

CHESTERTON BOARD OF ZONING APPEALS
MARCH 28, 2019
6:30 P.M.

The meeting was called to order at 6:30 P.M. Present were members J. Ackerman, F. Owens, J. Kowalski, R. Corder and president R. Riley. Attorney J. Paulson was present as legal advisor. Town Engineer M. O'Dell was not in attendance. The pledge of allegiance was recited.

APPROVAL OF MINUTES

Member J. Ackerman moved approval of the minutes from February 28, 2019 seconded by member F. Owens and passed by unanimous voice vote.

PRELIMINARY HEARINGS

B & B Developers Inc. requesting a Use Variance for residential use in an I-1 Zone for a 40-feet by 30-feet second floor residence at west end of the factory building. **Petition 19-08** Attorney Hiestand was present as representation for the petitioner. The residence is currently occupied by two tenants. The petitioner is looking to obtain a variance so that the residential use of the property Zoned I-1 can remain. He told the board that this apartment has existed and has not caused any issues over the years.

Member J. Kowalski commented that the petitioner is looking to extend the use of this property Zoned I-1 for his personal gain. He questioned, "When is the use of the property enough? We might as well throw out the Ordinance and let people do what they want."

Member J. Kowalski moved to set this item for public hearing at the April 25, 2019 meeting seconded by member F. Owens and passed by unanimous roll call vote.

Bennett's Rentals, LLC requesting a Use Variance for climate a controlled storage in a B-3 Zone. **Petition 19-09** Attorney Hiestand was present as representation for the petitioner. The petitioner is seeking a variance because climate-controlled storage is not currently a permitted use in a B-3 Zone. The property is located on Hwy. 20 which is not the most desirable property in recent years for commercial and office space uses. The petitioner sees a demand for vacant spaces to be utilized for this type of storage. He respectfully requested the board to consider setting this item for public hearing at the April meeting.

President R. Riley suggested that Attorney Hiestand get with the fire chief to compile a list of items that would not be permissible to store on the site.

Member J. Ackerman questioned whether the site had a sprinkler system currently installed.

Attorney Hiestand said he didn't know.

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Attorney J. Paulson encouraged Attorney Hiestand to get with the fire chief prior to the public hearing.

Member J. Ackerman moved to set this item for public hearing at the April 25, 2019 meeting seconded by member J. Kowalski and passed by unanimous voice vote.

Robert Johnson requesting a variance to build a sunroom where the current deck is (12 X 12). **Petition 19-10** David Jones from Exterior Designs was present as POA for the petitioner. The petitioners are looking to construct a sunroom where a deck currently is located. He said he didn't realize there were setbacks and lot coverage restrictions.

Attorney J. Paulson commented that there are a lot of deficiencies with the petition which raises concern in setting this item for public hearing. There is no signature page from the property owner. There is no deed. The Findings of Fact need to be completed. The map and list of property owners within 300 feet was not submitted. She suggested he get with the building department to go over the site plan and necessary requirements.

Member J. Kowalski asked the contractor why there was no building permit secured for work that was done by them earlier. He commented that the paperwork was not in order for this project. He wanted to see a building permit submitted for the previous siding project before moving forward with the public hearing for the sunroom.

Member F. Owens thought there would be other variances that would be required to construct the sunroom. The sketch would suggest there are setback and lot coverage issues.

Member F. Owens moved to continue the preliminary hearing until the April 25, 2019 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

PUBLIC HEARINGS

BenLew Enterprises, LLC. Requesting a Use Variance to allow residential use in B-2 Zoning for third floor only. **Petition 18-12** Rules for conducting a public hearing were read aloud. The secretary verified proof of notification, publication and payment. Brian Lewandowski was present as representation for the petition. He said he had meet with the building department to discuss changes to the site plan. There would be two apartments total one being on the south side and one on the north side of the building. Fire alarms would be installed and egress requirements would be meet.

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.

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It was by consensus of the town staff and board that all fire codes be adhered to. All the necessary permits need to be applied for by the petitioner. There will be an inspection by the fire chief and town engineer before an occupancy permit is obtained.

Member J. Ackerman moved to close the public hearing accept the Findings of Fact subject to the condition that all state building and fire code requirements will be followed. All state and local permits will be applied for. There shall be an inspection by the fire chief and town engineer before an occupancy permit is obtained. The motion was seconded by member R. Corder and passed by unanimous voice vote.

