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

Wednesday, April 2, 2014 — 1:30 p.m.
4th Floor, Council Chambers — County-City Building

REGULAR MEETING

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

MEMBERS ABSENT:

ALSO PRESENT:
Marcellus M. Lebbin - Board Attorney
Charles C. Bulot, C.B.O. - Building Commissioner
Mark Lyons - Assistant Zoning Administrator
Christa Hill - Planner/Area Plan Commission
Carolyn A. Henry - Secretary to the 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.

RIVER RACE FLATS

The petition of River Race Flats seeking a variance from the maximum allowable 50' to 93' and from the maximum allowable 5 stories to 7, on property located at 122 S. Niles Ave., Portage Township. Zoned "CBD". This was tabled from the March ABZA meeting.

MR. DAVID MATTHEWS: With Matthews, LLC, I live at 215 E. Colfax Ave., in downtown South Bend. And we're here to talk about a parcel the River Race Flats, Mixed Use building located in the East Bank neighborhood in downtown South Bend central business district on the corner of Jefferson and Niles Avenue.

MR. MATTHEWS WAS USING A POWER POINT PRESENTATION AT THIS TIME

MR. MATTHEWS: This is a project we've been working on for about two years since we started building the East Bank or the River Race townhomes which has almost sold out, we have two units left. And we've gone through a few different iterations of designs. Starting with the first design which was a single commercial mixed use building which caused a lot of alarm from the Prosecutors office and Metro Homicide because on the right side of the building where that dotted rectangle is, the Metro Homicide uses that space on our property to get access to their garage that they can get evidence and also a large evidence collection

vehicle in and out of the building that they've been leasing for about twenty years. And so they actively could possibly you know asked if we could possibly cut out a section of our building or if we could somehow accommodate their collection vehicle so that they would stay in the property and I guess it's been a pretty good home to them and we as neighbors in downtown love having the police station in the neighborhood. And then during the expansion or the development of Niles Avenue the City did a beautiful street scape as part of the design area overflow project. During the engineering of it though they asked if they could cut off a corner of our lot and shorten it up a bit, and you see this shaded area that we gave the City to increase the right of way to increase that street scape a bit better. So this is a parcel that after we had bought it we had a few neighbors and also the City come to us and see if we could kind of tweak our plans to make it more accommodating to the neighborhood and so we're more than happy to comply. We changed from this original plan of having one large building into having two buildings and then that still required us cutting off a bit of the alley. A bit of access by one of the buildings that the Metro Homicide folks can get in. And so it wasn't until maybe two or three months ago that we finally realized it's a more efficient way to accommodate both the neighbors and then deal with the impact of having a little bit less square footage from the City's Niles Avenue improvement and that was to make a tunnel and so if you look at the site plan there's dotted line on the right hand side that lines up a garage door across the alley (Mr. Matthews went up and pointed at the slide at this time) right here, and this is a garage door that Metro Homicide has their evidence collection vehicle parked in and then it's also where they get cars dropped off if they've been involved in a crime that they need to investigate and so by making a tunnel through our building lining it up with the driveway here then their vehicles and tow trucks can still access their spot and maintain use of this building. But that took away a bit of square footage from us and so our solution was to make up some of that square footage by adding one extra story. And so we're here today to ask for a sixth floor of residential and then the seventh floor being the elevator shaft and then from the height in the district which I think is 50' up to 93' which would be the top of that elevator shaft. And so we have a video that I can play that kind of shows this neighborhood in context…

MR. VELLEMAN: Before you start that can you go back to that site plan real quick, please?

MR. MATTHEWS: Yeah.

MR. VELLEMAN: That differs from the one that I have in my packet, which one is accurate? The one in my packet shows a sidewalk that runs beyond the alley and between that and the other building.

MR. MATTHEWS: This one (pointing to the slide) is slightly more updated and we've included a copy of this presentation already for the record.

MR. VELLEMAN: Okay. So it's set more back, I mean it's directly on the property line now, the building is?

MR. MATTHEWS: I think it's eighteen inches off the property line at the alley when before it was about it was about three feet off the alley. So what that, it's made a little bit bigger plaza and originally we had the facility moved back until we could verify that the Metro Homicide trucks could get in and out and so now that we have things lined up it just let the site be a little bit more efficient as well.

