

PLYMOUTH BOARD OF ZONING APPEALS

December 5, 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 December 5, 2023, at 7:38 p.m. Board President Art Jacobs called the meeting to order for Board Members Mark Gidley, Brandon Richie, Alan Selge, and Paul Wendel. Alternates Linda Secor and Fred Webster in attendance and not needed. 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 Selge and Richie moved and seconded to approve the minutes of October 3, 2023. The motion carried.

The following legal notice was advertised in the Pilot News on November 22, 2023:

<p style="text-align: center;">NOTICE OF PUBLIC HEARING</p> <p>The Board of Zoning Appeals of the City of Plymouth, Indiana will hold a public hearing on December 5, 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 2023-25: Harman Restaurants, INC., 209 N. Main St, Bourbon, IN 46504: A Variance of Flood Hazard Area Standards, from Article 6, 2. Specific Standards, a., ii, Structural Alterations to existing (or previously un altered structure), the cost of which exceeds or equals 50% of the value of the pre-altered structure (excluding the value of the land) for a more than a 50% renovation to a building located on parcel 50-32-93-104-224.000-019, located at 101 S. Michigan St., Plymouth, IN 46563, zoned C-2, Downtown Commercial District.</p>	<p>Information on these matters 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, November 22, 2023 <small>November 22, 2023 PN351812 hspaxp</small></p>
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BZA 2023-25: Harman Restaurants, INC., 209 N. Main St, Bourbon, IN 46504: A Variance of Flood Hazard Area Standards, from Article 6, 2. Specific Standards, a., ii, Structural Alterations to existing (or previously un altered structure), the cost of which exceeds or equals 50% of the value of the pre-altered structure (excluding the value of the land) for a more than a 50% renovation to a building located on parcel 50-32-93-104-224.000-019, located at 101 S. Michigan St., Plymouth, IN 46563, zoned C-2, Downtown 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.

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Booker states no matter the decision tonight, they would still need to get the permitting from the Department of Natural Resources (DNR) as this would not override them. He states what the DNR is trying to protect is the area that used to be called 100-year flood area, but now it is called the 1% flood area. He explains we have had two 100-year floods in a row in some places so now it is 1%.

Jacobs explains what it means is that you can have five 100-year floods in one year and then not have any in 500 years. He adds it is a misconception.

Booker states the DNR is involved with this particular application. He reviews the letter.



Eric Holcomb, Governor
Daniel W. Bortner, Director

Division of Water, 402 W. Washington Street, Room W264, Indianapolis, Indiana

December 1, 2023

Dennis Manuwal Jr.
Building Commissioner, City of Plymouth
111 N. Center Street
Plymouth, IN 46563

Re: Variance Request from Floodplain Development Standards

Dear Mr. Manuwal:

This letter is in response to your request for comments on an application for a variance to the Flood Protection Grade (FPG) requirement of your community's floodplain regulations. The structure in question is located at 101 South Michigan Street, Plymouth, Indiana. Variance decisions are solely the responsibility of the city. Since the Department of Natural Resources (DNR) cannot approve or deny a community variance we will offer the following information and comments.

The City of Plymouth is a participant in the National Flood Insurance Program (NFIP). Participation in the NFIP makes federal flood insurance available throughout your community and makes the city eligible for certain types of disaster assistance. A requirement of the NFIP is that participating communities adopt and enforce floodplain management regulations that meet or exceed the minimum state and federal floodplain management requirements. Per your city's ordinance, variances shall only be issued when there is:

- A showing of good and sufficient cause.
- A determination that failure to grant the variance would result in exceptional hardship.
- A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

The issuance of a variance without proper justification could jeopardize the city's standing in the NFIP and have a negative impact on the community. A pattern of unjustified variances could lead to probation or even suspension from the NFIP. This can lead to the loss of flood insurance and many forms of disaster assistance for the community. The loss of availability of flood insurance can have a direct impact on future sales or re-sales of properties located in your community's floodplains.

While a variance may allow deviation from building standards specified in your local ordinance, flood insurance rates and the flood insurance purchase requirements – which must be enforced by lending institutions cannot be waived. One of the most common requests a board may get is to waive the elevation requirements for the lowest floor of a building. Allowing this can cause significant hardship for property owners in the increase cost of flood insurance premiums.

The DNR mission: Protect, enhance, preserve and wisely use natural cultural and recreational resources for the benefit of Indiana's citizens through professional leadership, management and education.

