

Area Board of Zoning Appeals – December 4, 2013

AREA BOARD OF ZONING APPEALS
OF
ST. JOSEPH COUNTY, INDIANA

Wednesday, December 4, 2013
4th Floor, Council Chambers

1:30 p.m.
County-City Building

REGULAR MEETING

MEMBERS PRESENT:

Joe Velleman - Chairman
Michael Urbanski - Vice Chairman
Gerald Phipps
Robert Hawley
Randall Matthys
Jack Young
Brendan Crumlish

MEMBERS ABSENT:

ALSO PRESENT:

Mark P. Telloyan - Board Attorney
Charles C. Bulot, C.B.O. - Building Commissioner
Mark A. Lyons - Assistant Zoning Administrator
Christa Nayder - Planner/Area Plan Commission
Carolyn A. Henry - Secretary to Board

The regular meeting of the Area Board of Zoning Appeals of St. Joseph County, Indiana was called to order at 1:30 p.m., in the 4th Floor Council Chambers, 227 W. Jefferson Blvd., South Bend, Indiana.

WHARF PARTNERS, LLC

The petition of Wharf Partners, LLC seeking the following variances: from the maximum allowable five (5) stories at 60' to eight (8) stories at 100' and from the 15' Residential buffer yard to 10', on property located at 318 E. Colfax Ave., Portage Township. Zoned "CBD". This petition was tabled from the November ABZA meeting.

MR. PHILLIP PANZICA: Project Architect. I have with me today Patrick Hess, graduate architect. We're both staff members of Panzica Building Corporation, 416 E. Monroe St., South Bend. We thank the committee for this time and opportunity to present today. We're here today to talk about the Warf development. Our development team purchased the property in November, 2011. This is a 1 ½ acre property with 400' of frontage across the St. Joseph River, directly across from Century Center. The architect and development team, we studied the site almost daily for the past two years, we've had meetings, drawings, presentations and consultation on this project. Initially when the project was purchased we sought out and met with community business leaders, South Bend Redevelopment, East Bank Village Neighborhood Association and other stake holders in the community to seek their input and their ideas on what their thoughts are on this property. This site is very unique and very prominent in our community. It is not a riverfront site, it is the riverfront site. It's visible from Jefferson Street, the bridge at Colfax, from the downtown. We fully understand its impact of this project and the importance of it to the City. Under developing this project would be a terrible waste to a beautiful piece of land. The island, the property is literally almost on an island. You have the river on the west and then you have the East Race on the east. So

it almost stands alone by itself with Stephenson's Mill and with the Commerce Center. We also reviewed previous proposals done by other developers to seek out what it is that worked or didn't work for them and why they didn't get it developed. We went through a whole series of designs. We're not coming here today showing the first idea or the first thought. This has been after numerous, numerous, numerous, designs and layouts. We started out looking at a very simple development of a series of townhouses lined up on the riverfront. We deemed that as underdevelopment. We looked at a larger development which would have retail and office and residential. It became a very large structure which required parking below grade and on grade. It was a build it all or nothing kind of project and the economics just didn't work for that scale of project. We deemed that as being too large. Then we went through a whole series of designs of apartments and other opportunities, we settled in on a project that had three five story structures and apartments and then we settled down to what we're presenting today which is a two buildings and a future apartment building. We learned from each and every one of the presentations we did. We learned about marketing, we learned about construction, economics of the site. We learned about the aesthetics of not only our site but the surrounding neighborhood and the context that we're in. This is Phase I of a three phase development. The proposal is for condominiums, parking on grade, under within a building. Condominiums starting on the second level through the seventh floor, so six levels of condominiums, two condo's per floor, and then a roof level garden which creates an eighth floor elevator lobby. It is important that we understand the history, and I think it is important to your committee, that you understand the history of the site, the context of it and the impact of this project. We have a brief presentation with graphics explaining these things and questions you may have. I'm going to turn this portion over to Patrick Hess.

MR. PATRICK HESS: Good afternoon. Again my name is Patrick Hess and I'm going to run through a quick review that we've put together talking about our request for a zoning variance. The two variance that we're seeking again are increasing the maximum allowable height from five stories and sixty feet to eight stories and a hundred feet and also to relax the minimum side residential buffer yard and rear buffer yards from 15' per code down to 10'. We looked at this in a large arrange of ways historically with the downtown and then also within the context of the East Bank Village master plan. This is a view of how our site looked historically from the late 1800's taken from the old standpipe. And as you can see there is a definite difference in the East Bank Village as it existed on either side of the East Race. Where our side is located in between the East Race and the river is defined with warehouse buildings warrant by five stories in height, concrete brick. See smokestacks, water towers, it's a higher density and there's an entirely different type of density on the opposite end of the river. You see one and two story wooden structures, trees and yards and it's a much lower density. And again this is a very unique development, at least, on this edge of the river. That progressed into the future, the 1920's and 30's, you still see those buildings existing and they still exist today in the Commerce Center and the Stephenson Mills. To go further, the East Bank Village master plan, which was adopted by the City in 2008, further identifies the site as a unique area labeling it as an island set apart from the rest of the development. And then the final master plan that was adopted by the City, it's stated that the site should have high density mixed use development put on it. We took this note to heart as we did our early schematic designs and referenced this page in particular and the visuals that we see here references everywhere from two to eight and nine stories in height. And again we took that to heart as we began our schematic designs. And we also looked at the site and it's context with the greater downtown South Bend area, not just in the East Bank Village but on the other side of the river. This graphic that we see here is adapted from a 3-D cad model that Panzica produced for the City back in 2001 and we mainly used it to compare the height of our building in scale with the rest of the downtown. And most downtowns as they