JTR Construction LLC JTR Construction LLC requesting a variance reduce a front yard setback from 25 feet to 20 feet therefore a variance of 5 feet. A second variance is requested to reduce a rear yard setback from 25 feet to 17 feet therefore a variance of 8 feet.

Petition 19-03 The secretary verified notification, proof of publication and payment. Mr. Jason Robinson was present. He told the board he is interested in constructing a duplex on the corner of Locust Street and Wabash Ave. The best and safest location for the driveway and doorways would be located on the Locust St. side of the lot necessitating the need for the variances requested. He respectfully requested the board to consider granting the variance request.

There was no one present to speak in support.

James Kitt of 508 Wabash, Chesterton was present. He told the board that he and his wife had purchased 508 Wabash in February of last year. He was looking to the board for some clarity. How could there be two addressed properties commonly known as 508 Wabash, Chesterton?

Attorney J. Paulson speculated that when looking at the assessor's website Mr. Kitt would see 508 Wabash. She said it may be an issue with the auditor's office. The petitioner and Mr. Kitt should look at the legal descriptions on each of the properties. She suggested they contact the building department and see how the properties are addressed in the town system.

Member J. Ackerman commented that this is a matter beyond the boards scope.

Mr. Robinson said after the buildout this parcel will be addressed on Locust Street.

Member J. Kowalski moved to close the public hearing accept the Findings of Fact and grant the variance requests seconded by member F. Owens and passed by unanimous voice vote.

350 Realty Group LLC. Series 123 Brown Ave. requesting a Use Variance to convert dwelling, to a two family (duplex). **Petition 19-04** The secretary verified proof of notification, publication and payment. Mr. Jacob Cross told the board they are interested in returning this property back to its original use as a duplex. Back in 2005 the previous owners had turned this into a single-family residence. He requested the board to consider granting the variance request.

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

Mr. Joshua Cowning of 135 Brown St., Chesterton commented that the petitioner should have looked into matter before he purchased the property.

President R. Riley commented that this petition does keep with the original use of the property.

Ms. Donna Cunningham of 136 W. Michigan Ave., Chesterton submitted a letter in opposition to the petition. She stated that she had been a resident of Chesterton for sixty years. She finds he single family surrounded by duplexes and storage units. She stated that there have been numerous variances granted on properties surrounding hers. She questioned the saturation point of her neighborhood. She urged board members to vote no.

Mr. Cross said this property was originally a duplex. Near the property there is an R-1, R-2, R-3 Designation. This should not disturb anyone.

Member J. Ackerman moved to close the public hearing accept the Findings of Fact and grant the variance request seconded by member J. Kowalski and passed by unanimous voice vote.

Steve and Ashley Tolton requesting a variance increase lot coverage from 30 percent to 36 percent, therefore a variance of 6 percent. **Petition 19-05** The secretary verified proof of notification, publication and payment. Mr. Tolton was present as representation for the petition. He told the board they would be installing an inground pool and might also be constructing a shed. He requested to increase in lot coverage from 30 percent to 36 percent.

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 portion of the public hearing was declared closed.

It was the general consensus of the board that there were no issues and all the paperwork was in order.

Member J. Ackerman moved to close the public hearing accept the Findings of Fact and grant the variance request seconded by member J. Kowalski and passed by unanimous voice vote.

Richard Neal requesting a variance to build 4 additional structures (storage units) on said lot where there already is a principal structure, therefore a variance for 4 additional principal structures is requested. A second variance is requested to construct 2 storage buildings each having a front yard setback of 19 feet 6 inches, where the Ordinance requires a 30-foot front

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yard setback, therefore a variance of 10 feet 6 inches **Petition 19-06** The secretary verified proof of notification, publication and payment. Attorney Babcock was present as legal advisor for the petitioner. He was accompanied by Mr. Neal. He reminded the board that at the February meeting the petition was amended to request an 11- foot variance rather than 10 feet 6 inches. The property is Zoned I-1 and has 3.12 acres. He is looking to add 94 new storage units to the property. The principal structure is already there with the main office being located on Wabash. There is currently no main storage office at this location. Additionally, they are looking to create symmetry with the buildings to the east which would require some relief therefore necessitating a reduction in the front yard setback.

Mr. Richard Neal of 359 E. Burdick Road, Chesterton told the board he was interested in building small storage units. He said he would be cleaning up and fixing up the site and incorporating some additional landscaping.

