



CITY OF FISHERS AGENDA

In accordance with the Americans with Disabilities Act (ADA), the City of Fishers will, upon request, provide appropriate aid (i.e. interpreters) and/or assistance leading to effective participation for people with disabilities. Anyone who requires such assistance should [email Kelly Lewark](#), Office Manager, no later than 48 hours before the scheduled event or call at (317) 595-3487.

The public may [stream the meeting online](#). Members of the public may [submit comments online](#).

BOARD/COMMISSION: Board of Zoning Appeals – Fishers Meeting

DATE: 1/24/2024, at 6:00 PM

DIRECTIONS: Launch Fishers, 12175 Visionary Way, Fishers, Indiana 46038

- 1. Call to order / Pledge of Allegiance**
- 2. Roll Call**
- 3. Approval of Previous Minutes**
 - a. 12-20-23
- 4. Election of Officers, Appointments, and Designations**
 - a. Election of Chairperson
 - b. Election of Vice-Chairperson
 - c. Appointment of Secretaries (Ross Hilleary, Gabrielle Herin, Christy Cashin, Kevin Martín)c. Appointment of Recording Secretary (Kay Prange and Kelly Lewark)
 - d. Designation of Plan Commission Legal Counsel (Krieg DeVault)
 - e. Designation of Commission Legal Publications (Noblesville Times, The Current, Hamilton County Reporter)
- 5. Public Hearings**

- a. 8958 E 96th Street Drive-Thru Variance

Parcel: 15-15-07-00-00-016.015

Address: 8958 E 96th Street

Case: VA-23-34

Request: Consideration of a Development Standard Variances. One from Section 2.C.2.a Preliminary Development Plan of the Lantern Pines Ordinance #090391A to allow a restaurant drive through within the Health Science Centre area of the PUD and a Land Use Variance from Section 5.4.8.D.2.b. Use Regulations of the City's Unified Development Ordinance (UDO) to allow drive-up window, exterior menu board, and speakers, associated with a restaurant or coffee house, within 400 feet of any building zoned or used for residential purposes.

Petitioner: Matthew Land (matt@wtb-lawyers.com)

6. New Business

- a. 2024 Rules and Procedures

7. Staff Communication

8. Board Signatures – Findings of Fact

9. Adjournment

**CITY OF FISHERS
BOARD OF ZONING APPEALS
MINUTES
LAUNCH FISHERS AUDITORIUM
December 20, 2023**

The Board of Zoning Appeals convened at 6:00 p.m.

A roll call was taken. Members present: Steve Ferrucci, Jeffrey Silvey, and Howard Stevenson. Greg Lannan and Tom Grinslade were not present.

Others present: Ross Hilleary, Rodney Retzner, Kay Prange, Tracy Gaynor, Gabrielle Herin, Christy Cashin, John Schneider, Mike McGuigan, Joe Logan, Logan Stevens, Robert Warstler

Mr. Ferrucci confirmed quorum and called the meeting to order. He noted that only 3 members were present. In that case, all decisions would have to be unanimous. Petitioners were given the option to continue and come back when all 5 members were present.

Mr. Ferrucci asked for a Motion for the approval of the previous minutes. Mr. Stevenson made a Motion to approve, seconded by Mr. Silvey. The Minutes were approved, 3-0.

Public Hearings:

a. **Biggby Coffee and Other Retail Lot Size Variance – THIS ITEM IS CONTINUED FROM OCTOBER**

Parcel: 13-15-12-00-00-029.001

Address: 10404 Olio Rd

Case: VA-23-30

Request: Consideration of a Development Standards Variance from Section 3.3.2.B of the City's Unified Development Ordinance (UDO) to reduce the minimum required lot area from 1 acre to 0.70 acres for a lot split for the development of a new Biggby Coffee location.

Petitioner: Logan Stevens (stevens@carsonllp.com)

Planner: Gabrielle Herin, Senior Planner (hering@fishers.in.us)

Logan Stevens, representing the Petitioner, presented the following:

The intent is to subdivide the property to the owner of Biggby Coffee.

- The Traffic Study shows no concerns. At the October hearing, there were lots of concerns about traffic.
- 30% of parcels zoned C2 are smaller than 1 acre
- He tried to schedule a meeting with Weatherstone residents. Received no response.
- The building is 3800 sq. ft.
- Stacking for the drive-thru is 11-12.
- The corridor plan for the ROW does not apply. Setback concerns- all requirements are met.
- Parking concerns are not applicable.

Gabrielle Herin presented the Staff Report. The alternative is a larger building. Biggby is 1200 sq. ft. and the other is 2500 sq. ft. **Staff is sending No Recommendation.** Mr. Ferrucci asked Mr. Stevens if widening is recommended by A & F.

Mr. Ferrucci opened the Public Hearing.

Rosalinda Tepner (10541 Stonegate)- She is representing the Weatherstone HOA. There is not a safe way to walk there. She is opposed to density, and it is inconsistent with the 2040 Plan. The front of the building is actually on 104th St. The original study reinforces Geist Shoppe's claim that parking isn't adequate. Don't approve as presented.

Robert Warstler – (the original developer of this project in 2010) said that it is not factual that parking at FC Tucker is prohibited.

Mr. Ferrucci closed the Public Hearing.

Mr. Ferrucci confirmed with Ross Hilleary that the parking plan meets our requirements. The additional 12" to widen the access road will come from the drive aisle off 104th. A sidewalk would then go to the front of the building.

VOTE #1:

Mr. Ferrucci asked for a Motion. Mr. Ferrucci made a Motion to approve, with the voluntary commitment to expand the drive aisle from 24' to 36' and to record the variance on the property. NO SECOND was made on the Motion. The Motion fails.

VOTE # 2:

Mr. Ferrucci asked for a Motion to deny. Mr. Stevenson made a Motion to DENY, seconded by Mr. Silvey. The Motion did not pass, 2-1. The Motion was not approved as the vote was not unanimous. The variance failed.

Next steps from Rodney Retzner: Since there was "no action" on the Variance, the Petitioner can withdraw the Petition and then repeat if he wants. He can then come back for hearing on the new petition once we have five (5) members and there he should get a decision.

b. Claudio Residence Setback Variance

Parcel: 13-16-07-00-05-007.000

Address: 15584 Provincial Ln

Case: VA-23-31

Request: Consideration of a Development Standards Variance from Section 2:Development Standards, The Grand subsection of The Boulders PUD to allow a side yard setback of 5 feet from 10 feet, and an aggregate setback of 36 feet from 40 feet.

