

CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
6:30 P.M.

The meeting was called to order at 6:30 P.M. Present were members F. Owens, J. Ackerman, R. Riley, J. Carney and president J. Kowalski. Town Engineer M. O'Dell, Town Manager D. Cincoski, Building Department D. Lohse and Town Liaison K. Nevers were in attendance. Attorney J. Paulson was present as legal advisor. The pledge of allegiance was recited.

APPROVAL OF MINUTES

Member R. Riley moved approval of the minutes from January 27, 2022 seconded by member F. Owens and passed by unanimous voice vote.

Following the approval of the minutes, president J. Kowalski requested that vice president R. Riley chair the meeting since he was not present at last month's meeting. Vice president R. Riley was in agreement.

PRELIMINARY HEARINGS

Mark I Construction, LLC requesting a variance to construct an additional three (3) unit apartment building on the lot, where the Ordinance allows 1 principal structure on a lot, therefore, a variance of one additional principal structure on the lot. A second variance is requested to construct two (2) separate three (3) unit apartment buildings on the lot having lot coverage of 30.9 percent, where the Ordinance allows 30 percent lot coverage, therefore a variance of .9 percent lot coverage. **Petition 22-04** Attorney G. Babcock was present as legal representation for the petitioner Mark Markovich. Attorney G. Babcock told the board the property is located on 19th St. near Porter Avenue and is Zoned R-3. The property is approximately 1.051 acres. Mr. Markovich is interested in constructing two smaller 3-unit apartment buildings rather than one larger 6-unit apartment building. He has proposed facing one 3-unit building toward 19th Street and the other 3-unit building facing north. Mr. Markovich felt the two buildings would be better suited for the large parcel of land rather than one large 6-unit building facing north. He called attention to the site plan depicting the placement of the two buildings. He said they had added a bit more concrete to the driveway at the town's suggestion in case large fire equipment would need to access the site. He respectfully requested the board to consider setting this item for public hearing at the March 24, 2022 meeting.

Town Engineer M. O'Dell requested that the site plan exhibit be included in the Findings of Fact for the fire chief's approval. There was some additional conversation regarding signage and addressing in case of emergency.

Member J. Kowalski moved to set this item for public hearing at the March 24, 2022 meeting seconded by member J. Carney and passed by unanimous voice vote.

CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
PAGE 2

Robert and Agnieszka Sech requesting a variance to install a 5-foot (60") fence adjacent onto Woodland Drive which currently allows a fence up to 4.5 foot (54") therefore a variance of 6 inches. **Petition 22-05** Mr. Sech was present. He told the board they have two large dogs and for practical and safety reasons they are interested in installing a bronze color metal picket fence. The installation of the open sight fencing would no obstruct any car or pedestrian traffic. This fence is designed to sit two inches off the ground which necessitates the height variance.

Attorney J. Paulson noted the Findings of Fact had not been completed. She requested they be filled out and submitted by March 7, 2022.

Member J. Carney moved to set this item for public hearing at the March 24, 2022 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

Flynn Restaurant Group requesting a variance to replace signage on the East elevation. The proposed replacement signage for corporate compliance would replace existing logo 14.19 square feet and letterset 6.91 square feet with new logo 13.41 square feet and letterset 9.42 an overall increase of 1.73 square feet. A second variance is requested to replace signage on South elevation. The proposed replacement signage for corporate compliance would replace existing logo 14.19 square feet and letterset 6.91 square feet with new logo 13.41 square feet and letterset 9.42 an overall increase of 1.73 square feet. **Petition 22-06** Mr. Mike Niemiec the owner and operator for this Taco Bell location was present as representation for the petitioner. He commented that the variance requests are a result of new corporate branding. He respectfully requested the board to set this item for public hearing.

Town Engineer M. O'Dell requested a signage worksheet showing existing signage and proposed signage. He noted that in 2009 there was a variance granted at this location. The signage worksheet should take into consideration the total square footage being replaced based and what the Chesterton Sign Ordinance allows. Additionally, the height of the entrance signs may require a variance or they can be lowered to meet current standards.

