



City of Gahanna

200 South Hamilton Road
Gahanna, Ohio 43230

Meeting Minutes

Board of Zoning and Building Appeals

Lorne Eisen, Chair
Paul D. Bryson, Vice Chair
Ross Beckmann
Mike Burmeister
Obie Stillwell

Jeremy A. VanMeter, Clerk of Council

Thursday, January 18, 2024

6:30 PM

City Hall, Council Chambers

Organizational Meeting began at 6:30 p.m. Regular meeting immediately followed.

A. OATH OF OFFICE: Administered by Hon. Laurie A. Jadwin, Mayor

Michael Burmeister, Seat 3, 3-year term ending December 31, 2026
Obie Stillwell, Seat 4, 3-year term ending December 31, 2026

B. CALL TO ORDER (Organizational): Pledge of Allegiance & Roll Call

Mayor Laurie A. Jadwin, Chair, called the meeting to order at 6:31 p.m. The agenda was published on January 12, 2024. All members were present for the meeting. There were no additions or corrections to the agenda.

Present 5 - Ross Beckmann, Paul Bryson, Michael Burmeister, Lorne Eisen, and Obie Stillwell

C. ELECTION OF CHAIR:

Nominations

Mayor Jadwin opened the floor to nominations for chair.

Mr. Bryson nominated Mr. Eisen for chair. Mr. Eisen accepted the nomination.

There were no other nominations.

A motion was made by Beckmann, seconded by Stillwell, to close nominations and elect Lorne Eisen as chair for 2024. The motion carried by the following vote:

Yes: 5 - Beckmann, Bryson, Burmeister, Eisen and Stillwell

D. ELECTION OF VICE CHAIR:

Nominations

Chair Eisen opened the floor to nominations for Vice Chair.

Mr. Beckmann nominated Mr. Bryson for Vice Chair. Mr. Bryson accepted the nomination.

There were no other nominations.

A motion was made by Burmeister, seconded by Stillwell, to close nominations and elect Paul Bryson as vice chair for 2024.:

Yes: 5 - Beckmann, Bryson, Burmeister, Eisen and Stillwell

E. ADJOURNMENT OF ORGANIZATIONAL MEETING:

Chair Eisen adjourned the organizational meeting at 6:35 p.m.

A. CALL TO ORDER (Regular): Roll Call

Chair Eisen called the regular meeting to order at 6:35 p.m.

Present 5 - Ross Beckmann, Paul Bryson, Michael Burmeister, Lorne Eisen, and Obie Stillwell

B. ADDITIONS OR CORRECTIONS TO THE AGENDA:

None.

C. APPROVAL OF MINUTES:

[2024-0011](#)

BZBA Minutes 9.28.2023

A motion was made by Eisen, seconded by Bryson, that the Minutes be Approved. The motion carried by the following vote:

Yes: 3 - Beckmann, Bryson and Eisen

Abstain: 2 - Burmeister and Stillwell

D. ADMINISTERING THE OATH:

City Attorney Tamilarasan administered the Oath to all providing testimony for the proceedings.

E. APPEALS - PUBLIC HEARINGS:

[BZA-0002-2023](#)

To consider an appeal of Planning Commission's denial of V-0018-2023, a variance application to vary Sections 1165.09(a)(4)(B), 1165.09(a)(4)(C), and 1165.09(a)(4)(D) of the Codified Ordinances of the City of Gahanna; and denial of DR-0016-2023, a design review application for a monument sign for property located at 807 Havens Corners Rd.; Parcel ID: 025-003900; Current Zoning RID; St. Matthew Monument Sign; George Harvey, applicant.

Chair Eisen read the appeal title into the record and confirmed with the Clerk that all filings were complete.

Chair Eisen shared that there was a document that was not part of the board's actions or the board's information that BZBA was able to review before the meeting. Eisen asked City Attorney Tamilarasan if he needs a motion to accept the documentation. Tamilarasan said it would be at the time that they would accept all evidence. At this time, it would be open to the floor if there were any objections to considering this given the timing.

Eisen asked if there were any objections to the document. Appellee for the City, Matt Roth, said there is no objection. It is a standard Department of Transportation document.

Chair Eisen referred to the Rules of Procedure of Board of Zoning and Building Appeals the City of Gahanna, Ohio. The appellant and any interested party will be allowed a combined time of twenty-five minutes. Questions may be presented from the board as needed. Then, the appellee and any interested party are allotted twenty-five minutes. After, five minutes for the appellant for any further argument, rebuttal, or comments. The same will be allotted for the appellee. With that, Eisen turned it over to the appellants.

