




MEETING MINUTES

WHITESTOWN BOARD OF ZONING APPEALS



(317) 769-6557 
6210 Veterans Drive 
Whitestown, IN 46075 

WHITESTOWN BOARD OF ZONING APPEALS Thursday, October 10, 2024 AT 6:30 PM Meeting Minutes

1. OPENING THE MEETING

- a. Call to Order
- b. Pledge of Allegiance
- c. Roll Call

BZA Members

- Ken Kingshill, Chairperson
- Andrew McGee, Vice Chairperson
- Shelby Hasz
- Mark Pascarella
- Phillip Snoeberger

Whitestown Staff

- Allan Henderson, Zoning Administrator
- Todd A. Barker, Director of Development Services,
- Ashley Ulbricht, WPC/BZA Attorney
- Shannon Downs, Executive Assistant of Development Services

2. APPROVAL OF THE MINUTES

Motion: Andrew McGee made a motion to **APPROVE** the September 5, 2024, minutes as presented, seconded by Phillip Snoeberger. Motion **Passed** 5-0.

3. PUBLIC REQUEST TO SPEAK (Topics NOT related to an Agenda item)

- a. Ken Kingshill asked if there was any Public Request to speak. **None.**

4. PRESENTATIONS

- a. None

5. UNFINISHED BUSINESS

a. None

6. NEW BUSINESS (public hearing)

a. BZA24-006-VA Taco Bell

A request by Standard Whitestown, LLC for a **Development Standards** Variance from UDO 7.10 (C) Parking Rations for Vehicles and Bicycles to increase the number of parking spaces from 16 to 23 at a new Taco Bell being constructed at 4178 State Road 267, Whitestown, Indiana.

Allan Henderson - The site plan has a great deal of landscape on the Northwest side of the building. Future development on the West side of the Taco Bell, will help screen the parking area. The three criteria have been met and the variance is appropriate.

Jerry Kittle (President Innovative Engineering & Consulting, 3961 Perry Blvd, Whitestown, IN 40675), Mike Jansen, with Whitestown Crossing LLC 3961 Perry Blvd, Whitestown IN 46075 and Drew Warner (not in attendance), Standard Whitestown, LLC – presenting on behalf of petitioner, asking for an increase of parking spaces from 16 to 23 and will not have overnight parking as this location will be open 24 hours. With the location being off the interstate, we hope to provide families a space to spend an extended period inside the restaurant utilizing the facilities.

Ken Kingshill – asked if the current UDO for parking spaces (11-16) is specifically for fast-food restaurants.

Allan Henderson – Yes, the UDO is for general business and fast-food restaurants.

Ken Kingshill – asked if there has been a decrease in parking spaces.

Allan Henderson – doesn't believe there has been a decrease in parking with the UDO.

Ken Kingshill – asked if the board has questions.

Floor opened for public hearing at 6:39p.m.

No requests to speak online or in attendance.

Floor closed to public hearing at 6:40p.m.

Ken Kingshill – review of three criteria, all states all three criteria have been met.

Motion: Andrew McGee made a motion to approve as presented but not to exceed 23 parking spaces. Phillip Snoeberger seconded motion. **Passed** 5-0

b. BZA24-007-UV 401 Pierce Street

A request by Michael and Kate Jasionowski for a **Use Variance** from UDO 10.2 (D). Use Variance to operate a business in part of the residence, in a R3 Medium Density Single-family and Two-family residential zoned property at 401 East Pierce Street.

Allan Henderson – provided an update on what Use Variance means; use to operate on a land use that is not permitted in the district. 401 Pierce Street is zoned R-3. There is a summary provided of the current litigation that the town has with Jasionowski's. Based on the findings of fact, 5 criteria must be met. The petitioner meets, 1st, 2nd and 5th criteria but does not meet the 3rd and 4th criteria.

Krista Lockyear (Stoll Keenon Ogden, Law Firm), representing Jasionowski's, Krista shared a copy of the presentation with the board members. The Jasionowski's are requesting a use variance for the property of 401 East Pierce Street.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) – here to request a variance. Not here to discuss the litigation that is currently in process.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) – shared property updates, from purchase dates to uses of property, and how the family is involved in the community.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) Reviews the 5 criteria – Feels that all five criteria have been met, review each criteria and goes into detail as why each are met, as reviewed in the presentation.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) stated that the use of the property being a home based business and the business has been operating there since 2014 and has grown into what it is today under the previous UDO.

