

S. Baldwin noted that Renewals #1, 3, 5, 7, and 9 had been paid. S. Baldwin made the motion that the renewals that had been paid be approved – Seconded by R. Farris – Unanimous Consent Vote – Final vote is five (5) in favor and none against – Motion Carries.

Renewals #1, 3, 5, 7 and 9 were renewed in accordance with the motion and vote.

S. Baldwin noted that Renewals #2, 4, and 6 had not been paid. S. Baldwin made the motion that the renewals be renewed conditionally upon payment of their renewal fees and added that the appropriate staff member from the City check to ensure that they are still in business – Seconded by M. Acosta – Unanimous Consent Vote – Final vote is five (5) in favor and none against – Motion Carries.

Renewals #2, #4, and #6 were conditionally renewed in accordance with the motion and vote.

S. Baldwin noted that Renewal #8 had not been paid. S. Baldwin made the motion that instructed a letter be sent by the Attorney that indicated they have not paid their renewal fee and their Conditional Use is expired; however, if the renewal fee is paid by the next scheduled meeting, then the conditional use permit would be renewed – Seconded by M. Acosta - Unanimous Consent Vote – Final vote is five (5) in favor and none against – Motion Carries.

Renewal #8 was conditionally renewed in accordance with the motion and vote.

Tabled Applications:

1. **BZVD-24-41:** Shane Calkin – Variance from Development Standards for setbacks to allow for the construction of a pole barn.
Location: 1300 W Second St Zoned: Medium Density Residential (R-8)

Shane Calkin – 1300 W Second St – approached the podium and explained the reason for the request. S. Calkin explained that they wanted to replace the garage as it wasn't structurally sound. He further indicated that the plan is to remove the building and place a pole barn on the same footprint.

S. Baldwin stated that he had an opportunity to walk by the home and indicated that there was not a lot of room to work with in the rear.

R. Farris asked S. Calkin if he had the dimensions of the garage.

S. Calkin responded that it will be whatever the size of the building currently is. He added that he believes its either eighteen (18) feet by twenty (20) feet or twenty (20) feet by twenty-five (25) feet. He added that they plan on using poles and put the siding on the structure as opposed to laminated wood.

K. Eaglin asked S. Calkin if the door would be on the street side or the alley side.

S. Calkin responded that it would remain in the same spot as the garage door on the street side and the door entrance on the house side.

N. Burkhardt asked S. Calkin if he was able to currently use the building.

S. Calkin responded that that the building was functional, but not safe, and added that he'll replace the wood with metal.

S. Baldwin asked the Board and the audience if they had any further questions. S. Baldwin then explained what the Findings of Fact were to the audience and went into the Findings of Fact.

Findings of Fact

1. *Will this variance be injurious to the public health, safety, morals, and general welfare of the community?*

R. Farris: No, I don't see why it would be.

M. Acosta: I agree with that. It should be a benefit more than anything.

N. Burkhardt: No, in fact, he's trying to make it a safer structure.

K. Eaglin: Yes, I think it'll make the neighborhood safer.

S. Baldwin: I agree, replacing a dilapidated structure helps the general welfare of the community. And it's going to be built in the same footprint so it's not really changing anything.

2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?*

R. Farris: I don't think it will be. I think the applicant's just trying to upgrade the building and should be an improvement to the neighborhood.

M. Acosta: I agree that if anything--will be improvements for the neighborhood.

N. Burkhardt: I agree with those comments.

K. Eaglin: I agree.

S. Baldwin: We certainly heard no testimony from a realtor or anybody who stands as expert opinion that there will be adverse effects and frankly, I agree with the rest of the Board that updating something like this is going to help the general area.

3. *Will the strict application of the terms of the zoning ordinance result in practical difficulties in the use of the property?*

R. Farris: The thing that comes to my mind is the safety of the building. You know, if we apply the strict terms of the ordinance, you probably wouldn't be able to build the building. And that building is probably older than most of us in this room. So, I think that to me is the practical difficulty.

M. Acosta: I think what we see downtown are those smaller lots. It's real difficult to abide by the setbacks, and again not only for a strict application, not only would he not be able to do the improvement, but the existing building would be still nonconforming.

N. Burkhardt: I agree with Mr. Acosta, he's using the same footprint as his old structure.

K. Eaglin: Yes, I agree. It must be on the same footprint because of the size of the lot, it matches up with the neighborhood.