Petitioner: Delaney McNichols (Delaney@nicholasdesignbuild.com)

Planner: Christy Cashin (cashinc@fishers.in.us)

Mike McGuigan of Nicholas Design Build presented the request for a year-round basketball facility in the home to look like a boat garage or additional vehicle garage. The request is to reduce the setbacks.

Christy Cashin presented the Staff Report. There are letters of support from neighbors and the HOA. Staff has no recommendation for the Board.

Mr. Ferrucci opened the Public Hearing. Seeing no one from the Public to speak, he closed the Public Hearing.

Mr. Stevenson confirmed that the Petitioner is agreeable to direction from Staff.

Mr. Ferrucci asked for a Motion. Mr. Silvey made a Motion to approve the recording of the variance on the property. The Motion was approved, 3-0.

c. Ratliff Residence Development Standards Variance

Parcel: 13-15-02-00-25-046.000

Address: 13553 Haven Cove Ln

Case: VA-23-32

Request: Consideration of three Development Standards Variances from Section 3.2.3 R2 Development Standards of the City's Unified Development Ordinance (UDO) to allow lot impervious coverage of 52% from 35%, and a variance from Architectural Design Standards, Section 6.3.4B.3.d. to allow a roof pitch 4/12 from 5/12, and a variance from Architectural Design Standards, Section 6.3.4.B.4.a to allow a front load garage to be set 4' in front of the front facade plane instead of setting back 4' from the front facade plane.

Petitioner: Joe Logan (joelogan2086@gmail.com)

Planner: Christy Cashin (cashinc@fishers.in.us)

Joe Logan presented the variance requests. Located in Cambridge on Geist in the Marina PUD. HOA has approved and there are 4 letters of support from neighbors.

1. Impervious surface at 52% rather than 35%.
2. Roof pitch
3. Front-load garage

Christy Cashin presented the Staff Report. Staff has no recommendation for the Board.

Mr. Ferrucci opened the Public Hearing. Seeing no one from the Public to speak, he closed the Public Hearing.
Mr. Ferrucci asked for a Motion for the Impervious surface variance. Mr. Stevenson made a Motion to approve, seconded by Mr. Silvey. The Motion was approved, 3-0.
Mr. Ferrucci asked for a Motion for the roof pitch variance. Mr. Stevenson made a Motion to approve, seconded by Mr. Silvey. The Motion was approved, 3-0.
Mr. Ferrucci asked for a Motion for the front-load garage variance. Mr. Stevenson made a Motion to approve, seconded by Mr. Silvey. The Motion was approved, 3-0.

d. Brooks Park Impervious Surface Variance

Address: 9817 Backstretch Row, Fishers, IN 46040

Case: VA-23-33

Request: Consideration of a Development Standards Variance from the Southeast Fishers Planned Development Ordinance #100305E, as amended to increase the maximum permitted lot coverage from 35% to 45% for 13 proposed single family homes of the Brooks Park Subdivision located at 9698 Winning Ticket Court, 9697 Winning Ticket Court, 9863 Win Star Way, 9876 Backstretch Row, 9856 Backstretch Row, 9836 Backstretch Row, 9798 Backstretch Row, 9758 Backstretch Row, 9777 Backstretch Row, 9817 Backstretch Row, 9857 Backstretch Row, 9877 Backstretch Row and 9917 Backstretch Row.

Petitioner: Amanda Deardorff of Fischer Homes of Indiana (adeardorff@fischerhomes.com)

Planner: Gabrielle Herin, Senior Planner (hering@fishers.in.us)

Amanda Deardorff presented the variance request for lot coverage from 35% to 45%. They are looking for direction on how to manage the 13 lots going forward.

Gabrielle Herin presented the Staff Report. There are 2 active permits. Two remonstrances have been received stating that the homes are disproportionate in size, the homes are too close. Staff has no recommendation.

Mr. Ferrucci opened the Public Hearing. Seeing no one from the Public to speak, he closed the Public Hearing.

Mr. Ferrucci asked for a Motion. Mr. Silvey made a Motion to approve, seconded by Mr. Stevenson. The Motion was approved, 3-0.

Adjournment As there was no other business, the meeting was adjourned at 7:10 p.m.

Respectfully Submitted by:

Kay Prange, Recording Secretary



OPTION 1 PARKING REMOVED	DATE:	DWG/REVISED BY:	
	01/05/24.	R.D.W	

VARIANCE PETITION

Address of Subject Property: 8958 E. 96th St. Fishers, IN 46037

Petitioner(s) Name: NOC Pine Creek LLC **Phone:** 317-296-5294

Address of Petitioner: 7520 E 88th Pl Indianapolis, IN **Zip Code:** 46256

Email: Matt@wtb-lawyers.com

Owner(s) Name: NOC Pine Creek LLC **Phone:** 317-296-5294

Address of Owner: 7520 E 88th Pl Indianapolis, IN **Zip Code:** 46256

Email: Matt@wtb-lawyers.com

Request is for: A variance of the Lantern Pines PUDM Use Restrictions and a Development Standards Variance, both of which are described with more particularly below.

Legal Description: See Exhibit A

Tax Parcel Numbers: Local: 15-15-07-00-00-016.015 State: 29-15-07-000-016.015-0

Acreage: 1.63 **Township(s):** Delaware

Current Primary Zoning Classification: PUDM – Lantern Pines

Existing Use of the Subject Property: Retail

Existing Improvements on the Subject Property: Single-story shopping center building

Description of the proposal. Petitioner requests the variances described below be granted so that the former Starbucks location (the suite located at the southern corner of the building) be eligible to install a drive through. Starbucks vacated the space because it had a corporate policy to close stores without drive-through accessibility. The petitioner has encountered difficulty in finding premium tenants for the space as a result of the lack of drive-through development permissions. Instead of adding a less-than desirable business to the area, petitioner seeks the variances detailed below.

Specific ordinance(s), standard(s), condition(s), commitment(s), and/or regulation(s) sought to be modified.

