



City of Carmel

Carmel Board of Zoning Appeals Regular Meeting Minutes Monday, February 25, 2019

Members Present: Brad Grabow
James Hawkins
Leo Dierckman
Kent Broach
Susan Westermeier (Alternate)

Members Absent: Alan Potasnik

Staff Present: Angie Conn
Joe Shestak
Mike Hollibaugh

Legal Counsel: John Molitor

Time of Meeting: 6:00 PM

Approval of Minutes of Previous Meetings:

- On a Motion made by Leo and seconded by Jim to approve the minutes from November 26, 2018 and January 28, 2019 BZA Meetings. **Approved 5-0**

Communications, Bills, and Expenditures: John Molitor

- A BZA Executive Session will be held immediately following the conclusion of this BZA meeting but I do not have any updates and I advised to cancel.
A Motion by Leo and seconded by Jim to cancel tonight's Executive Session. Motion passes 5-0
- House Bill 1437 is being proposed regarding PC or BZA members completing up to 6 hours of a training course

Reports, Announcements, Legal Counsel Report, and Department Concerns: Angie Conn

- Item 6 on the agenda, Van Shaak Side Yard Setback, the Director transferred it to the full BZA and needs to suspend the rules in order to hear this item at tonight's meeting.
A Motion by Leo and seconded by Jim to Suspend the BZA's Rules of Procedure. Motion passes 5-0

Public Hearings

(V) Master Yoo's Tae Kwon Do Signage.

The applicant seeks the following development standards variance approvals:

- Docket No. 18120004 V PUD Ordinance Z-608-16, Section 18.3.A.2 45 sq. ft. wall sign allowed, 60.1 sq. ft. requested.**
- Docket No. 18120005 V PUD Ordinance Z-608-16, Section 18.3.A.5 3 signs allowed, 4 signs proposed.** The site is located at 2470 Harleston St. in Village of WestClay Uptown. It is zoned PUD/ Planned Unit Development. Filed by Jin Park, on behalf of E & J Enterprise LLC.

Petitioner: Jin Park:

- Presented an exhibit* with the elevations that showed where the signs would be
- We received a letter in support from the VOWC HOA Board
- We are adding one more sign that's allowed to the south elevation
- We did research on the sign placements of the other Master Yoo's locations

- These variances will only affect the appearance of this building

Public Comments: None

Department Report: Angie Conn:

- The Petitioner has worked with Staff to come up with a solution in order to have the Department's support for these variance requests
- One of the wall signs has been modified to a smaller size
- Staff recommends positive consideration of both variance requests with the condition that future tenants must use two of the four permitted signs as architecturally integrated signs into the fin design

Board Comments:

Kent: Can you explain what the fins are? **Angie:** If you look at the renderings, there are letters that flank on both sides on the fin that face east and west. If approved tonight, we would like these as future sign locations. **Kent:** Are there any plans for additional tenants? **Angie:** None are planned as of now, but they are planning for future tenants.

On a Motion made by Leo and seconded by Susan to approve Docket Nos. 18120004-5 V with the Conditions provided by Staff.

Approved 5-0

(UV) Recovery Auto.

The applicant seeks the following use variance approval:

3. **Docket No. 18120010 UV UDO Section 3.01 Prohibited Uses in Overlay, Automobile Sales & Display requested.** The 0.4 acre site is located at 10601 E. 106th St. It is zoned B2/Business and Home Place Overlay District, Business Sub-Area. Filed by E. Davis Coots of Coots, Henke & Wheeler, on behalf of Dianwei Wang and Meili He, owners.

