

**CITY OF HOBART BOARD OF ZONING APPEALS
MINUTES OF MAY 5, 2022**

Stuart Allen called the meeting to order at 6:00 p.m. with the recitation of the Pledge of Allegiance followed by a moment of silence. Members in attendance: Stuart Allen, Ron Jackson, Jason Spain and Scott Gregory. Member absent: John Brezik. Also absent: Phil Gralik, City Engineer. Also in attendance: Ross Pietrzak, City Planner and Joy Respecke, Recording Secretary. Present via Zoom: Alex Olesker, Deputy Engineer.

Approval of Minutes: Mr. Gregory motioned to approve the minutes of March 3, 2022 as presented, seconded by Mr. Spain. All ayes, motion carried. (4-0)

Communications/Acceptance of Agenda: Mr. Pietrzak noted the Hobart Comprehensive Plan website is now active. It is the vision plan for the next 20 years. The Lakota Group created the website, www.hobart2040plan.com and mentioned the importance of public participation. Mr. Jackson motioned to approve the agenda as presented, seconded by Mr. Gregory. All ayes, motion carried. (4-0)

New Business

1. **22-05** Hamstra North Ridge LLC/John Fulkerson (Petitioner/Agent) 7860 E. Ridge Road located 0.21 miles west from the NW corner of Ridge Road & Hobart Road, Sec. 154.172, zoned B-3, 19.902 acres

Request: Public Hearing: Use Variance

Purpose: To allow a proposed massage therapy day spa

Favorable Rec. Unfavorable Rec. Deferred Vote 4-0

Present was John Fulkerson/Director of Leasing for the Hamstra Group, owner of the Hamstra Northridge, LLC, 12028 N 200 W, Wheatfield, IN 46392. Mr. Pietrzak noted the recommendation to the Common Council are based on the Findings of Fact. He mentioned the Findings of Fact as provided, read more as an appeal of administrative decision and would not stand up as approved. He stated that Mr. Fulkerson respectively challenged the use and was informed he could either file an Administrative Appeal of Mr. Pietrzak's determination or a Use Variance. The Use Variance was filed but the answers provided for the Findings of Fact challenged Mr. Pietrzak's position. He mentioned that if the Board motioned for a favorable recommendation to the Common Council, they will need to provide their own Findings of Fact. Mr. Fulkerson introduced the owners of Heavenly Handz Day Spa: Bernadette Munguia and Meghan Cervantes. Ms. Munguia stated they are relocating to a different location and were denied due to massage parlors were listed under adult entertainment and only permitted in an M-1 District. She felt they do not fit under this classification and are licensed as health and cosmetology business. The business has been in operation since 2004, they began working for the previous owner in 2010 and purchased the business five years ago. She stated they are a legitimate business. Mr. Fulkerson stated under Indiana Code 25-21.8-1-4, it classifies message therapy as a healthcare service involving the external manipulation of pressure of soft tissue for the purposes of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress and pain and improving circulation of the human body. He disagreed with the M-1 zoning use of Adult Entertainment Facilities & Uses. He also mentioned under the B-2 zoning uses it states physical cultures and health spas. He stated the top 100 health spas in the US, over 75% include physical & massage therapy. He feels this is totally unacceptable, the way it is being handled. Mr. Allen opened the public hearing for Petition 22-05. The following individuals were present, are clients and spoke in favor: *Shirley & Frederik Luna, 745*

Acadia Rd., Valparaiso; James Lough, 415 N. Delaware St. Hobart; Nadia Irizarry has been an employee for 2 years; Sonia Mauseth, 239 N. Liberty St.; Carole Carlson, 1467 Lincoln St.; Kathy Scheidt. Hearing no further public comments Mr. Allen closed the public hearing. Mr. Jackson acknowledged a petition containing 743 signatures and 8 pages of letters that were presented at the meeting, all in support. Mr. Jackson noted he has been a client for five years. Mr. Allen also noted his wife has been a client. The Board explained they have to follow the City's Zoning Codes and State Statute. Mr. Spain explained they follow State Statute when it pertains to the Findings of Fact and allowed Mr. Fulkerson to provide appropriate answers to the questions. Mr. Fulkerson continued to comment that the variance was totally unjustified and asked what he was supposed to answer to move the variance forward. Mr. Pietrzak mentioned that as the Board, they could define their own Findings of Fact and reiterated by saying not to accept the Findings of Fact Mr. Fulkerson provided as they would not stand up as justification. The Board discussed appropriate responses to the Findings of Fact questions. Mr. Jackson motioned for a Favorable Recommendation to the Common Council for Petition 22-05 including all discussion and the Board's revised Findings of Fact, seconded by Mr. Gregory. All ayes, motion carried. (4-0)

2. **22-06** Area Sheet Metal/David Leonard (Petitioner/Owner) 400 S. Sullivan Street located approx. 700' north from the NW corner of Sullivan Street & State Road 130, Sec. 154.225, zoned M-1, 4 acres +/-

Request: *Public Hearing:* Developmental Standards Variance

Purpose: To encroach into the 40' side yard setback by 12'2" for a proposed addition to the existing building

Approved X Denied Deferred Vote 4-0

Petition was heard with companion Petition 22-06A. Present was David Leonard, 856 Main Street, 942-7270. He mentioned setback variances and the site plan were previously approved last year for a proposed addition to his existing building. However, it was found that in order for the columns to align the addition had to move back creating more of an encroachment into the side and rear yards. Mr. Allen opened and closed the public hearing for Petitions 22-06 & 22-06A without public comments. Mr. Gregory motioned to Approve Petition 22-06 contingent on the Plan Commission approving site plan including all discussion and Findings of Fact, seconded by Mr. Jackson. All ayes, motion carried. (4-0)

3. **22-06A** Area Sheet Metal/David Leonard (Petitioner/Owner) 400 S. Sullivan Street located approx. 700' north from the NW corner of Sullivan Street & State Road 130, Sec. 154.226, zoned M-1, 4 acres +/-

Request: *Public Hearing:* Developmental Standards Variance

Purpose: To encroach into the 50' rear yard setback by 29'4" for a proposed addition to the existing building

Approved X Denied Deferred Vote 4-0

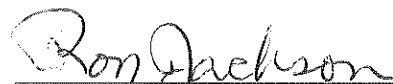
Mr. Gregory motioned to Approve Petition 22-06A contingent on the Plan Commission approving site plan including all discussion and Findings of Fact, seconded by Mr. Jackson. All ayes, motion carried. (4-0)

Consultation/Discussion: None

Hearing no further comments or discussion Mr. Jackson motioned to adjourn, seconded by Mr. Gregory. All ayes, motion carried. (4-0) Meeting adjourned at 6:50 p.m.



Stuart Allen, Chairman



Ron Jackson, Secretary