Deacon Christopher Walsh, an ordained Deacon in the Catholic church, and an attorney licensed to practice law in the State of Ohio. He respectfully requested that the board reverse the decision made previously and allow the church to present the sign as requested. In looking at the rules that the City of Gahanna has put forth, purpose of which is 1165.1. One of the things he thinks needs to be understood is that under Section A, it says, "this chapter is based on the premise that signs are subject to control as much as noise, odor, debris, and other similar characteristics of land use." He respectfully disagrees with that because signs are communication devices, and they are speech. Speech is protected by the Constitution of the United States under the First Amendment and that requires a different analysis on things such as noise, odor, debris, and other similar characteristics. They believe that the sign should be permitted because of the nature of the sign itself. It is

his understanding the primary objection and the objection that they would need the variance for is the ability to provide various messages. The church would like to provide four messages; at this point, it was a 30-second rotation. They are open to a longer rotation so long as it is not one per day. They have four organizations that would use a sign to present information to other interested people. For example, the church itself while Catholic is not restricted to Catholics. Any person who wishes to enter the church, use the church for prayer, contemplation, participate in mass without receiving the eucharist if you are not Catholic. Those things are open to everybody, and the church has other activities that are also open to the public. By having this message board, they can present messages to people who might be interested. The other organization is the school. The school itself is open to all; you do not have to be Catholic to become a school member. You do not even have to live in Gahanna; you can live anywhere you wish, and you can enter the school and become a student at the school. There is also the athletic department which has various sports activities. Those are also open to anyone you do not have to be a member of the Church. You do not have to be Catholic. You do not have to be Christian. You can be any person of the proper age and the proper sex to participate in sports. These are open to the public. The charitable works committee offers food to families throughout the area. Again, it is not restricted to Catholics, not restricted to Christians but open to all people that need financial or food help. The sign opportunity gives them the opportunity to help. Maybe they have family members or friends or neighbors, relatives who are in distress that they can come to St. Matthew at particular times, hours, and days and receive the help they need. By having the opportunity to have all four messages on a rotating basis they believe enhances the City of Gahanna, improves the environment in the City of Gahanna, and makes the City of Gahanna a more pleasant place to live. As far as the constitutional aspect of the restriction, they believe this is a content-based restriction. It is not content based because of anything that is being said. It is content based because they cannot have a rotation. The Supreme Court of the United States has noted that when it comes to an on-premises sign that those signs that are content-based have to survive strict scrutiny. Strict scrutiny requires that there be a compelling government interest that needs to be protected and also requires that it be narrowly tailored. The courts have also held that traffic safety which he knows is probably the one issue that the City of Gahanna would be concerned about with regard to rotational signs. Traffic safety does not meet the compelling government interest. That is in case law.

Board member Bryson asked Mr. Walsh if he understands that this is not a content neutral restriction because the content changes from moment to moment and if he understands that correctly. Mr. Walsh said that is

correct. Bryson asked if Walsh had any specific support for that in cases. It sounds unusual to him in that the restriction does not seem to have anything to do with what the content is but only in how frequently the content is displayed. Mr. Walsh said that the United States District Court, the Northern District of Ohio. It is *XXL of Ohio Incorporated v. City of Broadview Heights*. The case citation is 341 Federal Supplement Second 765. In that particular case, the restrictions did not deal with what was specifically on the sign. The restrictions dealt with the fact that there was information on the sign. Because there was information on the sign that makes it a content-based restriction and therefore it has to pass strict review. That is on page 789 to 790 of the of the case that he cited. The other things listed under 1165.01 he does not think apply to this sign. It is not an old sign; it is not dilapidated. It does not have anything to do with anything else listed. One of the issues under B says protect the public's right to receive information protected by the First Amendment of the United States. He would suggest that section 10 further supports their request by allowing a rotational sign. You are allowing the public to receive information that may be important to them. That would allow them to participate in activities at St Matthew. Walsh said there is a separate aspect of this case. It is a fairly new legislative enactment, and it is called the Religious Land Use and Institutionalized Persons Act. That can be found at 42 USC 2000cc. In that enactment by Congress, any entity that receives federal funding is prohibited from enacting restrictions on religious entities and institutionalized facilities that impede their religious rights. In this particular case what the section says it essentially adopts the strict scrutiny requirement the strict scrutiny again has to meet a compelling government interest and be narrowly tailored. He is assuming and can be corrected if he is wrong, that the City of Gahanna does receive federal funds in one shape or another. The code section that he cited does not specify the nature of the federal funding. It just says there has to be federal funding and since we have police officers here and we have fire departments, and we have other agencies for the City of Gahanna. He is going to assume, absent being corrected, that the City of Gahanna does receive federal funds of some nature or another.

