

**CHESTERTON BOARD OF ZONING APPEALS
SEPTEMBER 25, 2014
6:30 P.M.**

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

APPROVAL OF MINUTES

Member J. Kowalski moved approval of the minutes from August 28, 2014 seconded by member T. Browne and passed by unanimous voice vote.

PRELIMINARY HEARINGS- None

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** Rules for conducting a public hearing were read aloud. Attorney T. Hiestand distributed documentation of the assessed value of the property in question. The Zoning Ordinance does not prohibit open air markets it just does not address the question of open air markets with the exception of farmers market. The town's table of acceptable business uses is inadequate, which unnecessarily discourages people from starting one especially because of the time and efforts required to obtain a variance. He commented that the Porter County Expo Center is advertising for booth rentals at their indoor market. He said economic activity begets economic activity. This town has developed a well deserved reputation for somewhat ineffectual planning efforts especially with national accounts which have cost the town millions of dollars in economic development and cost the town hundreds of jobs. This is all under the guise of protecting existing business. Those businesses should parish for not being able to adapt to modern business realities. The approval of this variance would allow the petitioner to generate income to pay taxes and upkeep the site. Its things like this that allows people to become acquainted with our town and what it has to offer.

There was no further comment from members of the board.

Member F. Owens moved to close the public hearing and motioned to reject the variance requested by the petitioners for the following reasons; hereto attached and made a part of these minutes. See attached Findings of Fact. The motion was seconded by member T. Browne and passed by a unanimous roll call vote of 5 to 0, with all members voting yes to reject the variance request.

Christopher S. Cichocki and Sarah E. Cuevas-Cichocki requesting a variance to increase the height of a fence from 4.5 feet to 6 feet, along the south property line, therefore an increase of 1.5 feet. **Petition 14-07** Rules for conducting a public hearing were read aloud. The secretary verified proof of publication, notification and payment.

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Attorney J. Paulson said there are a few notification issues to be clarified prior to the public hearing being opened.

The secretary verified that there were several property owners within 300 feet that she had not received signatures for. She did not receive proof of payment from the petitioner.

Mr. Cichocki said yes there are two neighboring residents he had not notified. He commented that people were out of town and he could not obtain their signatures. He said he left the letters in those resident's mail boxes.

Attorney J. Paulson commented under the law the petitioner is required to notify all property owners within 300 feet. There are two ways to do so, one is by obtaining signatures and the other is certified mail. If you can't find people to obtain signatures you must send them a certified mailing.

The petitioner explained his hardships in obtaining signatures.

Attorney J. Paulson said in accordance with the law, she could not advise opening the public hearing. She advised the board to continue this public hearing until October. She advised the petitioner he did not need to re-notify everyone just the ones he did not reach for signatures. She strongly encouraged notifying them by certified mail.

There was additional discuss with the petitioner as to why he needed to go through this process and obtain a variance while some of his neighbors had six foot fences and they didn't have to go through the variance process.

Attorney J. Paulson said she would like to see the Finds of Fact strengthened. The corrected paperwork would be required by October 6, 2014. The certified mailings would need to go out by October 9, 2014.

Members of the board directed the petitioner to take a look at other fence petitions that are on file at the building department and are public record.

Member T. Browne moved to continue the public hearing until the October 23, 2014 meeting seconded by member F. Owens and passed by unanimous voice vote.

OLD BUSINESS- None

NEW BUSINESS- None

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MISCELLANEOUS BUSINESS

Member J. Kowalski called attention to a visual eyesore situation that exists on the north side of Indiana Ave. He said there are multiple cars with no plates on them and a whole lot of other stuff going on near that home.

Town Engineer M. O'Dell said they are aware of that issue and they are working on it.

ADJOURNMENT

There being no further business before the board member T. Browne moved adjournment seconded by member S. Niepokoj and passed by unanimous voice vote. The meeting adjourned at 6:25 P.M.

Respectfully submitted,

Gail A. Murawski, Secretary

Approve:

R. Corder, President

CHESTERTON ADVISORY BOARD OF ZONING APPEALS

FINDINGS AND DECISIONS

Petition No: 14-04

Amended for: _____

The application of: Elaine A. Bross, Steven Bross, Nancy Bross, & Carolyn Parrigan

Variances requested: Use Variance to allow an Open Air Market

Legal Description: See attached Exhibit A

Address: Parking lot North of 315 S. Calumet Road, Chesterton, IN

Date Public Hearing Opened: July 24, 2014

Date Public Hearing Closed: September 25, 2014

We ask that the members of the Chesterton Board of Zoning Appeals now FIND:

1. That the USE VARIANCE requested WILL WILL NOT be injurious to the public health, safety, morals and general welfare BECAUSE of the facts shown as follows:

- A. **The Petitioner has not produced evidence to the BZA to convince it to conclude that the use variance will not be injurious to the public health, safety, morals and general welfare.**
- B. **The open air market would generate an amount of traffic in excess of many permitted business uses that could be found for the property in question.**
- C. **The Petitioners have provided only a very short list of items they will not permit to be sold at the market: illegal items, guns, ammunition, tobacco, livestock, small animals, birds, reptiles. The Petitioners have indicated that any other items will be permitted to be sold at the open air market. There are numerous types of items, not encompassed by the list of prohibited items that would be injurious to the public health, safety, morals, and general welfare. Furthermore, the Petitioners have indicated they do not intend to inspect the open air market vendors' items for sale to ensure they do not consist of prohibited items, which would be injurious to the public health, safety morals and general welfare.**