develop have a stair stepping from the larger buildings down to the outer laying one and two story residential districts. We consider this the dome of development of the City. As you can see from the tallest building in South Bend, the Chase Tower, down to the west side and over to the East Bank Village, you see that our buildings are within context height wise with the adjacent structures and also in context with the structures on the other side of the river. There's an incremental height difference but it isn't enough where it's out of scale. And with that in mind, we took the history and began again, as Phil said, developing different schemes of how we would develop this site. We looked at complex site analysis, technical reviews and then also started getting economics involved. And as we were going through these processes we started coming up on hardships that were present with any sort of development on this site. The major one being the poor soils that are present on this site. From that image that I first showed you from the 1890's with all the industrial development, this is the oldest industrial site in the City. And we have here a soil boring report that shows that the top fifteen of the soil are a combination of wood, sand, gravel, brick, slag, other construction debris from all of the old buildings that used to be present on this site. And from the high density that was proposed for this site as part of the East Bank Village master plan, those soils cannot support that type of a building. And then upon further research we determined that our auger cast pylon foundations would necessary in order to support that type of structure. These auger cast piles are anywhere from fifty to fifty five feet in depth and require bringing in a drilling rig to drill each of these individual piles to allow for proper foundation support. And in the process it increases the price. So as we've gone through and done these designs we've taken the amount of foundations into account and want to try to prevent any unnecessary duplication. The same thing can be said for infrastructure. For each number of buildings that we put on this site we'll have to run gas mains, supply elevators, electrical, and all those other things that come with the economic feasibility of the project. And with taking all of those things into account, the historical, the East Bank master plan, and then all of these infrastructure and soil hardships, we came up with the design that we're presenting today. Two buildings on the site, seven story condo's, towers and then a third building which has retail on the first floor into apartments above. There are two, two floors of apartments above. Now the main portion of the variance that we're seeking is for building height, increasing from five stories and 60' up to eight floors and 100'. Now we're not, the whole building is not 100' tall. We have the elevation showing the side of our building, again we have one level of covered parking with the entrance lobby, six levels of condominiums above and the major number to point out here is the 76'2". That is the height of the majority of the building at that roof level. And then we have a smaller eighth floor roof garden access with an elevator mechanical room that juts out. It's truly only a 300 square foot area, so the vast majority of the 4500 square foot building footprint is at that 76'2" height. And we also did comparisons to the highest points on the adjacent buildings. The highest point on Stephenson Mills apartments next door is 54' and the highest point on the Commerce Center across the street is 68' in height. So again our building is taller than the adjacent structures but it's an incremental change and isn't out of scale with the adjoining properties. And we also looked at as far as vision impact on certain parts of the East Bank Village. This one study we did looking at it of how the site would look from the intersection of Colfax and Niles. The first phase, which is again a seven story building, is almost entirely hidden behind Stephenson Mills and the second phase tower up along Colfax still fits within the scale and isn't grossly taller than any of the buildings right next door. And then further down Colfax we did the same study and looked at the phase building setback farther off the street, not having a negative impact on the street scape and the same being said for the Phase two building up along Colfax. Again it far enough away from the these buildings that the scale isn't dwarfing anything. And we also did studies to look at how the adjacent properties look from within our buildings. This is a view from The Cascades fifth floor. And again even at the higher parts of the building you can see that we are even above the parapet of the adjacent Stephenson Mills. So again it's an

incremental height increase and isn't grossly out of scale with other buildings in the neighborhood. And also we looked at the neighborhood impact and how our fits within the city scape. And we made a very conscience effort to try to relate to the historical precedent that's already there, the Stephenson Mills and the Commerce Center, then also the visuals that were portrayed in the East Bank Village master plan. And we tried to matched as closely as possible the colors from the brick and the concrete in those buildings and what was portrayed in the master plan. So although we do have a modern 21st century building that we're putting in here it's still consciously references the late 19th century industrial precedence. And then lastly as Phil pointed out earlier we went through many iterations and different setups. This is one of our later ones and it was three five story buildings lined up against the river and it became apparent as we went through that this type of a setup was economically not feasible, again paying for three foundation systems instead of two, three elevators instead of two, six staircases instead of four, three roof gardens instead of two. But also one thing that came about from switching over to our final design of two structures is that it promotes views and vistas from the surrounding properties. So instead of having a wall of buildings lined up against the river front that is basically destroying any views and vistas that you have for Stephenson Mills and the Commerce Center and also from across the river looking back towards the East Bank Village we opened it up and from here again you can see in this visual you can see the river and the downtown skyline and the sunset on the other side. So again it was just a nice side effect that came from these updates to our design and again we're not only trying to find the highest and best use for this site but also promote the views and vistas of our neighbors. And again the variance request that we're seeking today are to increase the height from the current five stories and 60' up to eight stories and 100', to relax the minimum side buffer yards and rear residential buffer yards from 15' down to 10'. And with that I'm going to over to Phil for closing comments. Thank you.

