

**Valparaiso Board of Zoning Appeals
Regular Meeting Minutes
February 18, 2025**

The regular meeting of the Valparaiso Board of Zoning Appeals was held at 5:30 p.m. on Tuesday, February 18, 2025, at Valparaiso City Hall, 166 Lincolnway, Valparaiso, Indiana. Kyle Yelton presided. The Pledge of Allegiance was said. Members present were Diane Worstell, Hannah Trueblood, James Bilder, Paul Reed, and Kyle Yelton. Also present were Attorney Patrick Lyp, Bob Thompson, Jessica Gage, Seyi Aletan, and Petitioner.

MINUTES

Adoption of Meeting Minutes – January 21, 2025

Motion: Jim Bilder moved to approve the minutes from the November 19, 2024 meeting. Paul Reed seconded the motion and so approved with a 5-0 voice vote.

Old Business - None

New Business with Public Hearing

VAR24-015 (Public Hearing) A petition filed by Gene Lane (Owner). The property is located at 2504 Sears Street (Zoning Classification: GR General Residential). The petitioner requests the following variances from the Valparaiso Unified Development Ordinance (UDO), pertaining to a four-seasons room to the north side of the home:

- From Section 3.501 to encroach approximately 10ft into 25ft rear yard setback (per plan);
- From 13.304(c) to increase the extent of nonconformity (existing home encroaches approximately 17ft into 25ft rear yard setback).

The Board heard Petitioner's presentation. Mr. Lane presented a text from his neighbor to the north in favor of the petition.

Public Hearing

Seeing no one wishing to address the Board, Kyle Yelton closed the Public Hearing.

Questions/Comments from the Board

A brief discussion was held regarding drainage being adequate. Staff noted that the Engineering Department would review drainage prior to the issuance of the building permit.

MOTION: Paul Reed moved to approve VAR24-015 and adopt the Findings as presented. Clarification was made that the four-seasons room could be no closer to the eastern

property line than 15'6". Hannah Trueblood seconded the motion. Upon roll call vote the motion passed with a 5-0 roll call vote.

Roll Call Vote:

Paul Reed – Yes

James Bilder –Yes

Hannah Trueblood – Yes

Diane Worstell – Yes

Kyle Yelton – Yes

VAR25-002 (Public Hearing) A petition filed by Leeth Law LLC (Counsel) for Family Express Corporation (Owner). The property is located at 3750 State Road 49 (Zoning Classification: INL Light Industrial). The petitioner requests the following variances from the Valparaiso Unified Development Ordinance (UDO), pertaining to construction of a Family Express gas station and convenience store:

- From Section 11.304(M) and Table 9.401 to allow access with reciprocal cross-easements (per submittal) instead of access road (frontage street or reverse frontage street);
- From 11.502 to reduce projection/recess architectural features requirement to that shown in submittal;
- From 11.506 to reduce transparency (fenestration) architectural requirement to that shown in submittal;
- From 11.508 to reduce roof line architectural requirement to that shown in submittal;
- From Article 10 Landscaping in the following ways:
 - o State Road 49 Class D Bufferyard: to eliminate 5ft berm requirement, reduce 65% opacity requirement, and reduce lowest level plant prescription by half (see working copy of landscape plan provided)
 - o Division Road Class D Street Buffer: to eliminate 5ft berm requirement, reduce 65% opacity requirement, and reduce lowest level plant prescription by half (see working copy of landscape plan provided)

Attorney Todd Leeth – He gave a presentation on behalf of Family Express. The UDO requires great building architecture and then the landscaping plan requires them to hide it. The goal the variance from the 65% opacity is to allow for the visibility of the property. They have a unique situation on their property. To the south is a tower for microwave communications. There are "V" shaped easements through there. Those easements are 80' wide. They require them not to build, plant or block the view of the microwave communications at the elevation of 60' or higher. In the 80-ft swath that goes out to 49, he cannot plant a large tree as required in the UDO. His landscape plan includes the easement. A large tree by definition is 50' to 100' tall. On the landscape plan out by 49 they have the small ornamental trees which are under 60'. No reduction in large trees. No reduction in small trees. They do want a reduction in shrubs. No 5' berm. The reason for no 5' berm is it is part of blocking the view. ASHTO has a study that says an average passenger vehicle has the driver at an eye level of 3 ½'. If they have a 5' berm, that driver is not going to be able to see the Family Express store. These are the landscaping variances they are seeking having to do with visibility only and not cost. Lakeshore Landscaping has said they need 580 shrubs. They would like to do half of that.

