

Zoning Board of Appeals  
 Wednesday, November 2, 2011  
 6:00 PM Town Hall

Edinburgh Zoning Board of Appeals met in special session on Wednesday, November 2, 2011, 6:00 p.m., Edinburgh Town Hall.

Members Present: Keith Sells  
 Ron Hamm  
 Richard Pile  
 Becky Wilhelm  
 Rhonda Barrett, Secretary

Others Present: Dustin Huddleston, Town Attorney  
 John Drybread, Director of Utilities

Keith Sells opened meeting at 6:00 p.m. with roll call, Keith Sells, here, Becky Wilhelm, here, Ron Hamm, here, Richard Pile, here, Lloyd Flory not here, Rhonda Barrett, here.

Keith Sells presented the October 2, 2011 meeting minutes for approval, he asked for any corrections or additions to the minutes. There being no corrections or additions, he asked for a motion to approve the minutes. Ron Hamm made motion to approve minutes. Richard Pile seconded. Keith asked for showing of right hand for all in favor. All right hands were raised. Motion approved.

Keith then gave Dustin Huddleston, town attorney, the floor to address the board. Dustin wanted to remind the board of what happened at the last meeting and bring them up to speed as to what has happened since then regarding tonight's application. He presented the board with the new procedure in Indiana Law that came into effect in July, requiring any person attending any meeting need to sign in on a sign in sheet listing their name, address, and phone number to receive proper notification. He then asked all who were in attendance at the meeting to sign in before leaving. He then reminded the board of some issues that were identified at the prior meeting that the building commissioner presented to the board. At the prior meeting, the building commissioner was unsure of the legal description that had been presented with the petition, there was an issue with the petition asking for one variance and then advertising for two, and he was also unsure of the zoning. This left a lot of doubt, therefore the board voted to continue the hearing for tonight's meeting. Between the two meetings, the building commissioner was responsible to get those answers. After a review with the Town Council president, and the Director of Utilities, it was determined that he did not get those answers, and he is no longer the building commissioner. At this time the Town does not have a building commissioner and is in the process of getting one. Dustin has tried to get the information that was needed regarding the application. Dustin and John Drybread met with Mr. Sprague and explained some issues to him, and he understands what the issues were. At the last meeting Mr. Sprague was not in attendance due to the fact that the former building commissioner gave him a notice that said the meeting started at 7:00 p.m., not 6:00 p.m., so Mr. Sprague showed up at 7:00 p.m., therefore an error on the town's part caused him to not be at the meeting.

At the previous meeting the following items were identified concerning the petition:

1. The petition says it is zoned RB, this is what the petitioner put, but Brad does not know if that is correct, it could be zoned R1;
2. The attached legal description to the petition, Brad does not know if that legal description accurately describes both parcels;
3. On the petition, the variance request is for two pole signs on one piece of property, however the advertisement in the paper and sent to every landowner says two pole signs on every property and they exceed 35 feet. They are requesting higher than 35 feet up to 50 feet.

Dustin presented the board with the following information:

The legal description actually identifies two parcels that lap over Hospital Road. He presented the board with a map and marked it as Exhibit A, highlighting in yellow what the legal description is.

At the last meeting, what was presented to Dustin as being advertised and what Brad had told him was that the petition that had been filed by Mr. Sprague, asked for a variance to put up two signs. The legal advertisement asked for two signs and a height extension. With the information presented at the time, it appeared that Mr. Sprague did not file a proper petition for the height extension. After conversation with Mr. Sprague, it was discovered that he did file two applications, but the building commissioner failed to present those to Dustin. According to the rules and procedures for the Zoning Board, Mr. Sprague has done all he needs to do to file the petition and is in compliance.

The third issue is with zoning the building commissioner did not know where RB zoning ended and began on this property. This is a key issue as RB zoning allows for this type of sign, so placement outside of the RB zoning is an issue. Dustin still has not determined the zoning as the Towns zoning map is not properly measured, and it is hard to determine. After prior conversation with Mr. Sprague he is prepared tonight to commit to placing the sign in the RB zoning.

