

The **Noblesville Board of Zoning Appeals** met on Monday, April 4, 2022. Members in attendance were as follows:

- Mike Field Chairman
- Dave Burtner Vice-Chairman
- Lauren Wahl Citizen Member
- Dan Mac Innis Citizen Member

Others in attendance included Senior Planner Denise Aschleman, Senior Planner David Hirschle, and City Attorney Mike Howard.

Chairman Field calls the meeting to order at 6:00 p.m.

APPROVAL OF MINUTES

Motion by Mr. Burtner, seconded by Mrs. Wahl, to approve the March 7, 2022 meeting minutes as presented. AYE: Burtner, Wahl, Field. ABSTAIN: Mac Innis. The motion carries 3-0-1.

APPROVAL OF FINDINGS OF FACT

Motion by Mr. Burtner, seconded by Mrs. Wahl, to approve the March 7, 2022 Findings of Fact as presented. AYE: Burtner, Wahl, Field. ABSTAIN: Mac Innis. The motion carries 3-0-1.

NEW BUSINESS

1. BZNA-0039-2022 / BZNA-0040-2022

- Location:** 10473 Riverwood Avenue
- Applicant:** Christina and Scott Sutton (Property Owners/Applicants)
- Description:**
 - a. UDO §9.B.2.C.3.c.: Variance of Development Standards application to allow reduction of a rear yard setback (40 feet required, 20 feet requested) in an R-1 (Low-Density Single-Family Residential) zoning district.
 - b. UDO §9.B.2.C.3.b.: Variance of Development Standards application to allow an increase in maximum building height for an accessory structure (20 feet allowed, 21.5 feet requested) in an R-1 (Low-Density Single-Family Residential) zoning district.
- Staff Contact:** David Hirschle

Mr. Field announces that this item must be continued for one month due to the applicant’s non-notification to surrounding property owners.

2. BZNA-0043-2022

- Location:** 2140 Greenfield Avenue
- Applicant:** Hassan Shanehsaz (Property Owner/Applicant)
- Description:** UDO § 4.D.2.: Appeal of a Decision of the Director that a previous Conditional Use approval to allow a place of worship would not allow the use of the property for an outpatient drug counseling facility.
- Staff Contact:** Denise Aschleman

Ms. Denise Aschleman states that the site in question is located west of State Road 37 on the north side of Greenfield Avenue. She states that the proposed use of the property is by an organization known as Hope and Recovery Center for a drug rehabilitation facility. She states that the applicant believes that because the organization is a not-for-profit, offering its services as part of what they call a ministry, the proposed use should be permitted under the 2001 Conditional Use granted for a Place of Worship at the site. She states that the applicant has

acknowledged in an e-mail that church services ceased at this location in July 2021. She states that the same e-mail related that outpatient care and rehabilitation services would be part of the services offered as part of the proposed use. She refers to the Director's determination, Exhibit 5 in the Staff Report, that the proposed use goes beyond those accessory uses traditionally seen in association with church facilities. She relates that the Director's determination asserts that the proposed use would fall under the Medical Office category in the UDO's Schedule of Uses. She states that the definitions of "Place of Worship" and "Office, Medical" have been included in the Staff Report. She relates Staff's opinion that the use of medical professionals in provision of services clearly places the proposed use in the category of Medical Office. She relates that the website for Hope and Recovery Center specifies the use of medical professionals in its operations. She continues, adding that a number of documents provided by the applicant indicate the proposed operation of a drug rehabilitation facility among the services. She states that, while there will be several descriptions among various persons as to what would constitute a ministry, Staff has to be consistent in the way it interprets the ordinance, and it believes that the simple fact that the organization is a 501(c)3 is not enough to establish the use as a ministry, based on the definition of that term in Webster's and the interpretation of that term by Staff. She points out that religious services are no longer held on the site, which weakens the assertion that the proposed operation is part of a ministry.

Ms. Aschleman states that Staff looked into how the organization was set up, and relates that persons serving in positions with the organization represent various professional fields, but there does not appear to be any connection with an existing local church. She states that the applicant took issue with the Director's determination that the proposed use would result in regularly-scheduled weekly appointments and staffing because there was no evidence presented to support that claim. She states that Staff reviewed similar uses in the city, those that provided both one-on-one counseling and group counseling, and determined that they had a regular traffic flow. She points out that approving the proposed use at the subject site would, if the use eventually ceased, allow an organization which had its primary use as an outpatient drug rehabilitation service to locate at the site. She states that very little detail has been provided to Staff about how the proposed operation would work, which does not allow Staff to determine that the applicant's assertion is correct when it is claimed that the use would be less intense than a church use.

