**Board of Zoning Appeals**

**April 1, 2020**

**Held over Zoom Meeting App due to Covid-19 Precautions**

**Call to Order**

Members Present: Dan Vail, Grant Adams, Steve Duhamell, Corey Karn, Jon Horton

Members Absent:

Others Present: Pete Gensic, Ryan McIntosh, Chris Berry, Mitchell Kirk, Ryan Crum, Tonya Galbraith, Jennifer Pack, Gregg Morelock

**Oaths of Office**

Steve Duhamell

**Agenda Considerations**

Mr. Crum introduced the ballot procedure that the Board will use for the remote meeting. Mr. Morelock confirmed that because the voice vote is being recorded, a voice roll call vote will suffice.

**Approval of Minutes**

Mr. Horton moved to approve the minutes of the March 4, 2020 meeting. Mr. Duhamell seconded the motion. Motion carried 5-0.

**Old Business**

None

**New Business**

*Star Financial ITM Request for Special Exceptions & Development Standards Variances*

Mr. Gensic of Gensic Engineering presented the scope of the project. The petitioners are asking for permission to install interactive teller machine (ITM) on Lot 2 of McCordsville Commons ahead of building the bank. Star Bank, the owner of the property, plans to grow the customer base, then build a bank branch. The ITM will be removed when construction of the bank is complete. As of right now, there is no firm date to break ground on building the bank.

This request requires 2 variances and 4 special exceptions

Variances:

* Allow for a drive through at the site
* Allow for a 24-hour business at the site

Special Exceptions:

* Secondary structure prior to primary
* Allowing the kiosk visibility to not be minimized
* Allowance for parking in the front yard setback (this will line up with the development to the West, so it will have a consistent appearance)
* Allow signage on lot without primary structure

Mr. Gensic replied to comments Mr. Crum had emailed him for each of the above variances and special exceptions.

* Drive thru – Staff asked for the bank building to be built within 5 years and if it is not, the special exception will be removed. Star is asking for that request for a hard 5 years be moved to a soft 5 years.
* Cross access easement to the property to the East – Star is concerned with that the future business at this site is unknown, and therefore Star does not know what type of traffic the cross access will create.
* Star will enter into good faith negotiations to possibly sell the northeast portion to the neighbor to the East if Star has not developed it.
* Star is willing to construct 10 ft path along Broadway
* Star will to work to screen the ITM, but want to have access for maintenance
* Star agrees to condition on the parking setback in the front be no closer than 28 ft.

Mr. Horton made a motion to extend Petitioner’s time an additional 5 minutes. The motion was seconded and passed unanimously.

Ryan McIntosh of Star Financial stated that Star wants to enter the community and be good neighbors. Establishing the ITM will allow them to build a base of new customers and serve any existing customers. Star intends to build a bank at that location and when they do the freestanding ITM will be removed and a new one incorporated into the building’s drive thru. The ITM’s provide 95% of the transaction’s customers need and allow customers to speak directly to a team member between the hours of 7 am and 7 pm. After hours, the ITM works like a normal ATM. Mr. McIntosh reiterated that Star is planning on building within the next 5 years.

Mr. McIntosh said that their goal is to have a bank branch built within 5 years, Star also needs to examine budgetary concerns as they arise that may make defer the building of the branch. Mr. McIntosh reiterated Mr. Gensic’s concerns about the cross access easement, saying that the concern is the availability of parking for their customers and their safety as they cross the parking lot.

Mr. Horton asked if Star normally leads with an ITM at a site first. Mr. Gensic answered that the McCordsville location in addition to the Noblesville and Zionsville locations are the first time they’ve started with a machine first. They had planned to place the machine in Zionsville this week but were delayed due to travel restrictions and have dropped the paperwork off in Noblesville where it is an acceptable use.

Mr. Horton questioned the placement of the ITM, asking if there would be enough space for multiple cars. Mr. Gensic said that they are working on new drawings that will show the ITM is shifted to the North to allow more space. It will allow one car to be at the ITM with enough room for 3 cars behind it. Mr. McIntosh added that the average time at the ITM is 2.5 minutes, so cars should move through quickly.

Mr. Horton asked what cannot be done at an ITM and what needs to incentivizes Star to put a branch in if most of the transactions can be done through the ITM. Mr. McIntosh replied that customers can’t open an account or get a cashier’s check through the ITM. He said also that most customers still want the face-to-face relationship with a teller, and customer relationships can’t be built through the machine.

There was some discussion among Mr. Horton, Mr. Karn, and Mr. McIntosh on the locations of other branches, the distances between them, how long it has been since a new branch was built and older branches remodeled, and if they believe that the ITM will be used by existing customers and attract new. Mr. McIntosh briefly described the data used to decide to build a new branch and said that while McCordsville is a new market for Star, they believe they can come in and succeed.