- A. **Section 2(C)(2)(a) and Section 2(C)(3)(c) of the Lanter Pines Ordinance #090391A Passed September 9, 1991:** These sections of the PUD Ordinance list the permitted uses. Each state that a restaurant is a permitted use within the PUD, but state that it is to be a restaurant with no take-out or drive-through. Petitioner respectfully request that this Use Restriction be waived. This will not result in a change to the character of the PUD as there already exist two other drive-through locations within the same PUD, a Dunkin' Donuts and a Starbucks.
- B. **Chapter 5.4.8(D)(2)(b) of the Fishers Unified Development Ordinance:** This code section requires that no menu boards or speakers be within 400 feet of a building zoned for residential purposes. In this instance the menu board and the speaker would be located at the southwest corner of the building. On a direct line passing through the building, this would put the speaker and menu board approximately 292 feet from the nearest building zoned residential. However, as is shown in Exhibit B the building structure will shield any light and deflect any noise away from the building zoned residential. Because the externalities sought to be mitigated by the 400-foot requirement will be reduced by the structure of the building itself, an allowance for a reduction in that distance requirement will not create a detrimental impact to the property values or the quiet enjoyment of those located in the building zoned residential. As such, Petitioner respectfully requests a development standard variance for Chapter 5.4.8(D)(2)(b) of the Fishers Unified Development Ordinance.

/s/ Chris Cunningham

Chris Cunningham, President of NOC
Marsh, LLC (*Petitioner and Owner*)

12/12/23

Date

Exhibit A

Legal Description

BLOCK 3 IN LANTERN CROSSING, AN ADDITION TO THE TOWN OF FISHERS, HAMILTON COUNTY, AS PER PLAT THEREOF RECORDED AUGUST 10, 1999 IN PLAT CABINET 2, SLIDE 298 AS INSTRUMENT NO. [9947030](#) IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

EXCEPTING THEREFROM THAT PART TAKEN IN APPROPRIATED IN CAUSE [29C01-1708-PL-007913](#) AND SHOWN IN CERTIFICATE FOR TRANSFER OF REAL ESTATE ON TAX RECORDS RECORDED JULY 27, 2018 AS DOCUMENT [2018034362](#), AND DESCRIBED AS FOLLOWS:

A PART OF BLOCK 3 OF LANTERN CROSSING, THE PLAT OF WHICH IS RECORDED AS INSTRUMENT NUMBER [9947030](#) IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT, MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS:

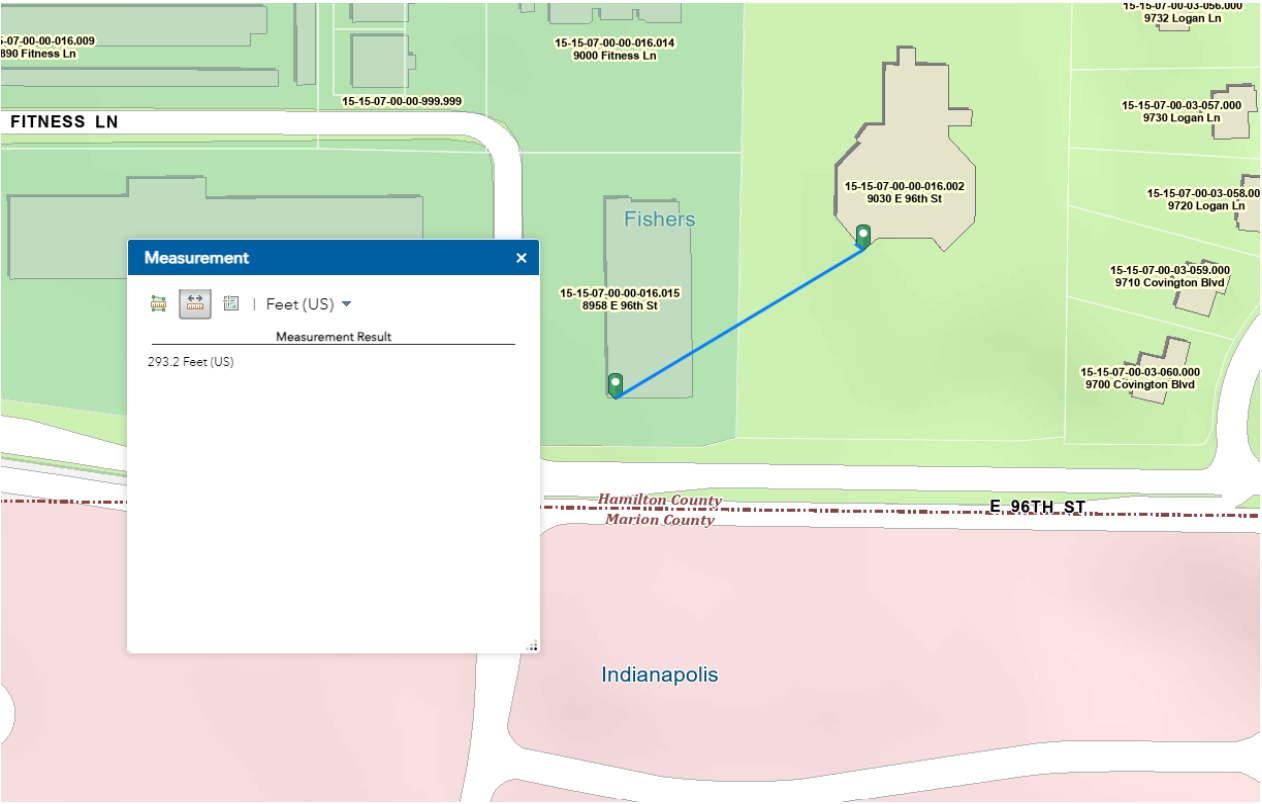
BEGINNING AT THE SOUTHWEST CORNER, OF SAID BLOCK THENCE NORTH 00 DEGREES 05 MINUTES 48 SECONDS EAST ALONG THE WEST LINE OF SAID BLOCK 15.00 FEET TO A POINT DESIGNATED "500" ON SAID PARCEL PLAT; THENCE SOUTH 89 DEGREES 12 MINUTES 10 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 195.16 FEET TO A POINT DESIGNATED "501" ON SAID PARCEL PLAT; THENCE NORTH 74 DEGREES 48 MINUTES 55 SECONDS EAST 36.32 FEET TO THE EAST LINE OF SAID BLOCK, MARKED BY A POINT DESIGNATED "502" ON SAID PARCEL PLAT; THENCE SOUTH 00 DEGREES 39 MINUTES 13 SECONDS WEST ALONG SAID EAST LINE 25.00 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK; THENCE NORTH 89 DEGREES 12 MINUTES 10 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 229.96 FEET TO THE POINT OF BEGINNING, CONTAINING 0.083 ACRES OF LAND, MORE OR LESS.