Mr. Bryson said he wrote his law review article on Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). One of the things required under the RLUIPA for the strict scrutiny to apply is that it must substantially impair the free exercise somehow. He said Mr. Walsh might not have gotten that to that yet but he asked how these restrictions in Mr. Walsh's mind substantially impair that right. Mr. Walsh said it substantially impairs it because without the ability to present the messages that they would like to present, they do not have any other way to present those to the traveling public. They are not going to know about it. They believe that is a substantial impairment. This sign is along the

street. Anybody can see it driving along and if they live in the area that would give them an opportunity to participate in these activities. They do not know who lives in, who drives around, who is close or far. Without them being here, their location, their physical presence on the street in the vicinity of the church is an opportunity for them to see what they are presenting. They do not have any way to know who those people are. If they can't present the sign, then they are substantially impaired by presenting this information to those who may take advantage of it. Because that substantial requirement, that compelling government interest as he has indicated, is not found in traffic safety or in aesthetics or any of that type of thing which is primarily what was listed under section B. They believe that they have presented appropriate information, appropriate case law support and a basis upon for the board to reverse the decision. He asked that the board take these into consideration and consider how important it is for the City of Gahanna to allow people who travel through the City of Gahanna to see what kind of opportunities there are for them for worship for sports, education, and for financial assistance by allowing them to show this rotation. They are open to change, as it does not have to be 30 seconds. He thinks maybe even a minute rotation. They are willing to work with the City on the rotation time. They believe that it would be important to have a rotation so that people can see all the various opportunities available to them at St. Matthew. He thanked the board for their time.

Chair Eisen wanted to remind everyone that the variance they will be voting on later is for sections 1165.09(a)(4), (B), (C), and (D), which is the percent of the sign that is electronic versus not, the frequency of changing, and coloration of the electronic portion of the sign versus the background. There is nothing in the variance or those relative codified ordinance sections, and they are not going to be saying, that there is freedom of speech or what can be put on the sign. Instead, those are the three things that the board will be voting on.

Chair Eisen asked if any of the board members had questions for the appellant. Board member Beckmann said that the church has been on this property for 20 years. He asked how they have been conveying their messages to people in the area without the digital sign. Mr. Walsh said they have some semi-portable signs they have on the side of the driveway for their charitable works, monthly pancake breakfast and during election season if there's a pro-life initiative or something like that, they will have messages along the property. Other than that, they have not had an adequate way to present their opportunities to the public.

Board member Stillwell asked if there is any way to measure the effectiveness of what they are using now opposed to what they could use

in the future. Is there any effective measurement to let them know if their message is being successfully conveyed? Mr. Walsh said he is not sure that there would be a way to measure it since they can put multiple signs on the property at one time. They have a school; they put up signs for the school registration, open houses, and other activities. He does not think they can calculate that currently.

Board member Eisen said they mentioned the pancake breakfast once a month and they are putting out a temporary sign and maybe for a couple of other things. He asked if there has been any push back or notifications from the city that they had any objections to the temporary signs. Mr. Walsh said there has been no push back on the temporary signs. Mr. Walsh said their only concern is the frequency of messages. They think they can comply with the requirement of one color, a black background with white text. They can meet the requirements of the size of the sign. Mr. Walsh said the high school has a sign that does not comply with these restrictions, and he believes there is an exception in code for government entities. He would suggest that that does present a different problem for the City of Gahanna, an equal protection issue and more content based because they are a religious institution, and therefore have a high school that has a sign that does not meet the requirements. It also suggests that the City of Gahanna does not really believe that a rotating sign causes traffic concerns, or, he thinks, the city would have asked the high school not to present a rotating sign. Board member Bryson asked if Mr. Walsh knew how often the sign at the high school rotates. Mr. Walsh said as he drove past, he saw two different messages within 30 seconds.

Board member Stillwell asked if there was any difference in the setback of the sign that is in question that they are wanting and the sign that is at the school. Mr. Walsh said he thinks the school sign is setback a little bit farther. He does not know exactly how far it is. But it is still visible from the road, and he thinks that is the issue. If you can see it from the road and it is a distraction, it is a distraction. He understands the point Mr. Stillwell is trying to make and he would agree that it is farther back than their sign would be.

