

SOUTH BEND BOARD OF ZONING APPEALS

MINUTES

Monday, February 6, 2023
4:00 p.m.

4th Floor, Council Chambers
County-City Building, South Bend, IN

MEMBERS PRESENT:

Mark Burrell
Kyle Copelin
Kathy Schuth
Caitlin Stevens

MEMBERS ABSENT:

Kaine Kanczuzewski

ALSO PRESENT:

Angela Smith
Rachel Boyles
Kate Bolze
Jenna Throw
Tom Panowicz

PUBLIC HEARINGS:

- 1. The petition of JJB HOMES LLC seeking a Special Exception to allow Restaurant, and seeking the following variance(s): 1) from the required 1 streetscape tree for every 30' of street frontage to none; and 2) from the required 1 shrub for every 5' of facade foundation landscaping to none, property located at 2621 MISHAWAKA AVE. Zoned UF Urban Neighborhood Flex. *(Audio Position: 04:04)***

ACTION

After careful consideration, the following action was taken:

Upon a motion by Kyle Copelin, being seconded by Mark Burrell and carried, a petition by JJB HOMES LLC seeking a Special Exception for Restaurant and seeking the following variances: 1) from the required 1 streetscape tree for every 30' of street frontage to none; and 2) from the required 1 shrub for every 5' of facade foundation landscaping to none for property located at 2621 MISHAWAKA AVE, City of South Bend is tabled.

Caitlin Stevens - Yes
Kyle Copelin - Yes
Kaine Kanczuzewski - Absent
Mark Burrell - Yes
Kathy Schuth - Yes

- 2. Proposal by the board to combine the appeal hearings into one hearing. *(Audio Position: 04:49)***

ACTION

After careful consideration, the following action was taken:

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Upon a motion by Mark Burrell, being seconded by Kyle Copelin and unanimous carried, the Board modified the Rules of Procedure to combine the appeals petitions into one hearing allowing for a 90 minute presentation each for the petitioner and for staff.

Caitlin Stevens - Yes
Kyle Copelin - Yes
Kaine Kanczuzewski - Absent
Mark Burrell - Yes
Kathy Schuth - Yes

- 3. Administrative Appeals by Lamar Advertising Company for 1) The issuance of a violation for failure to obtain an improvement location permit; and 2) The issuance of a violation for the location, erection, or maintenance of any sign not specifically permitted by this Ordinance for the signs located at:** *(Audio Position: 7:33)*

322 Hill St, zoned NC Neighborhood Center.
322 Laurel St, zoned NC Neighborhood Center.
416 S William St, zoned NC Neighborhood Center.
429 Main St, zoned NC Neighborhood Center.
509 Main St, zoned NC Neighborhood Center.
510 Lincolnway, zoned NC Neighborhood Center.
1138 Mishawaka Ave, zoned NC Neighborhood Center.
1415 Lincolnway, zoned NC Neighborhood Center.
3003 Lincolnway, zoned NC Neighborhood Center.
2401 Western Ave, zoned NC Neighborhood Center.

PETITIONER PRESENTATION

(Audio Position: 09:23)

Yasmin L. Stump, Attorney representing Lamar Advertising Company, 11495 W Pennsylvania St, Ste 101, Carmel, IN 46032 presented in person.
Michelle Millard, Senior Vice President/Territory Manager at Lamar; 1335 Mishawaka Ave, South Bend, IN 46615 presented in person.
Kerry Yoakum, Senior VP of Government Affairs, OAAA, 1850 M St NW, Suite 1040, Washington, DC 20036 presented virtually.
Jon Odom, Owner, Productivity Fabricators, Richmond, IN presented virtually.

CITY OF SOUTH BEND STAFF PRESENTATION

(Audio Position: 1:02:37)

Jenna Throw, Assistant City Attorney, City of South Bend, 227 W Jefferson Blvd, Ste 1200S, South Bend, IN 46601 presented in person.
Angela Smith, Zoning Administrator, City of South Bend, 227 W Jefferson Blvd, Ste 1400S, South Bend, IN 46601 presented in person.

INTERESTED PARTIES

(Audio Position: 1:54:51)

There was no one from the public to speak.

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A letter was received in support of Lamar from Gene Bamber, property owner at 1145 Mishawaka Ave, South Bend, IN 46615.

PUBLIC COMMENT

(Audio Position: 1:55:40)

There was no one from the general public to speak.

PUBLIC HEARING CLOSED

(Audio Position: 1:56:43)

ADDITIONAL COMMENTS FROM PETITIONER

(Audio Position: 1:56:03)

Jon Odom

Michelle Millard

Robert Miller, Real Estate Manager, Sr., 1335 Mishawaka Ave

Yasmin L. Stump

PETITIONER REBUTTAL

(Audio Position: 2:10:02)

Yasmin L. Stump

Michelle Millard

ACTION

After careful consideration, the following action was taken:

A motion by Kyle Copelin, being seconded by Caitlin Stevens to AFFIRM the decision by Staff to issue citations for zoning violations on all of the properties, failed to carry due to a lack of Majority vote.

(Audio Position: 2:25:47)

Caitlin Stevens - Yes

Kyle Copelin - Yes

Kaine Kanczuzewski -Absent

Mark Burrell -No

Kathy Schuth - No

A motion by Mark Burrell to REVERSE the decision by Staff to issue citations for zoning violations on all of the properties died due to the lack of a second.

(Audio Position: 2:30:07)

As the Board was unable to AFFIRM or REVERSE the decision by Staff to issue citations for zoning violations on all of the propertiesThe Rules are silent as to the effect of a tie vote. However, Article I, Section 2 of the Rules provides that on all questions of parliamentary law and procedure not covered by the Rules, Robert's Rules of Order shall be the authority.

Robert's Rules of Order, which controls in such an outcome per Board rules, and consistent with analogous precedent in cases of judicial appeal, instructs that such a

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deadlock results in a defeat of the Administrative Appeals since there was not a majority decision to affirm, reverse or modify. Therefore, the original issuance of each and all violations stands and remains unchanged. *(Audio Position: 2:44:17)*

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact – January 3, 2023

(Audio Position: 2:44:39)

After careful consideration, the following action was taken:

Upon a motion by Mark Burrell, being seconded by Caitlin Stevens and unanimously carried by vote, the Findings of Fact from the January 3, 2023 meeting are approved

Caitlin Stevens - Yes
Kyle Copelin - Yes
Kaine Kanczuzewski -Absent
Mark Burrell -Yes
Kathy Schuth - Yes

2. Minutes – January 3, 2023

(Audio Position: 2:45:03)


After careful consideration, the following action was taken:

Upon a motion by Mark Burrell, being seconded by Caitlin Stevens and unanimously carried by vote, the Minutes from the January 3, 2023 meeting are approved

Caitlin Stevens - Yes
Kyle Copelin - Yes
Kaine Kanczuzewski -Absent
Mark Burrell -Yes
Kathy Schuth - Yes

3. Other Business: None

4. Adjournment – 6:47 pm

RESPECTFULLY SUBMITTED,


KATHY SCHUTH,
Chair

ATTEST:



ANGELA M. SMITH,
Secretary of the Board