TOGETHER WITH THOSE NON-EXCLUSIVE EASEMENTS FOR ACCESS, UTILITIES, DRAINAGE AND SIGNAGE AS CREATED IN A DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS DATED JANUARY 13, 1995 AND RECORDED JANUARY 23, 1995 AS INSTRUMENT NO. [9502672](#) IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

ALSO TOGETHER WITH AN NON-EXCLUSIVE EASEMENT FOR DRAINAGE AS SET OUT IN A DRAINAGE AND CONSTRUCTION EASEMENT AGREEMENT DATED JUNE 25, 1995 AND RECORDED JULY 11, 1995 AS INSTRUMENT NO. [9542561](#) IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

Exhibit B

**GIS distance measurement to
nearest building zoned residential**





Board of Zoning Appeals Staff Report

Meeting Date: January 24, 2024

DEPARTMENT CONTACT:

Christy Cashin (cashinc@fishers.in.us)

CASE NUMBER:

VA-23-34

PETITIONER:

Matthew Land (matt@wtb-lawyers.com)

PROPERTY ADDRESS/LOCATION:

8958 E 96th Street

REQUEST: Consideration of a Development Standard Variances. One from Section 2.C.2.a Preliminary Development Plan of the Lantern Pines Ordinance #090391A to allow a restaurant drive through within the Health Science Centre area of the PUD and a Land Use Variance from Section 5.4.8.D.2.b. Use Regulations of the City's Unified Development Ordinance (UDO) to allow drive-up window, exterior menu board, and speakers, associated with a restaurant or coffee house, within 400 feet of any building zoned or used for residential purposes.

APPLICABLE REGULATIONS:

Lantern Pines Ordinance
#090391A and UDO

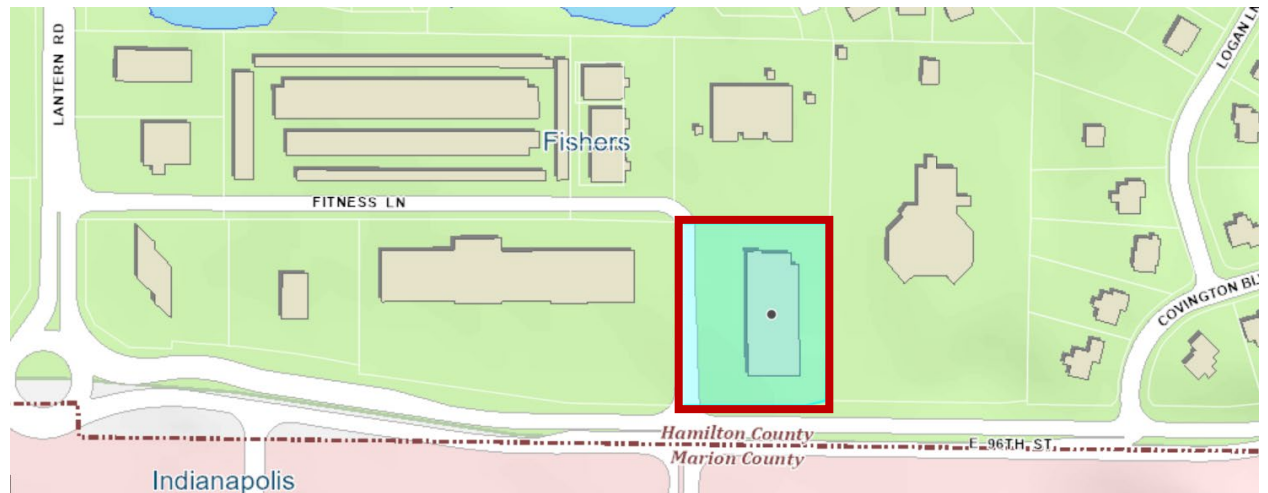
EXISTING ZONING:

PUDM – Lantern
Pines PUD

FISHERS 2040:

Regional Center

LOT SIZE: 1.63 Acres

LOCATION MAP**STAFF RECOMMENDATION**

☐ Approve

☐ Continue

☐ Deny

☒ No Recommendation

ZONING HISTORY:

The Lantern Pines PUD was established on September 18, 1991 (Ordinance 090391A). The Unified Development Ordinance (UDO) lists use regulations for restaurants (fast food/quick service) in Section 5.4.8.D.2.b.

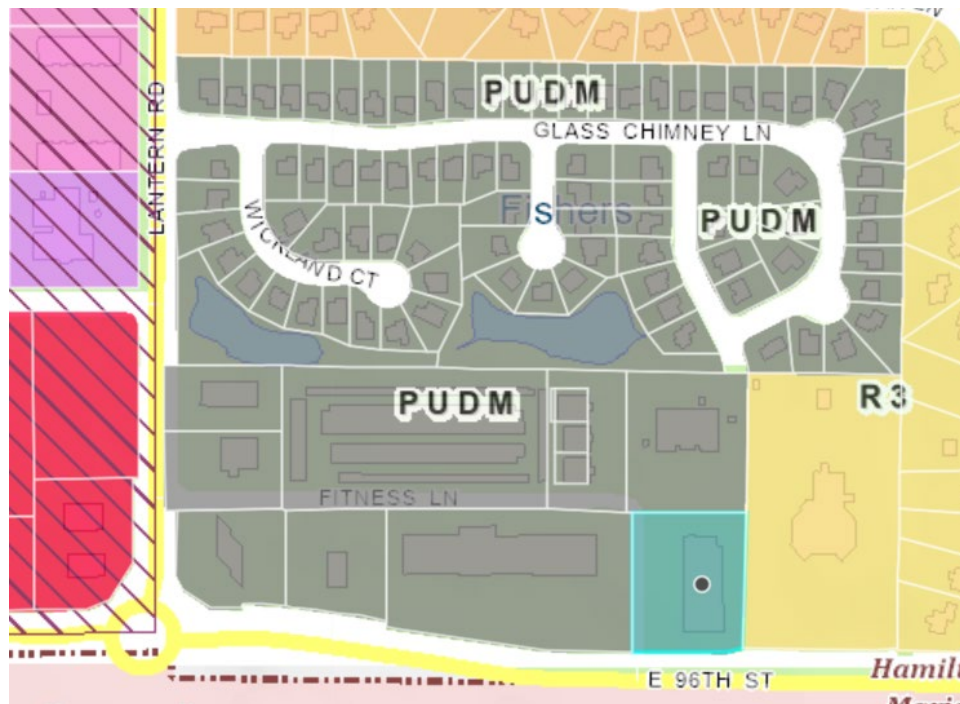
SURROUNDING ZONING & LAND USE:

