

**THE AREA PLAN COMMISSION OF
ST. JOSEPH COUNTY, INDIANA**

MINUTES

March 15, 2022
3:30 p.m.

Council Chambers, 4th Floor
County-City Building, South Bend, IN

MEMBERS PRESENT:

Adam DeVon
Elizabeth J. McCombs
Dr. Jerry Thacker
Kirk Youell – Zoom attendance

MEMBERS ABSENT:

Robert Hawley
John R. McNamara, P.E., L.S.
James D. Moffitt

ALSO PRESENT:

Abby Wiles
Ryan D. Fellows
Shawn Klein – Zoom attendance
Mitch Heppenheimer, Counsel
Shelley Marker

PUBLIC HEARING - 3:30 P.M.

A. REZONINGS:

1. A proposed ordinance of DEVON DALE R & CHRISTINE K DEVON to zone from O/B: Office/Buffer District to O: Office District, property located at 17871 STATE ROAD 23 HWY and 17847 STATE ROAD 23 HWY, St. Joseph County - APC# 2970-22. *(Audio Position: 0:02:07.4)*

Mitch Heppenheimer: A record needs to be made about A.1.

Adam DeVon: I will need to recuse myself from this petition, as I did last month which means we only have four board members present to vote and we need members five present for a quorum.

Mitch Heppenheimer: Due to lack of quorum it will remain on the table until next month's meeting. No vote is needed.

2. A proposed ordinance of PENN TOWNSHIP to zone from R: Single Family District to I: Industrial District, property located at 13750 McKinley Hwy and unaddressed 1.41 acres abutting to the south, St. Joseph County - APC# 2971-22. *(Audio Position:0:03:58.2)*

Ryan Fellows: This property is just east of Capital Ave. on McKinley. The property to the north and west are Zoned I: Industrial, to the east it is Zoned C: Commercial, and to the south it is Zoned R: Residential. This is the old Penn Fire Station property. You may remember previously several months ago the Area Plan Commission rezoned a property that was further to the east. This is the old fire station, not the new fire station.

(Referring to the slide show), this is looking east along McKinley with the fire station on the right side and looking to the west. This is looking southeast where you can see the neighboring residential properties through the trees. Willow Creek runs along the southeast of this property; it is a county drain with an easement of 75' wide from the top of each bank. The site plan shows the existing layout. Any changes to the property would go through Commercial Plan review. At that time, the property will need to be brought into compliance with development standards of the Zoning Ordinance.

Based on the five criteria and state law including the area being shown as intended for industrial on the future land use maps, staff recommends that this rezoning petition be sent to the County Council with a favorable recommendation.

Adam DeVon: Do we have an issue with Dr. Thacker on this petition?

Dr. Thacker: The property is owned by PHM.

Ryan Fellows: The abutting property you mean?

Mitch Heppenheimer: This property is owned by Penn Township.

Ryan Fellows: The county records are showing that Penn Township is the owner of these two properties.

Mitch Heppenheimer: Is it the Township or PHM?

Dr. Thacker: The school corporation.

Mitch Heppenheimer: The school corporation owns the property?

Dr. Thacker: The vacant lot is owned by Penn Harris Madison Corporation.

Mitch Heppenheimer: Not Penn Township, it's the school corporation is the owner is what he is saying. Who is the owner of the property?

Stephen Studer: Penn Township; aAdjacent parcel to the east that is owned by the school corporation.

Adam DeVon: The property to the east, not the property that is being rezoned.

Stephen Studer: The subject property that for rezoning is owned by the township.

Mitch Heppenheimer: There is no disqualification.

PETITIONER

Stephen Studer, attorney with offices at 4101 Edison Lakes Parkway, Mishawaka, Indiana: With me this afternoon is Mike Danch with Danch, Harner and Associates. We are representing the petitioner who is Penn Township with respect to the subject property. In particular we are requesting a change in zoning from the former Penn Township fire station. As you know the new Penn Station was built just east of there on McKinley. Penn Township wants to sell the excess property and we are seeking a zoning change from residential to industrial.

As the staff has noted with respect to rezoning to industrial and supported by the Comprehensive Plan, the future land use plan and the related criteria concerned in rezoning. We recognize the existence of a Willow Creek that has a 75' setback. We also acknowledge the fact that if the potential buyer purchases the property they have to go through a commercial site development plan. We are not here representing the potential purchaser; we are here for only here representing Penn Township. We recognize the contingencies and the restrictions of the property. We are only seeking to rezone the property from residential to industrial.