Attorney Babcock asked members of the board to consider that Mr. Neal's principal office is located on Wabash. They are not physically inside this building which would satisfy the need for this to be the principal warehousing structure. If it were the principal warehousing structure, they would be allowed to have accessory structures. There is currently no plan to develop any additional space that is available. He respectfully requested the board to consider granting the variance requests.

President R. Riley noted conditions that the town engineer said he would like to see if the petition is granted. A site plan and drawings would need approval from the town engineer. There would be no additional driveway cuts. Stormwater would be collected on site and approved. All state and local permits need to be applied for.

Attorney Babcock said there would be no problem complying with the town's requirement regarding stormwater control.

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

Ms. Pat Scott of 306 Brown Ct., Chesterton was present to speak in opposition to the petition. She expressed concerns for the number of storage units that currently exist in the area. A drive through the area resulted in approximately 100 units in the area. She expressed concerns about the traffic flow in that location and furthermore cited parking issues when certain events take place. She expressed concerns regarding drainage and stormwater management. The area and a few lots often flood. She commented that the area is already saturated with too much. She expressed concerns for dropping home values. There are many children that live and play near there and often times cars come speeding through the neighborhood. She urged the board to vote no.

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Mr. Ken Wilke of 347 Brown Ct., Chesterton was present to speak in opposition to the petition. He told the board he planted trees along the property line and did not want to see them dug up. He felt the area was an eyesore which invited undesirables and vandalism to the area.

Ms. Michelle Lawer of 351 Brown Ct., Chesterton was present to speak in opposition to the petition. She expressed concerns about her property value and increased traffic.

Ms. Ashley Coney 135 Brown Ave., Chesterton was present to speak in opposition to the petition. She echoed her neighbors concerns as well as drainage issues. She commented that the area does hold water.

Ms. Pat Scott of 306 Brown Ct., Chesterton questioned the stormwater plan for the proposed buildout. She again expressed doubt about fixing the problems that already exist.

Attorney G. Babcock commented that the use of the property in this particular way requires no variance in this zone. This style of use is somewhat destination driven and seasonal. It generates little traffic. There would be no additional roadcuts needed for the buildout of this project. He told the board they would not be using the detention pond that neighboring residents use. They would capture water and move it down in a north east direction with the use of swales and underground drainage pipes. They would not harm the neighboring tree line. He commented that there would only be a slight amount of traffic generated from this site. The flow of traffic is lessened by the stop sign that helps with likelihood of speeding traffic.

A letter was received from Donna Cunningham of 136 W. Michigan Ave., Chesterton in opposition to the petition. She expressed concerns for the over saturation of the area. Cited issues of drainage and traffic.

A letter was received from Christine Roberts of Brown Ct., Chesterton in opposition to the petition. She expressed concerns for the safety of the area with people that do not live in the neighborhood. Furthermore, she feared the devaluation of her property.

There was no additional rebuttal by Attorney G. Babcock as he felt those concerns had been addressed earlier.

Member F. Owens questioned the type of tenants that currently exist in the area.

Mr. Neal told the board there is Jimmy's Auto, Mr. Paul Childress occupies a portion. There is a small repair ink pump shop and a tile and carpet business.

Member J. Ackerman questioned what would be allowed on that parcel without seeking a variance.

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Attorney Babcock said that in an I-Zone the density is determined by the use and number of parking spaces. If there was no additional structure and the office was located on the site these would be considered accessory structures.

Member F. Owens asked if there would be a fence installed.

Mr. Neal said he did not plan on installing a fence. He commented that the concrete pad would eventually be outside storage and parking.

Member J. Kowalski commented that a lot of the allowable uses in this I-Zone would generate much more traffic than the proposed use. He also understood the concerns of the neighbors. He felt that Mr. Neal has always been a man of his word and for the most part has always strived to improve the property he owns in town.

There was some additional conversation about the control of stormwater runoff. Attorney G. Babcock understood that the detention pond used by the neighbors would not be the direction they would be taking their stormwater.

Members of the board felt that the neighbors might feel a bit more assured if additional fencing was installed. Member Kowalski said the back side of the area needs to be cleaned up.

Member F. Owens expressed concern about the close proximity to the neighbors. There was continued discussion regarding fencing and landscaping that would provide a visual buffer and privacy.

Member R. Corder clarified that if an office was put at this location the matter of the additional principal structure would not be an issue. There would be no variance needed.