During the last meeting it was determined that the building commissioner incorrectly advised Mr. Sprague to file with the zoning board first. The current Zoning Ordinance reads that signs of this nature need to go in front of the Planning Commission first as it is in RB zoning. After the planning commission approves the sign, then if Mr. Sprague wants to have a taller sign, he would then come to the Zoning Board to get a variance for the height. Mr. Sprague was actually advised to do the procedure backwards. Dustin advised Mr. Sprague of this information. Tonight the board can still proceed with the two variances which includes two signs on one property, and a height extension from 35 feet to 50 feet. If the board approves these two variances tonight it would be subject to the Planning Commission approval. For example if one or both requests are approved tonight, Mr. Sprague cannot put up any signs until he files with the Planning Commission and gets their approval. This is a backwards process, but since the town advised him wrong, rather than asking him to do a re-file and further delay the process, the zoning board has the opportunity and the power to grant these variances if they want to, but with the condition that he has to get approval from the Planning Commission.

Keith Sells said he feels uncomfortable to go outside the normal process, he felt that this should go before the planning commission first and get their approval before approving any variances on the sign.

Dustin informed Keith that he had explained this to Mr. Sprague and Mr. Sprague wants to proceed with the Zoning Board first. Dustin agrees with Keith, but the Town incorrectly advised Mr. Sprague on how to file, which puts the board in a tough spot. If the board wants to make that determination then they can, and Mr. Sprague is aware of the fact that the board may decide to not hear the petition until the sign is approved by the planning commission.

Dustin then reminded the board that with a Developmental Standards Variance, there is a three part criteria to approve or deny a petition. The board has to find that this is okay or against that if approved:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The strict application of the terms of the Edinburgh Zoning Ordinance will result in a practical difficulty in the use of the property. This situation was not self-imposed, or based on a perceived reduction of, or restriction on, economic gain.

If the petition is denied then the board would be required to say that the petition does not meet one of the standards, for example: the petition could not be denied due to dislike of signs.

Richard Pile stated that normally Brad would present the board with whether or not he was in favor of it. Dustin stated that Brad did file a staff report at the last meeting he was in favor of granting the variances subject to the planning commission approval. Richard stated that he would have no problem with approving tonight with it still going on to the planning commission for their approval.

Ron Hamm asked why Mr. Sprague needed the extra fifteen feet. Dustin asked the board to allow Mr. Sprague to give his presentation, and then they could ask questions.

Becky Wilhelm asked for clarification of the Planning Commission, if it is a commission for the town. Dustin informed her that it is and the John Drybread is the Chairman on that board.

Keith then asked Mr. Sprague to present his petition.

Richard Sprague introduced himself, he owns an outdoor advertising company by the name of J.R. Promotions. He and his wife Jan own the company and started the business as they own several hotels along the Interstate. They build nicer more modern signs versus the wooden plywood signs. The signs are lit from the bottom up and they try to make them all steel to be more attractive. He told the board he approached Brad about a year ago and was under the impression that signs were not allowed anywhere except in the RB zoning. They reviewed the maps and Mr. Sprague met with the landowner and they entered into a lease which states that the signs must be in the RB zoning. The reason for coming for the variance is due to the fact that the property is one large farm that is split by Hospital Road. One sign would be fronted on US 31 and would be visible as you are going up and down US 31 and the other sign would set on the south side of Hospital Road, used to reach the military traffic going and coming from Camp Atterbury. The property is two separate parcels but all on one deed.

The reason for the height variance is due to the fact that the ground is still being farmed, so the sign needs to be raised up to allow for the farming equipment to go under the sign along Hospital Road. The sign on US 31 height variance results from the highway raising up and the field dropping down approximately 10 feet, the variance would then allow for the sign to be above the car in traffic. Mr. Sprague and the land owner have agreed to have a survey done to verify that the signs are both located in the RB zoning, then bring the survey to the town to determine the location in the RB zoning. The sign on Hospital Road will be as far west as possible and still be in RB zoning. Mr. Sprague understands that it may be necessary to postpone this tonight until planning commission approves and does not have a problem with it, but wanted to present his petition as he did not make it to the last meeting. He would like to go forward if possible, but is willing to wait until a new building commissioner is hired if that was the board's desire.