2. That the use and value of the area adjacent to the property included in the variance WILL WILL NOT be affected in a substantially adverse manner BECAUSE of the facts shown as follows:

- A. **The Petitioner has not produced evidence to the BZA to convince it to conclude that the use variance will not affect in a substantially adverse manner the use and value of the area adjacent to the property in question.**
- B. **Remonstrators, who own property near the subject parcels, have testified that there is parking contention in the area, particularly on weekends. The Petitioners do not plan to offer on-site parking for their customers and thus the only available parking for customers would be on-street parking or in the lots of neighboring privately owned properties. The amount of on-street parking in the area is limited. The remonstrators indicated that if customers of the open air market use their private parking lots, there will be no place for their retail and commercial tenants and customers to park, thus jeopardizing their ability to rent their properties and reducing their property values.**
- C. **The open air market would generate an amount of traffic in excess of many permitted business uses that could be found for the property in question.**
- D. **The remonstrators also expressed concern over the type of items to be sold at the open air market and their effect on surrounding property values, such as used vehicles, car parts, tires, etc. The Petitioners have not indicated that these type of items would not be sold at the open air market. The open air display of used vehicles, car parts, tires, etc. would have a negative impact on surrounding property values in the downtown Chesterton area.**

3. The need for the variance DOES DOES NOT arise from some condition peculiar to the property involved BECAUSE of the facts shown as follows:

- A. **The Petitioner has not produced evidence to the BZA to convince it to conclude that there is some condition peculiar to the property involved which would result in the need for the variance requested**
- B. **The fact that a portion of this property is being utilized for drainage of an adjacent parcel owned by the Petitioner does not necessitate a variance, because the drainage does not utilize 100% of the parcels. According to the Town's Interim Building Commissioner, there are over 20,000 feet of available space on the property for B-1 usage and the minimum size of a building in a B-1 zone according to the Chesterton Comprehensive Zoning & Subdivision Ordinance is only 750 square feet, thus there is sufficient space to construct one or more**

buildings for B-1 use on the property.

- C. **The fact that the Petitioners allege that the property is “heavily taxed” is not a condition peculiar to the property, as all property within Westchester Township is taxed at the same rate. Any dispute over Porter County’s assessed value of the property may be addressed through proper means to the Porter County Assessor. Furthermore, the term “heavily taxed” is a subjective term and the based on the evidence presented to the Board, it does not find that the property is “heavily taxed.”**
 - D. **To the extent that the Petitioners claim that there is no market for the property because it is paved and fenced-in, that problem is self-created by the Petitioners who made the decision to pave and erect a fence surrounding the property.**
4. The strict application of the zoning ordinance WILL ___ WILL NOT ___ constitute an unnecessary hardship if applied to the property for which the variance is sought BECAUSE of the facts shown as follows:
- A. **The Petitioner has not produced evidence to the BZA to convince it to conclude that the strict application of the zoning ordinance will result in an unnecessary hardship if applied to the property in question.**
 - B. **According to the Town’s Interim Building Commissioner, there are over 20,000 feet of available space on the property for B-1 usage and the minimum size of a building in a B-1 zone according to the Chesterton Comprehensive Zoning & Subdivision Ordinance is only 750 square feet, thus there is sufficient space to construct one or more buildings for B-1 use on the property.**
 - C. **A simple reading of the 40+ permitted uses in the B-1 zoning district under Table A of the Chesterton Comprehensive Zoning & Subdivision Ordinance shows that there are numerous uses available to the property in question that would provide a reasonable economic return to its owner.**
 - D. **The fact that a portion of this property is being utilized for drainage of an adjacent parcel owned by the Petitioner does not necessitate a variance, because the drainage does not utilize 100% of the parcels.**
 - E. **Petitioners have testified that the subject parcels are being used to drain water from an adjacent property that is also owned by the Petitioners. They have further testified that using the subject parcels for drainage prevents damage to the building they own on an adjacent parcel. The drainage on the subject parcels provides a benefit and value to the Petitioners’ adjacent property, thus they are currently utilizing the property for a valuable purpose.**
 - F. **To the extent that the Petitioners claim that there is no market for the property**

because it is paved and fenced-in, that problem is self-created by the Petitioners who made the decision to pave and erect a fence surrounding the property.

5. The approval DOES DOES NOT interfere substantially with the Comprehensive Plan adopted by the Town of Chesterton BECAUSE of the facts shown as follows:

- A. **The Petitioner has not produced evidence to the BZA to convince it to conclude that the variance requested does not interfere substantially with the Chesterton Comprehensive Plan.**
- B. **The granting of the use of an open air market in a property zoned B-1 with over 40 permitted uses available to it violates a policy in the Comprehensive Plan under Appendix C: Economic Development Recommendations that reads "Encourage re-investment in downtown Chesterton." The granting of a variance for a open air market would not require any substantial investment in the property, as no buildings or structures are proposed, which interferes substantially with the Chesterton Comprehensive Plan.**

THE FOLLOWING SECTION IS FOR BZA USE ONLY

THE BOARD NOW GRANTS REJECTS the above requested USE VARIANCE(S):

And further decides the following conditions shall be imposed:

Dated: Sept. 25, 2014

CHESTERTON BOARD OF ZONING APPEALS