I will say this Mr. Thacker that I understand the Penn Township Trustee had reached out but not sure that there was ever any communication between you. Your property township school property is to the east of this. I think Mr. Danch can show that on the site plan and answer any questions.

We do have a contingent purchaser and the purchaser is a electrical contractor. They has been working with Notre Dame for 25 years. They do alternative energy medium voltage. It is not a high impact user, not really industrial, but this gives flexibility if that purchaser doesn't buy. That gives us more flexibility to find another user. The Penn Township Trustee has asked us to zone this from residential to industrial.

IN FAVOR

(Audio portion: 0:10:39.0)

Linda Somous, 13705 Old Creek Court: Our property is divided with the stream. What if these people decide they don't want to be there and they sell it? It is industrial, could the next owner put in some type of industrial smoke belching business there? My question is the industrial portion of it. The other properties that were sold to the east of it was zoned commercial. Why is it industrial and not commercial?

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

Stephen Studer: There are three lots in a subdivision to the south of us that border the property. As the staff has noted again, we are only looking at the rezoning any use of the property would

have to go through a site plan a development plan with adequate screening and setbacks, etc. There is a 75' setback for Willow Creek. We know we need to retain the water onsite. Again, we are not representing the potential purchaser. In terms of why we are doing industrial, we want outside storage. So our choices would be to ask for a special use permit and go to the Council that way or do a rezoning. This makes it more flexible in terms of selling it. The storage would be trucks—whatever electrical contractors use, wire, etc. They are looking for outdoor storage; that is why we went with industrial.

After due consideration, the following action was taken:

Upon a motion by Elizabeth J. McCombs, being seconded by Phil Sutton and unanimously carried, a proposed ordinance of PENN TOWNSHIP to zone from R: Single Family District to I: Industrial District, property located at 13750 McKinley Hwy and unaddressed 1.41 acres abutting to the south, St. Joseph County, is sent to the County Council with a FAVORABLE recommendation. Rezoning is supported by the Comprehensive Plan for South Bend and St. Joseph County, Indiana (2002), Goal 2: Encourage the economic development of the County and its municipalities. Especially supported by Goal 2, Objective A: Ensure that suitable areas are available for future industrial development. The future land use map identifies this area as an industrial growth area.

Adam DeVon	Yes	Dr Jerry Thacker	Yes
Elizabeth McCombs	Yes	Ben Webb	Yes
Phil Sutton	Yes	Kirk Youell	Yes

3. A combined public hearing on a proposed ordinance of SONS PROPERTY HOLDINGS LLC to zone from R: Single Family District to C: Commercial District and seeking a Special Use to allow Contractor yard and offices with outdoor storage up to fifty percent of the gross lot area, and seeking the following variance(s): 1) From Section 154.440 required hard surfacing for off-street loading areas to compacted gravel
2) From Section 154.182(O)(3) required architectural standards for new construction to allow use of vertical and horizontal metal sidings with contracting patterns and wood-look siding at entry, property located at 56435 OAK RD and 56369 OAK RD, St. Joseph County - APC# 2972-22.

(Audio Position:0:15:58.8)

Ryan Fellows: The proposed rezoning area is north side of Western Ave (SR 2) along Oak Rd across from the road from Weller Auto Parts. The site plan shows the zoning lot which includes two parcels totaling 5.73 acres, more or less. The site plan shows a new building for a contractor with a gross floor area of 14,798 square feet. The service yard and off-street loading area is compacted gravel requiring a variance, which is part of this combined public hearing.

The petitioner is also seeking a variance from the required architectural standards for new construction to allow use of vertical and horizontal metal siding with contrasting patterns and wood look siding at entry, as shown on the south and east elevations here. Here is the south elevation at the top facing SR 2 and the east elevation is on the bottom which faces Oak Road.

This is a combined public hearing procedure which requires a rezoning, a special use, and two variances from the development standards. The Commission will forward the rezoning and the special use to the Council with a recommendation and either approve or deny the variances.

Based on the five rezoning criteria in state, law staff recommends that this rezoning petition be sent to the County Council with a favorable recommendation. The variances from the development standards are determined based on the three criteria in state law. First criteria, the approval will not be injurious to the public health, safety, morals, and general welfare of the community. Variance number one, use of gravel would allow dust in the area causing public health respiratory hazard and potentially a public safety hazard with decreased driver visibility. Gravel would also track onto the public road potentially causing a safety hazard.

