



**CITY OF KNOX BOARD OF ZONING APPEALS**

**101 WEST WASHINGTON STREET**

**KNOX, INDIANA 46534**

**574-772-5445**

**Meeting Minutes:** September 20, 2021, 6:00 pm

**Meeting Location:** Knox Community Center

**Members Present:** Mike Skinner, Jeff Houston, Darlene Dulin, Mark Simpkins, Dave Metz

**Members Not Present:** N/A

**Staff Present:** Todd Wallsmith, Kenny Pfof

**Staff Not Present:** N/A

**Members of public present:** Rev. Daniel Allen, Peggy Shidaker, Linda R. Bailey, Matthew Ohime, David Weinberg, Elise Risner, Linda Wolfenbarger, Kendra Ohime, David Weinberg, David Johnston, Mayor Dennis Estok, John Wilson

The September 20, 2021 Board of Zoning Appeals meeting, held at the Knox Community Center, with COVID-19 restrictions in place (masks and social distancing required), was called to order at 6:00pm by President Mike Skinner. The Pledge of Allegiance was conducted and Roll Call performed.

President Skinner asked for approval to the agenda. As written. Member Simpkins made a motion to approve the agenda as written. Member Metz seconded. The motion carried 5-0.

President Skinner asked for approval of the August 16, 2021 minutes. Member Simpkins made a motion to approve the minutes without changes. Member Metz seconded. Motion carried 5-0.

## **OLD BUSINESS**

President Skinner addressed Old Business first, a variance request by Rev. Daniel Allen which was tabled from the August 16, 2021 meeting by the Pilgrim Gospel Lighthouse Church to build a parsonage on their property.

President Mike Skinner reopened the public hearing for the variance request at 6:03 p.m., on the following notice from August 16, 2021:

“Notice is hereby given that there will be a public hearing at Knox City Hall on Monday, August 16, 2021 at 6:00pm (Central Time) located at 101 West Washington Street, Knox, Starke County, Indiana. The purpose of the hearing is for a Special Use request to allow a parsonage to be erected on a property that is already occupied by a church in an area zoned as M-1 Light Manufacturing, located at Part Northwest, Southwest, Section 22, Township 33, Range 2, 1.174 acres, commonly known as 1102 West Pacific Avenue, Knox, Starke County, Indiana. The property is owned by Trustees of The Pilgrim Gospel Lighthouse Church. Kenny Pfost/City of Knox Board of Zoning Appeals Administrator.”

President Skinner referred members to a new map of the proposal for review. Kenny Pfost, BZA Administrator, notified members he recently went out to the property and noted “there is enough room in the southeast corner to have residential setbacks: 10 feet off the east property line with more than the required 30 foot rear yard; between the shelter/pavilion and the west side of the house would be 16 foot and he could have at least a 35 foot front yard, if approved, and that is with a 40x28 foot residence.”

President Skinner consulted legal council, Todd Wallsmith, on whether he was aware of any legal issues regarding this. Mr. Wallsmith stated, “As a parsonage, it is allowed. It’s allowed under the pre-existing use even though it is zoned industrial. Either the church was granted a variance in the past or was grandfathered in, but the prohibitions on having a residence there would be nonexistent because it is a parsonage and therefore part of the church buildings. As long as it complies with the set-back requirements and other zoning ordinances designed to protect the community, whether it is fire proofed and so on, there would be no prohibition against granting this. Member Simpkins asked Rev. Allen where would the ingress/egress for the house be? Rev. Allen stated it has been in the planning for a few years, and was initially proposed by his brother, Gerald, who passed away. He stated there is plenty of room for parking, at least 50 cars. Member Simpkins further asked if the driveway would go through the parking lot to which Rev. Allen stated it would but stated they would not be parking in the lot but would turn into the driveway from the lot. Member Simpkins then asked if this parsonage would be tied to the church as long as the church building is standing there? For instance, ten years from now if someone decided to subdivide it off, will it be a problem? Legal council Todd Wallsmith clarified, “Legally speaking, given the present zoning, you can’t put a house there at all. The only reason it is allowed is because it is a

parsonage, a part of the collected union of the church...You could not put a subdivision there under the present zoning. It is in the Board's legal authority to grant this variance subject to the condition that the house remain on the same parcel as the church." Member Metz asked, "If it were zoned in a different fashion, the setbacks would be appropriate? As a residential zone or something?" Per Kenny Pfost, "If it was residential, correct." Member Metz further questioned restrictions front yard, side yard, but he doesn't see mention of the rear yard. Kenny explained due to the tree line in the rear yard, it is difficult to know where the property line is but the property line goes past the tree line, which is at least 30 feet, which is the minimum rear yard setback. Member Simpkins asked if they would be required to have their own sewage and water tap to which Kenny stated, "Correct."

