

BZA MINUTES

NOVEMBER 20, 2006

Members present: James Trautman, Charles Addington, Bill Davis & Christy Starbuck.

Members absent: Mike Blankley, Dale Clevenger and Gary Moore.

Staff present: Cathy Flatter, Executive Director, Jamie Stump, Recording Secretary.

Legal representation: Robert C. Oliver.

Others present: See attached sheet.

The meeting was called to order by Charles Addington at 7:00 PM.

C. Addington: It has been a while since I have done this so I may be a little rusty but we will try it and see how it goes. The first thing on the agenda is the approval of the minutes of September 18, 2006. I need a motion to approve the minutes.

B. Davis: So moved.

C. Starbuck: Second.

C. Addington: All in favor of the motion to approve the minutes without reading say aye. "Ayes". Opposed (none). Those minutes of September 18th have been approved as written.

BZA 2006-21-V (Don Hubbard, Tony Hubbard & Leroy Duncan, Farmland)

C. Addington: It will be Don & Tony Hubbard and Leroy Duncan. If one of you would come forward please, whichever one of you is going to be the spokesman.

C. Flatter: You can have a seat right there Leroy.

C. Addington: This is a recorded meeting.

L. Duncan: Okay.

C. Addington: Did you notify all the adjoining property owners about this meeting?

L. Duncan: Yes sir.

C. Addington: Did we get receipts back Jamie?

J. Stump: Yes.

C. Addington: Did you get an article V, Conduct of Hearing when you applied?

L. Duncan: Yes.

C. Addington: There is one other thing and I can't think of what it is. Did we get that published in a timely manner, Jamie?

J. Stump: Yes we did.

C. Addington: That must be the last one I was thinking about.

C. Flatter: We only have four members here.

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C. Addington: Oh yeah. Okay I need to read this. There are just four members here so in a nutshell you have a right, since there are only four of us here, it takes four positive votes for

this to be approved since there are only four of us here. If you would like to postpone the meeting because there are not many people here, there are supposed to be seven of us so if you would like to post pone the meeting it will take all four of us on a positive vote for this to be approved is what it amounts to.

L. Duncan: Okay. And when you are talking about postponing it.....

C. Flatter: It would be our next regularly scheduled meeting on the fourth Monday of January unless the board would feel that they would want to call a special meeting.

L. Duncan: How many are normally at one of these?

C. Addington: Seven.

L. Duncan: There are seven of you? Okay. I guess we will just go on with it.

C. Addington: Okay. I am supposed to tell you that because all four of us have to vote positively on this.

L. Duncan: You are rusty and I am new.

C. Addington: Okay thank you.

B. Davis: Charles.

C. Addington: Yes.

B. Davis: Is it worth mentioning that if it doesn't get passed, what his waiting period is to reapply?

C. Addington: That is a good one Bill.

C. Flatter: You have six months if this is denied tonight. You have six months and you can reapply again. If you ask for it to be continued to the next meeting hoping there will be more board members there, you don't have to re-notify anybody, it is just a continuation of tonight's meeting.

L. Duncan: Can I ask who the voting members are? I don't even know.

C. Flatter: Just raise your hands.

C. Addington: Introduce yourselves. Tell us who you are.

B. Davis: Bill Davis.

J. Trautman: Jim Trautman.

C. Starbuck: Christy Starbuck.

C. Addington: Charlie Addington.

L. Duncan: Okay. We will just go on.

C. Addington: Okay. First thing, introduce yourself for the record.

L. Duncan: My name is Leroy Duncan.

C. Addington: You can tell us where you live and what you would like to do.

L. Duncan: Okay. I presently live at 475 N. 1000 West in Farmland and I have asked for a variance or exemption from a footnote in the C-2 rules and regulations, I guess, if you will. It applies to a restaurant serving alcohol. The present foot note indicates it must be 100 feet from residential zoning. I have Don & Tony Hubbard with me. They presently own Hubbards TV and Appliance in Farmland. Pretty much been there for about 30 years and they've decided to close their business and sell their property and they approached me on it and I would like to move into that property and relocate my business that is presently at 108 W. Henry Street in Farmland.

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L. Duncan: A lot of reasons why I need to do that, one I am in a building that is 800 square feet. It is not very big. It is located right next to downtown, the center of downtown, it is a hardship for parking there for myself, as well as all the other businesses, The Chocolate Moose, Pizza King and so forth and I presently do not have any handicap access. I am four steps up so I don't have handicap access. I have several elderly people that stop in on a regular basis and they

have to use the steps and to me it is a hazard as far as health. I opened in Farmland, I think it was August 12, 2005. I have been there all this time and I have not had one issue. It appears to be well accepted in Farmland. Basically, my goal is to move into Hubbard's TV and have more access to parking away from the downtown congestion and provide a good business for people. I've taken the liberty to, I know you have some zoning pictures but I have added some to this of businesses that are presently.....

