

**Valparaiso Board of Zoning Appeals
Regular Meeting Minutes
July 19, 2023**

The regular meeting of the Valparaiso Board of Zoning Appeals was held at 5:30 p.m. on Wednesday April 19, 2023, at Valparaiso City Hall, 166 Lincolnway, Valparaiso, Indiana. Remote access was available via livestream on the Valparaiso City Website. Kyle Yelton presided. The Pledge of Allegiance was said. Members present were Diane Worstell, James Bilder, Paul Reed, Mark Ribordy and Kyle Yelton. Also present were Beth Shrader, Jessica Gage, Attorney Patrick Lyp, and petitioners.

MINUTES

Adoption of Meeting Minutes – April 19, 2023

Motion: Paul Reed moved to approve the minutes from April 19, 2023. Mark Ribordy seconded the motion and so approved with a 5-0 voice vote.

Old Business

VAR23-003 - Withdrawn by Petitioner

New Business

VAR23-004

A petition filed by Indiana Land Trust No. 120977 dated April 5, 2022, c/o Richard E. Anderson, Anderson & Anderson, P.C. The property is located at 2811 Leonard Drive (newly established address, formerly 2851 Leonard Drive). The petitioner requests the following variance(s) related to proposed new construction of an office building (BP Business Park Zoning District):

- (1) 11.304(F) to reduce corridor bufferyard landscaping along rear of parking lot from State Road 49;
- (2) 11.304(G) to permit parking in front of building with respect to State Route 49 corridor;
- (3) 11.502(B) to reduce the length of the required offset from 20 feet to 16 feet 9 inches on the east and west sides of the building; and
- (4) 11.506(B)(2) to permit Low-E glass to be installed in windows in lieu of transparent glass.

Richard Anderson addressed the Board. Nick Schacki was also present. The owner of the property is Indiana Land Trust No. 120977. The address on the GIS right now is 2851 Leonard Drive. The new address is 2811 Leonard Drive. This is in Eastport Centre. It is a one-acre lot. It has BP Business Park zoning. The construction will be a 6,058 square foot building. Addressing the requested variances:

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Addressing the requested variances:

(1) 11.304(F) to reduce corridor bufferyard landscaping along rear of parking lot from State Road 49. The issue is the back of the property where the landscaping should go, there is a drainage easement near 49. When the construction of the business park was done, they put a drainage swale in. There is an existing drainage swale behind the parking lot. They have added trees and plants by 49 but there are not as many as expected behind the parking lot because that is the drainage swale. He has talked to Engineering about this and they did not find the drainage swale either.

(2) 11.304(G) to permit parking in front of building with respect to State Route 49 corridor. That permits parking on both sides of the building so the tenants can come in through the back and the business invitees can come in through the front. He is not so sure when the Ordinance was written if it was for the 49 Bypass that the front was towards 49. It looks like basically it is written the opposite way. They are making sure they can park on both sides of the building.

(3) 11.502(B) to reduce the length of the required offset from 20 feet to 16 feet 9 inches on the east and west sides of the building. There is a nice bump out. The reason they want the 16'9" as opposed to 20' is that it is the vestibule on each side for the entrance to the building. They only need to be so big from an efficiency standpoint. Also the window placement in a building of this size is dictated by a one acre lot. There still is an architectural break in the building.

(4) 11.506(B)(2) to permit Low-E glass to be installed in windows in lieu of transparent glass. This is the same glass that is used on the carwash. One is brown and one is grey. You can see through it from a safety standpoint.

He submitted a letter from the HOA. Pete Pequet is the President of the Business Owners Association for Eastport indicating they do not have any objections to the variances that are being requested.