MR. PANZICA: In closing I'd like to quickly address the setback issue. It's more of a technical issue. The rear yard is to be 15' because Colfax, the river is literally on a 45 degree angle to Colfax, so the question from the Building Department is, is the river your side yard or your rear yard? We exceed the setbacks on our east side, we're 30' well exceeded, on the back we're 30' from the City park. Along the river we went from 15' to 10' and we do note that there's 220' from our property line until the island park and Century Center is another 100' beyond that. So we didn't believe this 5' consideration is of any major issue. In closing the incremental height adjustment will not be injurious to the health, safety or comfort or general welfare of the community. The proposed use and the adjustments will not affect the use of the adjacent properties or diminish their values. Most likely their values will be increased by having this quality of development next to it. The proposed use in height is consistent with the character of the district. If we are not allowed this additional height we'll have hardships in additional expenses that makes reasonable development too expensive for this quality of site. The project is consistent with the goals of the City of South Bend and it's consistent with the recommendations of the East Bank Village Development plan which was adopted. We believe that this development, after two years of study, we believe it's the highest and best use of this site, that it well deserves. And we respectfully request your approval of these variances. Thank you.

MR. VELLEMAN: Mr. Panzica, we have a few questions for you. The picture you're depicting in your power point is not significantly different, but different than what we received in our packet, so is that the latest design or...? The design I have is a parapet in the front with nothing oriented off the side, it's all kind of in the middle, so I didn't know if the design changed...?

MR. PANCIZA: The south façade of the building, obviously the views, these buildings are oriented north, south, east, west, okay. The river's on a 45 degree angle. The views to the waterfall, the cascade and looking about three quarters of a mile up the river is due south, so the south façade we've oriented living spaces and so forth on the south wall, so we have a lot more glass on this south façade, but the east and west facades you're seeing those are accurate and true. We have a lot more solid surface areas on those walls. People are buying the views.

MR. VELLEMAN: Unfortunately this doesn't tell me which way it's looking. I'm just saying the top portion of your building in the picture that I have here is different than what you show there.

MR. PANCIZA: There may be some slight differences in the rendering but the general scale and design is consistent.

MR. VELLEMAN: Okay so the elevator shaft will be moved towards? Where is that going to be oriented?

MR. PANZICA: The elevator, the stairwells and the elevator cores are on the north side of the building fronting Colfax. So that area of the building is what's rising up, about 300 square foot of area is rising up to the proximately 90'. So you're seeing here, we're looking at the east side of the building so you can see the stairwell tower rising up above the roof line in front of the building.

MR. VELLEMAN: So that'll be oriented on both buildings to the north then?

MR. PANZICA: Yes, sir. And that is nothing more than, shall we call it an elevator lobby and a penthouse so that the residents can go up to the roof level and enjoy a green roof and look out over the city.

MR. VELLEMAN: And the one picture where you show all the height elevations, the top one, was that at the top of the structure or is that like a railing that's going to go around the top side of the unit?

MR. PANZICA: Well because the roof level is occupied, we have a 42" height parapet all the way around which is a code requirement.

MR. VELLEMAN: And that one measurement of that 86'...?

MR. PANZICA: That's was to the top of the parapet, 76'. Our highest level is, highest occupied level, by code, is where you stand. We're at 74'. If we go any higher than that, if we go above 75' we get into a whole layer of new code issues that create on firefighting and live safety that makes this type of building very, very expensive.

MR. PANZICA: Any questions from the Board? Go ahead Jerry.

MR. PHIPPS: Phil, I guess my question or my request for comments deals more with the Plan Commission's recommendations, which maybe I should let them speak for themselves, but I guess basically what they're saying is that unlike most zoning variances where there's a standard set for districts all over the City, this is really kind of a design standard that was set for one specific district but it's been incorporated in

the zoning ordinance and I think they're correct in pointing out that what we're really doing, you're asking us to do, is not so much a zoning variance but a change to the development plan that's been prepared for this district and could you comment on that, do you see it that way also?

MR. PANZICA: Thank you Jerry. No we don't see it quite that way. We see it as the ordinances were established for height and area prior to the East Bank Village Development report. And that report was done by the City, East Bank Village Association, the owner members of that area and that was done as a committee and that was accepted by the City. That even in itself identifies this site as distinct and unique from the rest of the village. We think the height and the areas, the heights that were set in the zoning were more consistent with the entire East Bank Village. And we had meetings with the Area Plan Commission and we said we really don't see the need for you to change your ordinances, we see this as a direct vehicle, that this is a special site to have an exception for the additional height because of the quality of the site and its location and we really don't believe it was in the writing of the ordinances it was given nor is it usually done specific consideration for one particular site. So we believe the variance approach is a reasonable approach.