C. Addington: If you present them to us we will have to keep them.

L. Duncan: That is fine. They are just pictures. These are businesses that are presently in operation, similar businesses to mine and I just got one copy of each, if you will pass those along. All those pictures are well inside of the 100 foot ruling. I don't know when the ruling went into effect. I don't know if Cathy knows that answer or not but I feel comfortable that several of those businesses have been granted the same right that I am asking for. I know Parker Family Dining is about 40 foot from residential zoning, the bar itself has been there forever. They added a restaurant that serves alcohol. It is 40 feet from their closest zoning. The Parker Pizza King no longer serves alcohol but they, as you can see from those pictures, I don't think I titled all of those, but it is the yellow building in there, the overhang practically touches on that building to the home next door. I think Mr. Trautman can verify that. They applied for an alcohol license in 1997 and received it. This ruling wasn't brought up to them at that time or nor was it with the Parker City Tavern in 1998 when they applied for their license. Hickory Hills Golf Course applied for their license in, I think it was 98 also, they are within 50 feet of zoning properties, or residential zoned properties and I honestly think the Winchester Golf Course would fall into that too. Their parking lot is.....

C. Flatter: Leroy, I need to ask, where was this picture taken?

L. Duncan: I think the date is on there isn't it?

C. Starbuck: No where?

L. Duncan: Oh I am sorry. That is the rear view of the Parker City Family Dining. I am sorry. Over sight, I forgot to label those.

C. Flatter: That is alright. I got all the rest of them.

L. Duncan: Now the Ridgeville Legion, it falls into that but I am sure they were grandfathered in many years ago, Top Hat has an alley between it and residential zoning but again, they were probably grandfathered. What I am asking for, I think aside from the actual footage and everything on those pictures you can see the congestion and these are four views of Hubbard's TV and Appliance and from my perspective it is obviously a lot more wide open there, a lot more separated from residential area and I personally don't see any conflict at all. Again, what I am basically asking for is a variance to the 100 foot rule. The closest residential property to the building is 84 feet presently. The ruling says 100 feet. All of the neighboring folks have been contacted.

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L. Duncan: Several of them have contacted me. I don't think there is anyone that abuts that property is here this evening. I am sure there are concerns in the area but again I hang my laurels on 15 months of service and we have had no issues with anyone in town, police or anything along that order. I make every attempt in the world to run a good business and treat people right and expect them to treat me right and all I am asking for is the same grace that has been given to Parker City, Hickory Hills and the other folks on that list. That is pretty much all I have.

C. Addington: Okay. Is there anybody in the audience that would like to speak? Okay. Come right up. You can keep your seat if you want. Identify yourself please for the record.

J. McKalip: My name is John McKalip. I live at 307 N. Olive Street in Farmland. I own lots 23, 24 and 25. My lot line is 70 feet from the lot line of the establishment. First I would like to say that our area is primarily residential. There are two businesses located at the north end of the street but those businesses close at 5 o'clock. There are houses around. There are children around.

C. Addington: Oh, I wanted to ask you one thing.

J. McKalip: Yes sir.

C. Addington: Are you one of them that was notified about this?

J. McKalip: No I was not notified. I found out this morning.

C. Flatter: He is directly south of the General Telephone property.

J. McKalip: We built our house where it was because of the location. If there was already an establishment like that located there we wouldn't have located there. There is a big difference to me between selling appliances and selling auto parts and selling alcohol, whether there is a restaurant there or not. I have talked to area realtors and they said there will be detrimental effect to my property value, substantially detrimental effect. I have here copies, which I don't think I need to provide you, but of my property tax bills. Since I built my house in January 1997, my property tax has went up every year, just like everyone else's. I have also improved my property. I have added a sunroom, I purchased another lot and I put up a rather large shed and I also put in a pool two years ago, now that pool is on the side of the lot where this establishment would be located. There is.....

C. Addington: It would be on the east side of the lot?

J. McKalip: It is on the north side of my lot.

C. Flatter: You can see the pool in the aerial.

J. McKalip: The main concerns to me is that first I thought this was settled more than a year and a half ago concerning the parking issue because it is within 70 feet of my property line. Second, there isn't adequate parking currently at the location. If you try to add more parking to the west, you are running into ditch problems. The area floods. Also, that puts the parking even closer to the houses to the west. There is, initially this was presented at the Town meeting in Farmland as being a family establishment. That is not currently what I see it that it is. I am not opposed to bars and I am not opposed to businesses. I am opposed to having bars located in neighborhoods. I have worked in bars and I spent 10 years in the Marine Corps, I am not a choir boy but I am a school teacher and I am not stupid. I think it is not a good fit regardless of the present situation downtown, it is a different environment downtown.

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J. McKalip: There is not as much residential housing located next to it. There aren't single family homes located next to it. The pictures and everything don't reflect drops in property values to those residences that are located near it. Now Hickory Hills, yes they may have gotten a liquor license in 1998 but most of the houses near it weren't built prior to that time. It is a golf course. The closest residence, I believe, belonged to the owner of Hickory Hills so there is a big difference between doing that and putting one in a neighborhood. Also, if there is a drop in property value, there isn't a reduction in my property tax and let me tell you my property tax is substantial. I pay over \$1,100.00 a half for a three bedroom house in Farmland. Now if my property value goes down it is really hard to justify property tax like that and the property tax of my neighbors across the street and the property tax of my neighbors behind me. A lot of people didn't attend tonight and I found out this morning, I called the Area Planning Department because I had heard that this might be happening. I hadn't been notified because I don't immediately adjoin of although I am 70 feet away and he came and talked to me the first time he

proposed this. I went and went to neighbors of mine that were home, one of them had cancer removed so he didn't show up tonight. He lived across the street and he and his wife are opposed to it. A number of other ones feel it is a lost cause to try to come and opposed it. I don't think it is a lost cause. The way I would like to finish is to put to you, it is fine to have a business, it is fine to have a business similar to what was there. It is a big difference to have the kind of business that he wants to put there, which could be located more in the center of town and currently is and when you look at this, I want you to think, "How would I like to have this located next to my house? And How would I like what it does to the value of my property?" I have worked hard for what I have and I really don't like seeing it slip away because I don't have control of a situation. Thank you.