S. Baldwin: And I agree, these were small lots laid out in the 19th century. This building is going to be on the same footprint of something that was originally there. There's a very small amount of room back there, so I think that that one's met.

K. Eaglin made the motion to approve the application as submitted – Seconded by N. Burkhardt – Roll Call Vote – all ayes - Final Vote is five (5) in favor and none against – Motion Carries.

Application BZVD-24-41 was approved in accordance with the motion and vote.

New Applications:

- 1. **BZVD-24-42:** Heidi Geiges – Variance from Development Standards for setbacks to allow for the replacement of existing structure with a new structure.
Location: 710 E First St Zoned: Historic District Residential (HDR)

Heidi Geiges – 710 E First St – The applicant approached the podium and explained the request for the Variance. H. Geiges explained that the current shed structure was dilapidated and that she wants to demolish it and build a new functional structure.

S. Baldwin noted that her application stated she can't meet the minimum three (3) foot side yard setbacks.

H. Geiges explained that she would have to dig up the foundation to move it, she added that her contractor had accompanied her to the meeting and that she had already been before the Historic Board who approved the replacement with the same footprint, so they've decided to reuse the foundation.

K. Eaglin asked H. Geiges about the dimensions to which H. Geiges states that the building was twelve (12) feet by eighteen (18) feet.

R. Farris asked H. Geiges if she was planning on using the structure as a garage. H. Geiges replied that she plans on using it for storage as it wouldn't have access to be used as a garage. She added that it'll be insulated with similar siding as the house, so it'll be an improvement from what currently stands.

K. Eaglin asked H. Geiges if there was access from the alley. H. Geiges replied that there isn't a driveway on the property.

S. Baldwin asked the Board and audience if they had any further questions and went into the Findings of Fact.

Findings of Fact

- 1. *Will this variance be injurious to the public health, safety, morals, and general welfare of the community?*

R. Farris: No, I don't think it will be injurious to an of those things listed. I think it's going to be an improvement to the neighborhood to build a new building.

M. Acosta: Yeah, absolutely. I think it'll be beneficial, especially replacing it on the existing footprint.

N. Burkhardt: I agree with those previous comments. And she stated its dilapidated structure now, and she's just making a safer structure.

K. Eaglin: I agree, it's going to make the back yard safer and improve the conditions of the back yard.

S. Baldwin: And again, I think that updating things like eliminating dilapidation and putting in something new is good for the general welfare, so I think that one's met.

J. Phagan clarified that he intends to split the frontage of the property to one hundred-eighty (180) feet instead of three hundred (300) feet.

S. Baldwin stated that he thought that the request was for just the lot, but now believes that the J. Phagan wants a Variance for three-sixteenth ($3/16^{\text{th}}$) of a lot.

J. Phagan clarified by stating that the lot will be smaller width wise, but not depth wise. He further elaborated that he would like to split the portion that has a view of the road and combine it with the eighteen (18) acres and do away with the driveway.

S. Baldwin and J. Phagan had a brief discussion about when the residence was built and why the acreage for the lot was less than one (1) acre.

S. Baldwin noted that the biggest concern he had regarding the request is the precedent that this could set, mentioning that another applicant could request to put three homes on a one (1) acre lot and so on and so forth, which he believes would be circumventing the Ordinance.

J. Phagan elaborated, stating that he will be combining the smaller lot that will be split with the eighteen (18) acres to the East. He added that nothing will be built there, and the rest of the property will be surrounded by farmland.

R. Farris asked J. Phagan if there was any way to deed off the three tenths (0.3) acres and add it to the depth, to which J. Phagan stated that he preferred not to do so.

S. Baldwin noted that while it may be farmland today, ten (10) years from now it could be apartments.

J. Phagan replied that that was the main reason why he's requesting the Variance as the house is offset and he would like a clear view of the road. He added that if someone wanted to build a build on that plot of land, he'd be facing the back of the structure they place there.

R. Farris noted that he has the same concern as Scott in that another applicant could come in and want to split a one (1) acre lot into a third of an acre and build on it. He added that the ordinance is clear on what the requirement is.

J. Phagan stated that that's why he thinks its best handled case-by-case as his request may vary from another applicants.