North: PUD-M – Lantern Pines PUD

East: R-3 Residential District (place of worship is located adjacent to property)

South: Marion County (residential)

West: PUD-M – Lantern Pines PUD



SUMMARY OF PUBLIC COMMENTS:

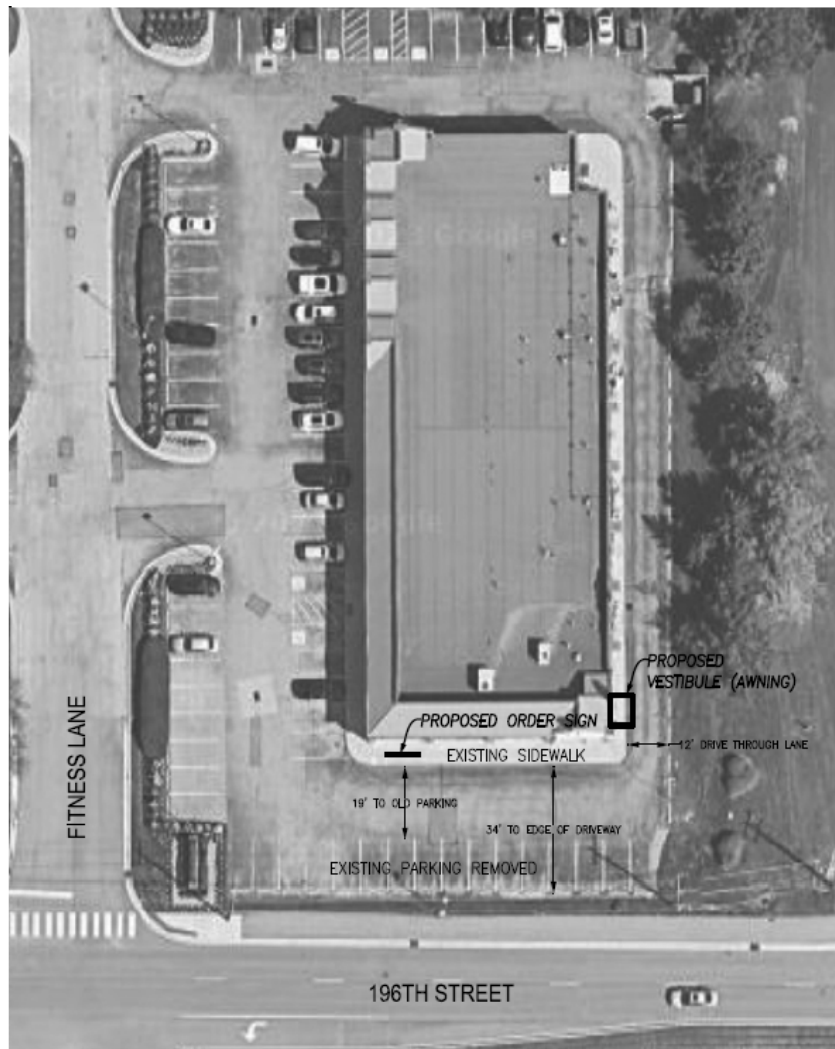
At the time of writing this staff report, no public comments were received.

PETITION OVERVIEW:

Summary of Request

The developer is requesting a Development Standards variance to allow a restaurant drive through and a Land Use Variance to allow a drive-up window, exterior menu board, and speakers, associated with a restaurant or coffee house, less than 400 feet from any building zoned or used for residential purposes.

Parking along 96th Street will need to be removed to allow room for a drive-thru stacking lane on the south side of the building; there would not be enough room to back out of parking spaces with a drive-thru lane in this space.



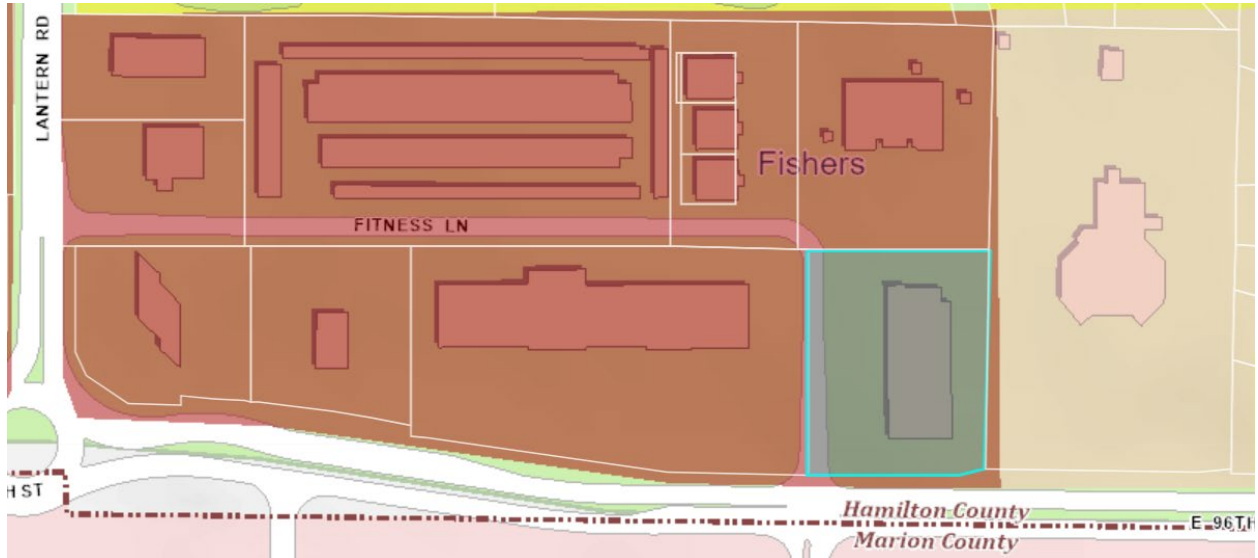
Site plan shows location of menu sign, drive-thru window and location of parking to be removed.