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One final note, any construction activity in the floodway requires a permit from the DNR. A community variance or exception that is granted in the floodway does not relieve the state requirements that must be met. If a community is approached with a variance request in the floodway, it is recommended that they consult with the DNR to avoid potential compliance issues. Remember, the purpose of your floodplain regulations is public safety and reduction of future flood losses in your community.

In closing we are acknowledging that a permit application for the project has just been submitted to our office as of December 1, 2023. The architect that submitted the application also asked questions about floodproofing the structure. Since that is the primary request of the variance, we would recommend the BZA delay a decision on the variance until our permit process has been completed.

If you have questions about the comments provided, please contact me.

Respectfully,

Douglas A. Wagner, CFM
Senior Planner, Floodplain Management Section
Division of Water

Enclosures: FEMA P-993, Variances and the NFIP
FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference

Cc: Darren Pearson, State NFIP Coordinator
FEMA

Booker references a summary letter about installing a 1,000-gallon grease interceptor, installation of a second means of egress on the south wall of the building, construction of two exterior decks, which are not part of the variance tonight. He states for these they will need a permit from the DNR. He states if a positive vote was decided at tonight's meeting, they would need to schedule a County Drainage Board meeting for Kankakee River Basin as there is a legal drain at the river there at this particular time.

Gidley asks if there is a timeline of when everyone became aware of this process. He asks when were they first cognizant of the fact of the flood concerns.

Booker responds by stating he suspects they came in and applied for a permit with the Building Commissioner and then they were informed.

Manuwal states he informed Harman back in May that they needed to file for DNR approval.

Brent Martin (15413 12th Road, Plymouth, IN 46563):

Martin adds it has been months since we have been aware.

Gidley asks when the application to the DNR was submitted for review.

Martin responds by stating last week.

Gidley asks why it took from May until December 1st.

Martin responds by stating they had to design everything first. He states they also had to make a summary of what those designs were outside the building envelope which requires the DNR approval.

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Wendel references the slide showing the south side of the building and mentions that it appears to be a flood wall below grade where his building is. He asks when that was put in there and the purpose.

Booker responds by stating he is unsure when that was put in but believes it was put in to avoid having water go into the basement. He adds that is an uninformed answer.

Timothy Harman (2940 Sycamore Lane, Bremen, IN 46506):

Harman states he is the property owner. He states he is seeking the variance from the local ordinance for the 50% evaluation improvement cap that would put quite a burden on them because the project requires in their opinion a significant investment. He states he was told because it is in the flood plain that cap is enforced but there could be a waiver of permission and that is why they are here. He states they would have to, from what he was told, construct the building to flood plain standards which is waterproofing. He states the building is already there and what they are going to be doing in addition to the building is put in some decks. He states the grease trap could actually go inside as well but that is a DNR issue, from what he understands. He states they have already moved forward with some of the things they can do with the local renovation permit. He states they painted, got windows in the works, some flooring coming forward, etc. He states it will be a rather sizeable investment and a really important project in my opinion for Plymouth. He states Plymouth is his hometown, he grew up here, a Plymouth graduate, and lived here for 30 years. He states he lives in Bremen currently but Plymouth is very important to him and very important to you all obviously. He states currently they have applied for an alcohol permit and that has been approved. He states they are moving forward as much as they can and Martin has finished the plans three weeks ago. He states they have been submitted to the State but they wanted a technical figure of the floor load capacity.

Martin states that is an interesting thing because you are changing the use of the building so the State asked them to evaluate the 1st floor structure. He states that is a little more complex than it may sound because you have to evaluate what is currently there and if it meets the live loading conditions for this occupancy. He states Rick Keller is the structural engineer who worked with them on the REES Theatre Project, and he is working on that right now to respond to the State on that question.

Gidley asks for clarification that isn't the DNR.

Martin responds by stating that is the State, the Department of Homeland Security (DHS).

Jacobs asks if they will be using the basement.

Harman responds by stating they will eventually. He states initially the first year or so they will have storage there. He adds everything is kept six inches off the floor. He states from his knowledge, the building only took in two inches of water once and he knew that when he bought the building.

Jacobs asks what his vision is for the building eventually. He asks what he hopes to be having down there.

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Harman responds by stating the brewery. He states they are going to open it in a couple of phases. He states in the first year they would like to get it open in the Spring and Summer with the first floor being the tap house and the restaurant. He states he would like to construct a deck or two and then move downstairs to do the brewery. He states there are other possibilities as it is a wonderful building and it is so well constructed. He states the thing with the waterproofing is that he was told that it never took in water, but NIPSCO bored in a two-inch hole using the lines and came up through the concrete so that is why it flooded. He states it may actually be waterproofed already but he is not 100% sure. He states there is some floodgates in the foundation for this purpose and NIPSCO had built the building extremely well. He comments that you could park tanks in there.