M. Acosta stated that he thought the request was simply to bring the parcel into conformance with the ordinance, not to have it subdivided. He added that he agreed with R. Farris in that the purpose of the ordinance is to not allow these kinds of changes.

J. Phagan replied that he wasn't subdividing the parcel to build a home on it, he was subdividing it to add it to the eighteen (18) acres. He added that he doesn't plan on building on the property.

N. Burkhardt asked the Board if they had the ability to add that as a contingency in the vote since he's going to keep it in his property and just add it to the adjacent parcel.

J. Phagan noted that he has no intention to build on that property and plans to keep it as a field or yard.

R. Farris noted that how they vote tonight could have bearing on how they vote in the future if a similar situation comes up.

J. Phagan reiterated his request to split the parcel and add it to the East parcel.

S. Baldwin noted that the purpose of Variances is clear in the zoning ordinance. He added that they are for peculiar conditions about the property that make it impossible or very difficult for a homeowner or property owner to adhere to the ordinance. He added that from his understanding of Indiana case law, when it's something just being done for financial reasons, that's not good grounds for a Variance.

J. Phagan replied that due to where he lives and when the house was built, he is now in the buffer zone and must go through this process.

S. Baldwin stated that in that area, all the properties are large. S. Baldwin then asked N. Burkhardt to clarify her comment about a contingency.

N. Burkhardt stated that as J. Phagan hadn't purchased the property yet and was still in the process of purchasing it, the city attorney may be best fit to answer the question regarding a contingency but added that perhaps they could approve it contingent on him buying the eighteen (18) acres and combining it with the lot.

R. Dibaya stated that they would have to consult with D. Sharpe.

S. Baldwin stated that they would be approving a smaller lot than what the Ordinance outlines and was concerned about the effect that that would have on future applications.

J. Phagan stated that his request was different as there was already a residence on the lot that was situated there before the Ordinance was adopted.

S. Baldwin replied that they must still stick as close to the written law as possible. S. Baldwin then asked the audience and Board if they had further questions.

N. Burkhardt asked J. Phagan what he would do if the application was not approved.

J. Phagan replied that he'd keep it as is and buy the property to the East.

A discussion was had concerning the specifics of the application as there was some confusion about the request for the Variance. J. Phagan and staff explained that the road frontage would be reduced, but the depth of the property would remain the same.

S. Baldwin stated that he believes the best course of action would be to table the application to allow J. Phagan to submit a drawing with more clear dimensions showing his request.

M. Acosta agreed with S. Baldwin, stating that they lack more pertinent information.

S. Baldwin recommended tabling the application so that J. Phagan could bring a plat or sketch showing the property as it stands and how he would like it divided. He added that it didn't need to be surveyed.

S. Baldwin made the motion to table the application to the next BZA Meeting (November 12) – Seconded by K. Eaglin - Unanimous Consent Vote – Final vote is five (5) in favor and none against – Motion Carries.

Application BZVD-24-43 was tabled in accordance with the motion and vote.

4. **BZVD-24-44:** Cindy Phillips – Variance from Development Standards for setbacks to allow for the addition of a pole framing building.
Location: 129 Parkview Dr Zoned: Medium Density Residential (R-8)

Cindy Phillips – 402 Fairmount Dr – the applicant approached the podium and explained the request for the Variance. C. Phillips explained that there is an existing pole barn behind the home that they'd like to extend out. C. Phillips stated that she had an additional sketch that she'd like to give to the Board which she stated shows the property marker and its proximity to the driveway. She last stated that if she can't build the barn then she will likely sell the property.

S. Baldwin noted that the home was built in nineteen hundred seventy-six (1975), five (5) years before the nineteen hundred eighty-one (1981) Zoning Ordinance but was built under the nineteen hundred sixty-six (1966) Zoning Ordinance which he noted was sometimes cavalier.

C. Phillips stated that a neighbor had been going around the neighborhood voicing their concerns with the addition to which she stated that it would likely increase the value of the property.

K. Eaglin asked C. Phillips if the building was going to be for their personal use or to store vehicles to which C. Phillips responded that it was going to be used for a fishing boat and perhaps her husband's truck.

A brief conversation was had regarding the specifics of the material the building would be made of.

C. Phillips explained that since driveway went up to the property line of the residence, she would like to place the garage close to the property line.

