

CHESTERTON BOARD OF ZONING APPEALS
JUNE 25, 2015
6:30 p.m.

The meeting was called to order at 6:30 P.M. Present were members F. Owens, T. Browne, J. Kowalski, J. Ackerman 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 May 28, 2015 seconded by member T. Browne and approved by unanimous voice vote.

PRELIMINARY HEARINGS- None

PUBLIC HEARINGS

Bethlehem Evangelical Lutheran Church requesting a Use Variance for a telecommunications tower. A second variance is requested for an additional accessory structure. A third variance is requested for a 45 foot height extension for an 85 foot communications tower.

Petition 15-03 A letter was received requesting that this item be continued until the July meeting. There was no representative present.

Member J. Kowalski moved to allow the petitioner to continue the public hearing until the July 23, 2015 meeting seconded by member F. Owens and passed by unanimous voice vote.

Town of Chesterton requesting a Use Variance to allow the construction of a wireless antenna facility. A second variance is requested to allow construction of a 140 foot cell tower; therefore a variation of 100 feet where the Ordinance allows for a 40 foot maximum height. A third variance is requested to reduce a setback from 105 feet allowed by the Ordinance to 29 feet therefore a variance of 76 feet. **Petition 15-04** Rules for conducting a public hearing were read aloud. The secretary verified proof of publication, notification and payment. Mr. Howley of Central States Tower II, LLC was present as representation for the petitioner. He commented that they had tightened up responses with regard to findings and decisions. They also provided photo simulations and included a landscape plan. The proposed tower would not adversely impact the town's public works yard or operations. They would be placing the tower at the farthest distance from a residential home. 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. He respectfully requested the board to consider granting the variance requests.

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

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Mr. Donald Spisak of 660 Wabash Ave., Chesterton was present to speak in opposition to the petition. He said that after his retirement he began having symptoms of tiredness and discomfort and an elevated blood pressure. After investigating his symptoms he concluded that his symptoms were from being within a close proximity to a cell phone tower. He currently lives near the cell tower installed near Joe's Towing on Waverly Rd. He said he installed a plug in device that deflects and shields against harmful electromagnetic waves. With the device he has he can deal with one cell phone tower but the installation of a second tower, he believes would be dangerous. He says our elected officials have pushed these things through and people like him can't stop them. He urged the board to deny the request.

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

Mr. Howley said the Federal Communication Act of 1996 states that local governments are not permitted to reject placement of wireless service facilities on the basis of health. Independent studies by electronic engineers have found that the uncontrolled radio frequency emissions such as on the ground have come out at levels that are four times below the emissions of a baby monitor placed in an infant's room. It is because these are low power towers that necessitate installing more towers at a specific site. They would also have to regularly submit data to the FCC showing that they are operating within the licensed frequencies.

Attorney Babcock asked if the Radio Emissions Frequency Report had been turned into the building department. He suggested that the board condition their approval on the location of the tower being in accordance to documents submitted into the file labeled as documents; C-1, L-1 and E-1.

Mr. Howley said once a building permit was secured they would be providing that RF Report. That report would demonstrate the maximum and permitted exposure levels as what is considered uncontrollable environment or ground level emissions.

Attorney Babcock commented that there is a peculiarity to the site which would not allow for cell phone tower use on this property. He said Chesterton does not have a cell phone tower use in the entire town. By the Ordinance, a Use Variance would always be necessary. When considering the health and safety issue, the FCC mandates that we have the RF Report and if it meets the criteria that particular health and safety issue is not a factor that can be used to reject the variance request.

Member F. Owens commented that placement of a cell phone tower is always difficult.

Member T. Browne was in agreement with member Owens. He commented that more and more people are moving to the area and opting for no land lines. The ability to make an emergency call from a cell phone is a reality and necessity.

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Member F. Owens moved to close the public hearing and grant the Development Standard Variance and Use Variance contingent upon documents C-1, L-1 and E1, being abided including following the FCC requirements. They would furthermore accept the Findings of Fact as presented. The motion was seconded by member T. Browne and passed by a unanimous roll call vote of 5 to 0.

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** The secretary verified proof of publication, notification and payment. 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 is in a B-2 Zone. Ms. Johnson lives in the larger residential home built in 1908. The smaller rental home has been there since 1945. The Chesterton Zoning Ordinance came into effect in 1955 to 1957. This site is considered a legal non conforming use. The home has been a rental home since 1997 and even before that.

Ms. Thompson of 408 N. Calumet said she purchased the home in 1997 and the other property has been a rental since then. When the former renter passed away she had taken some time to bring the smaller home back to a more rentable state.

Attorney Babcock said 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. The use of the rental does not adversely impact the neighborhood. There is ample parking available for renters to park onsite. He respectfully requested that the board 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 portion of the public hearing was declared closed.

Attorney J. Paulson said everything is in order.

Town Engineer M. O'Dell said the petitioner has made all the necessary updates to the home. He had no issues.

Member J. Kowalski wondered if anyone wanted to use this property as a business since its Zoned B-2 could they do so.

Attorney G. Babcock said yes.

Member F. Owens moved to close the public hearing accept the Findings of Fact and grant the Use Variance request seconded by member J. Kowalski and passed by unanimous roll call vote.

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MNB Development Corp. requesting a Use Variance to permit a children's indoor amusement park. **Petition 15-06** The secretary verified proof of publication, notification and payment. Attorney G. Babcock was present as representation for the petitioner. Marilyn Busch and Bill Nolan 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 Wi-Fi internet connection. The upstairs would include laser tag for older children and teens.

Mr. Bill Nolan of Iowa Street, Chesterton said "Fireflies" would be open from 10:00 a.m. till 7:00 p.m. seven days per week. He anticipated hiring about 10 to 12 employees. He said the equipment would cost approximately \$100,000.00.

Attorney Babcock said 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 said the building currently contains a sprinkler system and has more than adequate parking. Hopefully the business would draw outside patrons to the area and the South Calumet business district. He respectfully requested the board consider granting the Use 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 portion of the public hearing was declared closed.

Attorney J. Paulson said everything was in order.

Town Engineer M. O'Dell verified that it would be Tiger Lilly that would operate from the kitchen on the premise.

Mrs. Busch said yes Tiger Lilly would be operating from their kitchen.

Member F. Owens wondered if parents would be staying while children play.

Mr. Nolan said parents would be required to stay. They would have some sort of bracelet system to make sure children go home with the people they came with. He said any games would be geared towards younger kids. They would not have video games. Kids might redeem tickets they win from games for prizes.

Member J. Kowalski asked if Graphics 22 would still be located there.

Mrs. Busch said Graphics 22 would be leaving that building within the next two weeks.

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Member Kowalski commented that this business would be a good use of the space. He was happy to see that the building would not be empty. There is a need for that kind of activity in the area.

Member F. Owens moved to close the public hearing accept the Findings of Fact and grant the Use Variance request seconded by member T. Browne and passed by a unanimous roll call vote of 5 to 0.

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 requested that the board consider allowing Mrs. Gerhardt to withdraw the petition. He said the ability to get the end user into the site wasn't coming together liked they had hoped. He thought the petitioner might be interested in rezoning this parcel of property.

Member T. Browne moved to allow the petitioner to withdraw the petition seconded by F. Owens and passed by unanimous voice vote.

OLD BUSINESS- None

NEW BUSINESS- None

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 7:43 p.m.

Respectfully submitted,

Gail A. Murawski, Secretary

Approved:

R. Corder, President