Petitioner: Dave Coots:

- *Presented an aerial view of the property*, it is located at the northeast corner of 106th Street and College Ave
- A standard oil service station was previously here and was torn down last year
- Staff provided a letter from Indiana Dept. of Environmental Management stating adequate cleanup from this previous site has been done and they are continuing to monitor the ground water and will not issue a letter of compliance until the end of this year (2019)
- Underground storage tanks were removed and over 700 tons of contaminated soil have been removed
- The Petitioners are owners immediately to the east of this site and have been there since 2010
- The owners purchased adjoining property in 2013, and in 2018 entered a contract to purchase the old Mathews auto repair location
- The owners are seeking to expand their business into this location
- Sidewalks has been added since the City's improvements to 106th Street and College Ave
- The Thoroughfare Plan requires there must be a path along our business front and we agreed we would install a 10' wide asphalt path for connectivity
- The owner plans to pave this entire parcel and leave a 5' landscape buffer. This will allow the owner to expand his business to display the sale of automobiles.
- Staff has raised the issue for drainage if this parcel is paved and we will add improvements for drainage to accommodate any additional stormwater runoff
- We ask the Board to approve this UV for the purposes that were just stated

Public Comments: None

Department Report: Angie Conn:

- Home Place business district sub area excludes automobile sales and display, therefore the UV is needed
- This zoning district calls for buildings up to the street and the parking lots in the rear
- We recommended positive consideration with Condition of 1 year time limit in anticipation the petitioner will redevelop this area in the future

- They agreed to provide Staff with a landscape plan and additional ROW with a 10' wide multi-use path
- They agreed not to park any of their automobiles on the sidewalk

Board Comments:

Sue: If approved tonight, what happens after one year? **Angie:** After a year, they would have to come back for another UV or for an ADLS review. **Sue:** What's the harm for leaving the vacant lot as gravel? **Angie:** They want to pave it for the customer's sake. Staff is fine with leaving it as gravel for one year. **Sue:** Would they defer installing the multi-use path for a year? **Angie:** Yes. The City is planning to build a roundabout for this intersection in the future, so they are dedicating the ROW.

Brad: Who is responsible for the maintenance of the alley located north of this property? **Dave Coots:** The City probably inherited that. It is a dedicated alley. **Angie:** It was recently part of the annex and the City is now responsible

Leo: When is this roundabout going to be built? It is on the one year plan? **Angie:** No. It's currently not on the thoroughfare plan so I do not know the time frame for it.

Jim: What's the difference between the one year and two year timeline allowance? **Dave Coots:** The petitioner would prefer a two year plan. The owners have plans to expand their business and two years gives us more time to work out the future development plans of this site. **Jim:** I agree that a time limit is needed. **Leo:** I would agree for five years, but if the Petitioner is happy with two years, let's make it that.

On a Motion made by Leo and seconded by Jim to approve Docket No. 18120010 UV with the Condition of a two (2) year time limit.

Approved 5-0

WITHDRAWN - (UV) Cohen Office.

~~The applicant seeks the following use variance and development standard variance approvals:~~

~~**Docket No. 18120012 UV — UDO Sections 2.09 & 3.56 — Prohibited Uses, Office use requested.**~~

~~**Docket No. 18120013 V — UDO Section 3.64.C.3.c — Maximum 45% lot cover allowed, 62% requested.**~~

~~The 0.2 acre site is located at 248 2nd St. SW. It is zoned R2/Residence & Old Town Overlay District, Character Subarea. Filed by Jim Shinaver of Nelson & Frankenberger on behalf of Cohen Investments Partnership LP.~~

(V) Van Schaak Residence, Side Yard Setback.

The applicant seeks the following variance approval for a cantilevered fireplace with built-ins:

Docket No. 19010011 V PUD Ordinance Z-553-11, Section 6.1 Min. 5-ft side yard building setback required, 3-ft requested. The site is located at 528 Terhune Ln. at Jackson's Grant, Section 5, Lot 274. It is zoned Silvara PUD/Planned Unit Development. Filed by Matt Huffman of The Old Town Design Group LLC, on behalf of Kenneth & Nancy Van Schaack, owners.