S. Baldwin and N. Burkhardt asked C. Phillips about guttering to which she responded that there were no homes next to the property as the lot to the West was vacant to which S. Baldwin stated that if she gets a building permit then the drainage would be taken care of.

R. Farris asked C. Phillips about a picture on the site plan to which she asked the Board if her son could approach the Board to explain the details of the site plan as he had drawn it.

R. Farris stated that he had concerns that the peculiarity of the property didn't meet the requirements.

C. Phillips stated that the only reason they're requesting the Variance is because of the proximity of the driveway to the property line.

A brief discussion was had about whether driveways could be placed right up to the property line, to which S. Baldwin stated that he believes that they could be.

R. Dibaya explained to the Board that due to the proximity to the property line, staff recommended requesting zero (0) foot setbacks to account for any margin of error for the structure in case the two (2) foot setback wouldn't be enough room for the placement of the garage.

L. Bolan – 124 Benton Ln – a neighbor who owns the property south of 129 Parkview Dr approached the podium and stated that he had no issues with the request.

Mark and Carla Kirby – address unspecified – the owners of the property to the West approached the podium. They stated their concerns about the zero (0) foot. M. Kirby stated that they will eventually build something on the vacant land and was worried about what would happen to the pole barn in the future. He added that he had went around the neighborhood asking neighbors if they would be fine with their neighbors building up to their property line and submitted a petition that had been signed by neighbors who disagreed with the Ordinance.

S. Baldwin made the motion to accept the petition into the record – Seconded by M. Acosta – Unanimous Consent Vote – Final Vote is five (5) in favor and none against – Motion carries.

The petition was accepted into the record in accordance with the motion and vote.

M. Kirby added that he measured the drawing submitted by C. Phillips son and found that the thirty (30) foot pole barn structure width would intrude onto his property.

A brief discussion as had between C. Phillips and M. Kirby about the dimensions of the building.

M. Kirby stated that he was considered about the value of their lot, as well as if somebody were to want to put a fence right up to the property line. C. Kirby voiced frustration about guttering and drainage.

S. Baldwin assured them that with a building permit that wouldn't be an issue due to the strict specifications for draining rain and so forth.

R. Farris asked C. Phillips if they would be willing to build a smaller building.

C. Phillips stated that if they were to downsize, the building wouldn't be accommodating for their use. She added that the current existing structure isn't large enough to park a vehicle in.

S. Baldwin briefly spoke about the older Zoning Ordinances.

N. Burkhardt asked C. Phillips if there any way to turn the garage to lessen the side yard setback to which C. Phillips responded that that wouldn't be possible due to a tree on the neighboring property.

S. Baldwin spoke briefly about the peculiarity pertaining to the property.

S. Baldwin asked C. Phillips when she bought the property to which C. Phillips responded that she and her brother received the property when it was deeded off to them from her parents eight years ago.

M. Kirby noted that the current setbacks have been in place for over fifty (50) years and that he would like them to stay in place.

S. Baldwin then went into the Findings of Fact.

Findings of Fact

1. *Will this variance be injurious to the public health, safety, morals, and general welfare of the community?*

M. Acosta: Hearing the property owners that are affected by this object. Personally, I find that it's probably one of the biggest concerns I have, when we're talking about setbacks and zero (0) lot line stuff. It's one thing if everybody's good with it. You know, small lot construction where the entire

neighborhoods are that way. The actual question--is injurious to the public health and safety--no, I don't see that being injurious, but I don't see it being a beneficial benefit to the neighbor.

- N. Burkhardt: I agree with Mr. Acosta's statement, and I know in the past this has come up in another neighborhood, and we did not allow them to build because of the same issue. So, I don't believe it's injurious, but I question whether it's good for the general welfare of the community.
- K. Eaglin: Yeah, there again, we've always been on the side of protecting the neighbors, and that's what the ten (10) foot setbacks are for.
- R. Farris: I don't believe it's injurious to any of those things, but I'll leave it at that for that question.
- S. Baldwin: That's a tough question because normally, when it comes to property values and you appear before a court and this is not a court, this is a quasi-court. By Indiana law, you have to bring somebody who has legal standing like a realtor or an assessor, and of course, we did not hear from that. We have heard a neighbor's opinion which carries some weight. So, I'm ambiguous on this. I think if it does hurt the general welfare, it's not all that bad in my view.