President Skinner closed the public hearing portion at 6:10pm. Vice President Houston made a motion to approve the variance with the stipulation that the parsonage remains part of the existing church on the existing parcel. Secretary Dulin 2<sup>nd</sup> the motion. Motion carried 5-0.

## **NEW BUSINESS**

President Mike Skinner opened the public hearing for the Special Use request at 6:14pm, on the following:

Notice is hereby given that there will be a public hearing at the Knox Community Center on Monday, September 20, 2021, at 6:00pm (Central Time) located at 55 East Lake Street, Knox, Starke County, Indiana. The purpose of the hearing is for a Special Use request to allow the properties to be used for a thrift store in an area zoned as Residential, located at Ross 2<sup>nd</sup> East 54 feet of Lots 98 & 103, Ross 2<sup>nd</sup> West ½ Lot 97, and Ross 2<sup>nd</sup> West ½ Lot 104, commonly known as 503 East Lake Street, Knox, Starke County, Indiana. The property is owned by the Starke County Resource Center. Kenny Pfost/City of Knox Board of Zoning Appeals Administrator

Matt Ohime, Director of the Starke County Resource Center, spoke on the purpose of the Special Use request. Mr. Ohime stated the Starke County Resource Center would like to utilize the facility to be of assistance and help to the "vulnerable people of the community" along with developing a system of good will that would feed off itself between donors and those who benefit from the products thus, benefiting the community. Starke County Resource has acquired the property and plan to fully maintain the building and property. Mr. Ohime requests the Starke County Resource Center be given authorization to use the building fully as intended.

Further public comments made by Kendra Ohime. She stated many families have come to them already with various needs (including fires) and have been able to obtain items as a service. The mission and desire was birthed from the idea that those in need are able to get necessities at an affordable cost (ex. three items of clothing for \$5), which

still serves their needs at an affordable price. She further stated some people have become regulars and it is a good feeling to know you are assisting them to meet their needs.

Peggy Shidaker, Treasurer of the Starke County Resource Center stated since earlier in the year (March), they have served 949 people and received 192 donations. Financially, they have received \$37,000 as of this date in financial donations. She states the Resource Center has helped people find housing, employment, provided clothing for interviews, assisted with paying for resumes, provided clothing and dishes to two families who had fires, and also donated items to someone whose family member had a fire. Also had two families with hardships that items such as furniture were donated to.

John Wilson, stated the idea of the thrift store isn't a problem; however, the Board should take into consideration that in the past, there has been a problem with items piled up "outside" of the building (sitting outside dumpsters).

David Weinberg spoke in favor of a thrift store.

President Mike Skinner read two letters from the community that are against rezoning the Knights of Columbus building to Commercial. One felt it was a "backdoor move to open a homeless shelter that was previously not approved ...and suggested it be moved to an empty storefront downtown." Matt Ohime states there is no intention for the Starke County Resource Center to use the Knights of Columbus building as a homeless shelter. He further stated there is an intention for the Starke County Resource Center to find "some place" in the county to use as a homeless shelter as there is a need. He then stated he has had several people come to him who were initially negative towards the idea of a homeless shelter but are now positive.

Secretary Dulin asked how many days were they planning on operating the thrift store. Mr. Ohime informed the board that they have been having a garage sale twice a month as the Knights of Columbus has a garage door. Initially they plan to be open two Saturdays a month (every other Saturday 9am-1pm) and two days a week in the mornings for donations (Thursday and Fridays mornings 9am-12 noon. Anything outside of those hours may need to be looked at down the road but would certainly get buy-in from the neighbors. Stated those donating can use the alley when dropping off items so that traffic is not blocked on the street.

Public Hearing closed at 6:28pm so the Board could continue with questions.

Vice President Houston asked if there are at least two exits in case of a fire and their location. Matt Ohime stated there are two entrances but three exits (emergency exit off to the right in the first half of the room and another in the back). Vice President further asked about fire extinguishers. Kenny Pfost stated those items will all be taken care of before the Occupancy Permit is issued.