Board member Beckmann said they say they are willing to make concessions on the size of the electronic surface of the sign to meet the code requirement and forgo the multiple colors. Mr. Walsh said, yes, black and white is sufficient. Mr. Beckmann said in that case the only thing they would be arguing against would be the duration of the message changing. Mr. Walsh said that is correct, and they are open to a longer cycle if the board thought a longer cycle would be appropriate. He thinks at least a minute, but they are open to suggestions if it needs to be

a little longer than a minute. He thinks a minute should not be any more distracting than just what the sign being there would.

Board member Stillwell asked if they would be willing to match the setback where the school's sign is currently. Mr. Walsh said they are unable to because their building is too close to the road. They could push it back some, but he does not think they could push it back to where it be the same setback.

Board member Burmeister said the setback location was already approved and the height was already approved. Chair Eisen said it is not part of the appeal for tonight. It was already approved by Planning Commission. Mr. Burmeister asked if they have asked the sign manufacturer to provide a new rendering with the reduced percentage of the digital area to the rest of the sign. Mr. Walsh conferred with Mr. Harvey and said they would like a fifty percent as opposed to the one-third. Having fifty percent of the sign service be electronic verses one-third. They could produce a rendering at fifty percent.

Mr. Bryson said procedurally if they found in favor, they would still end up having to go back for the design review application. Mr. Walsh said he would think so. Chair Eisen asked the Clerk, should it go back through, who would that go back through, this board or Planning Commission? Mr. Walsh said perhaps the board could approve it pending approval of the final rendering. The board can say approved but with an option to disapprove if you don't like the rendering. You say you will approve it if the rendering itself is satisfactory and if you do not like the rendering then you disapprove it. He does not know if that is possible. Attorney Tamilarasan said one of the dispositions of appeal is that you may find in favor and amend with modifications. The board has the ability to do that here as far as their judgment today. Mr. Bryson said they would not have the design to approve based on a design review tonight. It would be pending or guessing at what the design would be. Tamilarasan said yes and added the other option would be to remand with instructions for Planning Commission to review the new design.

Tom Liskay, 457 Tresham Road, Gahanna. He moved to Gahanna in 1987 and has been a parishioner ever since. He is active at St. Matthews, and he was the one that produced the extract from the manual on uniform traffic control devices. They have everything on signs to include if we get hit with nuclear burst about maintain top speed while you are driving through this area. His reason for passing this out is that the recent manual published in December of last year is effective today, January 18, 2024. They have added more information on what they call CMS, Changeable Message Signs. The federal government and the

highway safety community realized that changeable message signs are very informative and appreciated by motorists. A lot of things have changed since we thought of electric signs, like you still see in front of a VFW, or American Legion, where they have the black plastic letters and the arrow pointing and talking about steak fry or fish fry or something like that. These signs are now on our highways; they are recognized as safe. We see them on 670 going back and forth. The State of Ohio just got in a little trouble over some cute sayings they were saying on those signs. The Feds told them to stop that. His sole purpose is to tell the board that changeable message signs are to pass on information for the driver. The person in the car will be looking at their sign and receiving the information that they want to give out. He said if you remember that unfortunate school shooting in Perry, Iowa, there was a still picture at the at the start of the incident. It said something like welcome back students because it was the start of their semester. Then, later he saw another still that said parents and the first three letters of the next word was c h e. He speculates that is check at the Methodist Church or the Catholic Church to reunite with your children. He continued, noting they have a school with over 600 children. Heaven forbid, he noted, if anything ever happened, but these changeable signs are the way the school would get the message out early to the traveling public.

Chair Eisen offered Mr. Roth an opportunity to speak. Mr. Roth began by saying Mr. Eisen pointed out something very crucial earlier. This is the Board of Zoning and Building Appeals. This is not a court that decides the constitutionality of ordinances. He thinks what the appellant is arguing is that a part of our electronic sign code is unconstitutional. This board is not empowered with making that decision. This board is empowered with hearing appeals of actions taken by the Planning Commission. The City of Gahanna does not impair free speech ever. The city does not impair religious speech. Courts have held that government entities can regulate the size and placement of signs. They can enact reasonable regulations as to the materials and appearance in those signs. Communities can say you can't have internally lit signs. That is different than saying you can't have any sign. The city is not telling the appellee they can't have a sign. The city is not telling them they can't have an electronic sign, nor telling them they can't have an electronic sign that rotates its message. All those things are allowed in city code. What this board is charged with tonight is an appeal regarding the size of the electronic sign, the number of colors in the electronic sign, and how often that electronic sign can change. When this application was heard in front of Planning Commission, the appellee came in and said they had this sign since, he doesn't remember if it is since the building was constructed or since there was a remodel. The sign is wooden, and it is decaying, it is falling apart they need to change it. They thought because of the need to change it, this