2. *Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?*

- R. Farris: Yeah, that's where I see the issue. I think it will be having a negative effect on the adjacent property owners, as we've heard their comments. So, I see that, in my opinion, I think there are other options, but as the application stands, I don't think I can support that.
- M. Acosta: Yeah, I think that's where my statement was going. It's if the adjacent properties still impacted.
- N. Burkhardt: I agree with that comment.
- K. Eaglin: Yes, it was brought up in the future. We can't predict. So maybe these lots will go on the market and then this encroachment would really impact the sale of the lots in the future. So, I think we need to attend to that in my view.
- S. Baldwin: In my view, substantially adverse effect to property values. Well, we've heard no testimony from what would be considered in Indiana, a witness, or realtor or assessor. So, just going on my personal opinion, I don't think that would be all that adverse to a future lot buyer next door. So, I think that one is tentatively met.

3. *Will the strict application of the terms of the zoning ordinance result in practical difficulties in the use of the property?*

- R. Farris: Well, I think there are other options. The applicant, you know, may not want to pursue those. I understand that, but I think we do have to apply the Ordinance as it's written to this situation.
- M. Acosta: The strict application of the ten (10) foot variance, it doesn't deal with the driveway where it lays or anything of that nature. You know, you're looking for something practical. Difficult use the property. The property has existed for years as it is. It's usable in that manner. And as Mr. Farris said, I think there are some other options here that can be -- I know it may not be functional to what your desired use is -- but yeah, there's smaller structures, different parts of the yard, or maybe a different thought as to what you want to use that existing building for those type of things, so that, as Mr. Baldwin said, this is one we got to be really specific about. And it's the difference between the practical difficulties.

- N. Burkhardt: I agree, it seems to make sense that the driveway, you would just put it on the driveway, but according to the law, that's just not always how it works. And like Mr. Farris said, there are different places to put it. You know, it's not because of utilities. You couldn't put it there and it would cost more to put it somewhere else. But I think if we go by what the Ordinance says, then I don't think there is really a practical difficulty.
- K. Eaglin: I agree with all the comments.
- S. Baldwin: Whereas other Board Members have pointed out this is a very large property for R-8, there is room on the other side of the property. There's some room in the back but in favor of them, this was laid out under a long-ago Zoning Ordinance, which has been changed twice since it was laid out. So, I'm kind of left straddling a fence here that I can see a practical difficulty of that was brought about by a previous Zoning Ordinance and previous building inspectors and previous whatever went back then in nineteen hundred seventy-six (1976) or so. But I do see possibility of other solutions.

K. Eaglin made the motion to deny the application as submitted – Seconded by M. Acosta – Roll Call Vote – all ayes - Final Vote is five (5) against and none in favor – Motion Carries.

Application BZVD-24-44 was denied in accordance with the motion and vote.

Old Business:

1. Lena Burns – Conditional Use Permit for a residential daycare (maximum of 16 children, hours 7:00am – 5:00 pm)
Location: 124 Crestwood Dr
Zoned: Historic District Residential (HDR)
One-Year Renewal
2. Michael Holcak – Conditional Use Permit for a short-term AirBNB style rental.
Location: 604 Jefferson St
Zoned: Historic District Residential (HDR)
One-Year Renewal
3. Jessica Lawless/New Life Fellowship – Conditional Use Permit for a daycare/childcare ministry.
Location: 1542 Clifty Dr
Zoned: Local Business (LB)
One-Year Renewal

S. Baldwin noted that renewal #2 had been paid but renewals #1 and #3 had not been paid.

S. Baldwin made the motion that the Attorney send a letter to the property owners indicating that their Conditional Use Permits had expired but will be renewed if they pay their fees by the next meeting and instructed that the appropriate staff member find out if they're still in business – Seconded by N. Burkhardt – Unanimous Consent vote – Final vote is five (5) in favor and none against – Motion carries.

Renewals #1 and #3 conditionally renewed in accordance with the motion and vote.

No further business brought before the Board.

M. Acosta made the motion to adjourn – Seconded by R. Farris – Unanimous Consent vote – Final vote is five (5) in favor and none against – Motion carries.

The meeting adjourned at 7:29 p.m. in accordance with the motion and vote.

BY ORDER OF THE CITY OF MADISON BOARD OF ZONING APPEALS

Scott Baldwin, Chairman

Ray Dibaya, Secretary/Associate Planner