

CHESTERTON BOARD OF ZONING APPEALS
JUNE 26, 2014
6:30 P.M.

The meeting was called to order at 6:30 p.m. Present were members S. Niepokoj, F. Owens, J. Kowalski, and President R. Corder. Member T. Browne was absent. Town Engineer M. O'Dell and Town Manager B. Doyle were in attendance. Attorney J. Paulson was present as legal advisor. The pledge of allegiance was recited.

APPROVAL OF MINUTES

Member S. Niepokoj moved approval of the minutes from May 22, 2014 seconded by member F. Owens and passed by unanimous voice vote.

PRELIMINARY HEARINGS

Elaine A. Bross, Steven Bross, Nancy Bross and Carolyn Parrigan requesting a Use Variance to operate an Open Air Market **Petition 14-04** Attorney T. Hiestand was present as legal representative for the petitioners. He was accompanied by Elaine Bross and Eric Bross. Attorney Hiestand explained that the parking lot where they intend to hold the market is a fenced lot on Calumet Road. He respectfully requested this item to be set for public hearing at the July meeting.

Member F. Owens said he was missing page 23 of the petition which is the page that would contain the last three Findings of Fact.

Attorney T. Hiestand read aloud Findings of Fact beginning with number 3. The need for the variance does arise from a condition peculiar to the property. He said the property location is a challenging because of onsite drainage issues. They are looking to utilize the property in a way that would help pay for the taxes and enhance the town of Chesterton. The concept of an open air market can accomplish both of those goals. There would be no site improvements in the B-1 Zone and the concept of the open air market would be seasonal. The items that would be sold at the open air market would be similar to those being sold at Yesterdays Treasurers, Junk and Disorderly and the resale shop.

Member S. Niepokoj asked if there was a reason why the property could not be used for a permanent building.

Attorney Hiestand said there is a drainage easement for underground drainage across the property immediately east between this property and Coffee Creek that would take care of surface water drainage. He understood that the town of Chesterton said it could not be utilized and they would have to put drainage structures on the property and some type of dry well to handle the surface water drainage. Eric Bross confirmed Attorney Heistand's comment.

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Eric Bross said that drainage structure is located on the center part of the property. They have two on each side drainage manhole covers dry wells that are taking water and that has disrupted the whole piece of the property. He said they were not allowed to use the drainage easement that they had to go to the adjoining property. They had to install new drains because the parking lot would flood. He said they installed the drains because they had not other options. He said the drains are in a part of the property where you would put a building but their unable to do so because of the underground structures.

Attorney J. Paulson said this is the subject of active litigation and town staff would not comment any further.

President Corder commented that if there were a building located on the property the drains would not be necessary.

Attorney Hiestand said a building would shed water just like the parking lot. He said the water runoff would still need to be taken somewhere.

Member J. Kowalski commented that the business at hand tonight is to set this item for public hearing. A decision at the public hearing would be based on the petitioners Findings of Fact.

Member J. Kowalski moved to set this item for public hearing at the July 24, 2014 meeting seconded by Member S. Niepokoj and passed by unanimous voice vote.

Member J. Kowalski and member F. Owens stated that they would not be able to be in attendance at the July meeting.

Member S. Niepokoj asked the petitioner if they would like to postpone the public hearing until the August meeting when they would have a full board.

Attorney Hiestand said the problem is that this use does have an optimal season and later into the summer puts petitioners behind. He questioned the option of scheduling another date.

Member J. Kowalski said a special meeting would cost the petitioner extra fees.

Christopher Torres requesting a variance to install a fence that will exceed the height Requirement at 6 feet high all the way around and will be built beyond the building line and will not fall within the required setback. **Petition 14-05** Mr. Torres said they are looking to install a 6 foot privacy fence along a busy road for safety issues. They live along a wooded area where deer and a coyote have also been spotted. They have a large German Sheppard dog and a four foot fence would not insure proper safety. He respectfully requested this item be set for public hearing at the July meeting.

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Attorney Paulson asked for a copy of the deed to be submitted. Petitioners would also need to supply the necessary Findings of Fact. She said the fence could not be extended into the out-lot, unless an easement from the homeowners association was granted.

Mr. Torres said they were interested in having a larger fenced yard.

Member F. Owens explained that the utility and drainage easement was not so much a problem as was installing the fence in Lot B which is not owned by the petitioner. He explained that these out-lots are needed to keep lines of sight open.