MR. VELLEMAN: So every time that Metro Homicide truck comes back to it's garage it's going to drive through, underneath your building?

MR. MATTHEWS: It doesn't have to no. They can actually drive in and then pull in, but they need the alley to do their multi point turn to get in but then for leaving, if there's nobody in the plaza I would expect them to just drive thru because it's a lot easier to pull that truck out then it is to back it up.

MR. VELLEMAN: Sure.

MR. MATTHEWS: And…go ahead…

MR. URBANSKI: Go ahead and finish what you were saying.

MR. MATTHEWS: And then the other concern they had in addition to the truck they sometimes have tow trucks that come in with a vehicle or two on it …

MR. VELLEMAN: An evidence car.

MR. MATTHEWS: And the is a hinge point and for that the only way we could figure out how to get that truck in is Phil be accepted to go on the street and then very carefully back up through the tunnel.

MR. VELLEMAN: I'd say.

MR. URBANSKI: I thought I heard him, correct me if I'm wrong, that by giving up that tunnel that's way you want to put the sixth floor on to make up? Now you're not losing that much space with that tunnel coming through there is there? I couldn't see more than at least two units.

MR. MATTHEWS: Right, well and we have eight units per floor and so we lost some space to the tunnel here (pointing to the slide) and it also…

MR. URBANSKI: Okay, but how many units would you have lost? You're not losing eight spaces…

MR. MATTHEWS: Correct.

MR. URBANSKI: To justify another floor?

MR. MATTHEWS: Right, but it also, the tunnel is more expensive to build as well. I mean the least expense building we could build would have been a building that looked like our original plan which was this one. (pointing another slide)

MR. URBANSKI: Okay. And in that particular case you would have had the setback variance from the area, like he should be having it.

MR. MATTHEWS: What do you mean?

MR. URBANSKI: Like the normal setbacks would be.

MR. MATTHEWS: There's not setback in this petition.

MR. VELLEMAN: No setback on the alley.

MR. URBANSKI: From the alley?

MR. MATTHEWS: From the alley or the street. It has setback maximums.

MR. LYONS: It would not be required a setback from the alley.

MR. MATTHEWS: So in the center…

MR. URBANSKI: So they can build on a property line a seven story building?

MR. LYONS: Five story.

MR. URBANSKI: Five story building, okay…

MR. LYONS: While we're on that…

MR. URBANSKI: But you understand what I'm saying…

MR. LYONS: You're petition lists a variance from five to seven, you're modifying you're request to five to six stories?

MR. MATTHEWS: Well, the seventh story is the elevator shaft.

MR. LYONS: So six occupied stories?

MR. MATTHEWS: Yeah, yeah that was always our intent.

MR. URBANSKI: That was always the…?

MR. MATTHEWS: The intent, yeah. The top of the elevator shaft is seven stories. But that is…

MR. URBANSKI: Okay, so what would you have done if authority had not been granted to another organization back on the Wharf site to go with one which had a lot of green space to go with one seven story building there? Now if that never would of happened, would you have gone with the five story building and still built a ramp for the homicide, which you're so gracious, it's so gracious of you to do for the City of South Bend Police Department, okay?

MR. MATTHEWS: I don't know what would of happened…

MR. URBANSKI: But that was your original plans, was it not?

MR. MATTHEWS: We've had a lot of plans on this site over the past two years.

MR. URBANSKI: But that was the original plan, correct, a five story building?

MR. MATTHEWS: The original plan was a triangular building like this, yeah it was at five stories.

MR. URBANSKI: Your original plan was a five story building?

MR. MATTHEWS: Yeah. I mean that was the most we could build in the neighborhood.

MR. URBANSKI: I'm not quite sure, the original plan was a five story building, I don't want to badger you, I don't want to knack, I just would like to hear it from you.

MR. MATTHEWS: Oh, yeah. When we bought the property the limit in the neighborhood was five stories. So we could build anything larger than five stories.

MR. URBANSKI: And, that would you have made allowances for Metro Homicide at that time?