Attorney J. Paulson said the sign ordinance has changed since the original variance was granted. The worksheet needs to indicate the total square footage on the property. She asked for clarification regarding the property owner. She requested a copy of the deed and noted that the petition might need to be amended to indicate proper ownership. Power of Attorney could also be granted if the petitioner could not be present. She suggested submitting separate Findings of Fact for each variance request. Additionally, she urged them to strengthen the Findings of Fact from a more legal perspective.

Member J. Kowalski moved to set this item for public hearing at March 24, 2022 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
PAGE 3

PUBLIC HEARINGS

AKB Rental Properties requesting a variance to reduce lot width from 75 feet to 50 feet, a variance of 25 feet. A second variance is requested to reduce the minimum lot area from 9500 square feet to 6100 square feet, a reduction of 3400 square feet. A third variance is requested to increase lot coverage from 30 percent to 39 percent a variance of 9 percent lot coverage on Lot 3. **Petition 21-13** Rules for conducting a public hearing were read aloud. The secretary verified proof of publication notification and payment. The secretary read into the records a copy of a letter received from the Dunes Calumet Audubon Society which has been retained as a part of the petition file. The letter calls attention the unique nesting habits of the Barred Owl. A Migratory Bird Treaty Act also prohibits the take of active nests. A tree cavity on the property location at 1708 Tower Street, Chesterton is known for many years to be an established Barred Owl nesting cavity and has successfully fledged young owlets. The Department of Natural Resources has set breeding safe dates during the primary nesting period of February 1- July 31.

Brian Lewandowski was present he is the appointed Power of Attorney for the petitioner. He was accompanied by Kevin Ortiz from Chesterton High School, the teacher in the Building Trades program. Brian told the board he is currently working in conjunction with the building trades program on the completion of a residential home located on Lot 5 Tower Street in Lahayn/Crocker. It is Mr. Lewandowski's intention to have the building trades program construct "triplets" by adding two additional residential homes the same as the home located on Lot 5. He told the board that back when the residential construction started on Lot 5 it was a buildable lot. He noted that surrounding neighbors have the same size lots. The board had suggested adding a variance request for lot coverage if a driveway were installed. If the board grants the variances for each lot, he would complete the transaction of purchasing the lots. He would continue his involvement with the program overseeing the construction of two future homes. Having the two lots would ensure the programs viability for at least three years. He was unsure if in the end he would sell the homes or keep them. He respectfully requested the board to consider granting the variances requested.

There was no one present wishing to speak in support of the petition.

Robert Vah of 1711 Crocker St, Chesterton was present to speak in opposition to the petition. Mr. Vah expressed concerns regarding drainage issues. He told the board he lives directly behind the proposed property and those lots always retain standing water during heavy rains. He submitted pictures depicting the water concerns.

Chad Stratton of 1707 Tower Street, Chesterton was present to speak in opposition to the petition. He expressed concerns regarding drainage and standing water. He submitted into records a copy of a letter received from the Indiana Audubon Society which was read aloud by the secretary and retained as a part of the petition file. The letter calls attention the unique nesting habits of the Barred Owl. A Migratory Bird Treaty Act also prohibits the take of active nests. A tree cavity on

CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
PAGE 4

the property location at 1708 Tower Street, Chesterton is known for many years to be an established Barred Owl nesting cavity and has successfully fledged young owlets. The Department of Natural Resources has set breeding safe dates during the primary nest period of February 1- July 31. The Town of Chesterton is celebrated for its commitment to its Bird Town Indiana role. The pair of owls also help control prey and rodents in a native way. He suggested building a nesting box following the nesting period dates of February 1-July 31 to encourage the owl's return to the area each year. He did not see the addition of these two homes bringing value to the neighborhood.

Brian Lewandowski said he had spoke to M. O'Dell about digging a trench to direct rainwater. He told residence that the home they are working on known as Lot 5 is still under construction. They would be adding trim and finishing touches nearer completion that will fancy it up. He said he couldn't speak to the nesting habits of the birds since he had little knowledge of the Barred Owl.

Vice president R. Riley asked if the dead tree on the property providing a nesting habitat for the owls would need to be removed and if he could adhere to the protected specified dates.

Mr. Lewandowski said he would get a copy of the Audubon letters so he might better address those concerns.

Town Engineer M. O'Dell said he would look into the drainage issues with Brian. They would further look into the possibility of installing a French drain. He suggested that the surrounding homes drainage might also be a contributing factor to the standing water near this location.

