Urban Area of the Property; and

e. Hours of operation for mining activities on the Property shall be limited to between 6:00 a.m. and 7:00 p.m., local time, Monday through Saturday.

3. Zoning Ordinance Art. 6, Sec. 040R. addresses the requirement to place a road maintenance bond or other financial guarantee to "secure the maintenance of City streets damaged by the mining operation". The Board heard concerns regarding damage to the roads adjacent to the Property that might be caused by IMI's mining operations. However, the Board concludes that Zoning Ordinance Art. 6, Sec. 040R.'s road maintenance bond requirements are not applicable here because the roads at issue are County roads and not "City streets". Therefore, IMI is not required to place a road maintenance bond or other financial guarantee with the City of Plymouth. However, the Board acknowledges that Marshall County may have similar road maintenance bond requirements and directs IMI to follow-up with the Marshall County Planning Department on that issue.

ENTERED by the City of Plymouth Advisory Board of Zoning Appeals this ___ day of August, 2023.

Art Jacobs, President

ATTEST:

Alan Selge, Secretary

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Surrisi states this was based upon review of the minutes of the hearing on this and our discussion at the last meeting. He states he tried to incorporate the thoughts that everyone had and the beginning of the findings of fact lay out what was presented and some of the comments on either side, the applicable law and then what the board's opinion was that it did not meet the standards for a variance because of health concerns and it was not the right fit basically for the neighborhood. He states it goes on to say because we lack of the authority to fully prevent it that we suggest these restrictions.

Gidley asks what they can do with the urban area and if it will stay agricultural or residential. He asks for clarification they can't put their mining equipment up there or a piece of screening equipment.

Surrisi responds by stating the way this is written is they have to build the earthen berm and the screening for all of that.

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Gidley interjects and asks if the north boundary of this non-urban area must have a berm.

Surrisi responds by stating the way it is written right now it states IMI must construct an earthen berm and landscape screening around the perimeter of the non-urban area of the property. He states the northern area would remain open then going down to the non-urban area you would have the berm and the 100-foot setback from the non-urban area. He explains this could be modified to have the berm around the northern urban area as well but that is not the way it is written right now.

Gidley doesn't believe they need a berm along 11th Road if there is nothing going on up there but he just doesn't want them to line up a bunch of equipment up there and make it look like a gravel pit anyway.

Surrisi asks Booker if any R-1 restrictions would prevent that.

Booker responds by stating none that he would know of.

Wendel asks if we can change the hours of operations. He believes for a regular work day they should do 7 A.M. – 5 P.M.

Surrisi responds by stating it was provided to him by the VanVactor's.

Jon VanVactor (11410 King Road, Plymouth, IN 46563):

VanVactor states the hours listed are the hours that were decided upon for the asphalt plant by the County Board of Zoning Appeals.

Surrisi states there is already activity going on under these hours right next door.

Wendel asks if the asphalt plant is open on Saturdays.

VanVactor responds in agreeance and states the only day they have off from them is Sunday.

Wendel asks if it is all day Saturday.

VanVactor responds in agreeance and states 6 days a week from 6 A.M. – 7 P.M.

Gidley clarifies the new reclamation plan goes to the Building Commissioner. He asks if the Building Commissioner has the final say if the city should accept that plan or should that come back here after he receives it for their approval.

Surrisi responds by stating they will submit that plan but part of that plan has to have the financial guarantees and all of it will be sent up to the Board of Public Works and Safety for their approval. He explains that is the way it is written in the zoning ordinance.

Gidley asks if he will notify this board when that board is going to review it so they can have input. Surrisi agrees.

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Wendel asks for clarification if they are still going to have 50-60 additional trucks coming out of King Road going up to their screening facility.

Surrisi responds by stating there had been some discussion about whether it made sense to direct them out onto King Road and his thoughts were to leave it alone on that respect. He states if it is on King Road, they would have to drive up King Road and turn onto 11th Road to get to their processing facility and it may make more sense to allow them to drive on their own property.

Wendel states on the far western side they could put a gravel road and they could get out on 11th Road and go down to their screening facility. He states it makes sense in his mind so they do not tear apart two county roads instead of just one.