Jacobs asks if he has done any research on how much it would cost to waterproof. He states you mentioned many thousands but you haven't really done any research. He states you are now saying it might already be waterproofed or you don't know.

Harman responds by stating he just found that out actually when discussing with Martin. He states to waterproof it, he is surmising that this typically done by breaking out the sides and excavate around the building. He states he did actually have a guy tell him that is the process to waterproof it so that has to be in the thousands of dollars. He states the benefit to him would be little to none as there is no public safety risk whatsoever as the building is already there. He states he does not see the benefit outweighing the cost here whatsoever. He states he knows there are a lot of people wanting this done and it is going to be excellent for the community as there is a lot of support. He states there have also been some nice letters of support and he is unsure if you have received those or not.

Booker states he will read those in at the public hearing.

Jacobs states he agrees with Harman that this would be great for the community but we should do what is right.

Gidley states he can't speak for everyone up here but he does not believe anyone up here is opposed to the project. He states everyone wants to see a restaurant there. He states what has caused his concern was the email from Manuwal with the 37-page flood management information and the concern that either he has or someone has that if they grant this and it does not comply with FEMA or the DNR, then the City of Plymouth residents flood insurance premiums could go up \$50 annually for each one of them or it could be cancelled altogether. He states that is his concern as he is not opposed to the restaurant whatsoever. He states he is concerned about what this does if not done correctly potentially to the flood insurance coverage of the residents of Plymouth, and potentially their premium if that is a fact. He states that is what he wants to know and find out.

Jacobs states you probably couldn't answer that and that is why he was hoping Manuwal or someone else could help him with that.

Martin states that relates to the DNR permit. He states this project does not affect the floodway at all. He states the posts that would support the deck on the south side are against the building

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which is actually higher than the base flood elevation. He states if you notice along the south wall that it is higher, then it goes down a little bit around the east side where it is slightly below the base flood elevation. He adds there will be a deck along the east as well. He states because there is no impact to the floodway at all, that means he does not need to create a model. He explains he did have to fill out the forms Booker presented in his report for the permit application which is pending and they do have a virtual conference tomorrow to review that. He states his conversations with Doug Walker at the DNR is that there are a lot of rules that encompass everything and your project isn't much of anything. He states if the DNR were to deny the permit in total, then he will have a variance sought with the DHS. He states that is because it does not matter how he defines the occupancy of the basement. He adds he can call it all mechanical, storage, or anything, that he still has to have two remote exits. He explains if the DNR does not allow a second exit, then he has another State Agency that he is going to have to deal with for a variance and he hopes that is not the case. He states from a safety standpoint, the two exits should happen. He states the deck on the east, which sits on posts in the asphalt parking lot, do not impact the flood waters movement. He adds he will let the DNR decide that. He states he does not expect that to be a big controversy with them.

Wendel asks if it will be elevated.

Martin responds by stating the deck is at first floor elevation. He states the only thing that goes down are the posts that support the deck on the east side. He states on the south side, there are posts against the building and those posts are above base flood elevation but you have to excavate for the foundation, so when you excavate for the footing of that, you will be below base flood elevation.

Gidley refers to a rendering that was sent.

Surrisi and Martin mention that was nothing that either of them sent.

Gidley states he could not understand what the picture looked like and the wording looked like. He states he understands the deck as it comes out at Michigan Street level. He asks where the other deck sat because it looked from the picture that it looked like it sits along the river.

Martin responds by stating there is a deck along the south side, which is the river side that is raised. He states the other one is also raised and that sits along the east side where the parking lot is.

Gidley asks for clarification that it is above the exit door. Martin agrees. Gidley asks for clarification that there are two decks at the same elevation. Martin agrees. Gidley asks if there is a third deck. Martin disagrees.

Selge asks if they are keeping the tree on the south side.

Martin responds by stating they are keeping the tree. He states to a certain extent the tree is holding the river back so he does not want to touch the tree.

Gidley asks who trimmed the tree and why there is a big limb sitting there.

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Harman responds by stating they had an individual cut the tree and they have to clean it out now. He states they do have a quote to get that cleaned out.

Gidley states the current mayor came into office during the flood of 2008 and he had to deal with the big flood. He states as he is going out, they are having to talk about that same stretch of river. He states the county is responsible for cleaning that bridge.