Mark Pascarella – asked if the business was allowed to exist at the property in 2014, did it meet the previous UDO?

Allan – based on the previous UDO the business did not meet the property zoning requirements in 2014.

Ken Kingshill – Is it the intent for the business to continue to operate at this location or are they looking for a different location.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) they currently do not intend on relocating as this is their community and want to continue to be here as a family and business.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) criteria #4 – why is this criteria met; Shared evidence of how this would be a hardship for the business and the community. The hardship is more to the business and the owner vs the property.

Ken Kingshill – asked the board if there are any questions for the petitioner.

Allan Henderson – provided a reminder that there is a 20 min maximum for the community to present evidence.

Floor opened for public hearing at 7:11p.m.

John Murphy, 2031 Jasper Brook Ct, previously lived at 351 Pierce St for 25 years. Stated the reason he no longer lives at previous residence due to the Boone Heating and Cooling home business and the traffic the business they created. Shared how the business was a disruption to their family and the use of their home. Does not support having the business at the home location.

The attendees listed below are in support of the use variance for 401 East Pierce Street.

Heidi & Don Watson - 503 Pierce St, John Nowosielski – 205 E Linville Ave, Denise Byers – 402 E Pierce St, Brenda Hoover – 406 E Pierce St, Thad Hudson – 301 E Pierce St, Philina Gandy - 401 Linville Ave, John Row – 201 E Pierce St, Brenda Hoover 406 E Pierce St, Phil Godby – 302 N Main St, Tim Roberts – 6460 Dusty Laurel, John Row 201 E Pierce St, Gloria Ebuhad - 8802 E 350 S, Zionsville IN 46077, Ron Domres – Whitestown American Legion, Jennifer Webb – 305 S Main St, Cheryl Spaulding - previous resident, resides in Westfield, Brandy Davidson – 5550 E 300 S, Philina Martinez - 401 Linville, Evan Toke – Zionsville, Kamna Popplelini – Zionsville

Floor closed for public hearing at 7:56p.m.

Ken Kingshill – received positive letters and emails, that will be included in the record.

Krista Lockyear – Those that have spoken on behalf of Boone Heating and Cooling have presented information that would support the questionable criteria #3 & #4. This business has served a need being located where they are today, and the neighbors have found their location to be beneficial. The Jasionowski's also face a hardship of high rent prices and can't afford to have their business in another location.

Staff Discussion:

Andrew McGee – asked for a timeline and what precipitated this. As this did not conform to the previous UDO either.

Todd Barker – There were complaints about a business being run at the 401 East Pierce Street, prior to 2021. That is what started the process of code enforcement attempting to come to a resolution, there wasn't a resolution resulting in litigation.

Andrew McGee – asked for confirmation that this wasn't permitted use under the previous UDO.

Todd Barker - confirmed that is correct.

Mark Pascarella – review of criteria #3 and #4. Doesn't feel that the hardship of the business owner or business can be accepted. As it is could lead to changes being made randomly to the UDO. Must keep in mind that even though we support small businesses and good citizens of the community most importantly must be able to show that the criteria are being met.

Andrew McGee – There are other businesses in legacy core that have come and gotten approval to have a business prior to the business operating.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) – would like clarification of the findings of fact that were proposed by staff before evidence. Would like clarification on the staff report regarding are those staff opinions as they aren't findings of fact yet until they proven.

Ashley Ulbricht – confirmed that findings of fact are that until confirmed and are proposed.

Ken Kingshill – This is a business that has been in business for some time and relied on the town turning a blind eye on the them having a business at their home. Verified that until the town was made aware of the home business by complaints from neighbors. The business is now in a situation where are asking for a variance. The petitioner has established with evidence with criteria.

Ashley Ulbricht – There is direct case law that does not support the argument presented. Statue of law was read aloud. There is case law on point about hardship and self-created hardship.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) – I'd like to clarify that the condition is the location of the business. Both the petitioner and the community desire to have this business as a welcome location. Believes that the hardship to the community does help the petitioner meet the criteria.

Mark Pascarella – General discussion and examples of hardships as business owners in neighborhoods.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) – the crucial point is the location of the property.

Mark Pascarella – there have been complaints about the business location.