Public Hearing

Seeing no one wishing to address the Board, Kyle Yelton closed the Public Hearing.

Questions/Comments from the Board

Jim Bilder – This was originally brought to the City Council on February 12 of last year. The discussion of annexation was brought up at that time.

Attorney Leeth – The Ordinance was adopted in March.

Jim Bilder – He is wondering how much planning and thought went into the structure and landscape knowing what the Ordinances were going to be.

Attorney Todd Leeth – That branded architecture wasn't rolled out until 30 days ago. It has been a work in progress. Part of that is focus groups. That architecture is more appealing to younger customers. When Family Express hired him in 2023 to do the annexation, the architecture wasn't as thought out as it is today.

Jim Bilder – He thought maybe they would have looked into requirements to make sure their type of building would be accepted before they started the annexation.

Attorney Todd Leeth – The UDO is extremely detailed. The roofline - he didn't even think that was a variance that was needed. Staff thought that one was needed too. This case is made hard by the detail of the UDO. When they were looking to purchase the 21 acres two years ago, there is no way they could have anticipated this. The architecture was designed for the customers. Not the UDO. The site was designed for the UDO.

Pete Andreou – architect with Family Express. He did the original prototype at Aberdeen. They are developing a new floorplan that is more efficient and customer centric. They currently have five projects and 17 in the future. They are working on a brand identification that will be acceptable to the majority of locations they are going into. They are investing \$10 Million Dollars in this area. They want the building to be attractive. Family Express has been here for 50 years. They are willing to talk about any issues and come to a resolution.

Paul Reed – Are they saying there would never be a connection to the NIPSCO frontage road?

Attorney Todd Leeth – No. INDOT has dictated the access point as far south of the stop bar at Division as possible.

Paul Reed – He agrees with breaking it up with different materials. The transparency stuff makes sense. The roofline he could go either way. Is there any parapet height to hide the mechanical equipment?

Kyle Yelton – He hears the comment about architectural design and then covering it up. This will be the cornerstone of the area.

Attorney Todd Leeth – The berm and the shrubs are the only thing they are seeking relief from.

Jessica Gage – Staff is the one who asked them to include reduction in shrubs. The reason is the working landscape plan did not show the level of detail needed to count the lowest level of plantings required; she did not want them to have to come back to the Board. Shrubs are dealt with differently in different parts of the Ordinance. The Ordinance is clear it expects three levels. There are requirements for large trees, small trees, and the lowest level plantings. It looks like the intention is to easily meet 50% of the requirement for shrubs, perennials, and/or ornamental grasses. For the sake of this BZA filing, they wanted to make clear they are still working on the landscape plan.

Attorney Todd Leeth – The Ordinance in regard to landscaping has many layers. There are five different types of landscaping. Lakeshore Landscaping will have trouble finding a spot for 587 shrubs on this site. They think the number is excessive. They are not here to save money, but because there are five levels of landscaping, and each level has its own number of required trees, he is suggesting getting rid of half.

Jessica Gage – It is not the first time that lower-level reductions have come up. Staff plans to study this section as they look at revising ordinances. 49 is the main regional roadway. The purpose of those types of roadways is to keep traffic flowing, provide only limited access. 49 does not have many access points by design, purposeful. As to the proposed access to this property, it was carefully reviewed by INDOT and the Engineering Department. Regarding the presentation about the required 5' berm, the building would be taller than the required berm so the building would be visible. Overall, the required bufferyard with berm is created for the street (the aesthetic for the motorists traveling through on the regional roadway); it has nothing to do with particular zoning districts or land uses. Berms need to be designed correctly for them to not look odd. So far, the city has not been consistent on the application of using berms and this too will get a closer look soon.

