

MINUTES OF THE ZONING BOARD OF APPEALS
January 23, 2017

The regular meeting of the Zoning Board of Appeals was called to order by Vice Chairman Mark Moore at 7:00 p.m. at the Village Hall.

Members present: Vice Chairman Mark Moore, Amy Flores, Matthew Krummick, Walter Oakley, Kurt Schultz, and David Semmelman.

Members absent: Chairman William Cotey.

A quorum was established.

Village Staff present: John Spoden, Director of Community Development; David Smith, Senior Planner; and Linda Carlson, Project Engineer.

Board Member Oakley moved, seconded by Board Member Schultz, to approve the November 28, 2016, Zoning Board of Appeals meeting minutes.

Motion carried 6 - 0.

OLD BUSINESS:

**ZBA 16-22 N3 Property Advisors, LLC, Applicant
175 W. Peterson Road**

Request is for a variation to reduce the minimum required Perimeter Landscaped Open Space in order to construct a Burger King restaurant with drive-thru for property in a C-3, General Commercial District.

**ZBA 16-23 N3 Property Advisors, LLC, Applicant
175 W. Peterson Road**

Request is for variations for signage in order to construct a Burger King restaurant with drive-thru for property in a C-3, General Commercial District.

Mr. David Smith, Senior Planner, stated that the Zoning Board of Appeals may recall that the petitioner, N3 Property Advisors, LLC, was before them at their November 28, 2016, meeting requesting approval for a Special Use Permit for a Drive-In Establishment Accessory to a Restaurant; a Site Plan Permit; variations for signage, and a variation to reduce the minimum required Perimeter Landscaped Open Space in order to construct a Burger King restaurant with drive-thru for property located in a C-3, General Commercial District at 175 W. Peterson Road.

Mr. Smith stated that the petitioner is proposing to construct a single story Burger King restaurant building with a drive-thru service approximately 1,900 square feet in floor area located on the south side of Peterson Road.

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Mr. Smith stated that during the course of the November 28, 2016 Zoning Board of Appeals meeting, the petitioner presented their plans, testimony was heard from the public, and the members of the Zoning Board of Appeals asked questions and deliberated. Mr. Smith stated that at the conclusion, the Zoning Board of Appeals made a motion to continue the matter to the January 23, 2017, meeting in order to provide the petitioner an opportunity to revise the plans and provide additional information in response to public, Staff, and Zoning Board of Appeals comments.

Mr. Mark Huonder, agent for the petitioner, stated that the proposed restaurant building is a little under 2,000 square feet in floor area on a one acre site. He stated that they are proposing both a right and left turn exit lanes. He stated that they have adjusted the angle of the parking from 60° to 45°. He stated they have agreed to install a ten (10) foot high fence along the rear property line and extend the fence line along the side property lines an additional 30%. He stated that they have provided a photometric lighting plan that shows the foot candle illuminations to not exceed 0.0 at the southwest corner of the site which is adjacent to the residentially zoned district to the south. He stated that the light fixtures will be directed downward so as to not cast glare onto the neighboring property. He stated that the traffic study shows that this is not a destination site and should not interfere with the normal traffic flow.

Mr. Huonder stated that their noise evaluation shows that sound measurements were taken both at the subject site and at another Burger King site located in Huntley for comparison.

Mr. Phil Cavicchia, 1716 Cedar Glen Court, stated that he is concerned about early delivery time noise. He stated that he has not had the opportunity to review the applicant's lighting plan and wants the opportunity to do that. He stated that he would like to know what the proposed fence material will be and that the fence should match the height of the existing building currently located along the rear of the subject site. He stated that he is concerned about the drainage and storm water management. He stated that he is concerned about the equipment handling, the exhaust, and the noise that the system will make. He stated that he is also concerned about the drive-thru speaker noise.

Mr. Clay Ervine, 1100 Wellington, stated that there is a vacant Burger King less than a half mile from this site. He stated that he does not understand why the Village would support this proposal and risk creating another derelict site.

Ms. Katherine Lobus, 1718 Cedar Glen Court, asked what the hours of operation will be for this proposed Burger King restaurant. She stated that she is concerned that the lights on the west elevation of the restaurant building will shine into their living rooms. Mr. Huonder stated the proposed lighting plan will be compliant with the Village Code. He stated that the hours of operation are proposed to be from 6 a.m. to 11 p.m. seven (7) days a week. He stated that they are proposing a 2 layer wooden fence at 10 feet in height which will act as screening from the adjacent properties. He stated that the drive-thru speaker noise was incorporated into the noise measurements taken by their consultant. He stated that the Burger King projected sales show that there will be long term viability. He stated that the exhaust equipment specifications used for this restaurant are designed with two layers of filtration which should address the smell and pollution.

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Mr. Michael Caldwell, agent and engineer for the petitioner, stated that all of the Village and Lake County requirements will be met regarding the civil engineering and storm water management.

Mr. Cavicchia asked what color will the exterior lights be. Mr. Huonder stated that the lights will be clear and not colored.

Ms. Jacqueline Anderson, 18320 Old Peterson Road, stated that she is concerned about the impact upon the traffic. Stated that she is concerned about the existing vacant restaurants along Milwaukee Avenue and questioned the logic of building a new restaurant on Peterson Road.