C. Addington: Okay thank you. Anybody else? Come up and have a seat and state your name please.

L. Jinks: Leonard Jinks, Jr.

C. Addington: Before we go any farther there is one thing I want to ask Cathy or Bob or somebody, the main thing here tonight as far as the liquor part of it, we don't have anything in that do we? It is just a variance is what we are after right?

C. Flatter: It is a variance based on the serving of alcohol.

C. Addington: Okay it is based on the serving.....

C. Flatter: In the commercial zoning district on page 20 of the Zoning Ordinance, our very first footnote, and this is at the end of all commercial zoning districts: Bars, taverns, nightclubs and similar establishments shall not be permitted within 100 feet of a residential zoning district, church, school or park. I just very quickly did some measuring. The southeast corner of the Hubbard property is within 50 feet of the Greene property that is caddy cornered to the southeast of their property and as Mr. McKalip had stated, his property is 70 feet south of that property, which the General Telephone property is also zoned commercial but the McKalip property is within 70 feet and then there is residential zoning abutting to the west and Mr. Jinks property is abutting on the very southwest corner and his property is also zoned R-1. So those are the residential properties that are abutting this piece of property. Go ahead Mr. Jinks.

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L. Jinks: Well you know, I am not for or against or whatever, the guy has a business to run. My biggest concern is the traffic that this is going to cause. We have, this neighborhood is growing and growing and growing with smaller children all the time. It is hard enough to get the streets fixed in Farmland now. It took me 15 years to get the front of my house paved. There is flooding. You people up here do not know what we went through for 10 years over there with the flooding issues. The church built that holding pond and we have not flooded since. But if he puts a parking lot on the west side of that building, we are going to start all over again.

C. Flatter: If he would be allowed to extend the parking lot to the west, then he is going to have to abide by drainage, the surveyor's drainage plans to be able to do that. He couldn't just go in there and put an asphalt parking over there and cause more problems to the neighbors. There is a storm water run-off ordinance that he would have to abide by.

L. Jinks: I haven't heard anybody say any plans of what we are going to do for traffic and stuff. You are going to have a restaurant, so surely there is other people besides people in Farmland that is going to go there to eat. We already have traffic problems over there right now with 32 and 1. I have semis and stuff going down in front of my house all the time and when you get up at 3:30 in the morning and you work days, you really don't want to listen to a bunch of whooping and hollering and tires squalling and people screaming, whooping and hollering all

night long. I mean, you know, there has got to be some kind of happy medium we can reach there. I am not telling the man not to put his business down there but I can't see where moving his business from uptown to down there is really going to help him that much, for as far as additional parking because Hubbard's doesn't have that much more parking than what he has uptown after 5 o'clock. That is all I have to say.

C. Addington: Okay, well thank you.

J. McKalip: I did have something else I wanted to add.

C. Addington: Come up to the microphone if you would please, since it is recorded.

J. McKalip: I did want to say that living next door to when Hubbard's was in business, I can tell you they emptied their trash every Monday night at 10:30. How do I know? Because I heard that dumpster get picked up by a big old Best Way truck and get banged every way to Sunday. Now I worked in a bar and I can tell you that I know at the end of the night you are going to be throwing away bottles, definitely. That is part of the business. I am not going to want to hear that, when I get up at 5 in the morning to get ready for school, at 11:30 or 12 o'clock at night. It is just the nature of the business. Downtown it is different. There is not the residential area that there is where we are currently. Thank you.

C. Addington: Is there anybody else in the audience that wants to speak about this?

N. Jinks: I do.

C. Addington: State your name for the record, please.

N. Jinks: Nicole Jinks.

C. Addington: Tell us what you would like to say.

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N. Jinks: I personally have been to Jabos where it is at up in Farmland and there, I don't see anything wrong with him putting his business up there at all, just for the fact that every time I have been up there it has been real quiet and it is a nice environment to sit in and of course everybody in Farmland, you know everybody so it makes it a lot nicer. When you go somewhere and you don't know anybody and you don't know anybody to talk to but personally myself I am for it, just for the fact that I have been up there and I know the environment and I don't think there would be a big problem with parking or people being up there because nobody gets loud or anything. But I am for it.

C. Addington: Thank you.

N. Jinks: Your welcome.

C. Addington: Who else? Is there anybody else? Okay board members do you have any questions?

J. Trautman: Yeah I have a couple. First of all your establishment is a Sports Bar but you are not going to change it to a restaurant?

L. Duncan: No, I will add food but it will maintain a Sports Bar atmosphere like the TV's and.....

J. Trautman: It will be a Sports Bar so it is not technically a restaurant?

L. Duncan: No I have to carry a restaurant license. I intend to have more food than I have now. I presently have sandwiches and pizza right now but I intend to expand that obviously.

J. Trautman: You are going to increase the parking facility on the front?

L. Duncan: My intentions were, I think by regulations and correct me if I am wrong, I think I will have 52 seats so I am talking in the neighborhood of 16 or 17 actual parking spaces that will be needed. I think it is one for every four seats and one for every person that helps, which is going to be three people so we are in the neighborhood. Presently I think there is

enough room out front for 12 parking slots. What my plan was is I rough drew on the map was to make a drive-thru area around the front of the building, away from the residential end and take it around to the west side and add whatever amount of parking I need, which will be very minimal to keep within all the rules and regs.