Mr. Torres said that was understandable. He agreed to pull the fence back.

Town Engineer M. O'Dell said the petitioner would have to sign a waiver if the fence was placed within the utility easement.

Additional information would need to be into town hall by July 7, 2014 at 10:00 a.m.

Town Engineer M. O'Dell asked for a sketch indicating the fence placement.

Member F. Owens moved to set this item for public hearing at the July 24, 2014 meeting seconded by member J. Kowalski and passed by unanimous voice vote.

David F. Krieter and Sandra J. Krieter requesting a variance to construct a single family Dwelling having a side street setback of 8 feet where the Ordinance requires a 15 foot Setback, therefore a variance of 7 feet. A second variance is requested to eliminate the requirement to place a sidewalk along Creita Street **Petition 14-06** Attorney G. Babcock was present as representation for the petitioner. Mr. and Mrs. Krieter accompanied him. Attorney Babcock said the petitioners own the lot at the corner of Creita and Washington. They are looking to build a home that would encroach into the side yard setback by 7 feet. It would be in keeping with the other homes currently in the small subdivision. He asked the board to consider allowing petitioners to eliminate the sidewalk along Creita as was done similarly in this small subdivision. Attorney Babcock asked the board to consider waiving the requirement to have the petition submitted 17 days prior to the hearing as this was a late submittal.

Member F. Owens moved to suspend the rules for submittal seconded by member S. Niepokoj and passed by unanimous voice vote.

Member S. Niepokoj moved to set this item for public hearing at the July 24, 2014 meeting seconded by member F. Owens and passed by unanimous voice vote.

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PUBLIC HEARINGS

Seth Nicholas Schugars and Lindsey Anne Schugars requesting a variance to increase the height of a fence from 4 feet to 6 feet along CR50 East and Duneland Trail Dr. **Petition 14-02** Rules for conducting a public hearing were read aloud the secretary verified proof of publication, notification and payment. Mr. Schugars was in attendance. He said they are looking to install a 6 foot privacy fence along a busy road for safety issues. The family has two small children with a third on the way. He said he has even spotted deer and a coyote coming out of the nearby woods. He respectfully requested the board to consider granting the variance request.

Christopher Torres of 1065 Birch Trail Dr. Chesterton was 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.

Town Engineer M. O'Dell said the out-lot which abuts the property is 10 feet wide and the fence needs to be at least 10 feet off the existing sidewalk.

A condition was added to the petition that the fence would not extend beyond the property line.

Member F. Owens moved to close the public hearing accept the Findings of Fact and grant the variance request with the additional condition seconded by member S. Niepokoj and passed by unanimous roll call vote.

Jason and Elizabeth Conway requesting a variance to increase the height of a fence from 4 feet to 6 feet along Pearson Rd. and Niblick Ave. **Petition 14-03** The secretary verified proof of publication, notification and payment. Mr. and Mrs. Conway were present. Mr. Conway said they are looking to install a 6 foot privacy fence along a busy road. They have small children who enjoy playing sports in the backyard. He said a taller fence would help keep sports balls in the yard and off Pearson Rd. They have two family dogs and also foster dogs. He respectfully requested the board to consider granting the variance request.

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 was declared closed.

There was no issue with the petition.

Member S. Niepokoj moved to close the public hearing accept the Findings of Fact and grant the variance request seconded by member F. Owens and passed by unanimous roll call vote.

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OLD BUSINESS

President R. Corder said he was displeased that there was lack of adequate security in place when a burglary at Disappear Gear occurred on June 12, 2014. He recalled the board granted that variance after receiving assurance from the petitioner that there would be a security alarm system in place and the guns would be kept in a vaulted area. He commented that the burglary was an egregious event placing the community at risk.

Member S. Niepokoj commented that the petitioner was taken at his word and the board assumed the petitioner would follow through on his assertions.

Member J. Kowalski said that conditions can be enforceable and conditions can be recorded the difficult part is making sure business owners are in compliance.

Attorney J. Paulson requested a copy of the Findings of Fact associated with the petition.

NEW BUSINESS- None

MISCELLANEOUS BUSINESS- None

ADJOURNMENT

There being no further business before the board member F. Owens moved adjournment seconded by member S. Niepokoj and passed by unanimous voice vote. The meeting adjourned at 7:45 p.m.

Respectfully submitted

Gail A. Murawski, Secretary

Approved:

R. Corder, President