would be a good time to consolidate all of their temporary signs they put out for food pantry, Easter, and everything else into one sign that can change. It is a great plan. There were discussions at Planning Commission about how close this sign is to the right-of-way. He believes it is one-foot from the right-of-way and code requires 15-ft. The church explained that based on where the building is, how wide the road has become, and I think there's a storm drain or something in there that they cannot move the sign back. Planning Commission granted their variance for this the placement of the sign. It was also explained that the sign that they want to put in is almost exactly the size of the current sign. He thinks it is just maybe an inch or two bigger. Planning Commission said fine you can have that bigger sign because the electronic sign is a box, and their current sign is curved at the top. Those are the kinds of things that variances are for. The electronic sign code says you can have an electronic sign that is one-third the size of the total sign. So, one-third electronic and two-thirds standard sign. The sign that is presented before this board and what was presented to Planning Commission does not meet that requirement. He thinks it was explained during the Planning Commission meeting that the electronic signs come from the manufacturer with thousands of colors on board. They can do all kinds of amazing things with the LED signs. There was discussion at the Planning Commission meeting about how many colors. They have limited the school and Burger King to one color on a black background. They do not always comply; the city knows that. Because the signs are capable of much more, there was discussion about that. There was discussion about the number of times it rotates and when a car is going past in a 35-mph zone. They don't want to get multiple messages to every car, but they want to get multiple messages out more often than once a day. That is something that the city sign code does not allow. It is something that variance could grant them permission to do. What is important here for this board to know there are, and it was presented by Ms. Capka from the city, a number of criteria that are to be considered when granting a variance: practical difficulties complying with the code; the beneficial use of the property without a variance; whether the variance is substantial; whether granting the variance would alter the essential character of the area; whether the surrounding properties would be negatively affected; whether granting the variance would adversely affect government services; and whether the property owner knew of the restrictions when they purchased the property (he does not think that is applicable here); whether there are viable alternatives; would the spirit and intent of the zoning code be honored if the variance is granted; is the sign compatible with the character of the neighborhood, and whether there is a detriment to public safety. Those are the factors that Planning Commission had to consider and those are the factors that this board has to consider, nothing else. Nothing else was considered by Planning Commission.

There were no extraneous discussions about things that are not pertinent to code or to the factors that are required to grant a variance. During the Planning Commission meeting, Mr. Hicks said that he just felt that the factors for granting a variance were not met. Mr. Wester felt that the electronic sign was too close to the road and would be a distraction. Mr. Suriano stated in his comments that Mr. Hicks said it very well, that the conditions just were not met. When you look at the conditions that are in the code, you have to decide if the appellee met those requirements for this code. Mr. Roth would argue they have not, and that the Planning Commission's decision was the correct decision. This board, however, can have a different opinion on that. He does not feel on behalf of the City Planning Commission that the sign as presented would ever comply with those things, but if they had a restriction. What this is really coming down to is the one-third, two-thirds split between the electronic sign and the standard sign, and how often it rotates. He thinks this board could send it back to Planning Commission saying it is granting variances from those codes if they come in with a sign that says 60%, 40% and rotates once every 10 minutes. Something like that. That could then be honored if they come in with a sign like that. This board is to decide not whether the city ordinance is constitutional or not.

Chair Eisen said he read some of the notes from the Planning Commission and some of the things that city planner Maddie Capka did say, and the appellant brought this up also. The Hamilton Road corridor in the area of Kroger to Burger King to the high school is a little more congested. There are some different types of signs there, some are closer to the road, some are farther away in a much faster paced moving area. It was mentioned that the church is in more of a residential area. He asked was there any discussion that he didn't read or anything else from staff about that being a difference here. It was mentioned that there are some changes in the High School sign and others versus allowing it to happen here, slower speed and residential, a different kind of area than the heavy-duty Hamilton Road Corridor. Roth said yes, some of the Planning Commission members were on Planning Commission before the city even allowed electronic signs. There have been applications that were turned down both before and after. If he correctly remembers the discussion at Planning Commission, it dealt with there is a wooded area across the street, they are not going to bother anybody there. There is one house to the west that touches on the church property. To the east, there is a roadway and then a multi-family property. The sign is not visible from anything to the south of the church property. There were discussions about there is only one homeowner that is in proximity to the sign. He thinks there was more discussion about how close the sign is to the roadway, and he also recalls there was some discussion about this sign being set to automatically dim at night. So, it is not as distracting with a

bright light facing drivers or the residence to the west. There were no other questions from the board for Mr. Roth.