MR. MATTHEWS: It's hard to say. We've been working for a while to figure out how to make this work. And so…

MR. URBANSKI: And so now you want the extra floor because you're so gracious to offer that tunnel for Metro Homicide. What would you use in that tunnel when they're not using the system?

MR. MATTHEWS: What we found out if we could, we could line some shops on it and make it so it's more pedestrian friendly.

MR. URBANSKI: So it's also going to increase your number of rental properties that you can have on the first floor?

MR. MATTHEWS: I don't know that it's not going to increase number of properties but instead of having an internal space it'll be an external space. And so it makes…

MR. URBANSKI: So the external space face will be to the tunnel?

MR. MATTHEWS: Correct. The…

MR. URBANSKI: Rather than a lobby?

MR. MATTHEWS: So instead of having like a ground floor commercial space where we could lease it to one tenant, now we've had to split that first floor up into two sections….

MR. URBANSKI: So with the possibility of more trucks backing in or do you think it's safe for people coming out of store fronts facing the tunnel?

MR. MATTHEWS: You mean, people would have to be careful.

MR. URBANSKI: But yet it's a safety concern?

MR. MATTHEWS: It is, yeah. I guess that would give us more liability letting them come in with this design.

MR. CRUMLISH: I have a question. Is Metro Homicide compensating you for the construction of this tunnel?

MR. MATTHEWS: They've offered. What we came up with is they're going to work to paint their garage door so it doesn't look like an ugly garage door.

MR. CRUMLISH: But you're paying the costs to build it?

MR. MATTHEWS: Yeah, yeah we're absorbing the costs. And we're happy to do that because the way we're able to justify was adding an extra eight units.

MR. URBANSKI: Adding eight units and giving up…what's that tunnel would have been, maybe two retail units or one retail unit?

MR. MATTHEWS: It's hard, it's easier to take square footage. So the way we'll know is we kind of build out the first floor and as tenants show up, we will subdivide it.

MR. URBANSKI: But the maximum would be two tenants more than likely because it's going to be 16' wide I'm assuming?

MR. MATTHEWS: It's nine feet wide.

MR. URBANSKI: The tunnel?

MR. MATTHEWS: It is.

MR. URBANSKI: Well then will a flatbed be able to make it through a 9' tunnel?

MR. MATTHEWS: It will. Trust me.

MR. URBANSKI: That concerns me all the more for pedestrians, not pedestrians, shoppers going in and out of the retail spaces. My god, you come out of there and that starts backing in with a flatbed with a 9' opening, there's no place to go.

MR. MATTHEWS: The classic flatbed car is 6 1/2', 7' wide so…

MR. URBANSKI: They're closer, I think they're closer to 8, I'm not going to argue the point, but my god with a foot, they're not going to have any spot to go. By the time you look at the mirrors hanging out, you're going to be looking at 8'.

MR. VELLEMAN: Will there be doors into that space on the ground floor?

MR. MATTHEWS: It's open. It's always open.

MR. VELLEMAN: I mean from the building to that alley, will there be doors that people will be able to walk out?

MR. MATTHEWS: We're not sure yet.

MR. URBANSKI: I thought you said earlier that you're going to have shops coming in …

MR. MATTHEWS: They'll have windows. We don't know if they'll have doors or not.

MR. URBANSKI: I definitely would wish if this is passes that you would not put doors in it. I don't think that would be safe at all.

MR. MATTHEWS: We could probably have them positioned towards the plaza. It just depends if there's one or two.

MR. URBANSKI: Just for the record now, I find trouble justifying eight units for a nine foot tunnel. And I do appreciate the tunnel. That Corbett, I'm sure, appreciates it from Metro Homicide but I'm having trouble justifying eight units on one additional floor to justify that alley, I mean that tunnel…

MR. MATTHEWS: Right, so and so it's not, our prediction isn't based solely on just accommodating Metro Homicide. We try to accommodate Metro Homicide. We accommodated the City with their awesome Niles Avenue street scape improvements. We are trying to accommodate the neighborhood in general by building

MR. MATTHEWS: And then keep it locked so it's not a walkway.