Martin states that is why they have to go to the county.

Gidley states that's why you have to go to the drainage board and say it has to be cleaned out.

Martin states he could say that but he knows the way they clean it. He explains the debris collects at the post in the middle of the river at the bridge and they put a crane on the bridge and that is how they clean the river. He states no matter what you do, nobody is going to run a piece of equipment between the building and the river as there is nothing there.

Harman states this point is important. He states it is not so much that he cannot use the building but rather that he cannot improve it more than 50% of the value so he is limited in his improvements. He states in theory, he could probably just use the building now but he would have a building that is not very nice. He thinks the 50% cap can be removed but he is not the authority so he is requesting that. He states they want to move forward with it and it will be safe.

Jacobs states the only thing he has to hold back on is that he does not want to cost the residents more or get a fine from it. He asks who can help him answer that question because he believes that is the hold up right now.

Martin states he can certainly say the DNR will make a determination, whatever that may be, about whether they are affecting the floodway. He believes they will say no so he does not believe there will be any backup of water upstream as a result of this.

Gidley asks what would happen if they were to approve a variance with the wording that said they will grant the variance subject to DNR approval.

Martin responds by stating they are two separate things. He states if you were to act favorably tonight, you would approve his ability to spend more than 50% of the value. He states he will be honest with you; it is a 12-inch-thick cast-in place concrete wall around the basement, he does not care if it is waterproofed or not, it will not leak.

Jacobs states the flood comes in different ways when it flows in.

Martin states at the doors, NIPSCO has steel plates that they put in there that were flood protection and they will do exactly that. He states they need to be 2 feet higher than base flood elevation or about 2 feet 6 inches tall.

Gidley asks in addition to tarring the wall, if they believe there were any steps taken by NIPSCO during the construction to guard against the flood.

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Jacobs responds by stating they did if they have a flood wall.

Gidley asks if the metal plates are still there to put in the doorways.

Martin responds by stating he hasn't found them yet. He states they would have to buy those.

Surrisi states Booker mentioned that we have to wait on DNR and he does not believe that is the case. He states the one provision he read that says any variance granted in a floodway, subject to 3 conditions. He states two of them don't apply because they are basically flood areas that have not been mapped or defined and that is not this case. He states the first one is about being located in a floodway hazard area, and that says they are going to have to get a permit for construction within the floodway, but as discussed, they are already underway with seeking that permit. He states it does not say any variance granted needs to get a construction permit, which any variance granted implies you could have granted the variance for them. He states the letter the DNR sent, talked about these are local decisions based off your local ordinances and that they have no say in that. He states at the very end of the letter it suggests that you could potentially wait until they have decided.

Jacobs asks if we can wait until they make a decision.

Surrisi states later when they get to the letter reading portion that he will speak favorably on behalf of the city administration. He states legally it is a totally separate issue and the 50% thing can be totally decided without respect to whether they get the extra permission to do the construction in the floodway. He states when he puts his advocate hat on later, he can say that it would be preferable that they did because that sends a signal to the DNR that the community is in favor of this project.

Martin adds it is helpful for the DNR permit.

Surrisi states the risk to the flood insurance program is nonexistent. He states when you read those warnings, it is talking about communities that are abusive and continually grant variances that do not have merit will have the spotlight put on them with a hand slap of higher rates and revocation of the program. He states this is not that type of situation as it is a project for an existing building that has probably been there well before any of these standards were applicable throughout the country. He states they do not have a history of abusive practice of granting these variances and he believes this one meets all the standards so it is not like this is the first step down the road to them having our insurance revoked in any way.

Booker adds the flood standards in our ordinance are not written by us. He states it was directly written by the DNR that they have to have our ordinance in our zoning ordinance in order to get flood insurance. He states if they decided not to put it in, which they could have, then we would not have a flood insurance program. He states he wants to make it clear that it was not Plymouth who wrote those rules, but it was the DNR.

Surrisi states rules themselves that they have adopted delegate to you the authority to decide when to grant variances.

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Manuwal states it gives you the authority to grant a variance. He states the 50% evaluation is FEMA. He states they wrote the 50% and you are not granted a variance for the 50%. He states you are granted a variance on whether or not he has to bring it up to current floodplain standards.

Booker states he believes the idea was to take an older building that was never approved and built years ago before these rules and they want to elevate it. He states if you go down by the Ohio River, or you see places where it looks like they are on stilts, that is what they had to do in order to keep their flood insurance. He states the flood insurance program is broke from his understanding and they have lowered the rates due to legislative actions but they keep raising the rates.