Vice President then asked about plumbing as he was aware that was a major issue years ago. Matt Ohime informed the Board that money has been invested in the property and the two lots next door. Trees have been taken down that could develop problems with the plumbing and the roof. Plumbing lines have been snaked and both bathrooms have been “gutted”. Air conditioning and recessed lighting has also been put in. Kenny Pfof asked about the hours of operation to which Mr. Ohime stated 9am-1pm every other Saturday. States if hours were altered, he would be a “good neighbor” discuss with the neighborhood. In regards to parking, Mr. Ohime stated that currently the parking area (lot) on the right hand side is grass (plans are to keep it as grass for now). Sometimes on sale days there have been 2-3 cars parked on the side of the street. Vice President Houston stated he has not noticed any issues.

Secretary Dulin asked Mr. Ohime to elaborate on the donation process. During the donation hours or by appointment, they pull up next to the building per the alley way, there is an overhead door where they will be greeted. Items are dropped off and brought into the building. Volunteers sort items. Some items are given to Goodwill that can be used for material purposes. The rest is organized and put out for a garage sale/referrals for those in need. Items not in good condition may get put in the dumpster. Secretary Dulin further asked if Drop Boxes were going to be used to which Mr. Ohime stated, “No. There are too many problems with vandalism.” Secretary Dulin further stated people have been known to set stuff outside of drop boxes. Mr. Ohime stated they have had a couple issues with that but have addressed it head-on and will continue to communicate with donors not to leave anything outside.

Member Metz asked how the Starke County Resource Foundation came up with the figure of \$37,000 in financial donations. Peggy Shidaker, Treasurer, receives those cash donations from churches and private donors, and this is the amount in their checking account. They also received a grant from the Starke County Community Foundation. Mr. Ohime feels there are a lot of generous people in Starke County. Member Metz asked if the Starke County Resource Foundation is aware of the Red Cross and what they do to assist people when there’s a fire. Mr. Ohime stated they are not in the position to be the Red Cross of Starke County but are continuously trying to connect with resources within and outside the Starke County community to assist those in need. Elaborated that a lot of people are not aware of resources available and the idea is for the Starke County Resource Foundation to partner with all those resources. Member Metz asked if there was any documentation from the Census Bureau that would tell how many people would utilize this facility. Mr. Ohime stated they have helped over 900 people in the last five months. Mr. Ohime said he thought the idea of this was identified in the Ball State study and we have to take care of our own. Member Metz asked why they couldn’t put it in an existing retail location to which Mr. Ohime stated they don’t have the overhead to purchase such a facility but if someone would donate a retail building, that would be great. The donation of the present building was from the Knights of Columbus.

Member Simpkins asked if there were separate sorting and selling areas and when do they stop taking donations because they are totally filled up. Mr. Ohime stated as of now, they haven't gotten to that place. Member Simpkins expressed concern that items wouldn't be organized. Kenny Pfost confirmed that he has been in the building and it is very well organized. Member Simpkins further asked, in regards to dumpsters, how often they were emptied. Mr. Ohime stated the dumpster is emptied weekly and it is lockable with a combination lock so others can't put their trash in the dumpster. Member Simpkins further asked how the money would be used that is made to which Mr. Ohime state it will all be given back to the community by helping and changing people's lives.

Member Simpkins about referrals. Mr. Ohime stated people can get referred to them and they give them \$40 of free stuff right away. He said, It's not about making money. It's about helping people."

Per legal council (Todd Wallsmith), he has a conflict regarding giving legal advice on this request because he consulted with The Starke County Resource Center regarding the acquisition of the building. He referred the Board to follow the Ordinances as they control Board actions. President Mike Skinner referred to the following:

On the application for the Special Use-

"10. There have always been some sort of variance offered on the property as it is not suitable to be a simple R1 dwelling."

President Skinner further elaborated, "The last two major Ordinance publications in 1998 and 1973 both say, "These are the Ordinances but...if you were using the property for something other than what the property is being zoned for, you are 'grandfathered' in. The existing owner was grandfathered in. The Catholic Church and Knights of Columbus have been grandfathered in twice for what they were using that property for. Any new owner...we go back to R1 and those definitions."

President Skinner also referred to the following request on the application as the applicant didn't ask for a Variance of Use:

"5. Type of Appeal: Request for Special Exception, Special Use, Contingent Use, Conditional Use."

President Skinner explained, "Looking at the BZA Zoning-Appendix A, Title V, R1- 2B: Special Uses that can be granted by the Board of Zoning Appeals does not list a retail establishment in a residential neighborhood. Based on what is written, the BZA does not have the power to grant this request."

Matt Ohime stated he had been instructed by 'someone at the table' to select *Request for Special Exception, Special Use, Contingent Use, Conditional Use*. He feels this is

the only use that this property can have. States they can continue operating as they are by having sales twice a month but just wants to make it work.