MR. URBANSKI: Do you want a walkway out to the alley there as beyond Howard Park's Tavern side door. They used to have a side door. I think they still do.

MR. MATTHEWS: They don't allow because it comes through their kitchen, they can't use it for public access. But they still have a side door there. (pointing to a map on the slide) And then, so we have a side door, here, Metro Homicide has a side door here, and the tavern has a side door for the kitchen here.

MR. VELLEMAN: But this must meet it because he's not asking for that variance as well.

MR. MATTHEWS: Generally the building we do downtown we exceed the landscape requirements. It makes the site more desirable.

MR. VELLEMAN: All the areas in the public, or I should say between the sidewalk and Niles Avenue there, is that all going to be grass or green there or…?

MR. MATTHEWS: I'm sorry, say that again.

MR. VELLEMAN: The area between the sidewalk that runs along Niles, and then Niles there, is those areas portrayed as grass or ?

MR. MATTHEWS: This would be portrayed as pavers here and then this will either be pavers or grass. (pointing to the map again) Usually we don't do grass though in front of commercial space. We do maybe planting box or some green that's a little bit less more drought resistant than grass would be. Grass isn't very ecofriendly.

MR. VELLEMAN: True. Any additional comments or questions for Mr. Matthews from the Board? Thank you Mr. Matthews. Any additional comments, questions or is there a motion?

MR. URBANSKI: Mr. Chairman, I'd like to make a motion to deny it, the height change. I would be 100% in favor if he maintained the regular height in that area. I truly believe by going up the additional height, it's not fit for that area. One of the comments that was made by the lady that spoke in opposition to, stated that, she stated about the panels on the roof but also she talked about the character of that whole neighborhood, the whole area and so that is why I'm making a motion to deny it…

MR. VELLEMAN: I'm going to stop you for just one second. I made an error during the public portion we did have letters from people that were not here. That was something I did not enter into the record. That was my fault. Ms. Bundy from the Howard Park Neighborhood Association, she sent a letter in favor of it that the Neighborhood Association was in favor of six stories rather than five and then we received 27 letters that were basically all the same basically said "that I support the petition of River Race Townhomes, LLC for variance in both building height and number of stories. Please pass this variance and bring more development to our neighborhood". Mr. Lebbin do I need to read all these names to enter them or just say that we have 26 letters in support of? We can't verify who or where they live but

MR. LEBBIN: You can just mention the number.

MR. VELLEMAN: Okay so we've received 26 letters in favor and we did receive on in opposition from Lois Boyer, 1147 Stratford Place, saying that she's opposed to this variance. "It's a village in South Bend, not Greenwich in New York City and these villages were usually independent units of government does not fit the character of the village". So just wanted to make sure everyone was aware of that. That's my apologies before we left the public portion.

MR. URBANSKI: Okay I think I stated a motion and the reason for my motion for the record.

MR. VELLEMAN: You did. We have a motion, do we have a second?

MR. MATTHYS: I'll second.

A motion to deny the petition was made by Mr. Urbanski and seconded by Mr. Matthys.

MRS. HENRY: Mr. Phipps?

MR. PHIPPS: Yes.

MRS. HENRY: Mr. Young?

MR. YOUNG: Yes.

MRS. HENRY: Mr. Hawley?

MR. HAWLEY: Yes.

MRS. HENRY: Mr. Crumlish?

MR. CRUMLISH: Yes.

MRS. HENRY: Mr. Matthys?

MR. MATTHYS: Yes.

MRS. HENRY: Mr. Urbanski?

MR. URBANSKI: Yes.

MRS. HENRY: Mr. Velleman?

MR. VELLEMAN: I'm going to say no and I'm going to give a reason why I'm going to say no because it really doesn't matter at this point first but at the same point the 93' of height I think is what scares everybody when they ask for that whereas we get to the point of what they really need. Is it totally that height, so I think if we could have worked possibly a little bit on that.

The motion carried 6-1.

> After hearing the evidence on the petition, the Area Board of Zoning Appeals find that you did not satisfy the Standards as set forth in I.C. 36-7-4-918.5; therefore, the petition was denied.

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

PETITION DENIED