Richie states knowing the previous businesses that were in there, he was there in the basement during the great flood and was utterly shocked at how little was in there. He states it was very well compared to everything else around there. He states he explains he had two people come to do estimates on his house to waterproof it, which is what they spoke about. He lists digging around the outside, putting in new drain tile, etc. He states the cheapest came in at \$50,000 for his house and he could not even imagine what would come in for that building plus sidewalks.

Manuwal states in the FEMA brochure that he sent out ahead of time for you all to read, it stated that financials are not a point of variance. He explains you can't use that as a granting factor.

Harman states in your variance application, it talks about hardship. He states that would be a tremendous hardship.

Jacobs reiterates that they all want the project but he wishes he had a clear answer on this. He states the worst that could happen is if they grant this for you and something does affect everyone in our community which he would not want. He states he is unsure if they are going to have that answer or not tonight. He states he understands it helps if they give him the variance now before DNR approval but if they had the DNR's approval now that it would give them some comfort level that it would not affect anyone. He states he is for seeing the project.

Selge asks how the DHS comes into this.

Martin responds by stating they review building plans for safety.

Wendel asks if the DNR would tell us in advance if they were going to do away with our flood insurance.

Manuwal responds by stating not necessarily as they do a review afterwards and that is when they would catch it.

Booker states they come in every 2-3 years and go through all your records.

Manuwal states if they read that this was granted strictly based off a financial reason, then they could pin you on it.

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Booker states he remembers at the Lake of the Woods, they came and reviewed his records and they did let someone build where they shouldn't have due to the wrong elevation and they had to go back and have them repair that.

Martin states on a practical matter for that building, you cannot make the basement level comply because you would have to raise it 2 ½ feet. He states the ceiling height down there is only 8 feet 10 inches.

Gidley asks Manuwal if he has said everything, he wants to say about it.

Manuwal responds by referencing the letter he received back from the DNR. He states in the last paragraph, it recommends this is tabled until after the permit process has been completed. He states the only reason is because in the application, everything is for a financial reason. He adds in which it is not deemed in our ordinance or with FEMA, a variance granting factor.

Jacobs asks if they approve it, could the DNR still not approve it. Martin and Manuwal agree. Jacobs states he would find it hard for them to penalize us for approving it if they were to also approve it.

Manuwal states if you want to approve it, you could put stipulations. He states all mechanicals or anything of that nature in the basement would have to be raised up above that 2-foot. He explains it would have to be of a flood proof nature.

Wendel asks if there is a kitchen in there.

Martin responds by stating on the top floor.

Gidley asks if this is going to be microbrewing equipment. He asks how many gallons they are talking about.

Harman responds by stating the systems vary. He states typically you could start off with a 3 ½ barrel system which is typically 31 gallons to a barrel.

Gidley states that could be on a raise platform.

Harman states you would want it on concrete as they are so heavy but it will be above the 2-inch water that came in. He adds it will probably be on stainless steel legs.

Martin states since technically the brewery is not on the application right now, that would take a separate application to the DHS for that use.

Gidley asks if this is really just about decks. Booker, Manuwal, and Jacobs say no.

Martin responds by stating for the BZA, it is about the 50% rule. He references, Doug Walker, the one he spoke to down at the DNR, said they might be looking for him as the architect of record to say this basement is flood protected. He adds he does not mind doing that but that is a conversation for tomorrow's virtual meeting.

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Gidley asks when you would anticipate them coming back.

Martin responds by stating his impression is that they are motivated because they are asking for a virtual meeting to review it. He believes it is because they are not affecting the floodway, and it is only minor construction in the fringe, that it will go rather fast but he does not control that.

Manuwal states he agrees. He states the only thing in the variance that Mr. Harman filled out is that he keeps referring to the financial burden and the financial burden is not a factor.

Harman states he doesn't know. He states you guys have the discretions to grant variances and he is not sure if the 50% cap is a local number that was recommended and adopted as he was not there.

Booker states all flood ordinances are written by FEMA.

Harman asks if we have the authority to remove that cap.

Surrisi states they have the authority to grant variances.

Harman states to him that it is a reasonable request and that if the city has a history of doing things reasonably that he thinks the flood insurance worry is overblown. He states he hates speaking for people but the building is there and it is not an unreasonable request. He states it has not taken water other than once. He states he was told because it was in the floodplain that is why it mentions any improvement over 50%. He states he could just stop what he is doing now and use the building. He asks how that changes the substance of the argument going forward because he could just stop what he is doing and use the building.