Ms. Aschleman points out that a denial of the filed appeal does not prevent the applicant from seeking approval for the requested use at the subject site. She states that the applicant can still apply for either a Land Use Variance or a Rezoning, which, if approved, may allow the proposed use at the site. She provides Staff's recommendation to deny the appeal of the administrative decision and affirm the determination of the Director not to allow establishment of an out-patient drug counseling facility based upon the previous Conditional Use approval for the site.

Mr. Field asks Mr. Mike Howard, City Attorney, whether, since this is an appeal hearing, comment from the public is taken. Mr. Howard replies that, typically, public comment is not taken for appeals. He emphasizes that the decision made this evening by the Board is in no way a determination that this "is a good idea, a bad idea, a good idea for this site," only whether this proposed use fits into the definition of House of Worship. He states that the public does not have a right to speak tonight, but the Board may wish to give them that right. He adds that, if this is done, the Board should limit comment only to the relevant issue, and not allow comment on whether the proposed use is a good fit for the site or the organization is a good organization.

Mr. Field calls for the applicant to speak. Mr. Casey Cloyd, 1060 E. 86th Street, Indianapolis, attorney representing the applicant, States that Hope and Recovery Center, the applicant, is partnered with Chapel Church, the previous long-term tenant at the site. He states that the building is owned by Greenfield Avenue Properties, LLC. Mr. Field asks what the term "partnered with" means. Mr. Cloyd responds that, since this is a start-up operation, this is somewhat ill-defined, but adds that part of the services that the organization would provide would consist of religious and spiritual training, along with the medical counseling. He states that medical services are provided in the form of detoxification, but "principally we're providing counseling both that way and spiritually." He returns to the question of the partnership, stating that Chapel Church is still a tenant of the building and, while not presently conducting its church services in the building, "it plans to do so." He states that the church has a facility on Walnut Street that it

principally uses on Sunday. He adds that the building at the subject site is a 16,000-square-foot building that can house 400 congregants, so the church would eventually like to use the facility. He states that a second way that a partnership exists is that Chapel Church is working with Hope and Recovery and Miller Care Group, the medical provider, "to conceive of and execute all this."

Mr. Cloyd states that it is anticipated that a doctor would be on site one or two times a week, with one or two counselors providing service as needed. Mr. Field asks if this will be an in-patient facility. Mr. Cloyd responds, "It is not. It is an out-patient facility only." Mr. Field asks if there will ever be an occasion for a patient to be there overnight or late at night. Mr. Cloyd responds that it is not presently anticipated, that it is a counseling business to be conducted "essentially" during business hours. Mr. Field asks how detoxification services are to be provided if patients do not stay overnight. Mr. Cloyd responds that it is not the intent to put the patient in bed and monitor them 24/7. He states, "we think that we can have sufficient efficacy helping them detox by just simply giving them guidance and periodic face-to-face contact."

Mr. Cloyd states his belief that traffic will not be a problem, pointing out that the church used to have one hundred children in day care at the site, with 25 staff members, and does not anticipate patient levels would be as high. He provides his opinion that "we are running into the limit of the ability of the State and its police power to dictate our own religious practices." He states his belief that the State Constitution permits the proposed use as part of the ministry of the church, to be operated "unfettered." He refers to the previous Conditional Use for a church to be operated from the site, and states his belief that this allows a rehabilitation ministry to be operated as part of the church.

Mr. Field states that public comment will not be taken this evening, but there will be plenty of opportunity for public comment if the applicant takes steps to submit applications seeking allowance of the proposed use on the site.

Mr. Hassan Shanehsaz, representing Hope and Recovery, describes the creation of his organization as a 501(c)3, and the goal to provide rehabilitation services "in a reasonable manner." He states that the services proposed to be provided are in great need in the County, and describes an overdose case in which the patient could have been helped if the service was available. He states that there are two questions this evening, the first being whether government can dictate the ministry of a church, and the second being whether this is a church property.

Mr. Field states that the Board is not an elected body, but an appointed body. He states that overturning the UDO is not within the power of the Board. He states his opinion that the Director has made a good case that this is not strictly a religious use for this property, but is a medical facility that is not allowed in the zoning district in which the property is located. He adds that it is not a question of religious freedom or whether the use itself is a good idea or a bad idea, but "does the use fit the UDO?"

Motion by Mr. Field to deny the appeal of this administrative decision, affirm the decision of the Director not to allow the out-patient drug counseling facility to be established based upon approval of the previous Conditional Use for a Place of Worship and endorse the facts and conclusions listed in the Staff Report. Mr. Burtner seconds. AYE: Field, Burtner, Wahl, Mac Innis. The motion carries 4-0.

3. BZNA-0044-2022

Location:	637 Sheridan Road
Applicant:	Manitou Development Corporation (Property Owner); Hamilton County Board of Commissioners (Applicant)
Description:	UDO § 8.B.3.B. and Appendix C (Official Schedule of Uses): Variance of Land Use application to permit establishment of a residential facility for those escaping abusive situations, with attendant offices and counseling services, in an R-2/FH (Low- to Moderate-Density Single-Family Residential/Flood Hazard) zoning district.
Staff Contact:	David Hirschle

Mr. Howard recuses himself from this item.