Public Hearing

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

Beth Shrader – This came before Site Review where they identified a number of items that do not meet development standards. This is an undeveloped property. It is not unusual in any way. Instead of designing to the development standards, the petitioner decided to request variances for the elements they identified that don't meet development standards. She thinks there might be more based on what has been presented. She spoke specifically about each of the variances. Regarding the bufferyard landscape, they are deficient in some materials. They are particularly deficient in shrubs. There is an amount of landscape that equals screening. That can be substituted, but there is no reason that it should not meet the

bufferyard. The issue of the drainage easement happens to be that the drainage easement is in an incorrect location. It is in the same area where there is a berm. There is no drainage where there is a berm. The placement is not an issue as long as the material is somewhere between the development and the 49 Corridor. Parking in front of the building in respect to 49. The goal is that as you drive on 49 you are looking at landscaping and architecture, not a parking lot. Regarding the offset of 16'9" from 20'. This is a very small reduction; however, staff sees nothing exceptional or peculiar to the site or the building for a variance to be allowed here. Regarding Low-E glass, Low-E glass does not mean it is not transparent. Looking at samples brought in by the petitioner, she does not feel that will require a variance. The glass proposed could be permitted as is.

Richard Anderson – The buffer is the drainage swale that goes behind the building. That is what the Association has told us and that is what Engineering has told us. When they talk about some sort of buffer they can put in that will effectively hide the parking lot, it cannot be done.

Beth Shrader - The buffer would be on the existing berm. The bufferyard is supposed to be adjacent to the property line and not the parking lot.

Richard Anderson – That part of it is in the drainage easement. There is an effective drainage easement on the plat so they can't put it there either.

Beth Shrader – It would be permitted. The drainage easement is on the berm. The drainage way is outside of the easement.

Richard Anderson - He showed where the drainage easement is marked. This is where the drainage swale is. He knows Beth is not in favor of any variances, but he is saying in this case there is a reason for it. Some of it can be put in but not all of it. Secondly, if it is parking in front of the building, that is what the ordinance says. Parking in front of the building.

Beth Shrader – She suggested he is looking at an old version of the Ordinance.

Richard Anderson – He looked at it on the City website today. With the offset, you can only build one size building on a one-acre lot to fit everything you need. Whether you have 16'9" or 20', he doesn't know why it is so important to be 20' when this building is architecturally designed to be beautiful just like the other two buildings they built in this area. For some reason because it is a number, we have to stick with it. With regard to Low-E glass, he was made to come in here for Low -E glass with regard to the carwash, so don't tell him it is a permitted thing now when he was made to come in for a variance with regard to the car wash and he was granted that.

Beth Shrader – What is presented is a transparent tinted glass, which is acceptable for an office.

Richard Anderson – That is not what happened with the car wash. This is identical to what I presented that night. He would like to have permission for this project so there is no question.

Questions/Comments from the Board

James Bilder – He asked if he knows the designated use of the building.

Nick Schacki – Most buildings in that area are office. He knows parking standards are different if it is medical office.

James Bilder - Was there consideration given to a 90-degree swivel of the building? It seems to him there could be more room for ingress and egress with the building turned. On the north long end if the building were turned there would be more space.

Richard Anderson -They would lose everything behind the parking. He showed the swale behind the building.

James Bilder – Is that pond clay lined or is it sand?

Kyle Yelton – He discussed the landscaping.

Beth Shrader – She explained the trees are all in there.

Nick Schacki – That is why we put more in there.

Beth Shrader – There is no putting more trees in. She showed the location of the drainage swale and berm. The drainage swale is not where it belongs.

Richard Anderson – They can't put trees there.

Beth Shrader -We also use common sense. You can see the drainage swale is not where the drainage easement is. There is a berm in the drainage easement that is already planted. You can clearly plant more in that area.

Richard Anderson – The drainage easement is not only for the benefit of the city, it is also for the benefit of every property owner in the park. Therefore, if they want to do something in that area, they have the right to unless it is vacated. The park has not asked for it to be vacated. So whatever trees are in there are subject to being torn out. Everywhere else where there is drainage the city does not go like this. Usually, we are told not to plant in drainage. Tonight we are being told to plant in drainage.

Beth Shrader – The drainage swale was not built in the drainage easement.

Richard Anderson – An easement is an easement. If you want to deny it is an easement, ok, but it is an easement. Utilities have the right to do what they want. You can do whatever you want in an easement but then they come and tear it out. The purpose of the trees is to screen the back and this does not do that. They are trying to put them out as far as they can towards 49.