Jacobs asks if he granted someone else a variance that cost you \$50 more a year, that he is going to be talking to you probably. He states he does not think that is a concern but that is why he wants to clarify that. He states he does not think from what he is hearing and they could move forward with some things that might be good but they will hear more. He states we look after people and want to do the right things for you as well.

Gidley asks what year they believe the building was built.

Martin responds by stating he is thinking early 1960's. He states it actually qualifies as a historic structure.

Gidley asks if the 1954 flood was larger than the 2018 flood.

Martin responds by stating the 2018 flood actually slightly exceeded that.

Wendel asks about the 1982 flood.

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Martin responds by stating he does not believe the 1982 flood was as big as the 2018 flood. He states he knows it came up onto the LaPorte Street behind the REES Theatre. He states that is when they started talking about the REES Theatre so he came to look at it.

Selge asks if the 2 inches of water that came in during the flood came in because of something NIPSCO had done.

Harman responds by stating he was told that it had never flooded ever and then all of a sudden water started coming in from a 2-inch hole they did not know was there. He states because it was bored in through the side wall and up through the foundation that water came in that they did not believe was going to come in.

Selge asks if they have located where the hole is.

Harman responds by stating it is still there.

Selge asks if it can be plugged.

Harman responds by stating he was told by somebody that they should dig on the side and plug the side down below the dirt.

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

Booker reads aloud two letters of support.

Randall Danielson (100 N. Michigan Street, Plymouth, IN 46563):

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December 5, 2023



December 1, 2023

Plymouth Board of Zoning Appeals
124 N. Michigan Street
Plymouth, Indiana 46563

Dear BZA Members,

I am addressing you on a personal basis and on behalf of The Rees Theatre Inc, board of directors and Rees Project Committee.

As former owners/operators of Johnson-Danielson Funeral Home and The Remembrance Centre, my wife and I were quite involved in the Plymouth business community and shared a pretty defined pulse on the community as a whole. We have had good civic administrations but quite often topics of concern and discussion would land on the state of the downtown, the number of empty storefronts, the need for urban living opportunities and more restaurants.

When funds became available, the City was quick to acquire the blighted properties of a flood plain and develop River Park Square that added greatly to quality of life offerings such as a successful Farmers Market and an outdoor music and entertainment venue creating a renewed sense of 'Pride in Plymouth'.

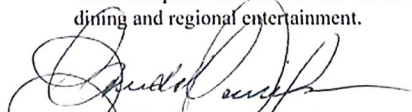
Thankfully, the State of Indiana provided grant dollars to encourage even greater community investment through public and private funding projects under the Regional Cities Initiative. The forward thinking Plymouth Redevelopment Commission worked hard to identify projects that were worthy of these dollars and addressed the above mentioned concerns of not only our downtown but also dollars for a needed new Boys & Girls Club.

At that time, three critical projects were identified for a vibrant downtown:

- A total restoration of the historic Rees Theatre, allowing for a multi-use venue
- A downtown residential project in the area of the old Cook Brothers south of the river
- A restaurant to occupy the former NIPSCO building on the river

Two are now complete, and I feel confident in speaking for the hundreds of investors, volunteers and a dedicated group of leaders that overcame a great number of hurdles and at times, exhaustion over a six year period to resurrect The REES, that on occasion will likely still flood. We stand in solidarity with Tim Harman, owner of Harman Restaurants Inc. who is willing to also overinvest in a building while believing, that in the end, it will pay dividends in revitalizing a community.

Let's complete the trifecta and become a destination for shopping, dining and regional entertainment.



Randall L. Danielson, President
The Rees Theatre Inc

PLYMOUTH BOARD OF ZONING APPEALS

December 5, 2023

Mayor-Elect Robert Listenberger (932 Angel Street, Plymouth, IN 46563):

December 5, 2023

City of Plymouth
Board of Zoning Appeals
124 N Michigan Street
Plymouth IN 46563

RE: Variance Application 2023-25
Harman Restaurants, Inc.

Dear Board Members:

I am writing to express my support for the variance from development standards requested by Harman Restaurants, Inc. I am sure I don't need to convince you of the many benefits this development will bring to Plymouth. The downtown area is thriving as an arts, entertainment, and commercial center and will only be enhanced with the addition of this restaurant and gathering place.

