

**CHESTERTON BOARD OF ZONING APPEALS**  
**AUGUST 28, 2014**  
**6:30 p.m.**

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

**APPROVAL OF MINUTES**

Member T. Browne moved approval of the minutes from July 24, 2014 seconded by member S. Niepokoj and passed by unanimous voice vote.

**PRELIMINARY HEARINGS**

**Christopher S. Cichocki and Sarah E. Cuevas-Cichocki** requesting a development standard variance. **Petition 14-07** Mr. Chichocki said they are interested in installing a fence at a height of 6 feet.

Attorney J. Paulson instructed the petitioner that a full legal description was necessary, which could be found on the deed or mortgage information. She advised him to specify the variance being requested and complete the Findings of Fact. Furthermore she advised the petitioner to go to the counties GIS website to obtain property owners within 300 feet and include their map. The Records Office could help him find a copy of the deed.

Town Engineer M. O'Dell said he only needed the variance on the south property line and asked the petitioner to label that on his site plan.

The petitioner was confident he could have the necessary requirements by the September 8, 2014 re-submittal date.

Member S. Niepokoj moved to set this item for public hearing at the September 25, 2014 meeting date seconded by member J. Kowalski and passed by unanimous voice vote.

**PUBLIC 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 representation for the petitioner. Mrs. Elaine Bross and Eric Bross accompanied him. A court stenographer appointed by Attorney Hiestand was also in attendance. A transcript of the July 24, 2014 meeting was made available to members of the board for their review prior to tonight's meeting. A site plan was submitted depicting lot layout. The vendor rules were provided for the board.

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Attorney Hiestand addressed concerns regarding parking. He said he had taken a look around to see how businesses in heavy pedestrian traffic areas preserve their parking. He noted that surrounding the European Market area here in town places that had utilized "patron parking only signs" those were being honored. In Brown County a CVS Pharmacy preserved parking also by utilizing "Parking for CVS Customer's only". In Beverly Shores he observed residents property marked clearly. In conclusion, if a parking space is clearly marked for use, it seemed to be observed by the general public. He noted that some communities that have increased tourist traffic have public parking lots available for two and three hour stretches. "If the town could acquire property for a few of those type parking lots we could get more tourists to our area and get a reputation where you could come and park more comfortably."

Attorney Hiestand said it occurred to him that part of this property was incorporated into an onsite drainage system but decided the fact really is economics. Economics dictate that the improved fenced area has no market. He said the bad tax situation makes this property difficult to rent or sell to somebody. Retail spaces moderately priced in this area sit vacant and anything new would be in a high rent category. This open air market would be an interim use that would enable the property owners to generate some income to put towards taxes. He respectfully requested the board consider granting the variance request.

Attorney J. Paulson noted that the public comment portion of the public hearing was declared closed at the July meeting. She advised the board that the public comment portion could be reopened if the board was inclined to do so.

Member J. Kowalski moved to reopen the public comment portion of the public hearing seconded by member T. Browne and passed by unanimous voice vote.

Rules for conducting the public comment portion of a public hearing were read aloud.

Mr. Leonard Sullivan of 413 Morgan Avenue, Chesterton was present to speak in support of the petition. He commented that no persons he spoke to were opposed to the market. He said he spoke to about 15 people and there was no objection. He suggested having directive signage so patrons to the market would not cut through Morgan Park. He commented that the Bross's have always been fair. He did not believe they would bring in anything detrimental to the community. They have been in business here for 70 years. He felt they should have a favorable hearing.

The president asked for all persons wishing to speak in opposition to the petition.

Maura Durham President of the Duneland Chamber was present to speak in opposition to the petition. Her current residence is 519 Greenwood Ave., Michigan City, IN. Deanna Kasch Duneland Chamber representative residing at 935 Luther Dr. Hobart, IN. accompanied her. Maura commented that the European Market is a market that has been in place past 12 years.

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They have used strategic planning to grown the market in a positive direction. They have procedures and restrictions in place. It is a juried market with seasoned reliable vendors keeping pace with what the town of Chesterton has come to expect. She said there is little issue because they abide by a set of rules and are doing everything they need to do. She said vendors are instructed as to where they can and cannot park. Patrons come because they know the standard of quality they can expect.

Maura Durham said that although the market is revenue generator for the Duneland Chamber of Commerce, they do give back to the community. They are involved with the 8<sup>th</sup> grade reality store experience. They sponsor a teacher's reception where they welcomed 30 new teachers to the community. They also finance a portion of the fireworks display which is a multi town endeavor. She thanked the board for their time.