MR. PHIPPS: One thing that seemed to be an argument that you made in order to have this site is to preserve this panoramic view unobstructed by other buildings but least for one and maybe two floors, but if we were to grant this variance, and I guess I'm just speaking for myself, I would find it difficult not to also grant someone else a 100' height variance for other buildings in that vicinity which would put you back to being lower than some of the other buildings. Do you see this as something that would be exclusively reserved for you at this one particular site?

MR. PANZICA: I think my answer to that question Jerry would be that as an architect that has practiced in this community and our firm has been here since 1955 and we know the community well, we would never dare to go onto shall we say Niles Avenue or Hill Street and propose a seven story structure with a roof garden. That would be shall we say the gorilla in the neighborhood. However, we do identify and see that this particular site is very unique. One comment we talked an awful lot in our office that hasn't been brought up today was when our downtown developed the City's literally turned their backs to river. The rivers were considered where you throw your trash and sewage. And so everything looked away from the river. Of course as it's developed, Century Center came along, yes it did address the river with the great wall of glass and the island park, but for a good part it blocked the city. So right now when you look at the downtown the river is passing the downtown. And the East Bank is separated on the other side of the river and further separated by the East Race further east. Our concept is by having height on the east side of the river it's consistent with the downtown. This is shorter than the Marriott. We're about 12' lower than the Marriott as far as grade level because that east sides lower. We believe that the height of this building and what we're doing with two buildings on that side will help make a transition visually that the downtown is on the east side of the river as well and helps marry the East Bank Village with the downtown much better visually. And that the height is something that this site deserves. When we start, as we tried to show you, in one of the...we went through a series of iterations and when we had that one scheme that we showed on the screen with the three buildings of similar style lined up along the river front, as we started going through the cost estimating and started looking at all the additional costs for additional foundation system, additional mobilization for a job and stairwells, additional elevators, all these costs started piling up and it becomes too expensive to build that foundation and stairs and elevators and only have, I think we had eight condominiums per building, so we had a total of twenty four. So we went to a scheme of well what if used

two foundations and only two elevators and four stairwells and we go six levels of condo's still the same number, twenty four, it immediately saw the opportunities. There was a little more height, it was a little more consistent with the downtown making a nice transition down to the East Bank Village and it also created opportunities for views not only for Century Center to see past these buildings to the East Race but also Stephenson Mills and Commerce Center to be able to look around these buildings. We had some early schemes that were literally, Jerry, 400' of building and it was a big barrier and we just didn't like it. I mean those, we learned a whole series of lessons and that was a very important one. And the last comment I'll make is we really believed that the incremental change is reasonable. We are literally, Stephenson Mills 55', Commerce Center 60' plus and that doesn't include their penthouses. And we're asking for 100' in the variance, we gave ourselves a little elbow room if there is to be a spire or an antenna or something we don't have to come visit you again. But the main building is 76' tall and the small penthouse area rises up to 90'. And we think, as we tried to demonstrate in the graphics and designs, it's an incremental change. It's not that we're going next to a 30' building and putting a 90' building.

MR. HAWLEY: Mr. Panzica, Phase I you talked about Phase I being the first building that you're going to put up. Do you have any thoughts or has there been any discussion that you have to have so many of the units sold before you start construction or what's the time table on that?

MR. PANZICA: Well it's all developing, yes you have to have presales and I'm pleased to tell you that the presales are strong. This is as a community as many communities it's hard to sell from paper. That's why we have so much presentation and 3D graphics. At this time we have a number of units sold. We need about two more units and this project is ready to go and we're very confident that we'll make those sales. So we are expecting that this will start groundbreaking in spring of 2014. And once the first structure goes up, now you have a sales model, we believe the second building will fill up very quickly as well.

MR. CRUMLISH: I have a question. Can you show us in the slide show where Phase III is?

MR. PANZICA: Yes.

MR. CRUMLISH: I can't see it.

MR. PANZICA: The third building would have a first level of retail and office and then we anticipate efficiency apartments, maybe 600 square foot, young professionals having an opportunity to rent an affordable apartment and live and work in the downtown.

MR. CRUMLISH: Was that shown in the previous use?

MR. PANZICA: It's hard to see, it's kind off to the side...

MR. CRUMLISH: The slide you had up there a couple of minutes ago I didn't see it.

MR. HESS: Basically the third building is this little one right here and it's a three story building towards the edge of the site, basically it will hide the site parking on completing the site and again it's a three story building, first level retail and then two levels of studio apartments above it.

MR. CRUMLISH: Can you show me where it is on the last slide? The final slide? The one he had up there...

MR. HESS: The one with this view up there?

MR. CRUMLISH: No. It was the one that was up while he was speaking, I think it was your very last slide.

MR. PANCIZA: You're right, you're very perspective. It's not shown. We took it out so that you could see both the buildings, I apologize.

MR. CRUMLISH: But it won't look that way.

MR. PANZICA: No, there will be a building....

MR. CRUMLISH: So that's another visual obstruction?