Chair Eisen will allow the appellant five minutes of any further comments or rebuttal. Mr. Walsh said the appellee's counsel is correct, that they are not required to consider constitutional issues that will be raised by this application. But, he would note, there are lots of case law in the US District Courts that deal with this exact issue, which means that when somebody does not receive what they believe to be a fair and just decision, they push it on up the line. He suggests that could very well happen here. He said the board is allowed to consider constitutional issues but is not required to. He reiterated that the Board certainly could consider them. He observed that it appeared the board had an attorney as one of its members, which in his mind was even a better benefit because the board could discuss with him his view of the Constitution and how that impacts the City of Gahanna. He would suggest that based on what counsel argued for the various criteria, it sounds like it is a matter of opinion. When he read the notes that were from the last commission, the variance discussion was commissioners said they did not feel that this would work. They did not feel this was right. He is not sure that is how we make decisions. We make decisions based on logic and reason. We look at the facts and we say does this make sense from a practical standpoint. Does this help the community? Does this benefit somebody? Not "I just do not feel like." It is a terrible answer. He would suggest they look at the facts, the fact that they have four organizations that will help this community, that will expand the opportunities for this community to participate in church, school, athletics, and in receiving the help they need when they are in financial straits. That is the issue that he would suggest the board to consider. He respectfully requested that the board grant the variance, even if the board wanted to take it under advisement as to the ratio of a sign. They can work with the board on that. He thinks fifty percent is fair but if forty percent works; they can work with the board. The color is not the issue. They will go black and white. He thinks that this is a perfectly reasonable opportunity for the board to take this case and show that the City of Gahanna wants its citizens and those driving through it to be welcomed, to be honored, and to be assisted when they need assistance.

Chair Eisen reminded the board that this will not be one vote tonight. There have been three variances requested for sections 1165.09(a)(4), (B), (C), and (D) and as Planning Commission did, they will be doing the same. As mentioned earlier by the City Attorney and in the Board of Building and Zoning Appeals Rules of Procedure, they will be voting individually on these items. The board has three options when it comes to the point of making a motion and then ultimately voting. The Board can

find in favor of the appellant or the appellee. The board can find in favor and amend with modifications, or the board can remand with instructions to Planning Commission. Chair Eisen explained for everybody in the room that they would vote on a motion in the positive so they would be voting for the motion to be in favor of the first, second, and third variance. Before the roll call happens, there is time allowed for discussion by board members. It is not an internal discussion amongst themselves. It is opinion and their final thoughts. Bryson clarified for a point of order there are three variance requests *and* the denial of the design review.

Eisen asked for a motion for 1165.09(a)(4)(B), the variance associated with the percentage of the electronic sign current code. It states that there is a maximum of thirty-three percent. What is currently asked and based on what was presented tonight may be different than that.

A motion was made by Beckmann to remand back to Planning Commission with a revised proposal since they said they were willing to alter the proposal to meet the existing code. Remand back to Planning Commission with that a redesign of the sign. Eisen asked if he was stating that for all variances or the first one. The first one is on the percentage of the sign. Eisen believes the offer was fifty percent and forty percent. Code is thirty-three percent.

Mr. Roth said if the board is going to grant with a percentage other than the thirty-three percent that is in the code, the board should state what percentage it is granted and then the applicant could come in with an application at that percentage instead of just remanding to come back with something. If Planning Commission gets it again, they are going to say the code is thirty-three percent. If you are granting a variance to something other than that, Planning Commission needs the amount. Eisen said he agrees with that. Bryson asked Beckmann if he wanted to shorten it, provide a revised motion. Beckmann said he is not prepared to say if he thinks fifty percent is the appropriate amount or not. He would say come back with a design that shows what it looks like at thirty-three percent as is already stated by the code. Bryson said then Beckmann's motion would be to find in favor of appellee, City of Gahanna, since you'd be saying deny the request for variance and keep it at what the city code says the thirty-three percent. Beckmann said yes.

Bryson seconded the motion.