Ken Kingshill – asked if there is case law about hardship to the community.

Ashley Ulbricht – There are several pages of case law and peculiarity. A few excerpts were read aloud.

Shelby Haaz – stated she drove by and viewed the property prior to the meeting and couldn't tell there was a business being ran from the garage/barn. Stated that the only way she knew a business was being run from 401 East Pierce Street, was that the vehicle in the back matched the vehicle in the driveway. Doesn't feel the business is obnoxious to the neighbors. Asked what made this business non-conforming to the UDO.

Ken Kingshill – each case is considered on a case-by-case basis. We don't start enforcement until there is a complaint. There could be businesses operating out of their home but haven't had a complaint.

Phillip Snoeberger – asked about material delivery and where are those materials stored.

Krista Lockyear (Stoll Keenon Ogden, Law Firm) – The material is being stored in the garage / barn.

Phillip Snoeberger – where are the old units stored once removed and brought back to the business

Krista Lockyear (Stoll Keenon Ogden, Law Firm) – items removed from a job may sit out back for a short time before being picked up.

Mike Jasionowski 401 Pierce St – asked for the question to be restated, the material that is removed from a home is stored out back of the building. The vehicle helps hide the old units. We are a service orientated business and don't have many installations a week. We do have pick up each week on Thursday/Friday.

BZA Board Members: open discussion about ideas for business relocation.

Andrew McGee: inquired when the business opened.

Mike Jasionowski 401 East Pierce St – Boone heating and cooling began in 2003.

Andrew McGee – asked if all 5 criteria must be met to pass.

Ashley Ulbricht – correct petitioner must meet all 5 criteria.

Ken Kingshill – inquired if the state law was adopted by the town.

Todd Baker – it is state law, and the town doesn't have the option, we are to follow the direction of the state law.

Andrew McGee – each variance is reviewed and is a case-by-case decision.

Allan Henderson – just as a reminder that a use variance is for an entire property.

Ken Kingshill – feels that the BZA has the discretion to make a decision guided by the vagueness of the state law.

Andrew McGee – if a variance is approved would like to assign a time frame to a variance.

Phillip Snoeberger – concerned with growth and relocation of the business. Variances are tied to the property not the business.

Mark Pascarella – asked if there can be conditions placed on the property.

Ashley Ulbricht – confirmed that yes there can be conditions placed, and it does tie to the land and not the business.

Andrew McGee – asked the petitioner if they are agreeable to the conditions being placed on the property.

Phillip Snoeberger – would like to see limitations being placed.

Ashley Ulbricht – each use has a set amount of parking tied to it.

Todd Baker – based on square footage or number of employees.

Allan Henderson – allowed parking spaces are based on square footage.

Motion: Andrew McGee motioned to approve BZA 24007-UV with conditions; 5-year sunset provision, will have to reapply for a variance in 5 years, limited too the site plan as presented by the petitioner. Findings of fact in staff report #1,2, & 5, with #3 & #4 to be determined and approved at the next meeting and compliance with the site plan, Phillip Snoeberger seconded the motion. **Passed 5-0**

7. OTHER BUSINESS

a. BZA Rules and Procedures

Allan Henderson – hasn't received any changes or updates to the rules. If you have any changes, get those turned in. There will be a redline copy sent out for review and approval at the next meeting.

Ken Kingshill – questions about the approval of the agenda.

Ashley Ulbricht – for open door law purposes an agenda must be posted.

Allan Henderson – if there are changes that need to be made prior to the beginning of the meeting.

Ashley Ulbricht – if you are going to reorder the agenda you will have to vote and approve the agenda change.

b. 2024 – 2025 Calendar

Allan Henderson – will send out the calendar for review, will be adding the Lebanon and Zionsville school calendar to the BZA calendar.

Todd Barker – potential school break conflicts that can be worked out prior to approving the calendar.

8. ANNOUNCEMENTS

Ken Kingshill asked if there were any announcements. **None.**

9. ADJOURNMENT

Motion: Phillip Snoeberger made a motion to adjourn, Mark Pascarella seconded motion. Motion **Passed** 3-0. Meeting adjourned at 8:58p.m.

Signed by:

Andrew McGee

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Andrew McGee, Vice Chairperson

Allan Henderson

Allan Henderson, Zoning Administrator