MR. PANZICA: Well we're doing the third building for a couple of reasons. Number one we have, with most of being residential and the parking being under the building, we have available land for another building and also another thing it does is we're pushing that building right up on to the property line which is encouraged by the ordinances and the design studies so that Colfax looks like an urban corridor versus a street with a lot of holes in it.

MR. VELLEMAN: Area Plan would you just like to expound on anything? Mrs. Hill.

MRS. HILL: We did point out in our comments both the ordinance and (could not understand) mentioned the height is at 60'. The ordinance that they need a variance, the East Bank plan, is not as enforceable as the ordinance but we still use it when write these recommendations or re-zoning recommendations or those type of things. We had originally looked at whether we wanted to change either or both of those and the consensus was that we did not want to change the height overall. The needed the ordinance or the East Bank plan, so if this as any ordinance has a unique characteristics or some sort of hardship that the variance would probably be the better way to go instead of changing, and then it would specific for this site instead of we were kind of playing with the idea of opening it up for all the East Bank. We're going to keep the ordinance in East Bank plan at 60' and then it's up to you to grant the variance if you feel that's warranted.

MR. VELLEMAN: With your experience of the East Bank area and is there any other site along that river that would qualify as how they stated "unique" spot like this. I mean they make a good point, they're not going to go back to Hill Street and put something 100' up and I understand that but is there any other sites along the river that could possibly have this potential?

MRS. HILL: At this time there's really no other vacant site along the river. The Emporium site is already built and there's Howard park which is again, I mean it's open and it's a park but I assume would stay that way for years, So most everything else along the river is already built, so this site may be the only area that comes to ask for a variance.

MR. VELLEMAN: What about sites like the Emporium, there's sites available behind, well I guess there aren't any more really, but there are sites behind like a street back that potentially could come back and ask for something like this that would make sense in the long run?

MRS. HILL: I don't know if they would make sense because again they're not right on the river, they would be on a street.

MR. VELLEMAN: Right, okay.

MR. HAWLEY: What about where the bus, what's developing there, right now where the bus terminal is?

MR. VELLEMAN: Oh on Northside?

MRS. HILL: Yeah that's on the river but again it's separated from the river by a street. So I don't know that we would look at that as the same. And that's much more of single family type of area.

IN FAVOR

There was no one present to speak in favor of this petition.

MR. VELLEMAN: Anyone wishing to speak in favor of or have questions about this petition? Seeing none in the audience there is a letter from the East Bank Partnership, Don Schefmeyer letter, it says, dear Board Members, I write in behalf of the developers who are planning to build a multi-building development since its inception and we have followed the development process via timely information being presented to us at numerous monthly meetings of our group. The feeling of the members of the East Bank Village Partnership is that this proposed development is of a scope and quality to further enhance the attractiveness of the East Bank Village providing, as it will, another alternative for high quality residential condominiums with superb views of the river. We do not believe that the proposed height of the buildings will be a serious impediment and in fact, without the proposed height variance, it will be impossible to build the project with any degree of economic feasibility. While we are generally in favor of the 60' height restriction, we believe that this site is in many ways unique and is deserving of the variance requested. Signed by, well I can't tell who signed it. I'm going to assume Schefmeyer since his names on the top of it. Anyone wishing to speak in opposition to this?

REMONSTRANCE

MR. DAVE MATTHEWS: 215 E. Colfax Ave., South Bend, Indiana. We built the east bank townhomes. We have a couple of vacant lots still there on the Colfax and Sycamore where the variance would impede our view if it goes closer to the river. But when we started there was this vision for the feel and character of the East Bank neighborhood, a neighborhood that had brick and stone buildings with the height of five stories or less that transition from the tall buildings on the west side of the river to the one and two story homes in the East Bank. With this vision we've invested about ten million dollars over the past few years in the neighborhood with nine million dollars of, we have projects of nine million dollars coming up this fall and next year that we plan on building. The homeowners who purchased from us at East Bank at the townhomes

on LaSalle Avenue bought into the character of this neighborhood which everything is about five stories or less. And it has a more personable feel than the tall buildings we have on the other side of the river. Changing the policy from five stories to eight will have drastic consequences for the neighborhood. It will reduce light on the sidewalks, it will cast bigger shadows the tall buildings are imposing. It's less pedestrian friendly. The variance request as written will allow them to build the building to be 100'. I don't think there is any stipulation that they couldn't go back to a 400' wall of a building that's 100' tall. They could do two buildings, they could do three. If a change like this is made in the neighborhood it should really go through, I think, the re-zoning process. You have room for more public comment. We have a lot that's adjacent to them that is right next to Rick Rice's house. If their variance goes through and we're adjacent we can apply for the same variance we're contiguous adjacent we should also get the same treatment and have a nice view of the river. I don't think Rick in his four story townhomes would like to have an eight story building that's 100' tall right next to him. Also from that parcel as you look south at the river, if their development gets closer to the river's edge then what's allowed for the side yard that will impact the view from our development. So it's very concerning that you guys will be changing policy, zoning policy, for this neighborhood as a variance. I guess that's my comment.