We put some in to fill in gaps between what exists out there. You can see there are quite a few existing plants already. When you talk about parking in the rear, you have the hotel directly across from us and its parking is in the rear. We talked about this and you say it is the front versus the rear, and you don't want it. This project is good for the City of Valparaiso. It is a pretty building. It looks nice. It is architecturally pleasing. All they are asking is a few feet here, a few less trees and all of a sudden it is no, no, no because you don't want it. He is asking this board to consider the fact that this is a good project for the city. It brings tax dollars. It brings tenants.

Paul Reed – You don't want anything in the swale area, right?

Richard Anderson – He showed where there is property that is not easement. It belongs to the State. The big circles are existing trees. They are trying to put landscaping in the front. This is a practical problem they are asking for help with. The property has been surveyed.

Paul Reed – There could be some adjustments and have parking in the front this would be a non-issue.

Richard Anderson – The tenants usually like to come in one door and the business invitees another.

Paul Reed – There is one other property along there that has parking in the back.

Beth Shrader – She cannot explain anything that was allowed while the overlay district was not in place. Before overlay standards were in place, parking lots were closer to the 49 corridor. The intent is to not look at parking lots. The board knows that anywhere in the city a project could not meet the standards. That doesn't mean that a project now with standards in place, doesn't need to meet the standards.

Richard Anderson – This is a one-acre lot and a small building with 6,000 sq ft. He considers that a small building. Beth may consider it a big building. It is something that fits on this lot and is saleable to tenants. He would not want to come in the same door as his clients.

Beth Shrader – That could still be accommodated within the development standards.

Richard Anderson – No because of the parking.

Beth Shrader - The parking could be on the side of the building.

Nick Schacki – Every building he has done that way has massive vacancies on the back end because there is no visibility. He is in the business of building buildings and leasing space. He has to be practical when he does it. He would be sitting on vacant offices and still paying taxes on it. The ordinance is there to work with. Not every project is going to fit into each mold. They

have to come in and make changes if it is a good project. They are not asking for a lot. The ordinance says parking in the front. Now it is parking in the back.

Beth Shrader - It is not supposed to be between the building and 49.

Nick Schacki – The interpretation does not make sense to a lot of people coming here to build.

Beth Shrader – That is an issue that needs to be taken up with the Plan Commission and Common Council, because those are the bodies that approve the Standards.

Richard Anderson – You have made the interpretation of front on your own.

Beth Shrader – It is not an interpretation. It is clearly written.

Richard Anderson – Front is front. Everywhere else, facing the street is front. If you want to change this ordinance, then you go to the Plan Commission and Common Council. Right now, it says front. They have a building that someone is bringing before them that is not a pole barn. It is a nice building.

Kyle Yelton – He agrees. He is worried about setting a precedent.

Richard Anderson – He thinks each case stands on their own.

Attorney Lyp – On the issue of the easement, regardless of what happens this evening, that should be resolved. State law lays out the minimum requirements that have to be established by the petitioner for variances. The petitioner is also asked to submit proposed Findings of Fact. The other issue is the use of the property. The land is pretty flat. It is not irregular shape. He believes it is true that tenants want to go in a different door than the business people. Even if we agree that ten property owners want to have the parking in the rear. Those are some of the proposed findings that petitioner wants the Board to adopt. For some requests, it is an accommodation rather than a practical difficulty. The decision is not based on whether or not it is going to be challenged. If some of these were to be challenged, there may be questions if there was sufficient basis to grant the request. If the intent is to grant one or all he would ask that it is done separately and the same if they are denied.

Beth Shrader – The text is “behind a principal building with respect to the Indiana 49 corridor.” This is very clear. In section 3.04(g) it states parking shall be located behind the principal building with respect to the corridor, wherever practical.

Richard Anderson – That is not what it says in your ordinance that is on the website.

Beth Shrader – She is reading it from the website.

Richard Anderson – This is a good project. He is sorry it doesn't meet staff's requirements. They are trying to put something in there that will look nice, something they can rent and

something that works. He does not have any problem with what Patrick said about putting in another easement for the swale. If they want to wait a month he will bring the ordinance back in print so they can have that discussion. The BZA is an independent body and not influenced by what staff's desires are.