Mr. Horton brought up Mr. Gensic’s comment regarding committing to a building within 5 years and asked if they weren’t comfortable with that time frame, what were they comfortable with. Mr. McIntosh stated that it’s difficult to pin a hard date on something like that. The owners look at it like it is an ultimatum and worry about what happens if the economy takes a downturn and they are committed to a specific time frame. He stated that 3-5 years is their goal to build a branch.

Mr. Crum asked if the language were changed to allow them to seek an extension after 5 years. If progress is shown, then the Town will grant an automatic 2-year extension. Mr. Crum acknowledges he didn’t know what “progress” means but was offering it as a compromise.

There was a discussion on what “progress” would look like and if it included an increase in customers in the area and what a “progress” metric was needed and what it should look like. Mr. Horton stated that he thought if a time extension would be automatic, then a metric needs to be decided, but if the extension would not be automatic, and Star was will to come in front of the Board again in 5 years, then the metric did not need to be decided. Mr. McIntosh said that Star would agree to come before the Board again if the bank was not built within the 5-year time frame.

A discussion regarding cross access easements followed. Mr. Crum presented the case for why Staff is arguing for cross access easement.

* Primary concern is the parcel to the East is oddly shaped and does not have much frontage or visibility. Main access would come from a road to Town Center. Staff wants to ensure that the two parcels can cross each other. Staff anticipates
* Staff anticipates this to be an out lot with a small store, restaurant, or another bank and does not anticipate the use to be a large traffic generator
* Cross access easement ensures that there will not be another road cut on Broadway, which is very important to the Town.
* Town code requires that traffic on the lots can cross, so once the branch is built it will be mandatory. Staff is asking that it be built now to ensure that if the bank is not built in 5 years or if the eastern lot is developed sooner, then it is already in place.
* It will aid in traffic flow once the Town Center is developed

Mr. Gensic and Mr. Crum discussed concerns about customer safety and traffic calming measures that would be allowed. Mr. Gensic asked if Star could place restrictions on the Eastern property. Mr. Crum assured Mr. McIntosh and Mr. Gensic that the cross access would not become a thoroughfare. It was compared to the existing shared parking lot between the CVS and Chicago’s Pizza to the immediate west of the Star Financial Parcel. Mr. Morelock and Mr. Crum also stated that the developers of that property would also most likely be required to go to Plan Commission or BZA to hold public meetings, and Star Financial could present any concerns at that time. Mr. McIntosh stated that he would go back to the Star Financial owners to discuss potential traffic calming devices.

Mr. McIntosh asked what a “good faith negotiation” means. Mr. Morelock said that it’s not easily defined, it’s just a commitment on the bank’s part to consider selling if that portion of the land is not being used.

Mr. McIntosh stated that the wrap show in the images presented is the standard wrap used for all ITMs. It’s how Star markets the machines because there is no other signage.

Mr. Morelock asked what the difference is between what is proposed and what Staff is requesting. Mr. Crum stated that Staff is asking that only the banner around the top and 2 sf on the north, west, and east sides on the wall. Mr. Crum stated that he considers all the orange and lettering as signage. Mr. Crum state that he is using 2 sf as a starting point for discussion and invited discussion.

Mr. McIntosh responded that unless there is something that catches a driver’s eye, it gets drowned out pretty quickly, especially with the Commons to the west of the site. He acknowledge that it looks bright, but they have the exact same building in New Castle, and it doesn’t distract, but enough to identify Star.

Mr. Crum explained that the Code would not allow a sign by right because not it is not a primary structure, but we still want it to be seen and successful. Staff is trying to keep a balance between what the standards usually are and allowing enough of an attention grabber to use the ITM.

Mr. McIntosh responded that since Star willing to remove the machine once the branch is built and this is just a temporary measure. He believes a 2x2 square won’t be noticed as people drive down Broadway. McIntosh

Mr. Karn, Mr. Crum, Mr. Horton and Mr. McIntosh discussed the wrap of the machine, what is used normally and if it is ever changed. Mr. Horton and Mr. Karn agreed that the wrap looks okay and that wrap is standard for how ATMs frame themselves.

Mr. Gensic circled back to the cross access easement question and asked if there was any wisdom to recording the easement when it may need to be changed if the building location is changed or that the neighboring site is unknown. Can Star say they agree to the easement but that it will be recorded with the development of the primary structure.

Mr. Morelock explained that the easement may be needed before Star is ready to build the primary structure. If it come to it, the easement can be easily vacated and relocated.