Number two, the Zoning Ordinance requires all new primary buildings to comply with architectural regulations regarding building material and architectural features on each facade visible from a public street in order to create a variation and built environment.

Criteria number two, the use and value of the area adjacent to the property will not be affected in a substantial adverse matter manner. For variance number one, use of gravel would allow dust in the area causing a respiratory health hazard. Variance number two, not meeting architectural standards would decrease the quality of the built environment visible from the public right-of-way.

Criteria number three is strict application of the terms of the chapter would result in practical difficulty in the use of the property. For both variance one and two, this property is able to be used equally well as other properties in similar circumstances in the County.

A special use may only be granted upon making a written determination based upon the evidence presented at a public hearing. Staff review finds that due to the development standards including setbacks and landscape screening, these criteria will be met. Staff does recommend approval [of the special use].

PETITIONER

(Audio position: 0:21:38.4)

Chet Gamble, CT Associates, 823 Academy Road, Culver, Indiana: I prepared the drawings for the owner. It was well described what would be taking place by the staff.

I would like to make a couple of comments on the two variances that are requested. The first item would be the architectural sidings we showed the owner is concerned about having a very

nice-looking building and went around and looked at other buildings they liked. That has been what was presented a little more modern look as some of the other buildings going up around town with this “quote, industrial look” for the sidings. However, we can meet the strict application of rules and ordinance having a stucco appearance and/or a brick appearance material used on the building. With direction as to how we might revise the sidings that is required before the next hearing. This would be adequate and attractive, and the owner can meet that requirement.

The second item I would address would be the term of parking/drive area. Hope the drawing was not misleading. If you look at the site plan, you notice on the left or the west side there is a road going around the front that is dotted indicating gravel. On the left side, there is an area that projects out the building is not symmetrical, and it is 15'. The attention is the area that is shown in gravel is not used as a driveway or parking area. It is a contracting yard. You can see other yards around town and see that those are not paved. Construction contracting yards, yards and materials that can be stored for the contractors use. The owners are not asking for a variance to have gravel in the primary driveways of parking areas of the building. The gravel would be used in the contractor's yard which would be accessed in the morning by two or three pickup trucks. The function of the building is to provide commercial irrigation services to farms and large clients like that. The workers come in the morning, get their materials out of the shop. Some materials will be stored in the contractor's yard. The materials will be taken offsite for installation. So that yard is not a vehicle or a real drive parking area that yard is for material storage. However, the area underneath on the left that is a covered roof where there would be vehicle parked out of the weather. Electric plug-in vehicles or diesels that have the plug in. The owner could make that one left piece of the drive-in front between the gated area and the front to make that paved up to and in front of the area along side of the building where those vehicles would be parked. Any vehicles parked onsite would be the front area and area off of Oak Road paved, but the contractor yard itself is not paved.

In regards to the dust accumulated, I have had a few projects where we had the dust brought up and also had projects where we were asked to take out the hard surface asphalt and put in gravel for environmental purposes. Because the gravel does a better job of percolating instead of sheet draining, it reduces the size of the detention areas and sentiment from the hard surface that goes from the asphalt right into the detention retention basins in this example. There are some benefits that help counterbalance the use of gravel for the contractor's yard.

IN FAVOR

There was no one present to speak in favor of this petition.

REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

Adam DeVon: This is a combined public hearing we will need a couple of motions. One for the rezoning and Mitch are we doing a special use or are we doing a separate...

Mitch Heppenheimer: Because of the nature of the situation, we should do the two motions then vote on the two motions at one time. And then go to the variances.

Adam DeVon: We need a motion for the rezoning and a motion for the special use. We can vote on it combined, and a separate motion for each of the individual variances.

After due consideration, the following action was taken:

Upon a motion by Elizabeth J. McCombs, being seconded by Ben Webb and unanimously carried, a proposed ordinance of SONS PROPERTY HOLDINGS LLC to zone from R: Single Family District to C: Commercial District, property located at 56435 OAK RD and 56369 OAK RD, St. Joseph County, is sent to the County Council with a FAVORABLE recommendation. Rezoning is supported by the Comprehensive Plan for South Bend and St. Joseph County, Indiana (2002), Goal 2: Encourage the economic development of the County and its municipalities. Especially supported by Goal 2, Objective C: Develop quality business areas to meet the retail and service needs of the planning area.

