

**MINUTES OF
Rensselaer Board of Zoning Appeals
Variance of Use Hearing #2023-04
Thursday June 8, 2023
6:30 PM**

I. Call to order:

The Members of the Rensselaer Board of Zoning Appeals met on Thursday June 8, 2023 in Council Chambers at City Hall. Board President, Stan Haines called the meeting to order at 7:00 pm. He asked Joshua Davis to proceed with roll call.

II. Roll Call:

Present: Stan Haines, Scott Malone, Sean Cawby and Building Commissioner Joshua Davis

Absent: Rob Dobson and Jeff Rayburn

Guests: City Attorney - Jacob Ahler, Jessica Call, Bryce Black, Joe Effinger, Ryan Preston, Melissa Kaufman, Brian Phegley, Michelle Oliver, Shannon Stevens, Bob Schenk and Samantha Joslyn.

III. Review and Approval of Past Minutes:

Stan Haines presented the minutes from the last BZA held on Thursday May 11, 2023, Variance of Use Hearing 2023-03 Bryan O. Culp. Motion to approve by Scott Malone, second by Sean Cawby.

Motion Passed

IV. Old Business:

Joshua Davis informed members that Sherry Urbanski has decided to relocate the accessory structure and reapply for a permit, which will not require any further involvement from the Board of Zoning Appeals Board.

V. New Business:

A. Variance of Use; 181 Properties

Ryan Preston of 181 Properties wants to add two short-term rental units at 108 W Washington St, zoned B-3 (Central Business). This property is a mere 8 ft. wide and 70 ft. long. His plans include maintaining the store front on the courthouse square, and the two short-term rental units will be located in the back of the store and the other on the second level. Ryan Preston informed members there will be an alarmed door in place to section off the store front and the back unit. The upstairs rental unit will only be accessed through the rear of the building – by the tenant. A 6 ft. privacy fence with a lock will be installed to prevent public access. Sean Cawby inquired about parking for the two rental units. Ryan Preston stated parking will be in the back of the building, with two parallel parking spots. There will be advertisement posted on links such as Airbnb. Ryan Preston was adamant that this short-term rental will boost and support tourism. Kenny Haun is working with the state to achieve the State Design Release approval.

Stan Haines explained that in order to approve the Variance, all members must approve the following paragraphs, following with a roll call vote.

*(This procedure for a vote includes five paragraphs; these are listed as items a. through e. on pages 10 and 11 in Chapter 28: Rensselaer Zoning Ordinance. If any one of these does not pass, then the application is denied. Joshua Davis then read the following paragraphs) ...

- a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

Stan Haines said having heard paragraph a. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes

- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

Stan Haines said having heard paragraph b. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- c. The need for the variance arises from some condition peculiar to the property involved;

Stan Haines said having heard paragraph c. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- d. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;

Stan Haines said having heard paragraph d. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- e. The approval does not interfere substantially with the Comprehensive Plan;

Stan Haines said having heard paragraph e. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

Motion Passed, Variance of Use granted.

B. Conditional Use; Michelle Oliver

Michelle Oliver began by stating how she has been offering child care for the last nine years in her home at 620 N Elza St, zoned R-2 (Two-Family Residential). She is now taking the next steps and will be applying to become a licensed in-home child care provider through the State of Indiana, once/if the Board of Zoning Appeals approves her Conditional Use. She informed members that she will not display any signage on the property. Currently, Michelle Oliver cannot have more than five children in her home at any given time. If her license is approved, this will allow for 3-5 more children. The additional children in her home will permit Michelle to hire someone to assist her.

Scott Malone and Sean Cawby both spoke highly of Michelle Oliver, stating she has watched all of their children. It was discussed that the community needs more daycare. Brian Phegley also addressed that there was a huge need to child care.

Stan Haines explained that in order for to approve the Conditional Use, all members must approve the following paragraphs, following with a roll call vote.

*(This procedure for a vote includes five paragraphs; these are listed as items i. through v. on page 18 in Chapter 28: Rensselaer Zoning Ordinance. If any one of these does not pass, then the application is denied. Joshua Davis then read the following paragraphs) ...

- i. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare;

Stan Haines said having heard paragraph i., he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- ii. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish and impair property values within the neighborhood;

Stan Haines said having heard paragraph ii, he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- iii. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;

Stan Haines said having heard paragraph iii, he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- iv. Adequate utilities, access roads, drainage and other necessary facilities have been or are being provided; and

Stan Haines said having heard paragraph iv, he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- v. Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.

Stan Haines said having heard paragraph v., he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

Motion Passed, Conditional Use Granted.