Proposed menu sign is 189 ft from residential zoning to the south and proposed drive-thru window is 222' from residential zoning to the east.

Fishers 2040

The Fishers 2040 Plan identifies this area as Regional Center. The variance request aligns with this vision.



STAFF RECOMMENDATION:

Staff has no recommendation for this request.

If the Board approves this Variance staff request the following conditions:

1. A single menu board is installed.
2. Landscaping is added along 96th Street.
3. The Approval Letter and relative documentation be recorded on the property with the Hamilton County Recorder's Office.

STAFF RECOMMENDATION

☐ Approve ☐ Continue ☐ Deny ☒ No Recommendation

**RULES AND PROCEDURES
-OF THE
FISHERS BOARD OF ZONING APPEALS**

February 28, 2024~~January 26,~~
~~2022~~

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ARTICLE I

GENERAL GOVERNING RULES

1. The City of Fishers Board of Zoning Appeals (hereinafter referred to as the Board) shall be governed by Indiana's Planning and Zoning Statutes, Ind. Code §36-7-4 et seq., as amended, the Unified Development Ordinance of the City of Fishers, as amended, and the Rules of Procedures set forth herein, as adopted and amended by the Board.
2. Any member of the Board who has a conflict of interest in a matter before the Board shall not vote thereon as defined under Article III.
3. Nothing herein shall be construed to give or grant to the Board the power of authority to alter or change the UDO, including all official zoning maps; this authority is reserved to the Common Council of the City of Fishers.
4. The Fishers Board of Zoning Appeals Attorney shall be consulted in cases where the powers of the Board are not clearly defined.
5. The office of the Board shall be located in the office of the City of Fishers, Planning & Zoning Department, One Municipal Drive, Fishers, Indiana, 46038-1574.

ARTICLE II

OFFICERS, MEMBERS AND DUTIES

1. The Board shall elect a Chair and Vice Chair (who shall be acting in the absence of the Chair) annually at its first meeting of each year.
2. In the case of death or resignation of the Chair, the Vice Chair shall succeed to the Chair and a new Vice Chair shall be selected from the membership.
3. A temporary Chair shall be elected in case both Chair and Vice Chair are absent.
4. The Chair (or in his/her absence the Vice Chair) shall preside at all meetings and hearings of the Board and decide all points of order and procedure. The Board may provide for an oath to be administered to all witnesses in cases before the Board.
5. The Department of Planning and Zoning of the City of Fishers shall serve as the office of the Board. The Secretary of the Board shall be appointed at the beginning of each calendar year. The Secretary shall conduct all correspondence of the Board. A Recording Secretary shall also be appointed at the beginning of each calendar year. The Recording Secretary shall be responsible to keep minutes recording attendance, the vote of each member upon each question, or, if absent or failing to vote, indicating such fact; and records of examinations and hearing and other official actions; and shall carry other official duties as may be assigned by the Board. Records and minutes of all such procedures shall be filed in the office of the Board.
6. The Board shall consist of five (5) members, appointed in accordance with the statutes governing such appointments.
7. The jurisdiction of the Board shall be the territory within the corporate boundaries of the City of Fishers as from time to time extended by annexation. The Board shall also exercise jurisdiction two (2) miles outside of its corporate boundaries pursuant to IC 36- 7-4-205 or under an interlocal agreement with another municipality pursuant to IC 36-7- 4-1208.
8. Major responsibilities of the Board are:
 - a. To render a decision on variances of development standards.
 - b. To render a decision on a variances of use.
 - c. To render a decision on a special exceptions.

- d. To render a decision on appeals of an Administrative Determination of the City of Fishers, Department of Planning & Zoning on matters arising from the exercise of Powers within its jurisdiction.

ARTICLE III

MEETINGS

1. The regular meeting of the Board shall be held monthly at a standard meeting date established at ~~the~~ regular ~~November~~ meeting. The Board will designate the standard meeting dates and times from January to the following January. From time to time these regular meeting dates may be modified. Such modifications shall be determined with as much advanced notice as reasonably practical. Meetings will be held at 6:00 p.m., in the ~~Fishers Municipal Center~~~~City Hall~~, or at such other place as will accommodate the public unless there is no cause for holding such meeting. If there is to be no regular meeting, the Secretary shall make every effort to inform the members of the Board at least 48 hours in advance.
2. Special meetings may be called by the Chair, by written request of two (2) members, or as determined at a regular meeting provided at least 48 hours' notice of such meeting is given to each member. Only matters included in the call for special meeting shall be considered except by unanimous approval of all members of the Board.
3. A quorum shall consist of a majority of the appointed members of the Board. No action shall be taken by less than a quorum of the Board. Such public hearings shall be continued until a quorum is present.
4. Each case to be publicly heard before the Board shall be filed in proper form by the required date set by the Planning & Zoning Department and shall be numbered serially and placed on the agenda of the Board by the Secretary. The case numbers shall begin anew on January 1 of each year. As soon as the case receives a number, it shall be placed on the agenda of the Board and a date set for hearing by the Secretary. Cases shall come before the Board in the regular order of their consecutive numbers unless otherwise directed by the Board.
5. Conflict of Interest. No member of the Board shall be qualified to hear or vote upon a petition or appeal in which they are directly or indirectly interested in a personal or financial way. Further, no member of the Board shall hear or vote upon a petition or appeal in which they are biased or prejudiced or otherwise unable to be impartial. Board members are required to fully disclose any conflict of interest as defined herein on any matter appearing on the Board's agenda during its public meeting. The Secretary of the Board shall note in the minutes that a member has been disqualified for a conflict of interest. When a member is recused in a particular matter due to a conflict of interest, they may exit the room for that item of business.

6. Conduct of Meetings. All meetings shall be open to the public. The Chair or, in his/her absence, the Vice Chair may administer oaths or compel the attendance of witnesses. The order of business at meetings shall be as follows:
 - a. Call to order/Pledge of Allegiance
 - b. Swearing in of new member(s) (when appropriate)
 - c. Roll Call
 - d. Election of Officers (when appropriate)
 - e. Appointments (when appropriate)
 - f. Approval of Previous Minutes
 - g. Public Hearings
 - h. Old Business
 - i. New Business
 - j. Staff Communications
 - k. Board Signatures - Findings of Fact
 - l. Adjournment
7. Adjourned Meetings. The Board may adjourn a regular meeting if all business cannot be disposed of on the day set, and no further public notice shall be necessary for such a meeting if the time and place of its resumption is stated at the time of adjournment and is not changed after adjournment.
8. **Continuances** may be granted at the discretion of the Board in any case for good cause shown, as follows:
 - a. New cases appearing for the first time on the agenda--continuances may be granted upon request.
 - b. Continued cases. All cases which have previously appeared on the agenda of the Board constitute continued cases. A request for the further continuance of a case may be granted by the Board for any of the following reasons:
 - i. At the request of a Petitioner because they will be unable to proceed with their evidence at this hearing to allow time to answer questions or modify ~~petition~~the petition.
 - ii. At request of staff to allow time for research or modification to the Petition.