The public comment portion of the public hearing was declared closed.

Member J. Ackerman asked the petitioner to give a bit more information about the Chesterton High School Building Trade program.

Mr. Kevin Ortiz from Chesterton High School, was present. He is the teacher in the building trades program. Mr. Ortiz spoke of the school's appreciation for Brian being involved with the building trades program. The purchase of these two lots would give the program and its student participants an opportunity to work for the next two years. He currently has a morning class with 17 students and an afternoon class with 12 students. He commented that the program for next year looks to have about 40 students.

Member F. Owens commented that the lot coverage isn't to far off the town standards for that location however, because of the size of the lots he suggested constructing only one larger home using both lots.

CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
PAGE 5

Member J. Carney commented that the water/drainage issue brought to light this evening is a concern. He questioned if a French drain type system could help alleviate this problem. He said building a nesting box following nesting season would be important.

Town Engineer M. O'Dell said he would need to look at the area and see if these lots are a contributing factor to the area problem. He commented that there could be a larger area adding to the problem.

Member J. Kowalski said he wasn't aware of the drainage issues until now. He commented that M. O'Dell had a good point about contributing factors. He understood both the remonstrators concerns as well as Mr. Lewandowski trying to support the building trades program. "We have to try to strike a balance, with what I have heard, I would find it difficult to make a decision tonight."

Member R. Riley commented that the program seems to offer a great opportunity for student to learn a trade. He understood that the number of houses becomes an important element. He suggested continuing the public hearing until the town engineer had an opportunity to look at site as it is related to the drainage concerns.

Mr. Lewandowski agreed that it would be a good idea to continue the petition.

Member F. Owens agreed that the time should be used to further investigate the surrounding factors.

Member J. Kowalski moved to continue the public hearing for Petition 21-13 until March 24, 2022 seconded by member J. Ackerman and passed by a unanimous roll call vote of 5 to 0.

AKB Rental Properties requesting a variance to reduce lot width from 75 feet to 50 feet, a variance of 25 feet. A second variance is requested to reduce the minimum lot area from 9500 square feet to 6100 square feet, a reduction of 3400 square feet. A third variance is requested to increase lot coverage from 30 percent to 39 percent a variance of 9 percent lot coverage on Lot 4. **Petition 21-14** The secretary verified proof of publication notification and payment.

Attorney J. Paulson advised the board and the petitioner to open the public hearing for Petition 21-14. The petitioner noted that he wished to incorporate his arguments from the previous Petition 21-13.

Vice President R. Riley solicited additional comments from the public. He noted the previous two participants had spoken in opposition to the petition.

The public comment portion of the public hearing was declared closed.

CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
PAGE 6

Member J. Ackerman moved to continue the public hearing for Petition 21-14 until March 24, 2022 seconded by member J. Carney and passed by unanimous voice vote.

First Baptist Church of Chesterton a/k/a Open Bible requesting a variance to construct a Dynamic two-sided sign (6 feet by 4 feet) having a gross surface area of 48 square feet where the Ordinance allows 45 square feet, therefore a variance of 3 feet. **Petition 22-01** **(Petitioner has requested to continue)** Attorney G. Babcock was present as legal representation for the petitioner. He noted that they have been delayed in obtaining a site plan as the board had previously requested. He respectfully requested the board to continue the public hearing for Petition 22-01 until the March 24, 2022 meeting.

Member F. Owens moved to continue Petition 22-01 until the March 24, 2022 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

JTR Construction, LLC requesting a variance to amend a prior BZA variance 19-03 and allow an additional 18-inch front yard setback variance. A second variance is requested to amend a prior BZA variance (19-03) and allow an additional 18-inch rear yard setback variance. **Petition 22-02** The secretary verified proof of publication, notification and payment. Attorney G. Babcock was present as legal representation for the petitioner. He was accompanied by the petitioner Jason Robinson. The property is located on the corner of Locust Street and Wabash Avenue. In 2019 the board granted relief for the front and rear yard setback. After the duplex was constructed, it was determined by the town that the overhang encroaches into the previously granted setback. The previously granted setback known as Petition 19-03 was an 18-inch front yard setback for a total variance of 6 feet 6 inches. The second previously granted setback known as Petition 19-03 was an 18-inch rear yard setback for a total of 9 feet 6 inches. He noted that the property was platted in 1857 as a piece of land. Each time a piece of land was sold off they created a meet and bounds description. This parcel is what is left of the original chunk of land. When the petitioner initially purchased the property, it was determined that the best and safest location for the driveway and doorways would be to locate them on Locust St. so residents would not have to back out onto Wabash Avenue which is a faster and more heavily trafficked street. The property receives a building permit, a site plan is submitted and upon inspections the foundation is poured by an outside contractor. The contractor pouring the foundation is unaware that in the town of Chesterton the setback is measured from the overhang not the foundation. This additional variance request is for front and rear overhang and fortunately it does not adversely impact any surrounding neighbors. Attorney G. Babcock respectfully requested to have the board to consider amending the 19-03 variance to the total as indicated above and included in the Findings of Fact.