C. Addington: Any more questions from the board?

J. Trautman: Yes. Are you going to make an access to the highway in the front or are you just going to continue from the side?

L. Duncan: The access is off of Olive Street and I am sure that would remain that way because I doubt that the State would allow me an entrance off of the highway. I presently, they have guard railing along there because of the ditch that goes through there and I have not asked that question as yet and I don't know how hard that is to achieve but I think you can see from one of those pictures there, I do have Olive Street access but.....

J. Trautman: Yes, I know.....

L. Duncan: It is 25 or 30 feet off of the highway so in regards to the traffic, the traffic is going to be on the highway, residents are going to be the ones to use Olive Street. That would be any residential person who would come up there. Olive Street or the street behind it which I don't even know the name of, is not a main thoroughfare for the traffic.

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L. Duncan: Now granted, presently with Farmland in the situation it is, I am sure there are people wondering around on every street there trying to find where they want to go but I don't personally see an advance of traffic on Olive Street because I put the business there. The access would be from the highway and I am sure that is how it will be used.

C. Addington: Is there any more questions? One thing I forgot, did you have any questions for John or anybody? If you did, I need to bring him back up. I forgot what I was doing.

J. Trautman: No I don't have any questions for John.

C. Addington: What about the other fellow? I can't think of his name right off hand. I have it right here. Mr. Jinks. Did you have any questions for him? Come on up.

J. McKalip: I would like to rebut the traffic issue.

C. Addington: I don't think it is possible, not right now.

J. McKalip: Is that possible? He is making a statement about the traffic on the street I live on, which he doesn't.

C. Addington: Yes but I am not sure, is it time to..... Okay go ahead.

J. McKalip: There are traffic problems on Olive Street. We have people who drive 55 MPH by the time they get past my house. There is no stop sign at Pursley Street so it is a straight run all the way down. Now I do believe that if people who are in town are going to come to his establishment if it was located there, they wouldn't go from Elm Street to Main Street up to 32, over and down, they are going to cut through the neighborhoods. I mean that is without a doubt. They are going to take the closest route. Also there are problems with 32. I have almost been hit 4 or 5 times going from Olive Street onto 32 in the morning right by the auto parts turning out onto 32 by people who pass between the Village Pantry and the Auto Parts because it is not a no passing zone. As soon as they get past the Village Pantry they are on it and if you don't think that is going to be a problem if the business was located there and people have alcohol and have delayed reactions, things happen. Things happen. If I am stone cold sober and pulling out and some idiot is coming the other way, if I didn't pull off into the parking lot of the Auto Parts, I would have been hit and I am not the only one. I asked for them to make it no passing, the Town

Board said it would have to be up to the State. I asked for a stop sign at Pursley Street and they said that they weren't planning on doing that at this time.

C. Addington: Do you think they might do that when.....

J. McKalip: I don't think they will. I have asked. I have asked for increased police patrol because of the speed problems but they won't and they have them limited because of the limited amount of Farmland Police. Thank you.

C. Addington: Any questions for him while he is here? I guess not. Okay, does anybody else want to say anything? If not, we are going to ask.....

L. Duncan: I just made some quick notes here. Flooding and I understand the issues around flooding as well as both Don and Tony were well aware of that for a long time, now as they said earlier since the church put in that holding pond, it has helped considerably but any parking lot that I might add, I don't know how it could contribute any more to flooding. I mean the rain is going to go where the rain is going to go.

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L. Duncan: Real estate values, that is something I can't argue one way pro or con but I do know at one time where Mr. McKalip lives was zoned commercial whether it is now or not but I think it had been zoned and then I think he had asked for it to be taken off. Wasn't there a pottery business or some kind there?

J. McKalip No that was my wife's business that we did not open there because we would have had to come get a variance and only the first few feet of our property.....

C. Addington: You need to come up to the microphone.

C. Flatter: I think originally up on Main Street wasn't it?

J. McKalip: Yes. The pottery business my wife had on Main Street, when we moved to our new house, we didn't open the business because we would have had to come get a variance and we would have had to ask everyone within more than just adjoining properties.

C. Flatter: Well it wasn't a variance. It would have been a rezoning change.

J. McKalip: A rezoning change.

C. Flatter: That is a 250 foot notification.

J. McKalip: That is why we didn't do that.

L. Duncan: As far as kids, my business presently is within a 100 feet of, I can't even think of the name of those apartments that are across the street. There are a ton of kids running around there.

C. Addington: That is a government issue there, is that what you are talking about? On the south side of the street there?