Mr. Crum offered to change the language to read the petitioner agrees to provide cross access easement either when the bank branch is constructed or when development occurs to the property to the east and within “x” months of the town notifying you of the development. Mr. Morelock asked to change the statement to Star would agree to provide the easement when the Town requests it.

Mr. McIntosh and Mr. Gensic agreed to that proposal.

There was no public comment on the matter.

Virtual Voice Ballot

***Ballot for Special Exception #1***

Request: Special Exception from Section 4.08 of the Town Zoning Ordinance, as amended, to allow drive-thru

Conditions to granting this Special Exception:

1) If granted, the condition that a bank branch is constructed within 5 years or the petitioner will be able to return to request an extension having shown progress toward the completion. The extension would be for a two-year extension.

2) It would also be conditioned on the agreement of a cross-access easement that will either be granted now by the petitioner or granted immediately upon the request of the Town.

3) Petitioner commits to enter into a good-faith negotiation with interested parties to acquire the triangle portion of the property for development only after it has been determined the area is not needed for development of subject parcel.

Mr. Horton moved to accept the conditions. Mr. Vail seconded the motion. The motion passed unanimously.

*Questions on ballot*

1) The proposed use is listed as a Special Exception Use by the Zoning Ordinance for the

District this property is located in.

Roll Call Vote: Unanimous Yes

2) The special exception can be served with adequate utilities, access roads, drainage, and

other necessary facilities.

Roll Call Vote: Unanimous Yes

3) The special exception shall not involve any element or cause any condition that may be

dangerous, injurious, or noxious to any other property or persons, and shall comply with the development standards of this Ordinance.

Roll Call Vote: Unanimous Yes

4) The special exception shall be sorted, oriented, and landscaped to produce harmonious

relationship of buildings and grounds to adjacent buildings and properties.

Roll Call Vote: Unanimous Yes

5) The special exception shall produce a total visual impressions and environment which

is consistent with the environment of the neighborhood.

Roll Call Vote: Unanimous Yes

6) The special exception shall organize vehicular access and parking to minimize traffic

congestion in the neighborhood.

Roll Call Vote: Unanimous Yes

7) The special exception shall preserve the purpose of the Zoning Ordinance.

Roll Call Vote: Unanimous Yes

Mr. Horton made a motion to approve Special Exception Request #1. Mr. Duhamel seconded the motion.

Motion passed unanimously.

***Ballot for Special Exception #2***

Request: Special Exception from Section 4.09 of the Town Zoning Ordinance, as amended, to allow a 24-hour business

*Questions on Ballot:*

1. The proposed use is listed as a Special Exception Use by the Zoning Ordinance for the

District this property is located in.

Roll Call Vote: Unanimous Yes

2. The special exception can be served with adequate utilities, access roads, drainage, and

other necessary facilities.

Roll Call Vote: Unanimous Yes

3. The special exception shall not involve any element or cause any condition that may be

dangerous, injurious, or noxious to any other property or persons, and shall comply with the development standards of this Ordinance.

Roll Call Vote: Unanimous Yes

4. The special exception shall be sorted, oriented, and landscaped to produce harmonious

relationship of buildings and grounds to adjacent buildings and properties.

Roll Call Vote: Unanimous Yes

5. The special exception shall produce a total visual impressions and environment which

is consistent with the environment of the neighborhood.

Roll Call Vote: Unanimous Yes

6. The special exception shall organize vehicular access and parking to minimize traffic

congestion in the neighborhood.

Roll Call Vote: Unanimous Yes

7. The special exception shall preserve the purpose of the Zoning Ordinance.

Roll Call Vote: Unanimous Yes

\_\_\_ made a motion to approve Special Exception 2. \_\_\_\_\_\_ seconded the motion. The motion passed unanimously.

***Ballot for Variance #1***

Request: Development Standards Variance from Section 4.01(C) of the Town Zoning Ordinance, as amended to allow an accessory structure prior to a primary structure

Conditions to granting this Variance:

1) Petitioner commits to constructing the required 10’ asphalt multi-use perimeter path along W Broadway with the construction and installation of the ITM.

Mr. Adams moved to accept the conditions. Mr. Horton seconded the motion. The motion passed unanimously.

*Questions on the Ballot*

1) General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Roll Call Vote: Unanimous Yes

2) Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

Roll Call Vote: Unanimous Yes

3) Practical Difficulty: The strict application of the terms of this (Zoning) Ordinance will result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.

Roll Call Vote: Unanimous Yes

Mr. Horton made a motion to approve Variance #1. Mr. Adams seconded the motion. The motion passed unanimously.

