

Pursuant to Executive Orders 20-04 and 20-08 issued by Governor Eric Holcomb in response to the COVID-19 pandemic, the BZA held a Public Hearing on August 10, 2020 by way of a conference call using GoToMeeting. The adjacent property owners were mailed a notice of the meeting with instructions on how to participate using GoToMeeting. An agenda was posted at the door and a link to the agenda was on the City of Berne website homepage. The legal notice was published on July 27, 2020 in the Berne Witness.

Members Present using GoToMeeting

Jerry Burke Present
Dave Burson **Absent**
Brent Lehman Present

John Kaeser Present
Linda Steury Present (at City Hall)
Tom Stuber Present (at City Hall)

Staff Present

Director, Shannon Smitley at City Hall
Board Attorney Dave Baumgartner using GoToMeeting

Present from the City of Berne using GoToMeeting

Gregg Sprunger, Mayor

Kurt Dailey, Work Force Manager

Guests Present at using GoToMeeting: From Et Cetera Ecke , Diane Schrock and from Bear Brothers Real Estate, LLC Justin Haines and Alex Subler.

Others Present Using GoToMeeting: From the Berne Witness, Clint Anderson and from WPGW/WZBD, Rob Weaver.

Linda Steury called the meeting to order and verified a quorum.

Public Hearing: Variance Request BZA 2020 -5 filed by Bear Brothers Real Estate, LLC (Alex Subler and Justin Haines) for their property located at 118 W. Main Street, Berne, IN 46711. The petitioners will be asking for a Variance to install a sidewalk four to five feet into Fulton Street Right-of-Way in order to utilize the existing sidewalk for an ADA ramp and to accommodate an outdoor seating area.

Linda reviewed the Variance request made by Bear Brothers Real Estate , LLC with the Board. They purchased the former Palmer House and our planning to open a new restaurant in the same location. In their application they are asking that the board allow them to use the Right-of-Way on the Fulton Street side of the sidewalk for an ADA ramp and a small outdoor seating area.

Alex Subler explained to the board that in preparing their State Design Release application, their architect advised them that if they were to make the main entrance on Main Street, they would lose a lot of their inside seating because the sidewalk is so narrow and the property line ends with the building itself. Alex reviewed the drawings of the plan that the BZA received prior to the hearing. Their architect further recommended that the ADA and main entrance use the old entryway off of Fulton Street and build their ADA ramp over the sidewalk, which is in the Right-of-Way. The plan for using Fulton Street sidewalk for the ADA ramp would eliminate several parking spots on the east side of the street. Their plan also includes an outdoor seating area.

Linda asked for additional comments from those attending using GoToMeeting. Jerry Burke asked how many parking spots will be lost and also if parking on the west side of Fulton Street will change and be an adverse effect on the side entrance to the Et Cetera Ecke. It was confirmed that parking on the west side of Fulton Street and the side entrance to Et Cetera Ecke will not be affected. Jerry also asked what the responsibility of the BZA is as to “No Parking” for those spots. Dave advised that hearing the request tonight is the first step in the process so the owners can submit their plans to the state. The elimination of parking spaces and use of a city sidewalk for the ramp and outdoor seating area would go to the Board of Public Works and Safety first but would ultimately need to go before council for approval.

Diane Schrock, Et Cetera Ecke, asked why there is a rush for the outdoor seating in the variance request since the plans are still preliminary. Dave advised that because the owners need to submit an application with the state, including the request for outdoor seating tonight, they can now make that request as part of their application and they will not have to submit an additional application. Diane stated that she appreciated the explanation.

When asked by Brent Lehman about the tuck pointing and the areas that look to be in bad shape, Justin responded that they would tuck point any brick that could pose a safety hazard. He also advised that they are also considering doing some art design painting on the outside of the brick as needed to further upgrade the look of the building, but they plan to bring back some of the historical aspects of the building as well. He stated that they are planning on exposing the old windows and entryway on Fulton Street side that have been bricked over.

Tom Stuber asked how safe the ramp and outdoor seating would be given the proximity to the street. He was advised that the ramp and seating would have the necessary barriers to meet all safety standards.

Comments from the Public None

After hearing all those wishing to be heard, Linda called for the reading of the Finding of the Facts .

The Board of Zoning Appeals of Berne, Indiana finds that:

1. Approval **will not** be injurious to the public health, safety, morals, and general welfare of the community because: ***Parking spaces on the west side of Fulton Street will remain the same.***
2. The use and value of the area adjacent to the property included in the Variance **will not** be affected in a substantially adverse manner because: ***Most of the parking and street access will remain on the street.***
3. The need for the Variance **does** arise from some condition peculiar to the property involved: ***not enough room to install an ADA ramp without using the Right-of-Way on Fulton Street.***
4. The applicant **did** establish that the strict application of the terms of the Zoning Ordinance constitute an unnecessary hardship if applied to the property for which the Variance Request is sought because: ***They cannot open their restaurant without an ADA compliant ramp.***

5. The petitioner **has** established that approval **does not** interfere substantially with the comprehensive plan of the City of Berne because: *Has and does not*
6. If granted, the board prescribes the following conditions: *None*

(DECISION)

Therefore, on a motion by Brent Lehman and a second by John Kaeser, the decision of the Board of Zoning Appeals unanimously approved the Variance Use request of BZA 2020-5 as stated in the Finding of the Facts. **Adopted this the 10th day of August 2020 by the following roll call vote 5 years -0 nays**

BERNE BOARD OF ZONING APPEALS

Jerry Burke aye
Linda Steury aye
Tom Stuber aye
*Dave Burson **Absent***
John Kaeser aye
Brent Lehman aye

REGULAR MEETING

Approval of Minutes. Tom Stuber made a motion to approve the minutes of July 27, 2020 and Brent Lehman made the second. The minutes were unanimously approved by the following Roll Call vote of 5 years 0 nays:

Jerry Burke	Aye	Tom Stuber	Aye
Dave Burson	Absent	Linda Steury	Aye
John Kaeser	Aye	Brent Lehman	Aye

Old Business- None

New Business- None

Closing of Meeting. On a motion by Tom Stuber and a second by John Kaeser the meeting was adjourned on a vote of 5-0

Respectfully Submitted,

BZA Secretary Dave Burson