Dennis Byron of Valparaiso and business owner at 219 and 225 S. Calumet, Chesterton was present to express concerns. He said a giant free for all garage sale across the street from his businesses was not what he wanted to see. He commented that this outdoor venue located in the downtown area would be seen by visitors to our town. He said he still had not seen what sort of rules would be in place. Furthermore, he did not find it assuring that the hours and days of operation would be vendor driven. He questioned if the variance would carry with the property or only apply to the Bross Families ownership of the property. He understood that the tax assessment was very high. He expressed concerns about parking in a limited parking area. As a business owner they spent \$100,000.00 to take the house down behind the businesses to gain 10 parking spaces. "That's a ton of money."

David Brum of 301 Jefferson Ave., Chesterton and business owner of 324 S. Calumet Rd., Chesterton was present to speak. He said historically there has been some contention in that area concerning parking. He said that onerous should not be on the business owners to "deal with" when the issue of parking is not being addressed properly. He said that sort of attitude in the beginning is not going to relate into a cooperative attitude if the problem does begin. He questioned if there would be rules restricting vendors/patrons from parking in neighboring lots. Patrons to that market would want to park in lots specific to businesses located in that area who need lot availability in order to operate a successful business. He commented that he would love to see that property be put to a better and higher use other than a fenced off parking lot. He thanked the board for their time.

In rebuttal, Attorney Hiestand said most businesses think how can I bring more business to the area? Concerns are what's going to be sold, yet there is no concern for what's being sold at Katie's Antiques or other antique stores. As far as he was concerned the chamber operates on the town right of way and has taken over half the park with no known variance. If they could relieve some congestion in that area by opening up another area it would be a good thing.

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This would encourage people to come to see what's available in another part of town. Non for profit groups in the community may benefit from exposure in the sales of candy and baked goods. If parking becomes a issue all you have to do is put up a sign. His observation indicated that people do obey restrictive signs.

Attorney Hiestand said the nature of the variance does run with the property. The Bross family has been associated with that corner for over 70 years. You can't put your head in the sand turn away competition. To have people come with their pocketbooks to spend in our community is the name of the game. The chamber has done a wonderful job with the market but we need to build on that. That's why people go to Nashville. People go there because businesses are there. We need to move forward. In conclusion he said parking does not have to be an issue if people are smart about the way they mark their business.

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

Member F. Owens said he is still confused with finding #3.

Attorney Hiestand said that although the drainage is an issue the main issue is that the economics are not there to do anything different with this property. It's developed, it has a fence, it's got pavement. The only thing to do besides some open market use of the property is to put a building on it. Is there is someone willing to invest a million dollars in putting a building in Chesterton and hoping they can rent it out for enough to cover that debt? It's just not going to happen. There is vacant property all over town.

Attorney Hiestand said drainage is an issue as well. He gestured to a site plan indicating where drainage improvements became necessary to handle surface water runoff so the adjoining building did not flood or become damaged. He said years ago some changes were made to the inlets in the sewer system immediately behind this property. The inlets were raised and the drainage was not sufficient to sheet drain this property into the existing inlets so water ponded next to the building. There was a drainage easement across the back property but they were told by the town they could not utilize that drainage easement. They would have to come up with some system for taking care of the water on the property. The drainage structure is located on the center part of the property. They have two drainage manhole covers, dry wells that are taking water away. The real hardship is there is no practical development you can make of the lot in its present state to generate income. People are not lining up to pay \$50.00 per square foot to rent a space and that's what it would take to cover expenses.

Member T. Browne asked if the drainage issue is the reason they are unable to put a building on the property.

Attorney Hiestand said he didn't know if you could engineer that to accommodate both the drainage and a building. The reason they can't put a building on that property is because there's

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no improvement to make on that property that would contribute to digging the petitioner's out of the hole they are in with the tax situation. Only a high rent user of the property could do that and they just don't exist. Buildings that exist are a better option. There is no viable economic use that can be developed on this property. If that comes along in the future grand.

Member S. Niepokoj asked if someone where to buy the property would the petitioners have drawings of the underground drainage system that's in place. He wondered when was the last time the property had been put on the market for sale.

Eric Bross said he had submitted drawings to the town when those drains were installed. The drawings had been submitted when they went through a remodel for the climate controlled storage project.

Elaine Bross said it had been on the market for 15 years with no buyer. Right before they converted the building for climate control storage she took it off the market.

Member Niepokoj asked for confirmation of the assessed property value. He quoted the value of the property of \$243,000.00. He asked if there was an error correction made by the county.