Ms. Christine Cavicchia, 1716 Cedar Glen Court, stated that she is concerned about the early morning delivery time to this site. She stated that the noise readings did not account for the delivery trucks. She stated that the noise readings were not taken during later evening hours. She asked what kind of corrective action will be taken if they are not in compliance. Mr. Caldwell stated that their traffic study identified the a.m. and p.m. traffic peak hours and the data showed no adverse impact on the traffic.

Mr. James Woods, Civiltech Engineering and the Village's traffic consultant, stated that Peterson Road is an IDOT SRA route. He stated that IDOT would like to see access points no less than 500 feet apart. He stated that there are many narrow commercial driveway entrances along Peterson Road and achieving a 500 foot separation cannot happen in this circumstance. He stated that the applicant's traffic study shows 45 vehicles turning out in the a.m. peak traffic time. He stated that he assumes that most of those vehicles are exiting to the east. He stated that 45 cars existing during a.m. peak equals about one vehicle every 1-1/2 minutes on average. He stated that their traffic study shows approximately 30 vehicles turning out during p.m. peak traffic period which equals one car per every two minutes on average. He stated that getting out and turning right should be fairly easy. He stated there may be times in the mornings where it will be a little more difficult and cars exiting may have to rely on courtesy gaps on occasion.

Mr. John Spoden, Director of Community Development, stated that the Village does have an adjudication process for non-compliance of the Village's Municipal Code including the Zoning Code.

Mr. Cavicchia stated that he is concerned about the potential impact of noise and believes that the proposed fence will not be good enough.

Mr. Huonder stated that traditionally the delivery time is 5:30 a.m., but they are willing to adjust that to 7:00 a.m. He stated that the site economics for this particular site made the acquisition feasible for a new Burger King for this site.

Board Member Oakley asked about the number of employees. Mr. Huonder stated that they would employ 12 employees per shift and they will have the ability to park on the site.

Board Member Flores stated that she would be in favor of no deliveries before 7:00 a.m.

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Mr. Caldwell stated that they have learned from the noise evaluation that any land use for this site will not meet the noise ordinance because of the ambient/background noise is already louder than what the Code allows.

Board Member Krummick stated that the petitioner might find it difficult to install a fence taller than 10 feet due to the structural integrity and may become an issue.

Mr. Cavicchia stated that his property is at a higher elevation than the adjacent subject site. He stated that the roof line of the existing building towards the rear of the lot helps to block noise from Peterson Road. He stated that once the Burger King is up and running he is concerned about the potential for noise on Sunday mornings.

Board Member Krummick asked if the landscaping will screen vehicle headlight glare. Mr. Caldwell stated that the evergreen landscaping is densely planted at 6 to 11 feet in height.

Board Member Krummick asked if the drive-thru speaker volume can be regulated. Mr. Caldwell stated that the volume can be adjusted and the speakers can be adjusted so that they face more to the east away from the residents to the south.

Board Member Krummick asked the petitioner to address the potential for cooking exhaust smell. Mr. Caldwell stated that they will be using latest technology on the venting and hood system with a series of baffles in the hood system to collect particulates. He stated that the two-fold exhaust ventilation system is 96% efficient.

Board Member Krummick asked where the proposed fence will end. Mr. Caldwell stated that they will run the fence along the rear property line and up each side property line about 30% the length of each side property line.

Board Member Schultz stated that it appears that the restaurant building footprint did not change. He stated that the 10 foot fence is good, but more than 10 feet will be difficult to physically support that height. He stated that he supports delivery times to be after 7:00 a.m. He asked for clarification of the parking lot lighting. Mr. Huonder stated that the rear lights can be set on a timer to dim after a certain time period.

Board Member Schultz stated that Village Staff should consider obtaining a sound consultant to review the petitioner's evaluation or do their own sound measurements.

Vice Chairman Moore stated that he concurs that the Village should provide their own review of the petitioner's noise evaluation. He asked for clarification of the auto turn exhibits provided by the applicant. Mr. Caldwell stated that Burger King will use the smaller size delivery trucks so that the turning radii should not be a problem.

Mr. Woods asked for clarification if the delivery trucks that are to be used are the single unit box truck. Mr. Caldwell concurred in the affirmative with Mr. Wood's question.

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Mr. David Pardys, Village Attorney, stated that the Village cannot base their approval for a Special Use Permit for a drive-thru on whether or not the proposed business will have economic viability or not.

Vice Chairman Moore stated that they need additional information and clarification of the petitioner's noise evaluation report.

Mr. Caldwell stated that that only the speaker noise is different than any other commercial development.

Vice Chairman Moore stated that this item should be continued in order to give the petitioner the opportunity to come back with clarification of the noise impact and to allow the Village the opportunity to have their own noise consultant report to the Zoning Board of Appeals as well.

In the matters of ZBA 16-22 and ZBA 16-23, Board Member Schultz moved, seconded by Board Member Semmelman, to continue these items to the February 20, 2017, Zoning Board of Appeals meeting.

Motion carried 6 - 0.

Ayes: Moore, Flores, Krummick, Oakley, Schultz, Semmelman

Nays: None

Absent: Cotey

NEW BUSINESS: None.

COMMUNICATIONS AND DISCUSSION: None.

Board Member Flores moved, seconded by Board Member Schultz, to adjourn the Zoning Board of Appeals meeting.

Motion carried 6 - 0.

Meeting adjourned at 8:40 p.m.