There was no one present to speak in support of the petition.

There was no one present to speak in opposition to the petition. The public comment of the public hearing was declared closed.

CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
PAGE 7

Town Staff had no further comment.

Attorney J. Paulson had no comment. This is a board decision.

Member J. Kowalski commented that Mr. Robinson had been in front of this board several times before with no legal representation. Attorney G. Babcock has done a good job with presenting this case. The reality is that as a contractor you should be responsible for the project's outcome. He concluded by saying he was frustrated by the entire project and the blame game that came along with it.

Member F. Owens moved to grant the variance requests accept the Findings of Fact and close the public hearing seconded by member J. Carney and passed by a vote roll call vote of 3 to 2 with members J. Kowalski and R. Riley voting no.

Vice President R. Riley commented that on several previous petitions Mr. Robinson has shown disregard for the town building standards. The accessory structure/garage is not appropriate structure in this area. He was voting no for those reasons. He cautioned the petitioner to be more respectful to the town and the board. In closing he said he would have voted yes if the petition needed his vote of support since there is such a great amount at stake and because of his attorney's outstanding work. Since the petition would pass by majority, he withholds his vote of support.

Northshore Health Centers, Inc. requesting a variance to reduce a side yard setback from 20 feet to zero feet therefore a variance of 20 feet. A second variance is requested to reduce a rear yard setback from 10 feet to zero feet, therefore a variance of 10 feet. **Petition 22-03** The secretary verified proof of publication, notification and payment. Attorney Katie Kopf of Hoepfner Wagner and Evans was present as legal representation for the petitioner. Attorney Kopf told the board the property is located at 801 Broadway, Chesterton. The current building is 20,913 square feet. Northshore Health will be creating a medical health center to include a pharmacy and other medical health services. A flex room would offer space for a conference room which might be used for a covid testing site or to hold blood drives. The petitioner is interested in constructing an addition to the existing south east corner of the property. The addition would hopefully continue to be the home of the Westchester Neighbors Food Pantry. They have been operating out of this location for the past ten years. They would be storing and distributing food from this location. This past Tuesday the pantry was able to serve 90 families. The pantry has approximately 5 to 10 volunteers that spend countless hours serving our community. She respectfully requested the board to consider accepting the Findings of Fact and granting the variance requests for Petition 22-03.

Ron Stone of Chesterton was present to speak in support of the food pantry. He thanked Northshore Health for allowing the Westchester Neighbors Food Pantry to continue serving at that location.

**CHESTERTON BOARD OF ZONING APPEALS
FEBRUARY 24, 2022
PAGE 8**

There was no one present to speak in opposition to the petition. The public comment portion of the public hearing was declared closed.

Member J. Ackerman thought it is a great project.

Member J. Carney said both he and his wife volunteer at the food pantry. His wife and volunteer Dawn Ruge who was in attendance, spend countless hours per week for this worthwhile cause.

Member J. Carney moved to close the public hearing, accept the Findings of Fact and grant the variance requests for Petition 22-03 seconded by member F. Owens and passed by a unanimous roll call vote of 5 to 0.

OLD BUSINESS- None

NEW BUSINESS- None

MISCELLANEOUS BUSINESS- None

ADJOURNMENT

There being no further business before the board member F. Owens moved adjournment seconded by member J. Kowalski and passed by unanimous voice vote. The meeting adjourned at 8:05 P.M.

Respectfully submitted,

Gail A. Murawski, Secretary

Approved:

J. Kowalski, President