L. Duncan: No it is not a government, but it is on the south side of the street next to Bailey's parking lot. There are kids who play in that street daily. I don't, I think if you look at the pictures, the actual location of the building is next to 32. It does not sit in the neighborhood. It sits on the outside of the neighborhood. It is included as part of the neighborhood. I don't want to under react but I really don't want to over react to the location. As I said I can't argue traffic but I believe the bulk of the traffic will be off of State Road 32. And again, the parking is whatever I need. We are not talking about a shopping mall parking situation here. I would only hope that my business could be that busy but that is not the case. I appreciate the young ladies comments. I don't know that any of you have ever been in my business but I run a quiet, my personal view of it is kind of a B.S. bar. People come in and they watch ball games and they talk about old times. I have pictures up on the wall from 1920 something basketball teams. It is quiet. There are not juke boxes blaring. It is a very low key operation. I have a couple that comes in on a daily basis

that are 82 years old. They come in and they drink one beer and eat a sandwich and they are great people and they have been great to me and the comment was made of why I need more room. I stated earlier that I have 800 square feet, I can't even put a pool table in my building and that is some what lacking if you are talking about a Sports Bar. Other than that all I can say is if we can do this I think I can provide the community with a good business as I have already done but I am at the point where I have to have more space and Hubbard's need to sell their building. That is why I am here.

C. Addington: If there are not any more questions from the board we are ready to take action on BZA 2006-21-V.

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C. Flatter: Bob and I are discussing, I am going to read this footnote again, it says, Bars, taverns, nightclubs and similar establishments shall not be permitted within 100 feet of a residential zoning district, church, school or park. The method of measurement shall be from the parking lot of the facility to the property line of the use protected or from the tenant space if the restricted use is situated within a multiple tenant building, which that is not it. As I said earlier, I was measuring this. This is on a scale of 1 inch = 100 feet. From the current southwest corner of the actual parking lot, he is 50 feet from that residential zoned area at the closest point.

J. Trautman: That would be at the southeast side?

C. Flatter: Yes.

J. Trautman: Across the street from, across Olive Street.

C. Flatter: Yes.

B. Oliver: Well the issue that we have here and I don't know whether you talked to anybody or not after the Area Planning Commission met but there were people who were interested in, I am assuming it was your business just because of the situation that had risen some time ago, and I think it was the last meeting we had with the APC. Our two members that are on the APC and also the BZA are not here this evening but we have what is called Area Planning Law and there is other types but in Area Plan under Indiana Code 36-7-4-918.3, it says the BZA may not grant a variance from a use district or classification under the Area Planning Law. Now why they put this in a footnote, whoever drafted this, I don't know but basically what they are saying is that you are in a proper zoning district for your business, however, there is a non waiveable condition on that and that is you have to be 100 feet from any residential property line or church or school or park. Those don't have any application but the one with the residential does and there is no way with what you have outlined or the space that is going to be necessary or the evidence here that you are going to be 100 feet from a residential zone.

L. Duncan: Could I add to that real quick? As I read that law, it basically outlines the parking lot, the parking area or the tenant space. There is an "or" in that sentence. Am I correct?

B. Oliver: Well it.....

C. Flatter: Whichever is the closer to....

L. Duncan: It says parking lot or building.

B. Oliver: Or tenant, but see the "or tenant space", you have to read the next part. It says, "if a restricted use is situated with any multiple tenants", but you aren't so that doesn't.....

L. Duncan: Well my point here and I think Cathy can help me on this one, she is measuring from the farthest point south of the paved area and is considering that the parking area. My point is I can move the parking lot and accommodate that if I am allowed to do that. I can't move the pavement but I can designate that a non-parking area and get within a hundred feet and that is all I am asking, instead of an absolute no here, give me an opportunity here to put

my parking lot where it needs to be but everyone is measuring an area that is paved, which also has about a 4 foot hole in it that they couldn't park in it any how. I talked to the neighbor that we are talking about being closest to, which is Joe Greene.

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L. Duncan: Joe was concerned and he came and talked to me and I told Joe, "What ever you ask Joe. Anything I can do I will do for you and he said will you not park right down here on my corner." I told him I could put dumpsters there, if necessary I can even fence it off. We are going by a paved area that Hubbard's used for deliveries and so forth. I can designate parking and be 100 feet but to this point all I have been told is, "This rule says this", it has never asked me what the intent is here and so that is why I asked for a variance.

B. Oliver: That is the whole issue from the standpoint of they can't grant any kind of a variance that is going to change the use.

L. Duncan: Right.

B. Oliver: And that is the whole issue that this boils down to that the conditions in here and if they don't enforce the condition then they've changed the use of the property.

L. Duncan: I understand.

B. Oliver: And is there, it boils down to a measurement.

C. Flatter: The building itself, on the west side, it says, "Bars, taverns, nightclubs, similar establishments shall not be permitted within 100 feet of a residential zoning district." Okay, basically that is the end of a sentence and the west side of the current building is within approximately 85 feet of that residential zoning on the west side.

C. Addington: This map is hard to read. I can't hardly see what is going on here.

B. Oliver: Did you say 85 feet?

C. Flatter: Approximately 85 feet.

L. Duncan: And with that being the case, how, I am lost here. How are the other businesses granted?

C. Flatter: Well, first of all, we will go with the golf course, there is no residential zonings any where around the golf course. It is all zoned agricultural. Phi Delts in Winchester was prior to Planning and Zoning. The Legion in Winchester was prior to Planning and Zoning. The Top Hat was prior to Planning and Zoning. The Parker Saloon, I would have to actually go back into my office and look at my zoning map and do some measuring to let you know whether or not that is within 100 feet of a residential zoning district and honestly I don't know when they were first granted a liquor license.....

