

CHESTERTON BOARD OF ZONING APPEALS
MAY 28, 2015
6:30 P.M.

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

APPROVAL OF MINUTES

Member J. Kowalski moved approval of the minutes from April 23, 2015 seconded by member T. Browne and passed by unanimous voice vote.

PRELIMINARY HEARINGS

Bethlehem Evangelical Lutheran Church requesting a variance for an additional accessory structure. A second variance is requested to install a telecommunication tower 85 feet in height a 45-foot variance from the 40-foot maximum allowed by the Ordinance. **Petition 15-03** Daniel J. Duhren and Doug Dolan of Dolan Realty Advisors, LLC were present as representatives for the petition. Mr. Duhren said since the last meeting SBA Towers has added decorative landscape and reduced the tower height. They are currently asking for two variances the first being to increase the height of the tower from the allowed 40 foot height to an 85 foot height. The second variance is for the accessory structure. He called attention to the justification memo requested by the board last month. The map indicated areas that would be enhanced by the installation of the proposed tower. The before and after coverage maps compared and contrasted services reliable in-resident services, unreliable in-resident, reliable in-vehicle unreliable in-vehicle and reliable on-street.

Attorney J. Paulson said she did not find a copy of the deed with the full legal description. The secretary called attention to a copy of the deed with legal description that Attorney Paulson reviewed. Secondly she informed the petitioner that they were still missing a request for a Use Variance. A communication facility is not an approved use in that area of town. She told petitioners that the Findings of Fact they submitted for the height variance and accessory structure were use variance findings they should be developmental standard variances. The form needed for those variances are different. She clarified for the petitioners, they would ask for 2 developmental standard variances and 1 use variance.

Town Engineer O'Dell said they had provided him with all the documentation he had requested.

Member J. Kowalski commented that the findings had been completed from the view point of the telecommunication provider. The findings should be completed from the view point of the property owner which is the church.

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Mr. Dolan said there is a strong need to be in the town of Chesterton and the findings were written as such. If the existing restrictions stayed in place, it would not permit the church to do business with them.

Attorney J. Paulson said the burden of proof must be met from the petitioner's point of view.

Members of the board questioned if the petitioners could provide an appropriately amended petition by the June 8th submittal date. They encourage the petitioner to take a look at past cell tower petitions which could be found on file at the town hall.

Mr. Dolan and Mr. Duehren assured members of the board that they are interested in providing whatever revisions are necessary to keep on their timeline. They understood that if the amended petition was not in order the public hearing might be continued until the following month.

Member J. Kowalski moved to set this item for public hearing at the June 25, 2015 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

Town of Chesterton requesting a Use Variance to construct a wireless antenna facility. A Developmental Standard variance is requested as to the height. A Developmental Standard variance is requested as to the setback. **Petition 15-04** Mr. Howley of Central States Tower II, LLC was present as representation for the petitioner. He said they are looking to install a cell tower to be located at 609 Grant St. The tower would be 140 feet with a 5 foot lightening rod atop for a total of 145 feet. They would also be seeking a variance for a setback from a business district. He said they have been working with the town staff for over a year on the location. The proposed tower would not adversely impact the town's public works yard or operations. The first carrier tenant on this tower is Verizon Wireless. They had demonstrated the need for reliable coverage in this business district of town. Residents, businesses and town visitors would be receiving state of the art communications capabilities. Furthermore, the town would also receive a financial benefit with this towers installation. The lease area would be 50 x 75 feet allowing for additional future carriers. This tower would also be suitable for any public safety communications the town might have. He respectfully requested the board to consider setting this item for public hearing at the June meeting.

Attorney Gregory Babcock was present to step in as council for the town regarding this item. He clarified that this location is in an I-1 District. He noted that the height and setback variances should be separated. He requested that the petitioner rework language used to make these variance requests. He said there are some landscape requirements and as long as those are met a variance would not be necessary.

Town Engineer M. O'Dell questioned why a taller tower then what was presented earlier did not have a greater impact on the areas served.

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Member T. Browne commented that the height of the tower does not necessarily result in a larger impact footprint.

Mr. Howley said that this location in the heart of the business district has more density. The desired outcome is for the signal to stay in this area. The placement and height of the other tower allows the signal carry further. These two sites are designed to complement each.

Member J. Kowalski encouraged the petitioner to strengthen their findings. As in the previous petition the findings of fact should be written from the land owners/petitioners perspective.