President Skinner explained the way the Ordinance is written, the BZA cannot approve a Special Use nor can they rezone a property. Vice President Houston asked if it can be covered under Title V R1-Single-Family District, Section 1, Intended Purposes A or B.

Legal Council, Todd Wallsmith stated if both sides waive any conflict, he would be willing to express his legal opinion. Member Simpkins made the motion to waive conflict for legal council to express legal opinion. Vice President Houston 2<sup>nd</sup>. The motion carried 5-0.

Per Mr. Wallsmith, "Variance cannot be granted to allow a non-permitted use. Under R1 for the special uses, it is not included. However, under the Intended Purposes, they don't exactly match the regulations. The Board has the right to deny this, in which case, realistically, there is no recourse through the courts because there is a valid basis for denying the special use exception. If granted, any of the objected individuals could bring an appeal to court. The likelihood of that is slim to none since they didn't show up and the cost would be thousands of dollars. Under Section 1. Intended Purposes, it is covered. Under Section 2. Use Regulations/Special Uses, it is not. It is odd that normally there is a 'catch all' under Special Uses that provides other uses in the spirit of this, but not specifically listed....Ultimately, under Section 1. A, Section 1. B, you would have a basis of going forward allowing it, even though it's not listed as a Special Use specifically. The test should be the practice of the BZA, would be something to read into the record so that everyone knows exactly what they are voting on.

Under Title XVIII Special Uses, Section 4, No special use shall be granted by the Board of Zoning Appeals unless the special use: 1. Is deemed necessary for the public convenience at that location; 2. Is so designed, located, and proposed to be operated that the public health, safety and welfare will be protected; and 3. Will not cause substantial injury to the value of other property in the neighborhood in which it is located.

The decision should first be whether or not under Section 1 A. or B. of the R1 Zoning is appropriate. Then decide whether Section 1 A. overrides Section 1 B. If it's determined Section 1 A. overrides Section B., then proceed to Section 4. of Title XVIII which is Special Uses and determine if the property meets standards 1-3."

Member Simpkins questioning the "rejection of an appeal". Mr. Wallsmith stated he is unaware of any procedure in place under the ordinances that allows rejection of a BZA appeal and to his knowledge, every rejection is brought before the Board. His recommendation is for the Board to determine if Section A. would rule over Section B. Vice President Houston states it looks like it is allowable under Section 1 A and Section B as essential services. Secretary Dulin asked for clarification as both A and B under

Section 1. listed essential services. President Skinner clarified with legal council that we are looking at Section 1 A and B vs. Section 2 B.

Secretary Dulin made a motion to table decision for now in order to allow more time to review standards so the right decision could be made. Member Simpkins 2<sup>nd</sup> the motion. The motion carried 5-0. The request will be reviewed at the next meeting.

David Weinberg asked if there was any way the property could be deeded back to the Knights of Columbus and have this “grandfathered” in. President Skinner advised they consult a real estate attorney.

### **ANY OTHER BUSINESS THAT MAY COME BEFORE THE BOARD**

Member Simpkins reiterated his concerns regarding Title XXI, Section1 Board of Zoning Appeals, C. Decisions, #1 which reads:

*All final decisions arrived at by the board of zoning appeals shall require a majority vote of all its members.*

Member Simpkins further asks Mr. Wallsmith, “What happens when all Board members aren’t here?”

Per Mr. Wallsmith, “Simply put, you have to have a quorum to hold a meeting. The quorum for a 5-member board is 3 members. By statute, for any action to be taken by the Board, a majority of members, total members, not the number of members in attendance, but a majority of the total Board, must vote in favor of it. If you have something that comes before the Board and you don’t have 3 votes, it does not pass. Any time there is a vote for this Board to take action, there MUST be 3 YES votes. For example, if you have 3 members present to vote on a variance and 2 members vote for it and one against, it is denied. If you have four members present and 2 voted for and 2 against, it is denied. If you have 3 members present and all 3 vote for it, it will be granted. Regardless of how many members are present, it will take 3 yes votes for it to pass.”

Member Simpkins further asked, “If it takes 3 to pass, why wouldn’t it take 3 to deny?”

Mr. Wallsmith explained, “The burden is on the person requesting the variance or special use. A tie vote is a loss. The only way to pass a request, there must be 3 members to vote in favor of it.”

Member Simpkins states he is reasonably satisfied with this information.

Vice President Houston made a motion to adjourn the meeting. Secretary Dulin 2<sup>nd</sup> the motion. The motion carried 5-0. The meeting adjourned at 7:10pm.