The question before you is whether to grant the requested variance from the floodwater control ordinance and allow Harman Restaurants to complete their renovations without requiring costly waterproofing to the lower level. The application explains why waterproofing would cause extreme hardship to the owner, while providing no benefit to neighboring properties and only negligible benefit to the subject property. I agree that forcing the developer to spend many thousands of dollars and disrupt existing sidewalks and streets would be counterproductive to our shared goal of improving downtown Plymouth.

As we have learned in recent years, flooding poses a serious risk to our city. As a community, we have risen to the challenge by leveraging grant monies to remove the most at-risk structures. We have turned a blighted, flood-prone area into Riverpark Square – a magnificent public space that has truly breathed new life into our downtown. We all recognize the dangers of flooding, and we have addressed those dangers appropriately.

The situation here is not the same. The flood risk to the subject property is minimal and presents no public safety risk.

The FEMA Floodplain Management Bulletin, *Variances and the National Flood Insurance Program* (FEMA P-993, July 2014) addresses the local use of variances for construction or maintenance of structures that would otherwise be prohibited in a floodplain. The bulletin points out that the federal regulations are not absolute but cautions that variances should only be granted after careful consideration. In addition to the usual criteria for granting a variance, you must determine:

- Good and sufficient cause and exceptional hardship exist;
- The variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
- The variance is the minimum action necessary to afford relief.

As you can see from the application, providing waterproofing to the building would create an exceptional hardship by requiring the developer to destroy adjacent sidewalks and streets at a cost of many thousands of dollars, while providing little or no benefit in the event of a flood. The variance would not be detrimental to the public because a flood would have negligible effect on the structure of the building and it would be closed to the public during any potential flood event. Finally, the variance is the minimum action necessary, as it would require no additional investment by the developer or the public.

I am excited to see Harman Restaurants, Inc. move forward with this significant improvement to downtown Plymouth, and I'm sure you are as well. As city leaders, we must all take public safety seriously and apply the zoning and flood control ordinances appropriately. However, in this situation I believe it is in the City and our residents' best interest to make an exception. I strongly urge the Board of Zoning Appeals to grant the Variance from Development Standards as requested by Harman Restaurants, Inc.

Sincerely,

Robert Listenberger
Mayor-Elect
City of Plymouth

Greg Hildebrand (2864 Miller Drive, Plymouth, IN 46563):

Hildebrand states he is with Marshall County Economic Development Corporation (MCEDC). He states he wants to speak in favor of this. He states in attracting industry, one of the main things they

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look at is quality of life because that is where their workforce is located. He states having a vibrant downtown and a retail inventory of places to eat and spend time at is important so they are in favor of this going forward.

Mayor Mark Senter (116 Pearson Place, Plymouth, IN 46563):

Senter states he would appreciate if this could be passed tonight as there are not as many city administrations that have had to deal with flooding like this one has. He states his started with his first week in office back in 2008 and then the 2018 flood, which beat the 1954 flood by 7 inches. He states we saw what happened then and it wasn't easy but they got through it. He states they had so many volunteers and it was truly amazing what happened in the Spring of 2018. He expresses that he truly appreciates everyone who was involved. He states he is very proud of our downtown and positive for the last 10 years, they only have two storefronts right now that have vacancies. He states starting with the Wild Rose Moon, the Heartland Artists Gallery, and the REES Theatre, we won a Mecca of Arts in the community and downtown. He states with the Mayor's Month of Music, they had nine concerts this year at River Park Square at Senter Stage. He states this means a lot and he would truly appreciate anything you can do to make this happen. He explains Yellow River Brewing Company would be a great addition to our beautiful downtown alongside the REES Theatre. He adds the REES Theatre has had nearly 200 events in the last 14 months.

Jeffery Houin (217 Elliott Avenue, Plymouth, IN 46563):

Houin states he was not expecting to be here tonight so he is not as prepared as he would like to be. He states he wants to address one minor issue. He states the question came up of whether there is an exceptional hardship and as Manuwal pointed out, you cannot base it purely on the expense to the developer. He mentions however, if you were to consider what would be required to waterproof this building to destroy sidewalks, streets, and excavate to an incredible depth on the north and west side of that building. He states you would be disrupting public infrastructure and utilities that he believes that alone can justify the finding of an exceptional hardship to require waterproofing of the building.