Booker states this is the problem of a two-mile zone. He states the only thing they can discuss in the ordinance is the city streets and these are not city streets. He explains he would like to see something in there about that but they cannot enforce anything on a county road.

Wendel asks if the County Commissioners have to approve any of this.

Booker responds by stating the mining language in the County Ordinance is pretty much verbatim of this. He believes they still need a road maintenance bond from the county.

Wendel believes he would rather see them go up that far west side and go out in front of one of those homes out there.

Gidley states that's the Amish house there and if it would go right up to their property line then that reclamation plan should take into account dust control for them. He states they cannot make a rule for every resident out there but that lady hangs her laundry out there and those trucks will be going up and down a gravel drive 40-50 times a day.

Wendel states if they go down King Road if that will encroach too much on the northern part where they can't really do anything if they put their gate there so it matches up with the asphalt plant. He asks if that is too close to that quarter mile stretch.

Surrisi responds by stating they do not address that in here and that would be left to the county when they approve the driveway permit where they believe it best to have it lined up.

Booker asks if they could put in there that they must go to the county and abide by all proper regulations with their zoning ordinance.

Surrisi believes they could add something like that.

Booker states the road maintenance bond should be approved by the county.

Gidley believes they need to be notified that they have to go to the county and possibly submit a road maintenance bond to the county.

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Surrisi states if you believe that same language is in the county that they could add that to direct them to the county.

Booker states it is almost the same language in the county. He explains instead of saying Board of Public Works that it would probably say County Commissioners.

Gidley states he noticed from the pictures in the first twelve pages is on the backside of the berm there is a fence. He states they do not only berm their property but they put a fence at the edge of the berm to keep people from getting in. He states any kid could climb the berm to get into the property. He states they have fences around their other properties inside the berm and he believes they should have one inside the berm here. He states it should either be chain link or barbwire but no single strand. He believes we are doing all we can do and appreciates what Surrisi has done. He believes it is good that he laid out all the concerns the neighbors had. He believes quite honestly the dust people are dealing with from the screening and sand pile that it will not go anywhere as the processing facilities will still be over there. He explains they have not solved that problem for those people but he believes they are doing the best they can. He wishes there was more they can do but he is glad the Plan Commission voted to approve that letter to the State Representatives to try to get this law changed.

Wendel adds it probably won't pass as there is a lot of mining in southern Indiana.

Gidley believes it is good that Plymouth is willing to say we want to protect our jurisdiction and our best interests and inside the two-mile zone is worth protecting.

Surrisi asks for clarification that they would like to see addition to the fence inside the berm and directing them to get with the county for the road maintenance bond. He states if you are okay with those changes then he can make those changes.

Board Members Richie and Gidley moved and seconded to approve the BZA 2023-12 Findings of Fact with the changes described above. The motion passed by roll call vote.

Yes: Gidley, Richie, Secor, Wendel and Jacobs

No: None

Reconsideration of BZA 2023-11:

Surrisi states the last time this was up for reconsideration that they had quite a busy meeting and the applicant can talk about the reasons for that and the board denied the reconsideration as the applicant was not here. He states we had some discussions with them and they are going to share their concerns about some of the conditions in place about the approval of the variance request. He states he would like to set the groundwork for how this could be reconsidered. He explains there are limitations in the zoning ordinance on refiling of variance requests in having to wait a year and this applies to only denied applications. He believes what the applicant is wanting to do is state their case on some of the issues they see with the conditions placed on their project with variance that was granted and see if the board would be open to hearing another variance request and if so, they would pay another application fee with a notice provided to all the neighbors and advertised. He states because you did not deny the initial request, they are able to advance another request. He

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states even though it is on the agenda as reconsideration that it is not up for reconsideration as you denied that last time because they were not here.