Petitioner: Justin Moffett, Old Town Design Group:

- It's an unfortunate situation that we are here, but hopefully we can find a solution that meets everyone's needs
- We designed the home for the Van Schaack's, and the cantilever fireplace is within the 5' side yard setback
- The fireplace total area is 7' wide, and the built in cabinets are 4' each, with a total width of 15-16'
- The built-in cabinetry are met to be flush with the fireplace, so it's purely a design detail
- We were required to submit our plans to the Architecture Review Committee of Jackson's Grant. Republic Land Development approved these plans.
- We applied for building permits through Department of Community Services and they were approved
- Construction was started and it was then brought to our attention that this was not in compliance with the PUD or the underlie zoning
- *Presented rear, side, and front yard elevations*
- Zoning allows up to 7' of a chimney/firebox to protrude in the side yard setback
- The problem is the cantilever area width is 15' 9" and the extra 4' per side is a common design feature
- We believe the additional 4' to each side does not create any hardships

- We believe the built-in cabinets with windows above are more architecturally attractive than just having a fireplace bumped out
- The difficulty for us are we received architecture approval, already built the foundation, and framed the home

Public Comments:

Jeff Hientzman, attorney of the adjacent neighbors – Laura & Nick Miller:

- My client and their neighbors have sent their opposition letters to Staff
- The builder’s submitted a variance application that does not indicate the cantilever chimney built out has already been done, but states construction will begin immediately after the variance is granted. It’s in the process.
- My clients notified the City as soon as they saw this
- This cantilever protrusion is off the framing of the house and does not have its own foundation. Tearing into the foundation is not required as suggested by the Petitioner.
- The District Ordinance of the PUD specifies cantilever chimneys are only permitted on rear elevations of homes with basements
- The amendment of the PUD ordinance establishes the 5’ setback
- We believe The Old Town Design Group has failed to meet their burden
- The building code allows up to 24” and not an inch more to encroach or there could be safety concerns. Pictures my client provided show it is over 24”.
- Values and uses of the homes in the neighborhood will be impacted. We had a realtor submit a letter stating this.
- There are landscaping requirements per the HOA that must be met. The window wells and chimney built out will create issues with plantings and maintaining the side yard landscaping.
- There have been zero practical difficulties in respect to this

Nicholas Miller, 532 Terhune Lane: I do not support this variance request. I live immediately next door. I have serious safety concerns. There are fire codes that exist when it’s less than 5’. It will have a vented fireplace that will come out right at my house.

Rebuttal to Public Comments: Justin Moffett:

- The PUD is control of the development, and not the UDO
- There are other examples in Carmel with similar cantilever setups
- We can remove the entire cantilever structure but the entire floor plan would have to change
- We do not have to rip out the foundation but it has an impact on the framing and design of the house
- We believe this should be allowed because the Silvara PUD of Jackson’s Grant is silent in addressing the bumped out chimney, so the UDO does control and allow for a cantilever fireplace
- From an architecture viewpoint, it looks better with windows and built-in cabinets
- If we did not have the windows and built-ins on the side of the chimney, we would not be having this discussion

Department Report: Angie Conn:

- The PUD Ordinance for Jackson’s Grant does require a 5’ side yard setback
- The City’s UDO allows for 10’ chimneys to encroach 2’ into a required yard
- We have a representative from the Building & Code Dept. to answer any questions about the building code
- We recommend positive consideration of the variance as long as the building and fire code issues are addressed

Board Comments:

Jim: Does the PUD indicate if you had to have a two story fireplace? **Justin Moffett:** The Village section of the PUD is completely silent on chimneys all together. As Staff suggested, we have to refer to the UDO.

Leo: Is the fireplace allowed on the side of the house or is strictly for the backyard? **Angie:** The PUD states all exterior chimneys shall be constructed of masonry. This does not apply to direct vent or interior fireplaces which protrude through the roof. The fireplace the Petitioner is proposing is a direct vent. We did not require it to be masonry. I can look into the cantilever clause for only of the rear of the building. **Leo:** Can the attorney provide us with his explanation? **Jeff Heintzman:** I don’t have the Ordinance in front of me and I would like to look at what Mr. Moffett has.