Elaine Bross said yes the assessed property value is \$243,000.00 and that is a corrected amount. Before that amount it was much more.

Member Niepokoj said he would like to see better control over what will go on. If you build it they will come is not the approach to be taken. Vendors should not dictate hours of operation or days of the week. How do you operate a business open ended?

Elaine Bross said the plan would develop as they work with their vendors. She commented it's difficult to know who's going to show up until you open the doors of any business. She said they have always run a good business. We will always know what will be there a week or two ahead. If it doesn't meet the criteria of decency it's not going to be there. "We are a family with integrity and we don't do that."

Member J. Kowalski commented drainage is not your biggest problem your saying it's the economy. He wondered if petitioners had ever approached the town to see if they could tie into the sanitary sewer.

Attorney Hiestand said it's a problem because it would have to be reengineered in order to deal with drainage. Right now that lot is serving as the sink for the water that comes off the building. He said you can't tie into the sanitary sewer. The effort now is storm water separation. The town was the one who told Mr. Bross he could not utilize the drainage easement that existed across property the east and he had to come up with another solution. He said if someone comes along

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and wants build over a million dollar building on there they could reengineer that. Now it serves as the way to keep the other building dry for storage.

Member Kowalski said he understood the plight, but wondered if they ever thought they had a price that was too high. After you sold off the bigger property to the hardware store, you're now left with what's there. Other people in this community have vacant property and have to pay property taxes. If the board approves this variance what would we do with every other individual that wants to put a flea market on their property? He said he understood every petition is judged on its own merit. You go half a mile down the west and there's a lot owned by Mr. Mitchell and maybe he would like to operate a flea market. There are many factors to look at here. You're asking for a quick fix.

Attorney Hiestand said his property is committed to parking for his tenants. This property is Zoned B-1 we don't need to provide parking. We're providing parking for vendors but that's not a B-1 requirement.

President R. Corder said that's not a requirement for B-1 Uses.

Member Kowalski commented that the chamber gives back to the community. What are we going to get out of this as a community?

Attorney Hiestand asked members of the board what they would put on the lot in order to make money.

Member Kowalski said it takes money to make money.

Attorney Hiestand commented how much do you suppose they've already invested in this lot, fencing paving, and drainage.

Member Kowalski said this petitioner has been in front of the board three times now. The first time they asked for a variance and then withdrew. The second time they asked for controlled storage and the board agreed. Now they want to bring this in. How much is enough?

President R. Corder questioned members of the chamber. He asked if the chamber had a business plan prior to the start-up of the Chesterton European Market.

Chamber President Maura Durham said vendors had an application they would submit. Being a juried market vendors were required to submit photographs and or a written description of what they planned to bring. The jury would make a decision based on merchandise. If there was duplication in vendor offerings or the quality was sub-par the application was declined.

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President R. Corder asked if the chamber gives vendors a start time and tear down time and if they designate parking.

Deanna Kasch said the vendors are asked to park farther away from the market area so patrons have more convenient parking spots. She said she also encourages patrons to dine at local restaurants and directs them to local stores. There is an information booth that is operated by a paid staff member. There is a specified set up time. There is a website just for the European Market where the week's vendors can be found. Patrons to the market have come to expect certain vendors and can easily know who will be present during any given week. She said there has been a business plan in place since the markets inception.

President R. Corder questioned whether signage restricting parking would be calculated into overall signage square footage allowable per businesses.

Town Engineer M. O'Dell said restrictive parking signage on the building would be figured into the overall building signage square footage allowed.

President R. Corder said the Smedman's Marketplace information allows for bake sales and baked items while another list of restricted items excludes baked goods.

Mrs. Bross said they could change that.

Member F. Owens noted that the assessed value of the property at \$145,900.00 and \$243,100.00 given as a handout by the petitioner are not what is currently reflected on the counties website.

Member J. Kowalski said he is unable to make a decision tonight because much of the information presented was just received tonight. Member F. Owens was in agreement.

Member S. Niepokoj moved to continue the public hearing until the September 25, 2014 meeting seconded by member J. Kowalski. Attorney Hiestand expressed his displeasure having this item in front of the board for 4 months with no decision. The motion passed by unanimous voice vote.

Attorney Hiestand was informed that the secretary had not received any copies of the information which was delivered to board members. He said he would be sure she received the information.

**OLD BUSINESS- None**

**NEW BUSINESS- None**

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**MISCELLANEOUS BUSINESS- None**

**ADJOURNMENT**

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

Respectfully submitted,

Gail A. Murawski, Secretary

Approved:

R. Corder, President