9. **Failure of petitioner to appear:**

- a. The Chair may entertain a motion from the Board to dismiss the case for failure of the petitioner to appear. In the absence of a motion by the Board, the Petition shall be continued to the next regular meeting.
- b. In cases which are dismissed for failure of the Petitioner to appear, the Petitioner will be furnished written notice by the Secretary of the Board.
- c. The Petitioner shall have 30 days from the date of the notice of dismissal to apply for reinstatement of the case. In such cases, the Petitioner must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chair for good cause shown, and upon payment of the appropriate fee by the Petitioner.
- d. In all cases reinstated in the above-described manner, the case will be docketed and readvertised in the usual manner prescribed for new cases.

10. No matter requiring a vote will be placed upon the regular meeting agenda unless received by the Secretary or designee by the deadline set by the Planning & Zoning Department. Items may be added to the agenda at any regular meeting if agreed to through a majority vote of the Board.

11. The Board shall continue any case(s) that are not called onto the floor by 10:30 pm. Such cases shall be continued to either the next regular meeting or to a special meeting. The Board shall adjourn the meeting no later than 11:30 pm. This rule can be suspended by simple majority vote.

12. **Electronic Participation Policy:**

- a. The provisions of P.L. 88-2021 (HEA 1437) (the "Act"), including definitions, are hereby incorporated into this Policy, per IC 5-14-1.5-3.5.
- b. Subject to the following sections, any member may participate in a meeting by any electronic means of communication that: (i) allows all participating members of the governing body to simultaneously communicate with each other; and (ii) allows the public to simultaneously attend and observe the meeting.
- c. A member who participates by an electronic means of communication: (i) shall be considered present for purposes of establishing a quorum; and may participate in final action only if the member can be seen and heard.
- d. All votes taken during a meeting at which at least one (1) member participates by an electronic means of communication must be taken by roll call vote.

- e. A member who participates by an electronic means of communication shall strive to notify the Secretary at least 48 hours in advance of the meeting, unless emergency circumstances dictate otherwise.
- f. Restrictions:
 - i. At least fifty percent (50%) of the members must be physically present at a meeting at which a member will participate by means of electronic communication. Not more than fifty percent (50%) of the members may participate by an electronic means of communication at that same meeting.
 - ii. A member may not attend more than a fifty percent (50%) of the meetings in a calendar year by an electronic means of communication, unless the member's electronic participation is due to:
 - 1. military service;
 - 2. illness or other medical condition;
 - 3. death of a relative; or
 - 4. an emergency involving actual or threatened injury to persons or property.
 - iii. A member may attend two (2) consecutive meetings (a "Set") by electronic communication. A member must attend in person at least one (1) meeting between a Set that the member attends by electronic communication, unless the member's absence is due to:
 - 1. military service;
 - 2. illness or other medical condition;
 - 3. death of a relative; or
 - 4. an emergency involving actual or threatened injury to persons or property.
- g. Minutes/Memoranda: The minutes or memoranda of a meeting at which any member participates by electronic means of communication must:
 - i. Identify each member who:
 - 1. was physically present at the meeting;
 - 2. participated in the meeting by electronic means of communication; and
 - 3. was absent; and
 - ii. identify the electronic means of communication by which:
 - 1. members participated in the meeting; and

2. members of the public attended and observed the meeting.
- h. Declaration of Emergency: If an emergency is declared by (i) the governor under Ind. Code§ 10-14-3-12; or (ii) the mayor under Ind. Code §10-14-3-29; members are not required to be physically present for a meeting until the emergency is terminated. Members may participate in a meeting by any means of communication provided that:
 - i. At least a quorum of the members participate in the meeting by means of electronic communication or in person.
 - ii. The public may simultaneously attend and observe the meeting.
 - iii. The minutes or memoranda of the meeting must comply with the above section.
 - iv. All votes taken during a meeting at which at least one member participates by an electronic means of communication must be taken by roll call vote.

ARTICLE IV

VACANCIES

The Chair shall inform the appropriate appointing official as promptly as possible when a member fails to attend three consecutive meetings or three of any seven meetings for the purpose of considering the replacement of said member so that the appointing official may appoint a replacement to fill out the unexpired term. Other vacancies occurring in office shall also be reported to the appropriate official for similar action.

ARTICLE V

NOTICE OF HEARINGS

A Public Hearing is required for all variances of development standards, variances of use, special exceptions, ordinance interpretations, and appeals of administrative determination by the Planning & Zoning Department.

1. Timing: When a Public Hearing is required, public notice through newspaper and/or mailed notices shall be given not less than ten (10) calendar days (not counting the day of the hearing) prior to said Public Hearing, or as otherwise specified by State law. The meeting agenda shall be published at least 48 hours before the meeting, or as otherwise required by State code.
2. Mailed Notice: Names and addresses of the adjacent property owners must be obtained by the Planning & Zoning Department from the Hamilton County Real Property Department and/or City of Fishers Geographic Information System (GIS) Department ~~and/or other applicable County Transfer and Mapping Office~~. This list should be obtained not more than ninety (90) days prior to the date of the hearing. The adjoining list must be requested for the entire parcel if no deed has been recorded for smaller parcels. The Planning & Zoning Department must mail notice to every entity on the adjoining list through certified mail or a certificate of mailing.
3. Newspaper Notice: Notice by publication shall be made by the Planning & Zoning Department in accordance with Ind. Code §5-3-1, as amended. Newspapers recognized for publishing notice are the Times of Noblesville, The Current in Fishers, ~~and~~ the Current in Lawrence/Geist and the Hamilton County Reporter.
4. Proof: Proof of newspaper publication and public notice mailing must be obtained by the Planning & Zoning Department at least two (2) business days before the scheduled hearing.
5. Re-notice: If, for any reason, the petition is not heard within seventy (70) days of the date of the published hearing date, a new or updated list of adjacent property owners from the Hamilton County Real Property Department and/or City of Fishers Geographic Information System (GIS) Department ~~applicable Transfer and Mapping Office~~ must be obtained, and a revised notice stating the new public hearing date shall be sent at least ten (10) calendar days (not counting the day of the hearing) before the hearing to any new or revised adjacent property owners.
6. All means of notice shall include:
 - a. The case number assigned;
 - b. The time, place, and date of the hearing;