L. Duncan: In 1997, no excuse me 1998. Oh the first, very first?

C. Flatter: The very first.

L. Duncan: Nineteen zero something.

C. Flatter: They have served alcohol in that building continuously for

J. Trautman: I have been there for, I have lived there 40 some years and there has been a bar there

C. Flatter: So basically we have all grandfathered uses.

L. Duncan: What about the Pizza King in Parker? That wasn't grandfathered in. That was 1997.

C. Flatter: That they got a liquor license?

L. Duncan: They have a beer license, yes. They recently gave it back, I think within the last 2 or 3 years.

J. Trautman: They had a liquor license there and when Pizza King closed up they lost it.

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L. Duncan: They gave it back. That was 1997.

J. Trautman: Then Pizza King bought it again and applied for it but they had sold their liquor license.

L. Duncan: Yes, well my only point is that it was instilled in 1997, they added.....

C. Flatter: And I am not saying that there is some of those things that can fall through the cracks because if the business is there and then they apply for the liquor license.....

L. Duncan: Into another building is what I am talking about.

C. Flatter: But if they go into another building, they first of all have to check the zoning and so then that is when my office has to make sure that they meet all of these requirements and with the Pizza King, they were serving before and the evidently closed up, started back up and then applied for the license. Nobody would have come into my office and asked me any kind of questions like that and that is not something that I would just know unless somebody came to me. But we did have one other incident similar to this where we had the restaurant that is directly south of Anchor Hocking here in town that had been old Froggies for years and they rebuilt it and it has a beautiful restaurant sitting there but it was built in a residential zone but it basically was an extension of a non-conforming use when the new building was built but they had always had a beer and wine license. Well the people that owned it closed the business up and put a For Sale sign out and we had somebody that was interested but because that use had stopped for 12 months or longer it no longer could be considered grandfathered in that residential zoning district. The individual first of all had to come in and rezone the property so that they could sell it as a restaurant and then they were told at the time that there was no way that we could grant a variance on the being within 100 feet of a residential zoning district. There was just no way that they could get around it because they had it on Washington Street and they had it to the west and east of them so we have had one other incident like this and of course the building is still sitting there empty because not very many people want to buy that kind of a building if they are not going to be able to serve alcohol in it.

L. Duncan: Okay my question to Mr. Oliver is, is this the law that you are quoting, that is State wide, every county, it is not a county footnote?

B. Oliver: Two things actually, that is a good point and a good question. The code section I just cited you is the Indiana Law. Any county in Indiana that is Area Planning, not metropolitan or any other, it is Area Plan and we are an Area Plan county that applies to. You can not have a use variance. Then we also have it in Article XVIII, which is the variance part of our own ordinance and it says, "A variance shall not include authorizing of the use not among the permitted uses specified in the ordinance". That is basically your reiteration of the state statute but it is in both places. The thing, my conclusion is the thing that you need to do if you want to put your business there is to talk to the Town Board or someone who would come before the Area Planning Commission and this ordinance would have to be amended to either amend the distance or to take that footnote to be taken out of there because basically....

L. Duncan: Some law.

B. Oliver: Okay, do you know what the Area Planning Commission is?

L. Duncan: Right.

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B. Oliver: They basically through them, write the ordinance. This was done by a firm hired outside of the county, I think on bid process, and the other thing just as a foot note to you now, every year you've quoted was before this ordinance came into effect.

L. Duncan: Oh was it?

B. Oliver: Yes.

L. Duncan: That surprises me.

B. Oliver: This I think came into effect in 1999 or the first of 2000.

C. Flatter: January of 2000 is when it went into effect.

B. Oliver: The example she gave you has occurred within this ordinance but the Area Planning Commission and there is some different ways to get before than as far as modifying or amending the ordinance. Then the ordinance is sent out with the modification to every governmental body that makes up the Area Plan. There are 10 governmental units and then they vote, in other words if you said, "I want that changed or I want to request that that be changed to 50 feet", then if that was the case and the Area Plan recommends it than those legislative bodies that actually say that, now here is the trick bag, it says, not for you but for us, if Farmland is the only one out of 11 that says "yes", then it is you have 50 feet and everyone else has 100 feet. Then we start getting, it depends on what town or city you might be in but just sitting here as the attorney, I have to tell these people basically that they can not vote to approve this as it is particularly if we are 85 feet from the residential zone using the side of that building and it is not only the state statute because we are Area Plan but it is also because of our ordinance.

L. Duncan: But Farmland being a party to the county zoning can make exception and the zoning can't? I guess if I am understanding.....

B. Oliver: Farmland can only make it if this ordinance, well now wait a minute, I may have spoken too quickly, I don't even know. We can't, well yes it could still be done but it would have to be less than 85 feet because we are still subject to the Indiana Code so that says we can not grant a use variance but the way to.....

C. Addington: I was going to ask you, you said something about if you wanted to you could make it 100 feet or did I understand.....

L. Duncan: The parking. I can make the parking 100 feet.

C. Flatter: But there is no way he can change where the building is located.

C. Addington: I understand that.

C. Flatter: He is 85 feet on the.....

L. Duncan: I can make it multi-tenant.

B. Oliver: I am trying to look up the initiation

L. Duncan: Is there an exemption one can file for?

J. Trautman: Are you saying that he would have to have the Town Board of Farmland come before the Area Planning Commission to ask to have the ordinance changed for.....

C. Flatter: That is what Bob is looking up right now to verify, we know that the legislative body can initiate a zoning change in the map and he wants to clarify for an amendment also.