Sean Surrisi (124 N. Michigan Street, Plymouth, IN 46563):

Surrisi states he is the City Attorney for the City of Plymouth. He states following up what Houin said, from the definition of hardship in the ordinance, that financial hardship alone is not exceptional hardship. He states that does not mean it cannot be one of the factors that you consider along with the other factors that Houin just mentioned. He states he would also mention that they had a lot of efforts to mitigate flooding risks in the downtown and they have seen a lot of success from that. He states all along in that planning, there has been a vision to have a restaurant here, which is one of the final capstones on some of this downtown planning in the floodplain so he is very much in support of it.

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

Harman states he appreciates the support of everyone. He states as far as the variance is concerned, he guesses you have the authority to grant it, so he respectfully requests it. He states it does delay

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the process if they have to continue on. He believes Houin made a good point that it is not just the financial hardship, but it is breaking up sidewalks.

Jacobs states from sitting up here. We keep saying what it costs but we really have no idea. He states it is probably going to be a lot but it would help him a lot if he had that dollar amount because it is easy to speculate on what it would cost. He states he hears you and appreciates that but he doesn't really know if that would be a problem. He states he can agree that it would be a lot.

Martin states they did an alternate bid on replacing the sidewalks for the REES Theatre, which is right across the street to the north. He states the bids on that were between \$175,000 - \$250,000 just to replace, not to waterproof.

Richie asks Harman if he has any businesses in Bourbon.

Harman responds by stating he does.

Richie states he frequents those buildings frequently and he cannot speak highly enough of their upkeep and in that little bit of Bourbon, they create life there. He states he has to be done there for various events, he states there is The Standard, and then across the street, there is your pizza place.

Harman responds by stating it is Subway.

Richie states they are without a doubt the two best businesses downtown in Bourbon, for their upkeep and business. He states we would expect the same here. He states from the pictures of what you got planned that he is excited. He states with the REES Theatre and the townhomes, he believes we are going to see life brought down to Plymouth where it is desperately needed. He explains it has been dead there for way too long. He states there is nothing like being downtown right now and seeing the marquis lit up at the REES Theatre and seeing people go in and out of there. He states that it is just absolutely amazing. He states something like this is exciting and somewhat romanticizes Downtown Plymouth to a degree. He states he appreciates your plan and everything you are doing with that to bring business down there.

Harman states the variance will help speed it up or else they are just in delay. He states he would really like to get this open by Summer. He states they had this pie in the sky idea that they could get this open this year but in all honesty, they would like to get this done this Summer and the variance would help speed it up. He states that would help them with the ability to move forward with their plans quicker. He explains it is hard to put these construction guys on hold as they are constantly being sought after project after project. He states it is really hard to keep these guys moving and he does not want to delay the project for not being able to find a contractor.

Jacobs restates speaking as the President of the Board of Zoning Appeals, that he believes everyone up here wants this restaurant. He states they have to make sure we do it right to protect us and the city. He believes we all want it but he states we have to follow the process.

Manuwal states he understands that he probably seems like the bad guy here. He states he loves the idea and sees it there but wearing the Flood Plain Administrator hat, he has to do his due diligence to make sure everything is done properly.

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Jacobs states that's what they are trying to and have a restaurant here.

Gidley asks if we are going to approve it without the requirement of the DNR, then he would at least ask the applicants, once they have their meeting with the DNR and an outcome is determined that you immediately notify this board. Martin agrees. Gidley states he does not mind who does it but he would like to see the outcome.

Board Members Richie and Wendel moved and seconded to approve BZA 2023-25 as presented. The motion passed by roll call vote.

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

Other Business:

Gidley states the construction has begun out at the new gravel pit. He states they are taking down trees out at the section where they do not have authority to prevent. He asks if there are any permits that they need to pull from the city in order to proceed.

Booker responds by stating they do have to have a restoration plan.

Gidley states he is confused here. He states we told them they had to put up a berm, landscape it, put a fence around it, etc. He asks what the method is that they are going to use to ensure that happens.

Manuwal responds by stating to notify him because unless he has an inspection out that way, he does not just drive around.

Gidley asks if the neighbors out there will have to call you and let you know there is no berm.

Manuwal responds by stating they did inform him that they were going to go in and start clearing trees that way they can do the rest of the work.

Gidley states they haven't applied for a permit yet for the driveway, yet they are driving off the road in multiple locations. He understands that is the county road and they are going to have to get on with the county because they need to get their entrance/ exit location approved. He states that road is newly paved and they are just driving off it wherever they want and it needs to stop.

Booker states if they start violating the ordinance, then they can take them to court.

There being no other business, Board Members Selge and Richie moved and seconded to adjourn the meeting. The motion carried and the meeting adjourned at 8:50 p.m.



Kyle Williams— Recording Secretary