Chair Eisen turned to the city attorney to make sure if they talk in any negatives that it is clear what they are voting. Their choice could be to vote on the appeal which is at a greater than thirty-three percent and those in favor would say yes and those that believe that it needs to be a lesser number would say no. Eisen wants to make sure that they are

stating this correctly and making it the clearest message from the board. Tamilarasan said yes, as the rules indicate and as you have indicated the motions must be made in the positive. That can be in favor of the appellee which would be the City of Gahanna Planning Commission, so the motion is proper. You would be voting yes or no to uphold the decision of Planning Commission which was to deny the variance. An affirmative answer of yes to this motion as pending on the floor would be to deny the Variance.

Discussion on the motion: Eisen said he is going to interject a thought here that really does apply to all three. He was a board member in 2019 when a case came up at Peace Lutheran Church. These items, the other items are not in question, and they were not at that time about right-of-way and height. He is not saying that this should sway the other board members in any way; it is a similar sign, a similar case. The motion of the Board of Building and Zoning Appeals at that time was modifications with the electronic sign to be one color, amber on a black background which is meeting 1165.09(a)(4)(D), one message daily which meets 1165.09(a)(4) in that it would not scroll or move. The only reason that they did not talk about 1165.09(a)(4)(B), which is the percentage of the sign, is because they did not come in asking for a larger portion of the sign to be electronic. They were going to use the rest of the sign for stagnant letters, and they had that opportunity whether there was one or more programs that the church had. That was their opportunity in the stagnant portion of the sign. Bryson said it was a pretty big sign. It needed a variance for height because it is big. It is close to the road, a third seems like enough. Burmeister, said it was granted to increase from 72 inches to 78 inches the last meeting which is a ten percent increase. To go from thirty-three to sixty-six does not seem necessary when you have already increased the sign ten percent in the vertical. You should be able to get your message across in thirty-three electronic percentage of the overall sign. When you have already increased the sign size already by ten percent.

Chair Eisen asked that the motion be read back. Clerk VanMeter said he has a motion by Beckmann, a second by Bryson with respect to 1165.09(a)(4)(B) to find in favor of the appellee upholding Planning Commission's denial of the variance.

A motion was made by Beckmann, seconded by Bryson, that with respect to the Appeal on the variance of Code Section 1165.09(a)(4)(B), the Board uphold the denial of the variance, Finding in Favor of the Appellee. The motion carried by the following vote:

Yes: 5 - Beckmann, Bryson, Burmeister, Eisen and Stillwell

Chair Eisen asked for a motion for the next appeal which is 1165.09(a)(4)(C), electric copy may not change more than once per day. They are

requesting to change every thirty seconds.

Burmeister said he is trying to think a way to verbalize the motion. Bryson said sometimes they end up putting it the best they can and fixing it when we figure out what they are really moving for. Eisen said they can get some assistance from the city attorney if needed to make sure that the official motion is worded properly so that the board is voting in the correct manner.

Motion by Burmeister, seconded by Bryson to amend with modification of no more than once per hour.

Discussion on the motion: Tamilarasan said that would be defined in favor of the appellant with modification to change it to once an hour. That would be a proper motion. Bryson said it would defeat the purpose of making a sign electronic. Because you could send somebody out there with letters and stick them up once per day.

Chair Eisen asked that the motion be read back. Clerk VanMeter said he has a motion by Burmeister and a second by Bryson with respect to 1165.09(a)(4)(C) to find in favor of the appellant with a modification of one time per hour.

A motion was made by Burmeister, seconded by Bryson, that with respect to the Appeal on the variance of Code Section 1165.09(a)(4)(C), the Board amend and modify the variance to the electronic message display changing not more than once per hour, Finding in Favor of the Appellant with modification. The motion carried by the following vote:

Yes: 4 - Beckmann, Bryson, Burmeister and Stillwell

No: 1 - Eisen

Chair Eisen asked for a motion for the next appeal which is 1165.09(a)(4)(D) which has to do with the color rendering. Code talks about colors for electronic portions of signs are limited to amber, white, or similar color for the lettering with only one background color. Background color is limited to black.

A motion was made by Bryson, seconded by Stillwell, that with respect to the Appeal on the variance of Code Section 1165.09(a)(4)(D), the Board uphold the denial of the variance, Finding in Favor of the Appellee.

Eisen said as a designer he appreciates what was done on the sign. However, he believes in accord with other signs including in the heavily trafficked Hamilton Road Corridor at the high school, the Burger King sign, those signs are single color with the black background, and he will be voting in favor of the appellee, Planning Commission's decision.