MR. VELLEMAN: Thank you Mr. Matthews. Anyone else wishing to speak in opposition to?

MS. WILLOW WEATHERALL: I live at 1741 Wall St., South Bend. I'm over in the Sunnymede area but I'm a community organizer and I work a lot on the revitalization of downtown. Most recently for small business Saturday I organized a holiday shopping crawl through the East Bank Village and I encouraged dozens of people to come out and check out the revitalization that's happening in that particular part of South Bend. The emerging the arts district there is very exciting. I wanted the people to see the new stores and the new homes that are going in, and just see how unique that area is. I traveled on foot through almost all of the entire East Bank with a group of people shopping, eating along the way and enjoying it. So I appreciate the plan that was submitted and the time and thought that went into it but I also have concerns about exactly about the variances being asked for today and how it would change the character of the neighborhood. It doesn't, from the screen shots it doesn't look like that big of a change but I have a feeling like as somebody who walks and is in that neighborhood a lot and the people living in that area, is going to be a bigger change than we expect from the power point slides. And so I too am concerned to that there's not enough public comment and dialogue on this particular process. So, again I am somebody that's passionate about South Bend. I'm very excited for the development that's been proposed here and definitely have concerns about that additional height and the way that it will change the character of what I see as becoming South Bend's new art district. And it has a feel and will have a draw that people will have a certain expectation in that area and we want to make sure that we're thinking about that vision how East Bank is positioning itself and the kind of development that's being proposed here to make sure it really is in line with that. Thank you.

MR. VELLEMAN: Anyone else wishing to speak in opposition to? Seeing none the public portion is now closed. Mr. Panzica, Mr. Hess, would you like to come back up?

REBUTTAL:

MR. PANZICA: Thank you. I want to address a couple of issues here. First of all the issue of a variance versus changing ordinances, real estate law recognizes that no two properties are the same, even in a

subdivision where all the lots being 50' X 150', each lot is individual and separate. And there's no way ordinances can address all the specific issues of each and every site in the neighborhood or an area of our community. So ordinances are blanket and the general take up large swaths, large areas, consider commercial corridors versus residential. This truly a commercial corridor, number one. Number two this site is very unique. It is extremely unique in our community. This site by no means should be underdeveloped. If we are to develop this project, we've established the 24 units is what is necessary to be economically feasible. And we've done studies looking at structures that are four and five stories tall. And in order to develop, that means you're lining up a series of buildings that creates a large wall. And we don't think that is what we want on that river front. We believe that the river front should be shared with other people. Look at Stephenson Mills, look at Mr. Matthews property to the north, these buildings do not impact the views of the properties that he's developed on Niles Avenue near Jefferson Blvd. and does not impact anything around the Emporium. The only buildings that are behind us are the Stephenson Mills and the Commerce Center and those huge buildings block any views from farther east to them toward our downtown. Those are large massive buildings as well. I think this height change is incremental. We're not coming in here and asking for 150' when everyone is 50'. We've demonstrated with the visuals that are true and accurate and I state my professional reputation on what we're presenting today. We have to reason to deceive anybody. You can all go check out what we're telling you on the heights of these buildings and what is out there. We spent many, many hours looking at this. We truly believe that the character of what we're doing takes serious consideration to the context to the neighborhood. And the building that fronts onto Colfax Avenue, little three story structure, is more consistent with that frontage and the neighborhood. The site is isolated from the rest of the East Bank Village as I stated earlier we would dare not come in front of this committee and ask for this type of variance when we would park this type of structure next to one and two story residential buildings. The Commerce Center is a huge building, four stories. It used to be a power plant. It has penthouses on it. It's a massive, massive structure. The Mill building next to us, again, that's a very massive structure, very solid. So we're giving consideration to all these things that are being brought up in the room. I'm sorry that this young lady hasn't seen in the community the advertising, the news press on this facility. There's websites on the facility. There's been signage on the property for how many months now, since last spring. So we believe that we've been out in the community. We've talked to the community. It's well respected. We've gone to the East Bank Village Association that has membership of all the people in the East Bank area and they actively attend these meetings. And we've had numerous presentations and discussions and they welcome this development. Asking us to go back and ask the City to change an ordinance is, I think, is an over kill. This is why we have variance application and variance routes. Because this site is unique and different and stands out on the edge of that river I believe the variance is the correct means of dealing with this specific site. Thank you.

MR. VELLEMAN: Comments, questions from the Board? I guess I'm going to start with a question, maybe Chuck and Mark would have to answer this. Since they showed different elevations can you actually write ordinance variance that would say for "this building it's going to be a height of 70' with an area 30'x30' than can be up to 90' to allow for the elevator shaft and all that to make that happen?"

MR. LYONS: Yeah you could do it as written commitments. You could state the main roof line be at 76' maximum with only the penthouse, elevator shaft extending up to a maximum of 92' or whatever you want. You could do written commitments specifically like that. You could also tie written commitments to the elevation drawings as provided.

MR. PHIPPS: Is the variance tied to this particular plan that they presented or...?

MR. LYONS: Yes but I would recommend that if you're going to do that, do written commitments as well if you want to specifically state heights.