Member T. Browne moved to set this item for public hearing at the June 25, 2015 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

Starlite M. Thompson and Jordanna L. Suter requesting a Use variance to allow the continued use of an existing home for residential rental. **Petition 15-05** Attorney G. Babcock was present as representation for the petitioner. He was accompanied by Starlite Johnson. Attorney Babcock said the property located at 408 and 408 ½ N Calumet in a B-2 Zone. The Ms. Johnson lives in larger residential home built in 1908. The smaller rental home has been there since 1945. That home has been a rental home since 1997 and even before that. Ms. Thompson had taken some time to bring the smaller home back to a more rentable state since it has become empty. She has since considered selling the properties and given the length of its vacant state according to our Ordinance the use of a rental property would necessitate a variance. There are currently renters in the home. He respectfully requested setting this item for public hearing at the June meeting.

Town Engineer M. O'Dell wondered if a variance for an additional principal structure might be necessary.

Attorney Babcock explained that the structure is a legal non-conforming structure the necessity for the variance arises because of the use.

Attorney J. Paulson agreed with Attorney Babcock they do not need a variance because it is a legal non-conforming structure the home predates the Zoning Ordinance.

There was no comment from members of the board.

Member J. Kowalski moved to set this item for public hearing at the June meeting seconded by member J. Kowalski and passed by unanimous voice vote.

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MNB Development Corp. requesting a Use Variance to permit a children's indoor amusement park. **Petition 15-06** Attorney G. Babcock was present as representation for the petitioner. Bill Knowlen accompanied him. The proposed two story 22,000 square foot site formerly housed Range Masters. The lower level would contain play equipment for younger children. A sitting area where parents could supervise play would offer WiFi internet connection. The upstairs would include laser tag for older children and teens. The developer had looked at Zao Island and Bellaboo's similar facilities located in nearby communities. The current tenant at the site Tiger Lily Cafe would provide concessions. He respectfully requested that this item be sent for public hearing.

Attorney J. Paulson had no comment.

Member J. Kowalski had a question concerning the property deed which was clarified by Attorney Paulson.

Member T. Browne questioned the day to day operations and inquired about staffing.

Mr. Knowlen said the hours of operation would be from 9 a.m. to 7 p.m. seven days per week. He said the business would most likely start out overstaffed with supervisors evening cleaning staff.

Attorney G. Babcock said they would provide a business plan and address issues of safety and employee background checks.

Member J. Ackerman moved to set this item for public hearing at the June 25, 2015 meeting seconded by member T. Browne and passed by unanimous voice vote.

Laura L. Gerhardt as Trustee of Trust #8 requesting a Use Variance to permit the use of the Property for a chiropractic office on Lot 6 & Lot 7. **Petition 15-07** Attorney G. Babcock was present as representation for the petitioner. He was accompanied by Victor Gerhardt, Laura's husband having a POA document in file. The property located at 114 S. 11th St. is zoned R-3 residential. The location has formerly housed a dentist's office and veterinary clinic. He commented that his property should probably be rezoned but at this time they have a chiropractor interested in locating his practice there. The petition was not submitted within the required timeframe although all board members did have an opportunity to review the petition prior to tonight's meeting. Attorney Babcock respectfully requested the board to consider suspending the filing rule for submittals and consider setting this item for public hearing at the June 25, 2015 meeting.

Member T. Browne moved to suspend the rules for submittal seconded by member J. Kowalski and passed by unanimous voice vote.

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Attorney J. Paulson had no comment.

Town Engineer M. O'Dell had no issues with the petition.

Member J. Kowalski moved to set this item for public hearing at the June 25, 2015 meeting seconded by member T. Browne and passed by unanimous voice vote.

PUBLIC HEARINGS

Lawrence J. Janowski, Trustee of the Josephine M. Janowski M. Living Trust requesting a variance to reduce the size of off-street parking spaces (length: 20 ft. to 18 ft. for 75-90 degree parking angle) **Petition 15-01** Attorney J. Paulson said a formal letter was received from the petitioner withdrawing the petition. The rules state no other petition concerning this property can be brought before the board for 6 months.

OLD BUSINESS- None

NEW BUSINESS- None

MISCELLANEOUS BUSINESS- None

ADJOURNMENT

There being no further business before the board member T. Browne moved adjournment seconded by member J. Ackerman and passed by unanimous voice vote. The meeting adjourned at 7:50 p.m.

Respectfully submitted,

Gail Murawski, Secretary

Approved:

R. Corder, President