Chair Eisen asked that the motion be read back. Clerk VanMeter said he has a motion by Bryson, second by Stillwell with respect to 1165.09(a)(4) (D), to find in favor of the appellee upholding Planning Commission's denial of the variance.

A motion was made by Bryson, seconded by Stillwell, that with respect to the Appeal on the variance of Code Section 1165.09(a)(4)(D), the Board uphold the denial of the variance, Finding in Favor of the Appellee. The motion carried by the following vote:

Yes: 5 - Beckmann, Bryson, Burmeister, Eisen and Stillwell

Chair Eisen asked for a motion for the denial DR-0016-2023 a design review application for the monument sign. He directed his comments to Mr. Roth. They have voted on individual aspects of the sign. Now they are moving forward with the design review application. The implications of those decisions, based on the application, he asked how those two should be related just to make making sure that we are discussion and voting on that in a proper manner. Mr. Roth said that given the first and third votes that the board just had, the design that was presented is not in compliance. He does not know how the board could change the Planning Commission's non-approval of that sign, when two of the three factors are not present. Eisen said he wanted to make sure that everyone is clear what they are doing.

Chair Eisen asked for a motion on the denial of DR-0016-2023. Bryson asked for procedure clarification if there is a big difference or cost between approving the denial and coming back with another design application in light of finding in favor of the appellant on the middle part or remanding with instructions to kind of follow the other. Planning Director Michael Blackford said from a procedural standpoint, the cost of a design review application is \$200. There is fairly limited staff review that would have to go to Planning Commission. If this were denied, he would follow up with the applicant to have them file a new design review. That would have to be scheduled for Planning Commission. After they get all the revised material it might take anywhere from a month to two months before they would get back before a Planning Commission meeting. Bryson asked if Planning Commission had to look at a design review application that was amended, would that take about the same time? Blackford said Planning Commission historically makes their decision in one meeting. It would be about two months maybe from start to finish which would be filing of application and a decision by Planning Commission. Bryson said so there would not really be a benefit to anyone in saying remand it, have them do a new design review application and decide on that one in light of what the board has said here. That would not change anything for anybody? Director Blackford said he was not following the question. Eisen said they would like to see,

as they have voted on the three variances, what is in the best interest of the church, the best interest of the city, and the least cost. There is cost of an application, and cost of time and money. They want to do what is best for everybody and most economical still following all the Rules of Order. He requested to do what is best for everybody and save time and money for the city and for the church. Mr. Bryson said that is what he was aiming for. Mr. Roth said he conferred with Mr. Blackford and if he understands the thought correctly, if the board remanded it with these changes, the applicant can come in with a sign that complies with what the board has voted on tonight and go forward with the currently pending application without paying another \$200 fee, or have the church pay another \$200 for a whole new application. Mr. Roth said Mr. Blackford would prefer if it were just remanded, they can come in with a new design and they would not have to pay a new fee if it complies with what the board voted on. Mr. Eisen asked the members if that sounded reasonable. Mr. Roth said he does not see a reason to do a whole new application if they can take what they got from the board tonight and come in with a sign that complies with that.

Motion by Bryson to remand for decision on a decision on a design review application with a new design that complies with the variances that the board approved. Tamilarasan said the appropriate motion would be to remand to Planning Commission with instructions to allow an amended design review consistent with this body's findings.

Chair Eisen said they will accept Mr. Bryson's motion with clarity by the city attorney.

Motion by Bryson, seconded by Stillwell to remand to Planning Commission with instructions to allow an amended design review consistent with the BZBA findings.

Chair Eisen asked that the motion be read back. Clerk VanMeter said he has a motion by Bryson, second by Stillwell with respect to DR-0016-2023 remanding to the Planning Commission with instructions for an amended design review consistent with the BZBA findings this evening.

A motion was made by Bryson, seconded by Stillwell, that with respect to the Appeal of DR-0016-2023, the design review application be Remanded to Planning Commission with the instruction of considering an amended design review that is consistent with the Board's findings. The motion carried by the following vote:

Yes: 5 - Beckmann, Bryson, Burmeister, Eisen and Stillwell

F. POLL MEMBERS FOR COMMENT:

Chair Eisen welcomed aboard and again congratulated Mr. Stillwell and Mr. Burmeister for their appointments to the Board.

G. ADJOURNMENT:

With no further business before the board, the Chair announced the meeting adjourned at 7:43 p.m.

Jeremy A. VanMeter
Clerk of Council

APPROVED by the Board of Zoning and Building Appeals, this day of 2024.

Lorne Eisen