MR. CRUMLISH: I have another question for you Mark. What is the front setback requirement in the Central Business District?

MR. LYONS: Zero feet. It actually has a min/max, you're not supposed to setback anymore...

MR. CRUMLISH: Is it applied to each structure on the property?

MR. LYONS: It applies to the development, generally. So if you have multiple buildings, for example, their third building being placed out front would meet their requirement for that.

MR. CRUMLISH: Actually it looks like it's off the property line. Does that apply to an accessory building?

MR. URBANSKI: As they're looking that up, can I ask a question? And I think Carolyn should be able to answer it, when a notice is posted for a BZA meeting, is it posted on this property, the advertisement? When it's advertised in the paper it's advertised the same way something that comes up for re-zoning, is that correct?

MR. LYONS: If you're asking if a sign is posted at the property, no.

MR. URBANSKI: But for re-zoning it is?

MR. LYONS: Re-zoning it is.

MR. URBANSKI: Okay, so that's the difference. So that sign is what would might bring, as what was brought up, more people to a hearing?

MR. LYONS: Yes.

MR. VELLEMAN: Oh, those little yellow signs that this property is being considered for something?

MR. URBANSKI: I don't think there'd be much more here than there would be at a re-zoning meeting, which goes before Area Plan first.

MR. VELLEMAN: It's hard to say. I mean we can see the list of the 300', within 300' and it was...

MR. PHIPPS: The biggest difference probably with a re-zoning is it would go both to the Plan Commission and the City Council and there'd be two hearings instead of one.

MR. BULOT: The front setback you are allowed for multiple buildings. It says an elevation view from the street frontage at least 50% of the visible façades of the buildings facing the street shall be located at or between the minimum setback and the maximum setback. So if you have two buildings and one only has, one has less than 50% of its façade, but the other building has, let's say 100% of its façade, if you have at least 50% of the combined facades in that requirement, you're in compliance.

MR. CRUMLISH: How do we have that here? Only a third of the façade meets that requirement.

MR. LYONS: Building three 100% of it meets that façade. The rear building is not oriented towards the street so it's not applicable. The northwest building which would be considered oriented towards the street so the north two buildings would meet that 50% façade requirement.

MR. CRUMLISH: So to comply with that they'd have to build that third building?

MR. LYONS: Yeah.

MR. CRUMLISH: That would have to initially and not at a future phase?

MR. LYONS: That would be up to ...

MR. BULOT: It depends on what we receive in terms of the initial proposal and time line in terms of when the phases will be rolled in. If it's going to be a matter of years, I'd have reservations about it. But if it's going to be within a reasonable time frame for that type of building, I'd be okay with that.

MR. CRUMLISH: They're on for a variance on this at this time?

MR. PHIPPS: Mr. Chairman I'll make a motion that we grant the variances as requested. My thinking is a quality development on this site would be a very good thing for the City while we are allowing higher than the zoning ordinance allows I think they have reduced the bulk of the building such that they're not completely blocking the site and I would consider that a valuable exchange and I'd also note that the part of the goes up to 100' is relatively small part of the whole development.

MR. URBANSKI: I second that and I echo what Jerry has said that the fact that something like this downtown, I feel, is needed the idea of housing and all. There's an article in the paper, I think Sunday, sometime in the last three or four days also about the housing coming downtown, quality housing, adding to the tax base and bringing people to the downtown. So for that reason I do second the motion.

MR. PHIPPS: I would make the motion also contingent upon the variance being tied to this particular development plan at least to the extent that it relates to the part of the building above the 60' zoning restriction.

MR. VELLEMAN: So you're saying that if they're supposed to be 67' on that one height, that's where they build the building to...

MR. PHIPPS: Or we would not allow expansion of the building to more building above that 60'.

MR. VELLEMAN: Right because that was my concern was if we allow them 100' they could come back and say we're going to build this big ole building right on the river that's 100' tall and 1000' across or whatever...

MR. PHIPPS: I wouldn't tie them to every detail to the site plan just the....

MR. VELLEMAN: Tie them to those...

MR. PHIPPS: To what they're showing above the 60'...

MR. VELLEMAN: To what they're showing above the variance allowed. Okay, I understand.

MR. CRUMLISH: I think we have to tie the written commitment to the third building.

MR. VELLEMAN: To building it to the same time as the first one is or?

MR. CRUMLISH: To some reasonable time table as Chuck would determine To comply with the Central Business setback requirements.

MR. PHIPPS: We have a zoning problem in the future. We can't grant a variance for a building not to be built.

MR. BULOT: Probably an easy method of doing this is require them to pull a foundation permit for the buildings and once they do that they would be tied into a two year time period per the building permit, six months to start and two years to finish.

MR. PHIPPS: Couldn't we set a time period in which to pull the permit a foundation permit, a foundation permit like within three years that would give them a five year time period to build the third building.

MR. VELLEMAN: That's our discretion, I guess.

MR. BULOT: Sure it's your discretion.

MR. VELLEMAN: So this brings, Mr. Telloyan I'm going to ask you, we're now subjecting them to some written commitments we're going to ask them to do, do we need bring them back up and ask them if these are acceptable to them?