***Ballot for Variance #2***

Request: Development Standards Variance from Section 4.01(D)(2)(a) of the Town Zoning Ordinance, as amended, to allow a kiosk’s visibility to not be minimized

Conditions to granting this Variance:

1) Landscaping is provided along the north, west, and south foundation walls of the ITM structure. This landscaping should be located so as to not prevent access to service doors. The landscaping shall include, but not be limited to shrubs, annuals, and perennials, and shall be not less than 3 square feet of surface area for every 1 square foot of structure footprint.

Mr. Horton moved to accept the conditions. Mr. Vail seconded the motion. The motion passed unanimously.

*Questions on the ballot*

1. General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Roll Call Vote: Unanimous Yes

2. Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

Roll Call Vote: Unanimous Yes

3. Practical Difficulty: The strict application of the terms of this (Zoning) Ordinance will result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.

Roll Call Vote: Unanimous Yes

Mr. Horton made a motion to approve Variance 2. Mr. Adams seconded the motion. The motion passed unanimously.

***Ballot for Variance #3***

Request: Development Standards Variance from Section 6.05(B)(1) of the Town Zoning Ordinance, as amended, to allow parking in the front-yard setback

Conditions to granting this Variance:

1) Parking shall be no closer than twenty-eight (28) feet to the future right-of-way line.

Mr. Horton moved to accept the conditions. Mr. Vail seconded the motion. The motion passed unanimously.

*Questions on the ballot*

1. General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Roll Call Vote: Unanimous Yes

2. Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

Roll Call Vote: Unanimous Yes

3. Practical Difficulty: The strict application of the terms of this (Zoning) Ordinance will result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.

Roll Call Vote: Unanimous Yes

Mr. Horton made a motion to approve Variance 3. Mr. Adams seconded the motion. The motion passed unanimously.

***Ballot for Variance #4***

Request: Development Standards Variance from Section 7.03(H) of the Town Zoning Ordinance, as amended, to allow signage on a lot without a primary structure

Conditions to granting this Variance:

1) Signage on the ITM shall be limited to the “canopy” feature of the ITM and an additional 2 square feet of signage on each of the east, north, and west elevations.

No motion was made to accept staff conditions on variance.

*Questions on the ballot*

1. General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Roll Call Vote: Unanimous Yes

2. Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

Roll Call Vote: Unanimous Yes

3. Practical Difficulty: The strict application of the terms of this (Zoning) Ordinance will result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.

Roll Call Vote: Unanimous Yes

Mr. Horton made a motion to approve Variance 4. Mr. Adams seconded the motion. The motion passed unanimously.

*6295 W Chelmsford Solar Panel*

Chris Berry, petitioner, requested a variance to allow solar panels on the part of roof facing the street. IPL will tie it into the power grid and there will not be an onsite battery at the home, so what isn’t used goes into the grid. The proposed plan involves 42 panels that will generate enough power to almost cover the homes entire power usage. Under the current ordinance, having panels only on the back of the roof will would not justify the installation expense.

Mr. Berry argued that the code is outdated and the new solar panels are more aesthetically designed. The solar panels are integrated into the roof and are only 2.5 inches high.

Mr. Karn asked about if the panels would blend with the rest of the community. Mr. Berry agreed that everyone has similar shingles, but believes that design-wise, they won’t stand out too much. He stated that McCordsville is a nice commuter community and that allowing solar panels may make McCordsville even more attractive to tech savvy people.

Mr. Crum presented his staff report, stating that when the ordinance was drafted in 2016, the primary concern was the aesthetics if everyone installed solar panels. He agreed that solar panels look better than what they used to. The solar panel is low profile and it will blend in well. Mr. Crum said that staff would support the variance request, as long as there was no remonstrance, if only to see what it looks like. This can be a test case to either change ordinance or continue approving solar panels on a case by case basis.

Mr. Karn asked if the BZA would be setting a precedent by approving the solar panels. Mr. Morelock stated that the public perception is important, so that the BZA would need to state the reasons to differentiate between variance requests. He stated that each case would rise and fall on its own merits.

There were no public comments.

Virtual Ballot

***Ballot for Variance #1***

Request: Development Standards Variance from Section 4.01(D)(4)(b&f) of the Town Zoning Ordinance, as amended

*Questions on Ballot*

1. General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Roll Call Vote: Unanimous Yes

2. Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

Roll Call Vote: Unanimous Yes

3. Practical Difficulty: The strict application of the terms of this (Zoning) Ordinance will result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.

Roll Call Vote: Unanimous Yes

Mr. Horton made a motion to approve Variance 4. Mr. Adams seconded the motion. The motion passed unanimously.

**Announcements**

Next meeting will be May 6 (If needed)

**Adjournment**

Mr. Adams made a motion to adjourn the meeting. Mr. Vail seconded. Motion carried unanimously.