Mr. David Hirschle states that the site in question is located on the south side of Sheridan Road, between River Road and Hague Road. He states that its zoning designation is R-1, but, generally, the western third of the property lies in a Flood Hazard zone. He states that properties east of River Road are commercially zoned, and Monterey Village subdivision lies on the north side of Sheridan Road.

Mr. Hirschle states that the proposal is to establish a facility providing services and residential accommodations for those escaping crime and abusive situations. He states that Prevail of Central Indiana would occupy the office and residential building, and adds that Prevail specializes in working with families, children, teens, and adults who have experienced trauma, with services including advocacy, safety planning, crisis response, and support groups. He states that Prevail offers schoolteacher training, court support, a 24-hour crisis line, and help finding housing, employment, food, and transportation.

Mr. Hirschle states that the site plan included in this report shows an approximately 20,000-square-foot building located about 280 feet from the Sheridan Road right-of-way, south of detention and parking. He states that the Board is not approving the specific site layout for this site, as the Technical Advisory Committee review has yet to occur. He reveals that there are six suites being planned for the clients' temporary residential use, the suites being similar to extended stay type suites, and, along with the required amenities such as the laundry room, they comprise 30% of the building's square footage.

Mr. Hirschle states that the Comprehensive Plan recommends the eastern-adjacent properties as "Infill Residential;" however, the Conditional Use granted for the self-storage facility to the east of the subject site in 2018 interrupts the contiguity of this recommendation and leaves the subject site isolated as a "Residential" recommendation.

Mr. Hirschle makes reference to a traffic study included in the Staff Report, and adds that the study, conducted by A&F Engineering, may give some idea of the traffic intensity associated with the proposed use. He states that the study was conducted to determine whether a right-turn lane and/or a left-turn lane into the site from Sheridan Road are warranted. He states that the use intensity is revealed by this statement: "Data provided by Prevail shows that, at most, during the PM peak hour, 69 vehicles will enter the site." He concludes by stating that this intensity led to A&F's recommendation that "a left-turn lane or passing blister be constructed along SR38 at the access drive location," but no right-turn lane (or deceleration lane) is recommended for installation by A&F.

Mr. Hirschle states that the strict application of the terms of the zoning ordinance would not allow the proposed use to be located at the site, but, as the UDO does not include this type of proposed use anywhere within the Official Schedule of Uses, a Land Use Variance would be needed to allow its establishment in ANY Noblesville zoning district. He adds that the City is not allowed to completely exclude any land use within its planning jurisdiction. He forwards Staff's recommendation for approval of the application with the conditions listed in the Staff Report.

Mrs. Wahl asks for clarification on the possible passing blister. Mr. Hirschle responds that the blister would be for northbound traffic.

Mr. C.J. Taylor, Director of Planning for Hamilton County, representing the Hamilton County Board of Commissioners and Manitou Development Corporation, presents himself for questions. Mr. Field refers to the five conditions in the Staff Report recommended to be added to an approval motion, if made. He asks Mr. Taylor if there are any objections to the conditions. Mr. Taylor responds that there is no objection.

Mr. Field opens the public hearing.

Gary Scalf, 630 Sheridan Road, Noblesville, comments on the traffic situation, alleging that traffic "is a mess out there" and "from 2:00 in the afternoon to 5:30, they're backed up all the way past the house beside me." He asks if the Board is going to let them "continue running with two lanes." Mr. Field responds that decisions on traffic improvements are not decisions that the Board can make.

Seeing no one else wishing to speak, Mr. Field closes the public hearing.

Motion by Mrs. Wahl to approve application BZNA-0044-2022 based on meeting the Findings of Fact and subject to the following conditions:

1. Improvements within the Sheridan Road right-of-way, in the form of a passing blister and/or accel/decel lane, following INDOT's requirements or allowances, shall be installed before the Certificate of Occupancy is issued for any new building on the site.
2. All lamps used for exterior illumination of the parking lot shall be a maximum of 3000K to assist with the cumulative, long-term, city-wide desire of reducing sky glare.
3. The use shall comply with the "Additional Standards for Non-Residential Uses" set forth in UDO Article 4, Part B, Section 6.
4. The Applicant shall sign the Acknowledgement of Variance document prepared by the Department of Planning and Development Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
5. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Department of Planning and Development prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

Mr. Burtner seconds. AYE: Wahl, Burtner, Field, Mac Innis. The motion carries 4-0.

MISCELLANEOUS

ADJOURNMENT

The meeting is adjourned at 6:38 p.m.

Mike Field, Chairman

Caleb P. Gutshall, Secretary