MR. PHIPPS: That might be helpful.

MR. VELLEMAN: Mr. Panzica, Mr. Hess would you come back up to the podium to possibly weight in a little bit on what you're willing to do? So I guess what the Board is asking is we're going to approve the variance as requested subject to some written commitments that will need to be written, Mr. Lyons can help you write them, there's an appendix "C" I believe, that would be written commitments to make this approval go forward would be that the heights that you showed in your power point here would be the heights that we agreed to with those written commitments and also a time frame on the third building to get us within that

perimeter of being within the setbacks. What kind of time frame were you looking at on that third, I know you say, to me that third building is a little bit outside the realm of the first two because it's a different structure, is there a time frame you have on that right now?

MR. PANZICA: Well thankfully the market is getting stronger. We have commitments for the first building. These are condo's. There's a limited market for these. There's a certain amount of absorption rate that can be there. We would expect that we would be breaking ground on the second building within eighteen to twenty four months of the first building being completed. The third building, that's a smaller structure, that one can probably fall in within two year time frame of completion of the first building. I think we would be accepting of establishing heights we requested, we showed on our presentation of 76' and nominal inches and to 90' to the top of the elevator roof lobby with a condition that those dimensions are nominal and provide us a little elbow room when we get involved with the fine details of detailing of this building that if a beam you gain four inches on a beam, you've got clearances necessary for elevators, that that 76' 4" might become 77' 2", some nominal dimension that's very small and incremental. So I wouldn't want to be married to 76' 8" period because again there's always nominal dimensions but I'd think we'd be consistent and be acceptable to doing that.

MR. VELLEMAN: Mr. Hess would you bring that one elevation back up real quick for us please? I understand what he's saying, we can't make it 76' 2" but we can make it 78' or 77' or something...

MR. PANZICA: I'd like to reiterate again and I think Jerry understands this as well and Brian does as well, in the building codes once we go above 75' occupied level that the height the fire department has difficulties fighting fires. Their ladders don't go up that high, etc. So a whole series of codes kicking in about live safety, you got to create fire safety rooms on the first floor with annunciation through the whole building, the ability to talk to each condominium individually etc. and these systems are not inexpensive and it adds a lot of expense to the project and I assure we would never go above 75' occupied level. This is what we're anticipating doing. We have people lined up that want to buy these condominiums and move in. Any delays now we start losing customers.

MR. VELLEMAN: So you'd be accepting if we said 76'2" plus or minus a foot...

MR. PANZICA: Yes sir.

MR. VELLEMAN: And 90'6" plus or minus a foot?

MR. PANZICA: Yes sir.

MR. VELLEMAN: And then a time frame of, Brendan, you brought it up two years for a foundation plan?

MR. CRUMLISH: It sounded like what Mr. Bulot was suggesting, sure.

MR. VELLEMAN: So if you would pull a permit to put the foundation in on the third building within two years which would give you an additional two years to build it, so a total of four years for that third building? Would that be acceptable in the written commitments?

MR. PANZICA: I believe that would be acceptable.

MR. VELLEMAN: That all can just be incorporated into that vote, correct? With the written commitments that was just stated? So just so the Board is aware, we have a motion for approval and a second with the written commitments from the petitioner, that these buildings will follow the basis of designs that we see here to 76'2" plus or minus a foot and a certain portion of the elevator shaft penthouse to be 90'6" plus or minus a foot and that they will pull a permit put the foundation on building three within two years of this date which then allows them a total of four years to actually put that third building in to get within the zero degree setback on the Colfax Avenue. So that is what we're voting on.

A motion for approval with written commitments was made by Mr. Phipps and seconded by Mr. Urbanski. The motion carried unanimously.

After hearing the evidence on the petition, the Area Board of Zoning Appeals find that you did satisfy the Standards as set forth in I.C. 36-7-4-918.5; therefore, the petition was granted with written commitments.

Based on the testimony presented, the Area Board of Zoning Appeals, after careful consideration, finds this variance granted with written commitments and will issue written Finding of Facts.

PETITION GRANTED WITH WRITTEN COMMITMENTS

MICHAEL & SHAUNA McCORMICK

The petition of Michael & Shauna McCormick seeking a variance from the required 8' side yard setback to 5', on property located at 12093 Bluebonnet Lane, Harris Township. Zoned Residential.

MR. MICHAEL McCORMICK: 12093 Bluebonnet Lane, Granger and I'm seeking a variance so that I can add a third stall onto my garage. That's pretty much cut and dried. It's going to be built to code and it's going to be half brick like the rest of my house is. So everything is going to blend in.

MR. VELLEMAN: Is the roof elevation going to stay the same, you're just going to extend the roof over or is it going to...?

MR. McCORMICK: I'm going to set the roof down maybe six inches so it...

MR. VELLEMAN: But the peak will be the same? It won't look like a shed off the side of it?

MR. McCORMICK: No.

MR. VELLEMAN: It'll be the same, north to south elevation?

MR. McCORMICK: It'll be set back probably like two foot just so it's aesthetic, looks proper.