J. Trautman: Farmland would have to go to the Area Plan to get the variance of the ordinance change just for Farmland.

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C. Flatter: Right and then we would be recommending. Yes and that can be done because Indiana Code states that like if we present it to all of the legislative bodies even if we have one that doesn't approve it, then the ordinance for that one legislative body is different than everybody else's. It becomes an enforcement problem because you have to make sure, "okay now which one is included and which one is not included in this amendment" but it can be done.

L. Duncan: Cathy what kind of a time element are you talking? Approval in Farmland and then what? I mean is this something they tell you or you guys.....

C. Flatter: If they initiate, basically it is saying if they are allowed to request us to amend then it would be a hearing before the Area Planning Commission and then the Planning Commission would vote and it would be a recommendation that the Town of Farmland has the final say so on, so if they initiate it then well it is pretty well a done deal at that point. It is the technicalities of having to go through a public hearing.

L. Duncan: Well I understand that.

J. Trautman: But still would they have to.....

B. Oliver: Okay, with regard to the Zoning Ordinance procedures for adoption, amendments and so forth, the proposal may be initiated either by the Planning Commission, which is how we got the new ordinance basically. The whole ordinance came in, by a petition signed by property owners who own at least 50% of the land involved and under advisory planning law or the Area Planning law any participating legislative body may also initiate the proposal and require the planning commission to prepare it. The Planning Commission or the petitioners must prepare the proposal so that it is consistent with 601 of this chapter and then there is a very specific statutory scheme that is involved in presenting to the legislative bodies the proposed change and they have time to respond by saying, "Yes or no" or by modifying and then we have to act on their, if they say yes or sufficient time lapses and they haven't responded, I think it is 90 days...

C. Flatter: Ninety days, yes.

B. Oliver: It just automatically changes but the last one that we had had to do with variances of all things and we had, we as the Area Planning Commission initiated that change to the zoning ordinance. Nine of our ten legislative bodies said yes or didn't respond within the 90 days, most of them did it immediately, we still have one that hasn't and they are going to have problems because again it relates to variances so there are methods to amend the zoning ordinance and I think that is the only way that building is going to be able to be used for what you want to do. Again that 85 feet.....

C. Flatter: So you would go to your Town Council and talk with them about this. If you can get the majority of them to agree that they come to the Area Planning Commission and request an amendment to the zoning ordinance then we are required to send that amendment on to all the legislative bodies, correct?

B. Oliver: After the APC has approved it.....

C. Flatter: After the APC gives a recommendation.

B. Oliver: Right.

C. Flatter: Favorable or unfavorable.

B. Oliver: Right. It goes out even if they say no.

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C. Flatter: They have 90 days to respond. If the Town of Farmland is the one that has initiated this change, they are going to act on it within their 90 day time frame and so it would then go into effect.

B. Oliver: What you really need to do Leroy is get, if you want to talk to the Town Board, go to a meeting when the town attorney is going to be there.

L. Duncan: Right.

B. Oliver: Describe to him, take a copy of the ordinance if you don't have it with you, I would almost suggest, who is your town attorney?

L. Duncan: Mr. Welch, Jason.

B. Oliver: Jason, he probably has a copy of the zoning ordinance. If not, does he usually carry one? He is usually my substitute here if I can't get here. Make sure he is there and then sit down because if you want to try it this way...

C. Flatter: Or if he knows prior to the meeting he can see to it that he has one with him.

B. Oliver: Right so he can be prepared to discuss it.

C. Addington: John do you have a question?

J. McKalip: Yes, when you talked about moving the parking, doesn't that become an issue? Because if you move the parking north it has to expand parking on the west than that puts the parking closer to the residential lines on the west.

C. Flatter: There is no way that he can get around that 100 foot requirement for the simple fact of where the building is sitting on the lot.

B. Oliver: If he could, yes but the issue becomes the 85 feet between the building and the residential, which is a bar right now as the ordinance stands.

J. McKalip: If this does come before Area Planning again, is there any way that we can be notified? I heard third hand this was taking place.

L. Duncan: It was in the paper.

B. Oliver: You have to understand, the APC is a different body. It's notice requirements are any property owners within 250 feet of the property.

C. Flatter: So you would definitely be notified.

J. McKalip: Okay, so I would definitely be notified.

C. Flatter: But it would be, well I am not sure, I have to read through there on what the notification process would be if the town initiates it. They are responsible for notification. So you would be getting notification from the Town of Farmland.

J. McKalip: Okay, thank you.

L. Duncan: Not to keep anyone here longer but I do have some quick questions. If I understand you correctly, I approach Farmland for what I want, if that passes then it comes back to the zoning for the grant or denial right?

C. Flatter: The Town of Farmland would be filing, not basically filing, they would be requesting an amendment change to the Unified Zoning Ordinance so it is going to be a public hearing but we are going to have representatives from the Town of Farmland sitting where you are sitting, saying, "We want to amend this footnote" and then the process is sending that amendment, preparing that amendment to be read the way, the Planning Commission would decide.

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C. Flatter: They would make that recommendation as to how it needs to be worded and they are going to send it to all the legislative bodies. All those legislative bodies then have 90 days to act on that.

C. Addington: Tell him what a legislative body is.

C. Flatter: Cities, towns and the County Commissioners for the unincorporated area.

L. Duncan: If I understood you correctly, Farmland could be different from the other.....

C. Flatter: Yes, if all the other legislative bodies say, "No we want to leave footnote number one as written", that can be done, but then we prepare an ordinance for the Town of Farmland and if they choose for it to be 50 feet then the Unified Zoning Ordinance that I am going to enforce for the Town of Farmland has to be 100 feet from a residential zoning district.