Scott Cresswell (900 Linden Ave., Suite 100, Rochester, NY 14625):

Cresswell states what he was prepared to do today was apologize because of the world they live in is a new place and unfortunately his attorney that was going to be on with him was on vacation and got tied up. He states it was really his mistake in the sense that he was supposed to be on call. He states they do develop these sorts of development projects like they do here all over the country and unfortunately what occurred that day was the flight he was on ended up getting delayed so that the actual time of this meeting his flight hadn't landed yet in order for him to make this meeting so he ended up missing the meeting which he wanted to apologize for. He states as it relates to how they already approved their zoning request to rezone the parcel subject to us performing certain contingencies that himself and his partners do not have a problem with the contingencies that have been imposed but what they want to do is get some clarity or have the board agree with them on how long they have to make some of those improvements. He provides the example of wanting to subdivide off the piece directly behind Dollar General, tucked between the American Legion and the Dollar General. He states one of his plans was to subdivide off that one parcel and in your approval of our zoning you stated rightfully so that the parking lot needs to be fixed and there needs to be a sidewalk put up there. He states the sidewalk was something they did not anticipate in their budgeted plan when they had initial conversations with the city. He states they were led to believe they were not going to have to put a sidewalk there and he understands now that was lost and they are living in reality. He states we are not asking for you to reconsider that but what they are asking for is the ability to subdivide that parcel and then some additional time in order to sell it to a potential buyer. He states if the Chick-Fil-A is not going in the area for the first meeting then they can try his parcel. He explains it makes little to no sense to put in a sidewalk to then find out a year from now that they are just going to tear it all up to put in curb cuts and turn it into whatever it may be. He states it is not a prudent use of funds and that is one of the examples why they wanted to have the reconsideration at the last meeting that he apologizes again for not being able to make. He states they want to make their application again to be at the next meeting so they can get some proper guidance as to timeframes when these unanticipated conditions need to be required to be done so they can get the main building open and generating some cash flow. He states it would give time to get this parcel subdivided and have a buyer with a permanent use and incorporate everything that needs to be done on the site in one fell swoop. He explains if they are sitting here three years from now without a buyer then he would expect at some point in time rightfully so for them to say to pave the parking lot or turn it into grass and get your sidewalk put in and he would agree with that. He states again they are not looking for changes for what you are putting in for requirements for the zoning but they are looking for the time to do some of those items with some clarity so they are hoping to put in another application for the next meeting where they would have input from the public.

Jacobs asks Surrisi if a motion needs to be made.

Surrisi responds by stating if you are open to hearing those things and the proper paperwork is filed then we can cut them loose to do it.

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A general consensus was reached that they were okay with it. It was decided they would go through the process again.

Cresswell states he really appreciates your time and apologizes again for missing the last meeting. He states they will get another application in again and in front of you. He states they are looking for a timeframe on the conditions of the project.

Jacobs asks if he will plan to be in person here.

Cresswell responds by stating for the next meeting. Jacobs agrees. Cresswell states if you want him to be there then he will be there.

Jacobs states he was curious but that would be good.

Gidley states he would like that as well.

Cresswell states next time they are on the agenda he will personally be there.

Booker states for September 5th.

Cresswell states he will move some things around but he will make it work.

Jacobs clarifies he was just asking a question and that it isn't mandatory. He wouldn't want him to change plans.

Cresswell states he usually likes to be at these meetings and he will do his best to change things around.

Other Business:

Gidley states this was covered during the Plan Commission meeting but when they approved the variance for Biggby Coffee and they left the room that he was told they were quite upset as during the same meeting we told another business they didn't need to have sidewalks but yet we told them to. He states in the meantime he goes by there several times a week and saw the construction. He saw who did the construction, Stone Excavating, and he saw the quality of work they were doing putting the sidewalks in. He states he has seen them used in the meantime by a number of people crossing from the side of Dollar General onto that new sidewalk.

Jacobs adds it was said that would not happen.

Gidley states they are using it and going up it. He explains he met with those two guys when they were training themselves in that building and told them how impressed he was. He states he wants to publicly thank those two. He explains it is two people starting their own business and did exactly what they asked them to and did it nicely. He states there was no wait or messing around.

Wendel states they understand the gravity of Oak Drive and that it is going to be a monster project.

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Gidley states they are not mad now and they are happy. He explains when he sees them on the street now, they wave and greet him. He explains he is glad they are there. He states he is concerned when the busses start to go in the mornings and their line is backed clear out their drive as he is not certain how all of that is going to go but he felt obligated to publicly thank them for doing what they are doing there.

There being no other business, Board Members Wendel and Richie moved and seconded to adjourn the meeting. The motion carried and the meeting adjourned at 8:58 p.m.



Kyle Williams— Recording Secretary