John Molitor: I would recommend we take a five minute recess. I will consult with both sides. **Brad:** We will use a ten minute break for the sides to discuss the details and differences of the PUD

-10 minute recess -

Brad: The Board will give both sides an additional five minutes each to present your case

Jeff Heintzman:

- My client's zoning is using the Bridge Creek PUD when referring to side yard setbacks
- Architecture standards found in sections 6.01 & 6.02 state chimneys are to be on the rear elevation of the house
- I read this provision as required or preferable because of the limited side yard with basements
- The UDO states chimneys and flues shall be permitted to project into required yards for a distance of not more than 48" (4') when placed not to obstruct light and ventilation
- What's your typical side yard throughout all of Carmel? You're typically dealing with larger yards and not 5' side yard setbacks.
- This cantilever chimney will extend more than 2' in the side yard and construct light and ventilation
- If this variance is allowed, then explain why?

Justin Moffett:

- The Village section omits the language of chimneys and doesn't address the location
- The three other PUD sections in this neighborhood clearly defines chimneys placed in the rear of the home
- The setbacks are the same as the Bridgmont and has nothing to do with the chimney
- The Village section of Jackson's Grant is meant to have narrow lots
- Old Town was brought into build this development because of our expertise of building on narrow lots
- We don't believe there are any fire code issues
- We are asking if we can have the 4' wide cabinet built-ins with windows, on each side of the chimney

Committee Comments:

Leo: I would like to hear from the Building & Code Department on the fire safety issue. **Mike Sheets,** Building Inspector for DOCS: Code states that you have to be 6' apart. You are not allowed to build up to 3' of the plot line. They are proposing an overhang that will have to be fire protected. **Leo:** How long is the pipe that sticks up from this? How long is it supposed be away from the wall? **Mike Sheets:** They typically stick up 60".

Leo: How many homes have been built in this section at this point? **Justin Moffett:** Close to 30 homes. **Leo:** How many of these homes have these side chimneys? **Justin Moffett:** I don't know. **Leo:** Do you know of any homes with this type of side chimney? Is this the first time this has come up? **Justin Moffett:** I don't know the answer to that. **Leo:** An important issue we need to figure out is this the first time that this has happened? We need to be consistent with our decisions, and we need to identify if there are any other similar situations in this neighborhood. I will ask this be tabled for 30 days and ask the sides to come up with a resolution, or they present more facts to us. I want our legal counsel to look into us and provide us with some direction.

Brad: Is the chimney a defined term in the PUD? It is not in the UDO. **Angie:** It is not. **Brad:** This structure becomes a bump out with a bay/boxed window and the chimney issue is irrelevant. **Angie:** The Planning Director determined the building with the build-ins, is actually encroaching and not the chimney itself. **Jeff Heintzman:** Section 6.02 refers to a direct vent fireplace as to something having a chimney.

Jim: Were you proposing as an alternative, to put in a traditional brick chimney, and that could extend beyond to what you are proposing? **Justin Moffett:** If we omitted the 4' window sections on each side of the direct vent, we could omit the Variance. **Jim:** Is this what Staff believes? **Angie:** Yes, if they just had the fireplace, it could encroach and they would not need the variance. Since it has the other elements, the built-in cabinets, it is more than a fireplace and it is encroaching into the 5' side yard setback.

Leo: Does the City approve side yard fireplaces that have an 8" pipe that sticks out? I have always seen a direct vent on the side of the house without a pipe that sticks out 8". **Angie:** I can't speak to that. **Mike Sheets:** It depends on the manufacturers design. It can go out the top, side, or rear. It's typically around 6" to 8". **Leo:** Does the 6" to 8" meet code? **Mike Sheets:** Yes, the manufacturer specs or code dictate how far they can be.

Brad: Are these windows operable or fixed? **Justin Moffett:** The windows are fixed. I can't speak of how many homes have cantilevers, but I would say we have the direct vents in every home.

Brad: Was this design element required by architectural review process or part of the submittal to Jackson's Grant?