Attorney Todd Leeth - the UDO has five different classes of bufferyards. The berm pops in at Class D (correction later made by staff that it starts to apply at Class C). With each movement through the table, the opacity amount of plantings increases. He thinks the berm is part of that "let's screen it from view" versus let's landscape it and make it look green and pretty. Their goal is to make it look green and pretty and not to hide it. If it were a true industrial building with outdoor storage and trucks, those are what you screen. A retail commercial building should not be screened.

Paul Reed – Is there going to be signage along the road?

Attorney Todd Leeth – At that corner.

Paul Reed – You talked about impulse buying. I was wondering if this is a destination point. If he is going to get gas, there is no other gas on 49. Having more landscaping is not going to affect the marketing of it or being able to see it. He thinks it is going to enhance it more.

Attorney Todd Leeth – He thinks staff's biggest concern with their plan is the clusters they have chosen, at least on 49, are quite large.

Paul Reed – Where would the berm be?

Bob Thompson – It would be right behind the right of way.

Jessica Gage – A good berm takes some space. She does not know about moving the berm forward.

Attorney Todd Leeth – There are also maintenance issues. Storm water is an issue. His real issue is visibility.

Kyle Yelton – He asked Attorney Lyp if the Board is comfortable with the Petitioner working with staff to come up with a plan, can they approve conditioned on working with staff.

Attorney Patrick Lyp – If the BZA has a general consensus of what it wants to see, it could provide guidance to Bob, Jessica, and Todd. Or you could say work it out with staff. If they cannot work it out, they come back to this Board. Or you may want to see the final decision, so you may say come back with the agreed upon plan because the BZA wants to see it.

Jim Bilder – It is an enormous project and is a welcome project. The City went to great lengths to see that it gets completed. This is quite manageable. He is comfortable with staff working with Todd.

Diane Worstell – She asked Attorney Lyp if each variance should be a separate motion.

Attorney Lyp – Past practice has been to do them as one. It would be appropriate to do them each separately if the members feel more comfortable. The BZA asks the Petitioner to submit Findings of Fact. That is because if there is a challenge to the granting of a variance, then we are defending those Findings of Fact and they have skin in the game to defend the decision that this Board makes. In the first three Findings, he sites economic reasons for the request. Economics is not a reason to grant a variance.

Attorney Todd Leeth – He feels economics can play a factor in a Developmental Standards variance. If Attorney Lyp disagrees with that, then it is simple to strike that.

Jessica Gage – There are notes in the Findings that relate to architecture, the logo, the branding concept. The City has an Ordinance about logo buildings not being permitted. Staff did not consider what is proposed a log building, but she wants to be careful with the language that is

in the Findings. The traffic speed of 49 is considered by staff when considering the architectural variances requested. The building materials – the architect did a great job with making this look 3-D at first glance. This same building would not be in a standard commercial corridor. It wouldn't translate the same. She wants to make it clear that they may want to adjust some of the language as they are developing custom Findings.

Jim Bilder – He asked about the precedent being set. Attorney Lyp had told him previously that they are obligated to look at each individual situation relatively independent of others.

Attorney Todd Leeth – There are so many different factors in each case.

Kyle Yelton – He is comfortable with staff working on the details of landscaping.

Hannah Trueblood – She is supportive of that as well.

MOTION: Jim Bilder moved to approve all variances listed, subject to agreement between Petitioner and Staff as to appropriate landscaping and working with staff for appropriate Finding of Facts for approval and signature at the next meeting. Paul Reed seconded the Motion. Upon roll call vote the Motion passed with a 5-0 vote.

Roll Call Vote:

Paul Reed – Yes

James Bilder – Yes

Hannah Trueblood – Yes

Diane Worstell – Yes

Kyle Yelton – Yes

Staff Items

All appointments/reappointments are not yet available. Election of officers and appointments of staff will take place at next regular meeting. Draft update to Rules and Procedures will be provided in next regular meeting packet for consideration at next regular meeting.

ADJOURNMENT

Motion: Paul Reed moved to adjourn the meeting. Hannah Trueblood seconded the motion and so approved with a 5-0 voice vote.

NEXT MEETING: Tuesday, March 18, 2025, 5:30 p.m.


Bob Thompson, Executive Secretary



Kyle Yelton, President