Member J. Kowalski said he had concerns for both the petitioner and the neighbors. To make a good decision, both parties need to be satisfied. All the conversation doesn't change the fact that the property is still an I-Zone.

President R. Riley commented that the Town Engineer M. O'Dell is aware of the drainage issues in that area and regardless of what the petitioner decides to do the issue of drainage needs to meet the requirements of the MS4 and approval of the town.

Member J. Ackerman said the concerns of the surrounding residents are very well taken but he is stuck on the fact that the petitioner could have incorporated a small office and Mr. Neal could be out there now moving forward on the construction of the units without any input from the neighbors.

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Attorney G. Babcock said his client is willing introduce landscape trees to some areas. There would be no commitment to enhancing the façade. The unit in the southwest corner is near a grassed area. They would continue a tree line that the neighbor has started from Lot 3. He would install a screening type fence where Lot 3 and Lot 4 meet up to the corner of the building. There was conversation about removing two of the units to make the buildings the same size and also pushing the units back.

Attorney J. Paulson commented that the conditions and the commitments from the petitioner are sufficiently complex enough that both the town and the petitioner need to sit down and go over them. The requests of the building commissioner also need to be taken into consideration. She suggested that by continuing this item until the April meeting the board would have actual written commitments to base their decision.

Member J. Ackerman said he would find it difficult to vote on something that is still vague and undefined.

Member J. Ackerman moved to continue this item until the April 25, 2019 meeting seconded by member J. Kowalski and passed by unanimous voice vote.

Bradley and Christine Joyce requesting a variance to reduce a side yard setback from 10 feet to 5 feet, therefore a variance of 5 feet. **Petition 19-07** Mr. Joyce was present. He told the board they are looking to reduce the side yard setback. They would be expanding to a third garage to provide additional storage. The neighborhood ordinance requires homeowners to park all vehicles in the garage. Additionally, items that need to be stored in the garage make it difficult to have room for their family needs.

Attorney J. Paulson said that at the last meeting the petitioners were asked to submit a site plan drawn to scale by the building commissioner. The rules require that any materials for review be submitted 17 days before the meeting. The plans requested were not submitted until March 26, 2019 which was two days ago. The building commissioner has been out of town and has not had a chance to review the materials. She suggested that the board not make a decision on the matter. Since the public hearing was advertised, she suggested hearing from any persons wishing to speak on this matter.

President R. Riley commented that given the circumstances and the lack of review by the town engineer the board is handicap in making any decision.

Attorney Hiestand was present as legal representation. He was in agreement to come back next month to present all necessary materials to the board.

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There being residents in the audience wishing to speak on this matter the public comment portion of the public hearing was opened.

Henry Dixon of 1650 Hogan Ave., Chesterton was present to speak in support of the petition. He commented that the addition of the third car stall would be in keeping with the aesthetics of the surrounding neighborhood. He found no issues with the distance between properties.

Attorney Hiestand commented that members of the board might be interested in the slope of the land between the affected properties.

A letter was received from Brenda Hurst of 1636 Hogan Ave., Chesterton. She commented on the tight spacing between the Joyce's home and their neighbors the Perez Family. She urged the board to significantly consider the neighbor most immediately impacted by the construction of this third stall.

President R. Riley moved to close the public comment portion of the public hearing with the understanding it would be reopened at the continued hearing on this matter.

Member F. Owens moved to continue the public hearing until the April 25, 2019 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

OLD BUSINESS

Attorney G. Babcock submitted a copy of the written commitments from the petition of the Estate of Keith D. Pomeroy. The variance had been granted at the February meeting to allow the construction of a residential duplex in a B-2 Zone, where the Ordinance does not allow for residential use in that zone. The commitments were agreed upon by Spencer and Nancy Sutton the purchasers of the property.

NEW BUSINESS- None

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MISCELLANEOUS BUSINESS

Attorney T. Hiestand urged members of the BZA that also sit on the Plan Commission to look at the 30 percent lot coverage requirement. So many houses in town are in excess of 30 percent lot coverage. Some of the lot coverage in these new PUD'S has been approved up to 60 percent.

Attorney J. Paulson said that many of the changes to the zoning code originate with the Plan Commission. When looking at changes to the zoning code the commission needs to take these types of things into consideration.

ADJOURNMENT

There being no further business before the board member J. Ackerman moved adjournment seconded by member F. Owens and passed by unanimous voice vote.

Respectfully submitted,

Gail A. Murawski, Secretary

Approved;

R. Riley, President