Justin Moffett: It was part of our design that we submitted for approval. If we just did the fireplace bump out and not the built-in cabinets with windows, they would of rejected it. **Leo:** Who are they? **Justin:** The architectural review board, the master developer of Jackson's Grant. **Leo:** Have they sold lots to other builders and not just Old Town Design Group? **Justin:** They use others. **Sue:** Would the developer turned down your building plans if you just did the fireplace build out without the windows and built-ins cabinets? **Justin:** Yes, the developer would have denied it in their review process. They require more details and do not allow just a direct fireplace build out.

Jim: Did the architectural review developer examine the full set of plans, including the foundation, plot plan, and elevations? **Justin Moffett:** Yes, we submitted the full set of plans including the plot plan

On a Motion made by Leo and seconded by Kent to continue Docket No. 19010011 V to next month's BZA meeting (March 25, 2019)

Approved 4-1, Hawkins

Old Business

(UV) PIP Printing, 2430 E. 96th St.

The applicant seeks the following use variance approval for an existing pole barn:

1. **Docket No. 18120009 UV UDO Section 2.05 Prohibited Uses, Printing/Publishing Establishment requested.** The 3-acre site is located at 2430 E. 96th St. It is zoned S2/Residence. Filed by Jeffrey Lauer of Polis Collaborative LLC, on behalf of PIP, Inc.

Petitioner: Jeffrey Lauer:

- We presented this at last month's meeting but due to comments from neighbors and the Board, we were asked to continue it to tonight's meeting
- This business will run as a satellite location and it would not be open to the public
- Their proposed functions would be minimal and low impact with 1-2 employees
- They intend to keep and maintain the residential character of the area. They will not change the existing dwellings
- The multi-use path has been addressed and we will contribute to the thoroughfare fund
- Location of the bicycle racks have been proposed and agreed on
- We will dedicate the street ROW once we take possession of the property
- Location of the bathroom facilities and dumpster enclosure have been addressed
- The CFD require access by a paved road. They wanted an asphalt path and we agreed to that.
- The CFD need to tweak out the turning radius of their fire truck
- The CFD will not sign off with a Certificate of Occupancy without their approvals
- Engineering require street curbing and drainage within the parking area
- Petitioner has no intention of removing any trees
- The Board mentioned to have the business operate in the southern portion of the parcel
- Anything north of the pole barn will not be touch and provide a natural buffer from the neighbors to the north
- We ask for your approval tonight

Department Report: Angie Conn:

- The Petitioner has addressed seven of the outstanding items from the last meeting
- The Engineering and Fire Department are comfortable with us going forward
- Staff will not impose a time limit on their proposal. We withdraw our time lime we imposed at the last meeting.
- We ask for positive consideration with the condition of the Petitioner fulfilling at the City's required site and building requirements before the City's issuance of a final Certificate of Occupancy

Board Comments:

Jim: Is there any intent for outdoor storage? **Jeffrey Lauer:** The pole barn is large enough to store everything.

Jim: Are there any regulated environmental materials we need to worry about? **Bud Kistner,** PIP Printers: Our products are safe and are non-hazardous.

Sue: What’s the largest sign you can make there: **Bud Kistner:** 4’x8’

Brad: I still see a reference to a gravel driveway. Staff recommended an asphalt driveway and parking pad.

Jeffrey Lauer: The petitioner has committed to an asphalt driveway as a requirement by the Fire Department.

On a Motion made by Jim and seconded by Leo to approve Docket No. 18120009 UV with conditions: the Petitioner fulfilling all the City’s required site and building requirements (including compliance with the Indiana Fire Code as enforced by the City of Carmel, as well as installation of the asphalt driveway to the pole barn) before the City’s issuance of a final Certificate of Occupancy.

Approved 5-0

John Molitor: I will provide my legal expertise of the PUD interpretation to the BZA before next month’s meeting in regarding the Van Schaak residence, Side Yard Setback Variance request.

Meeting adjourned at 7:50 p.m.

Brad Grabow – Vice President

Joe Shestak – Recording Secretary