Upon a motion by Elizabeth J. McCombs, being seconded by Ben Webb and unanimously carried, a Special Use for Contractor yard and offices with outdoor storage up to fifty percent of the gross lot area property located at 56435 OAK RD and 56369 OAK RD, St. Joseph County, is sent to the County Council with a FAVORABLE recommendation.

Adam DeVon	Yes	Dr Jerry Thacker	Yes
Elizabeth McCombs	Yes	Ben Webb	Yes
Phil Sutton	Yes	Kirk Youell	Yes

Adam DeVon: Motion for variance number one for the hard surface to allow for compacted gravel as presented.

Upon a motion by Elizabeth J. McCombs, being seconded by Ben Webb and unanimously carried, the variance(s) 1) From Section 154.440 required hard surfacing for off-street loading areas to compacted gravel and 2) From Section 154.182(O)(3) required architectural standards for new construction to allow use of vertical and horizontal metal sidings with contracting patterns and wood-look siding at entry property located at 56435 OAK RD and 56369 OAK RD, St. Joseph County, were\was approved.

Adam DeVon	Yes	Dr Jerry Thacker	Yes
------------	-----	------------------	-----

Elizabeth McCombs
Phil Sutton

Yes
Yes

Ben Webb Yes
Kirk Youell Yes

(Audio position: 0:30:27.0)

Adam DeVon: Now may we have a motion for variance number two from the architectural control standards?

Elizabeth McCombs: I make a motion to pass the architectural standards with a favorable recommendation.

Adam DeVon: Just to clarify, the standards state there needs to be 50% masonry or a couple of variances. They are asking not to do that.

Ryan Fellows: This would be final approval this is not something that will be forwarded to the Council. You make a final decision here.

Elizabeth McCombs: Do you need me to state that differently?

Adam DeVon: We are either approving or denying the variance. They are asking for a variance that they don't have to meet that requirement.

Elizabeth McCombs: I make a motion that we approve it.

Adam DeVon: We have a motion; do we have a second to approve the variance?

Ben Webb: How frequently do we approve variances like this?

Abby Wiles: You all as a board don't approve that many variances. You have combined hearings and there was one earlier this year. Have we had a recent architectural standards variance at the ABZA?

Ryan Fellows: Not since I have been here. I think Shawn might be present. Shawn, do you remember a architectural standards variance ever being granted?

Shawn Klein: No, I have not seen one in my time.

Abby Wiles: Part of it is when we have additions or like remodels, the standards are very loose versus when there is new construction, we have to require them.

Adam DeVon: On the residential side, typically the County or the City doesn't have many standards. Some do, some don't. This is commercial; it is a little different. Personally, I would be against any restrictive standards. The individual contractor or company should be able to make

their own judgment on what they want to use on their own buildings. That is my personal opinion.

Elizabeth McCombs: The way he spoke, I thought there would be a covered roof outside and if you encompass all that, that is a little bit different than just a building.

Abby Wiles: Just for clarification because you all don't see that many variances. Ryan, please go to the variances slide? Ryan threw a lot at you for the rezoning, the special use, and variances all together. It is a lot of state statute and legalese, but what we continually discuss with our ABZA, our zoning board members, is in order for a variance to be granted it has to meet three criteria. You hear Ryan month after month drone on about Comprehensive Plan and responsible growth and development. Those are the standards for a rezoning.

For a variance, it is will it be harmful to the public health, will the area adjacent be harmed, and a lot of times that is a "no and no". But the third is strict application to the terms of the chapter will result in a practical difficulty in the use of the property. So, is there something special about this site that warrants them not having to comply with the ordinance? Legally you have to make a determination that variances meet all three of these in order to grant approval. You can't say "you don't like it" you have to be able to meet all three criteria. If one of them is a "no" then the variance is denied per the state statute. However, if you feel the request meets all three, you'll approve the next month's written Findings of Fact that we write and you approve that speaks to each three criteria. Does that provide any clarity?

Mitch Heppenheimer: The staff is recommending that this variance not be granted, and the reason why is the standard says...

Abby Wiles: For new construction, there are two different options. All brick excluding windows display, door, window, fascia, soffit, provided that the brick use on each of the applicable façade shall include at least two architectural elements or two colors of brick. It's not all brick, so we move to the second option, which is the primary building material shall be either brick, stone, architectural precast concrete, etc. and shall constitute a minimum of 50% of each applicable façade. The brick section is not 50% of the façade.

Adam DeVon: That is only for the street facing, correct?