Keith Sells asked Mr. Sprague if the signs generate property taxes. Mr. Sprague stated yes that the signs are assessed, and there is a new process coming up were the signs were assessed a flat fee, but under the new rules, the value will be the cost of the steel and is assessed as personal property.

Keith then asked if anyone had any questions for Mr. Sprague.

Richard Pile asked how the advertisement on the signs was determined; if business pay to advertise on the sign. Mr. Sprague stated that at least two or three of the faces would be used for their own hotels, welcoming the military and what they have to offer them, a restaurant is committed to one of the faces, they plan to contact some of the downtown businesses to see if they would like to be on the sign, some insurance companies. They are focusing on some of the small businesses in this area between the interstate and the Town of Edinburgh. The sign going North on 31 would probably be some businesses in the Franklin area.

Dustin reminded the board that they can make commitments or requirements to this petition for example: the board will approve but Mr. Sprague would need to commit to get a survey and share it with the town and the town would approve that survey. The board can make their own reasonable commitments that he would comply to and attach it to the petition. There is now a

provisional law where commitments are recorded in the county recorder's office and they are binding to the land. If ownership of the land transfers and then ownership of the sign were to transfer, then the new owner would be required to abide by the attached commitments. Richard Pile asked if somebody controls what is on the signs. Mr. Sprague stated that there are some restrictions in the lease that says there cannot be any sexually oriented material, no alcoholic beverages advertised by themselves, no political ads. The lease has some tough restrictions on the sign. Mr. Sprague's main concern is for their hotels and to get people to stop in the community and spend money.

Keith asked if anyone else had any questions or if they were ready to make a motion.

Dustin asked Mr. Sprague if he wanted to make any commitments to the petition. Mr. Sprague is willing to commit to the survey that signs will be located in the RB Zoning, he will go to the Planning Commission, he will wait until new building commissioner is hired, will provide the town with the commitment he has made with the property owner, which includes the types of businesses that they do not want advertised on the sign.

Keith asked if anyone had any further questions or if they want to make a motion.

Richard Pile asked if he makes a motion does he just say that he wants to make a motion to approve the petition. Dustin informed him that he would say state that the board finds that it is not injurious to the public safety and health, will not affect property values, and that the zoning ordinance creates a practical difficulty. Dustin asked Richard Pile if he wanted him to state that, and Richard said yes. Dustin asked Richard Pile if the motion is to approve the petition, Richard said yes.

Becky Wilhelm asked Mr. Sprague if the signs were electronic billboards. Mr. Sprague said no the signs are static billboards.

Richard Pile, with Dustin Huddleston's assistance, made a motion to approve the two variances for two signs on one parcel, height extension from 35 feet to 50 feet, with the commitments of obtaining a survey, submitting it to the town, committing to the contents of the lease with the land owner, content restrictions, waiting until the building commissioner is hired by the town to get those plans approved with the town to where the location is going to be with the signs, committing that the signs will be in RB zoning, and subject to the Planning Commission's approval. Ron Hamm seconded the motion. Keith Sells asked for a showing of right hands for approval. All right hands were raised. Motion approved.


Keith presented the next item on the agenda which is the Michael Fisher six month review.

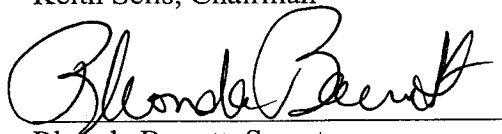
Dustin stated that with the building commissioner's absence, he did not have a report on the status, and he did not investigate as that was not in his duty. Dustin recommends postponing this until a new building commissioner is hired.

Keith Sells made a motion to table the review. Becky Wilhelm seconded. Keith asked for a showing of right hands. All right hands were raised.

Richard Pile commented on the movement of Don Knight's sign being moved and replaced with a new sign. Dustin referenced that this sign had been approved a prior meeting.

There being no further business, Keith asked for a motion to adjourn. Becky Wilhelm made a motion to adjourn the meeting. Ron Hamm seconded. Keith Sells asked for a showing of right hands to approve. All right hands were raised. Meeting adjourned

  
Keith Sells, Chairman

  
Rhonda Barrett, Secretary