Attorney Patrick Lyp – The BZA is separate and quasi-judicial. Of all of the people in the room, the BZA relies on Beth. If there is a disagreement as to interpretation, that is not up to this body. That would be an appeal of a decision.

Richard Anderson – He is not saying influencing. He is saying they are not looking at what he is asking for. Variances are variances. That is what we are requesting. He is willing to defer for 30 days and see what else he can come up with.

Beth Shrader – Staff has no problem with a continuance.

MOTION: Mark Ribordy moved to continue VAR23-004 to next month's meeting. Paul Reed seconded the motion and so approved with a 5-0 roll call vote.

Roll Call Vote:

Paul Reed – Yes	James Bilder –Yes
Mark Ribordy – Yes	Diane Worstell – Yes
Kyle Yelton – Yes	

PRJ23-001 and VAR23-005

A petition filed by Eastgate Investments I LLC and Eastgate Investments II LLC c/o Todd A. Leeth, Leeth Law. The properties are located at 1301 LaPorte Avenue (Building 3, PUD Uptown East) and 54 Roosevelt Road (parking lot, CA Campus zoning). The petitioner requests the following:

PRJ23-001: To propose a First Amendment to the Agreement for Written Commitments dated January 20, 2021, and recorded February 10, 2021, as Document No 2021-004200 in the Office of the Recorder of Porter County, Indiana (BZA file reference VAR20-019) to allow for apartment unit conversions in Building; and

VAR23-005: Proposed parking lot at the Northwest corner of Roosevelt Road and LaPorte Avenue to be constructed with the following variances:

- (1) 11.407(D) to reduce parking lot setbacks along the north and west sides of the subject parking lot parcel from 10ft to 1ft; and
- (2) To reduce up to 50% in the Stormwater Management requirements and Detention Policy set out generally in the UDO, and specifically in 7.302.

Todd Leeth presented on behalf of petitioner. He was joined by Larry Gough. His goal is to make this seem like a simple case. No matter how he tries this case is not simple. There is Eastgate Investments I, II and III. Eastgate I and II are the owners of the Uptown East apartment project. The notch out is the southeast corner of Roosevelt and Lincolnway and is

Horizon Bank. Uptown East was developed as a PUD prior to the UDO and was done under an ordinance at the time. There also was an Eastgate District Ordinance as well. Uptown was developed as that. Uptown is four different buildings. One and two are mixed use. They are multifamily and the first floor in a portion of those buildings is commercial. They have frontage along Lincolnway. This project was geared towards student housing. In 2021, they requested to reduce the number of housing units in this project. They did this because of the change in circumstances. The University has had diminishing enrollment. The law school at VU has closed. Larry and his group have seen the Master Agreement with VU for student rental expired and not renewed. Leasing to students has declined. With some heavy lifting and cooperation with the City in 2021, Larry and his group received a variance from this body to change some of the student housing to marketplace and workforce housing. In doing so they reduced the number of bedrooms within Buildings 1 and 2 so that they were not 3- and 4-bedroom units. With this variance they were required to do certain things that resulted in an agreement for written commitments. That agreement required certain parking numbers. Those numbers were established to be 319 spaces. They did that with 171 on site. There are 77 on LaPorte Avenue and 13 spaces in Horizon for overnight parking. Tonight, they are asking to do the same thing in Building 3 as they did in Building 2. They want to convert the units to 1- and 2-bedroom units. In doing that, they will have an increase in the number of units in Building 3 by 12. Under the UDO, that requires them to find 18 more parking spaces. He can confidentially say the parking demand will go down, even though the ordinance requires them to provide more parking. The number of beds will go down from 95 to 83. The ordinance requires the number of parking spaces based on doorknobs and not beds. He suggested doorknobs don't drive, but the people who place their heads on those beds do. They are proposing an amendment that says they are required to have 337 parking spaces. With the cooperation of VU, they can acquire the northwest corner of LaPorte and Roosevelt. It is an existing parking lot that is exclusively for the university. Buying it gives them the potential for 59 new parking spaces. He feels his demand with a reduction in the demand and the increase in the number of spaces is a win win win situation for the community, Uptown East and the city. The variances have to do with the north and west property lines and setbacks. They have been able to increase the setbacks. They have been through site review. They are removing their request with storm water management requirements. They are working with the City Engineer on this, and are making sure they do it to his satisfaction. It is a difficult situation to explain, but he feels it is a win situation for everyone.