Mitch Heppenheimer: These are the standards that we have in place. They are asking not to follow that. Now you can see the difference between what they are proposing and what the standards says. That is for this variance.

(Audio position: 0:35:59.0)

The last variance that you approved, the staff didn't recommend approval. Had to do with a gravel situation there is reason for that as well. You voted on and we are not going to go backwards on that. I want you to make sure you understand totally what this is about.

The variances, you have the final say. The things you voted on before the rezoning, special use goes to the Council. You don't have final approval, but the variances you do. You have already taken one variance and approved it, allowing them to use a portion of the outdoor space for gravel, which was a variance from what we have as a standard. Now we are talking about what this looks like and materials that are being used for the new construction of the improvement.

Adam DeVon: That is only for the facades facing the streets, correct?

Abby Wiles: The language reads, on each façade visible from a public street. We have applied it to the south and the east elevations.

Adam DeVon: It would have to be all brick or 50% and they are asking for a variance of that.

Phil Sutton: We have a motion, don't we need to...?

Mitch Heppenheimer: The motion is to grant the variance.

Phil Sutton: Right, but nobody has seconded it.

Adam DeVon: Not yet, we are just clarifying it.

Mitch Heppenheimer: That is correct.

Adam DeVon: We have a motion, does anyone want to second the motion?

Phil Sutton: We need to second it to turn it down?

Mitch Heppenheimer: Or it dies for a lack of a second.

Adam DeVon: Does anyone want to second that motion that we grant approval of the variance?

Elizabeth McCombs: The motion dies due to lack of a second.

Adam DeVon: So the motion dies, do we have we have another motion?

Ben Webb: I would like to make it but not sure how to say it.

Mitch Heppenheimer: Tell us what you want.

Ben Webb: I say we stick with what the staff is proposed, deny the variance so they would meet the standards as expressed.

Upon a motion by Ben Webb, being seconded by Phil Sutton and carried, the variance(s)
1) From Section 154.440 required hard surfacing for off-street loading areas to compacted gravel and 2) From Section 154.182(O)(3) required architectural standards for new construction to allow use of vertical and horizontal metal sidings with contracting patterns and wood-look siding at entry property located at 56435 OAK RD and 56369 OAK RD, St. Joseph County, were/was approved.

Adam DeVon	No	Dr Jerry Thacker	Yes
Elizabeth McCombs	Yes	Ben Webb	Yes
Phil Sutton	Yes	Kirk Youell	Yes

ITEMS NOT REQUIRING A PUBLIC HEARING

(Audio position: 0:39:28.1)

1. Miscellaneous:

No items to review.

2. Executive Director's Report:

(Audio position: 0:39:37.4)

Abby Wiles: I apologize that the written report didn't make it into your packet for review. I will cover the highlights. We originally scheduled the first series of public meetings for the Comprehensive Plan at the beginning of this month. We accidentally scheduled one of those on Ash Wednesday, then made the decision to move them all back that way we can advertise them adequately. You all should of received notice of the public meetings. Shelley sent out a flyer to all board members ABZA, APC, RDC. They are coming up next week. March 23 is the first meeting that will be in the evening at 5:30 p.m. at the downtown branch library. Virtual meeting on March 29, in-person meeting over lunch at the downtown branch library, and evening meeting March 31 at the New Carlisle Olive Township Library.

In department news, we have a Code Enforcement program that we are working on launching. Ordinance were approved by the County Commissioners this morning. Enforcement will begin on those three new ordinance April 1st. Our Code Enforcement Inspectors have come on staff already.

3. Minutes:

(Audio position: 0:41:03.0)

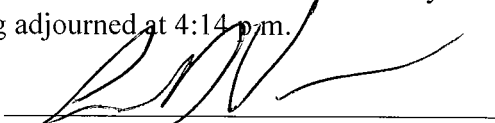
Upon a motion by Phil Sutton, being seconded by Elizabeth McCombs and unanimously carried to approve the minutes from January 18, 2022, Area Plan Commission meeting.

Upon a motion by Elizabeth McCombs, being seconded by Ben Webb and unanimously carried to approve the minutes from February 15, 2022, Area Plan Commission meeting.

4. Adjournment:

(Audio position: 0:42:10.8)

Upon a motion by Phil Sutton being seconded by Elizabeth McCombs and unanimously carried, the March 15, 2022, Area Plan Commission meeting adjourned at 4:14 p.m.



Adam DeVon,
President of the Commission



Abby Wiles,
Secretary of the Commission