- c. A description of the petition, and requested action;
 - d. A description of the subject property location or address;
 - e. A statement that the full legal description is on file with the Department of Planning and Zoning, City of Fishers, One Municipal Drive, Fishers, IN 46038, (317) 595-3155;
 - f. A brief description of the general procedure concerning submission of public comments; and,
 - g. The name of the Petitioner.
7. On-Site Notice: The Department of Planning and Zoning shall place a notice sign on the affected property, where applicable. Notices shall be large enough to be legible from the road and shall be placed in a conspicuous place on the property.
8. Exception. The notice requirements herein shall be applicable to all petitions except those initiated by the City. In this case, the City shall determine the notice requirements, if any.

ARTICLE VI

HEARING AND REHEARING

1. Variance Applications shall be heard within 60 days from the filing of the completed application with the Secretary unless it is withdrawn. If amended, it shall be heard within 60 days from filing of completed application. Cases will be heard in the order of their assigned case number; amended cases will have priority according to date of amendment.
2. At the public hearing, the Petitioner or any other party may appear on his/her own behalf or be represented by agent or by legal counsel. In the event that remonstrators retain counsel to represent them at a hearing before the Board, then such counsel shall state that they has so been retained and is present to object.
3. Order of the Hearing shall be:
 - a. ~~Petitioner~~The petitioner or their representative may make a statement outlining the nature of the request and introduce such evidence as they may wish.
 - b. The floor shall be open for public hearing. Persons wishing to address the Board shall state their name and address and make such remarks as they wish, pertinent to the subject matter of the application.
 - c. The Petitioner may reserve time for rebuttal at the conclusion of the public hearing as they carry the burden of proof.
 - d. The Chair shall formally close the public hearing and permit the members of the Board to direct questions to the Petitioner or any other persons.
 - e. The Chair shall ask for any staff comments, concerns or recommendations.
 - f. The Chair shall call for a motion and, upon motion duly made and seconded following discussion by members of the Board only, the matter shall be concluded by recorded vote on the motion.

Witnesses may be called and factual evidence and exhibits submitted by either Petitioner, remonstrator, or those in favor of the petition.

The Chair may establish appropriate time limits for arguments, but such time limits shall be equal for both sides. The Chair may request representatives of each side to speak for the entire group or portions of the group but shall not require such representation against the wishes of the group involved. General guidelines are as follows:

Presentation by Petitioner	15 minutes
Public Hearing	
Individuals	2 minutes
Spokesperson	5 minutes
Petitioner Rebuttal	5 minutes
Staff	As needed for complete response

The Board may, at the discretion of the Chair, extend any or all time limits.

4. The Board shall not be bound by strict rules of evidence and may exclude irrelevant, immaterial, incompetent, or repetitious testimony.
5. A Petitioner or remonstrator, or the agent or attorney of either, may submit a list of persons favoring or opposing the petition. Such list will be accepted as an exhibit if it contains nothing more than a brief statement of the position of the persons favoring or opposing the petition together with the signatures and addresses of the persons subscribing to such statement.
6. The Chair may rule on all questions relating to the admissibility of evidence, which may be overruled by the majority of the Board.
7. The Petitioners and remonstrators must present all evidence they possess concerning the case at the public hearing. No further oral testimony will be accepted after the public hearing is closed. Only a written response by Petitioners or remonstrators to the staff report, prepared solely for the case under consideration, will be accepted by the Secretary after the close of the public hearing. Statements will be accepted no later than the day on which the Board's decision is made on the specific case in question.
8. Roberts Rules of Order shall apply in the absence of specific procedures established herein.
9. Application for rehearing may be in the same manner as the original application. Application for rehearing may be denied by the Board if from the record it shall appear that there has been no substantial change in facts, evidence, or conditions. However, any matter not previously reviewed may be heard again on motion adopted by unanimous vote of all members at a meeting at which a quorum is present.

ARTICLE VII

DECISIONS

1. The Board shall conduct its vote in public session.
2. All decisions of the Board shall be made at a public meeting by a motion made, seconded, and determined by a roll call vote by the Secretary. Exception: approval of minutes, adjournment, and other procedural items may be made by a voice vote.
3. The motion shall include explicitly, or by reference, any findings-of-fact of the Board. If conditions are imposed in the recommendation, such conditions shall be implicitly included in the motion.
4. Any motion deciding in favor of the Petitioner on any petition, shall require the concurring vote of the majority of the members on the Board. The motion shall include the reasons for the determination made, and if in favor of the Petitioner, shall set forth any conditions and/or safeguards required, and any time limitations prescribed.
5. When a vote of the Board does not result in an official action of the Board, the petition shall be automatically continued and heard at the next regularly scheduled meeting.

A case may not be withdrawn by the Petitioner after the vote has been ordered by the Chair. No case which has been withdrawn by the Petitioner shall again be placed on the agenda for consideration by the Board within a period of three months from the date of said withdrawal, except upon the motion of a member, and adopted by the majority vote of all members in attendance at a regular or special meeting.

ARTICLE VIII~~11~~

RECORDS

1. A file of materials and decision relating to each case, including notation concerning the decision, shall be kept in the office of the Board.
2. All records of the Board are to be considered public documents.

ARTICLE IX

AMENDMENT OF RULES

1. Amendments to these rules of procedure may be made by the Board following the circulation of said amendment to the total membership prior to a regular meeting. The amendment may then be adopted upon ~~the~~an affirmative vote of a simple majority of the membership of the Board.
2. The proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.
3. These rules may be suspended for due cause upon the affirmative vote of all members present.

ADOPTION OF RULES AND PROCEDURES

These rules of procedure were adopted by the City of Fishers Board of Zoning Appeals on ~~February 28,~~
~~2024~~January 26,
~~2022.~~

Chairperson

Vice-Chairperson

Member

Member

Member

Secretary