Larry Gough addressed the board. They have been working with staff. There is a modification to the plan that is presented tonight. The plan shows 53 parking spaces. He wants to put together a plan that is acceptable to him and staff. If the number is between 53 and 59, that is acceptable. They have worked through some of the development standard variances. They will continue to work with staff to come to a final plan.

Public Hearing

James Stan – 2501 Spyglass Drive. He owns 836 Lincolnway. Things keep changing. The stormwater variance has been removed. He does not want to end up with a flooded basement.

His main concern is the setback. He talked about what the setback is going to be. His sewer line runs from the back of his building through his parking lot through what he has as green space to the north side of their property. When he did his sewer 30 years ago, he put in new because he knew he was going to have a parking lot. What wasn't explained to him back then is that his sewer does not end there; it goes through their property and to LaPorte Avenue. He has talked with Larry about an easement. He would like to get that on record and recorded. He would like to make that a condition on any variance given. He discussed potential situations and having access to the end of his sewer. He would like any water aimed away from his property. He is not trying to be adversarial; he just does not want to be severely damaged. His involvement with this started with concrete pavement millings were at 54 Roosevelt; those piles have been there since the beginning of May. They fill up the whole lot; it is an eyesore. There are a lot of facts he does not know.

Matt Evans – 706 Washington. He is a broker in this process and an interested resident. He knows the parking issues that have been in this area. He feels this would be nice for the area. This should help address problems on LaPorte Avenue and consideration of things that can happen in that area for future development. He does not feel the requests are too far overreaching. He is glad to see the drainage issues have been addressed.

Vice President of Finance – Valparaiso University. They are supportive of these requests for the economic development of this area.

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

Rebuttal from Petitioner

Todd Leeth explained where Mr. Stan's property is located. They are aware there are two sewer lines (Mr. Stan's property and the corner property) that run from that area. They will deal with them and place them in an easement. They appreciate the support of VU tonight and Mr. Evans and his comments as well.

Larry Gough – They have met with all the neighbors. They have discussed the sewers and will get easements. The water will run through some retention ponds and catch basins before it goes to LaPorte Avenue.

Questions/Comments from the Board

Beth Shrader – She appreciates the effort made by the petitioner. The petitioner worked with staff to come up with a plan that nearly meets the development standards.

Attorney Patrick Lyp – There was a comment in public comments about the sewer line. The petitioner has said he will take care of this. He is not sure they want to put it as a condition of

approval. In regard to the request for an amendment, it basically cleans up language and makes it clear what is happening with this project.

Paul Reed – He asked about the parking lot.

Attorney Lyp - The drawing shows 53 spots, but actually it is not certain how many will be in there in the final rendition after working through final approvals with staff. After the first year of use as a parking lot, Traffic and Safety may want to make some changes to parking in the area.

Beth Shrader – With this request, the BZA would be establishing that 337 is the new required parking number and how that is made up is not as relevant to this board, but more relevant to Traffic & Safety and Board of Works that deal with parking along public streets.

Paul Reed – They would like to have two-way traffic on LaPorte. Will that allow parking on both sides? Another thing is the number of calls to our Police Department from these apartments.

MOTION: moved to approve UV23-002. Diane Worstell seconded the motion and so approved with a 5-0 roll call vote.

Roll Call Vote:

Paul Reed – Yes

James Bilder –Yes

Mark Ribordy – Yes

Diane Worstell – Yes

Kyle Yelton – Yes

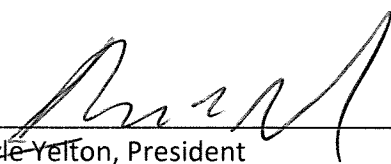
Other Business

ADJOURNMENT

Motion: James Bilder moved to adjourn the meeting. Diane Worstell seconded the motion and so approved with a 5-0 voice vote.

NEXT MEETING: August 16, 2023, 5:30 p.m.


Beth Shrader, Executive Secretary



Kyle Yelton, President
PAUL REED