C. Variance of Use; Rensselaer Pizza King

Brian Phegley stated he was applying for a Variance of Use to continue running Pizza King, which has been a community staple for 48 years. Joshua Davis stated the property is zoned R-1 (Single-Family Residential) and because new owners have taken over, there would need to be an approval from the Board of Zoning Appeals. Scott Malone wanted to know if anything was changing about Pizza King; Brian Phegley confirmed everything is staying the same, aside from the menu. Joshua Davis spoke with Police Chief Matt Anderson in regards to the parking situation at the front of Pizza King. Matt Anderson informed Joshua Davis that he did not see a need to change the parking at the establishment. In support of Pizza King, and the unforeseen circumstances that Brian and Chasity Phegley encountered with having to come before the BZA, Joshua Davis requested that the \$100 filing fee be returned to them. Stan Haines said there would be a vote after the reading of the paragraphs to waive the fee and explained that in order to approve the Variance, all members must approve the following paragraphs, following with a roll call vote.

*(This procedure for a vote includes five paragraphs; these are listed as items a. through e. on pages 10 and 11 in Chapter 28: Rensselaer Zoning Ordinance. If any one of these does not pass, then the application is denied. Joshua Davis then read the following paragraphs) ...

- a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

Stan Haines said having heard paragraph a. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

Stan Haines said having heard paragraph b. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- c. The need for the variance arises from some condition peculiar to the property involved;

Stan Haines said having heard paragraph c. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- d. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;

Stan Haines said having heard paragraph d. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

e. The approval does not interfere substantially with the Comprehensive Plan;
Stan Haines said having heard paragraph e. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

Stan Haines made a motion to approve the rebate of the \$100 filing fee, second by Sean Cawby.

Motion Passed, Variance Granted.

D. Variance from the Developmental Standards; Mike and Debra Seibert

Joshua Davis would like the Board to approve for the re-plat. He stated that if Rensselaer were ever to expand, the property in question would be zoned RS (Suburban Residential).

Stan Haines explained that in order to approve the Variance, all members must approve the following paragraphs, following with a roll call vote.

*(This procedure for a vote includes five paragraphs; these are listed as items a. through f. on pages 10 in Chapter 28: Rensselaer Zoning Ordinance. If any one of these does not pass, then the application is denied. Joshua Davis then read the following paragraphs) ...

- a. The approval shall not be injurious to the public health, safety, morals and general welfare of the community;

Stan Haines said having heard paragraph a. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

Stan Haines said having heard paragraph b. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- c. The strict application of the terms this Ordinance will result in practical difficulties in the use of the property;

Stan Haines said having heard paragraph c. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- d. There are exceptional and extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to the other property or class of use in the same vicinity and district;

Stan Haines said having heard paragraph d. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes

- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- e. Such variances are necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and district but which is denied to the property in question; and

Stan Haines said having heard paragraph e. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

- f. That the granting of such variance will not alter the land use characteristics of the vicinity and district, or increase the congestion in the streets.

Stan Haines said having heard paragraph e. he would entertain a motion to vote on the paragraph.

- Scott Malone: Yes
- Jeff Rayburn: Absent
- Stan Haines: Yes
- Sean Cawby: Yes

Motion Passed

E. Amend the Rules of Due Notice

Joshua Davis explained how expensive it can be for petitioners to apply for a Variance or Conditional Use. He said that sending certified mailings can add up when you have to include all parcels within a 250 ft. radius. Scott Malone asked what Josh was suggesting. It was suggested that they only reach the parcels within a 100 ft. radius, petition to their neighbors, utilize yard signage or increase the time window to advertise, to be able to send letters via first class. Anything is up for discussion to alleviate financial hardships. Stan Haines, Scott Malone and Sean Cawby agreed to table the discussion until the next scheduled meeting.

F. Approval to Change the Requirements of Public Notice

Joshua Davis stated this went hand-in-hand with the above topic. It was up to the Board of Zoning Appeals at their discretion to require the petitioner to advertise the newspaper legal notice. One option is to solely rely on the Building Department to take on the responsibility, and adjust the filing fee appropriately. Board members agreed to table to discussion until the next meeting, when everyone is present.

Scott Malone asked when the next appointment will be made for the Board of Zoning Appeals. Joshua Davis responded when they find someone appropriate. It was asked by Stan Haines if a member could join the scheduled meetings via Zoom. Jacob Ahler agreed that would be acceptable. Stan Haines suggested Chad Gutwein for the mayor's appointment.

VI. Adjournment:

Stan Haines Adjourned the meeting with a motion by Sean Cawby, second by Scott Malone.

Motion carried.

Meeting was adjourned at 7:40 PM.

***Next Meeting:** Thursday, July 13, 2023 at 6:30 pm CST (Following Plan Commission Hearing)

Minutes Prepared by: Jessica Call