L. Duncan: My question is, is Farmland the deciding factor?

C. Flatter: Yes.

L. Duncan: Okay.

C. Flatter: The legislative bodies for zoning and zoning change in the Unified Zoning Ordinance, the wording is the legislative body.

L. Duncan: My point is, Hubbard's want to sell the building, I would like to buy it but I obviously can't buy it until a deciding party decides so I guess my, if I have a meeting in Farmland and they agree then from my perspective it's a done deal there's...

C. Flatter: It is the channels they have to go through.

J. Trautman: Don't think it is a done deal. They have to go before another board. Not this board, it is another board, but as far as you are concerned if Farmland says it is okay then yes I guess you could say you can buy it.

C. Flatter: Because the Area Planning Commission is just a recommending body. They don't make a final decision when it comes to zoning changes and amendments to the Unified Zoning Ordinance. It has to be the legislative body. Even though they have to have the public hearing with the Area Planning Commission, they are just going to say, "seven give favorable or seven even unfavorable", we still send that recommendation back to that legislative body and they have the final say.

L. Duncan: Okay. Well I guess I owe most people in this building an apology for having to come up here this evening.

C. Addington: No, that is fine.

C. Flatter: I couldn't tell you, "No" that you couldn't file for it. I mean, Bob and I had discussed it prior to you coming in and asking for the petition but I can't say, "Well sorry, no, I can't give you the paperwork for a variance".

C. Addington: So we do not take a vote then. There is no need to is there?

J. Trautman: No we can't.

C. Flatter: Bob do you have to have a vote since it is a petition?

L. Duncan: How bout if I make it easier on you and ask for a continuance? Make it forever.

C. Addington: It wouldn't be a continuance with this board though so I am not sure.
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L. Duncan: If I make it forever?

C. Addington: Can they withdraw or would that foul things up if he did?

B. Oliver: Well I am sitting here looking at this and trying to figure out what line I can cross here, not representing him, I don't know that I can be advising him.

L. Duncan: How about if I just approach it that way? I would like to withdraw my petition. Tell me whether I can or not. Then you are not advising me.

C. Addington: He is working on it.

C. Flatter: You know we need to amend the Rules of Procedure.

C. Addington: Is this it? You are not talking about this are you Cathy?

C. Flatter: No. It just dawned on me that we need to take the variance part out of our Rules of Procedure.

L. Jinks: Can I say something here?

C. Addington: Come up here again.

L. Jinks: It seems to me like.....

C. Addington: Identify yourself again for the record, please.

L. Jinks: Leonard Jinks, 310 Hickory Street, Farmland. We've set here, he was offered a chance to postpone it and he chose not to and he was told that if he didn't want it postponed and

it went through and if it was denied, that he would have to wait 6 months to reapply. Maybe I missed something.

C. Addington: No that is right. You said it right but the only thing is it wouldn't have made any difference whether there was 7 of us or 4 of us, since what we found out here about the rules and regulations, it wouldn't have made any difference.

L. Jinks: So we are not voting on it at all?

C. Addington: I don't believe. We will find out here in just a minute.

C. Flatter: Even if we do ultimately decide that they need to vote this evening and they would most likely all of them vote to deny it because our attorney is telling them that they can't approve it, what we are talking about is not coming back to the Board of Zoning Appeals again so the six month issue doesn't pertain to any of this other than we are talking about as far as him going to the Town of Farmland and asking them to present an amendment change.

L. Jinks: I am still with you on that one.

C. Flatter: This is with a completely different board. It is with the Area Planning Commission and so he wouldn't be coming back to the Board of Zoning Appeals so a six month time frame doesn't apply here.

L. Jinks: Okay, that is all I am trying to find out is what we are doing here. It seems like we are jumping from one side over onto the other here.

C. Addington: Thank you.

J. Trautman: No you are jumping from one board to another really.

C. Flatter: I think we finally found here under Article X of the Rules of Procedure, which is final disposition of cases, number 3) it says a case may not be withdrawn by the petitioner after the vote has been ordered by the chairman. Well he really hadn't completed his order for the vote and I interrupted him so that Bob and I could go on and explain this, so you can withdraw.

L. Duncan: Then I would like to withdraw it.

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C. Addington: Okay.

L. Duncan: I apologize again.

C. Flatter: Well we all learned something tonight.

L. Duncan: Hey we did.

C. Addington: We got an education.

B. Oliver: Just so you know that the full provision says, "No case which has been withdrawn by the petition shall again be placed on the docket for a period of three months from the date of withdrawal."

L. Duncan: But that doesn't interfere with the town placing something?

C. Flatter: No.

C. Addington: Thank you everybody. Is there any other business before the board tonight?

C. Flatter: I have nothing else.

C. Addington: If there isn't, we will adjourn.

The meeting adjourned at 8:15 PM.

THE NEXT REGULARLY SCHEDULED MEETING IS JANUARY 22, 2007 AT 7:00 PM IN THE COMMISSIONERS CONFERENCE ROOM OF THE RANDOLPH CENTER FOR FAMILY OPPORTUNITY, WINCHESTER, INDIANA.

Mike Blankley, Chairman

Dale Clevenger, Vice Chairman

Jamie Stump, Recording Secretary