

**CHESTERTON BOARD OF ZONING APPEALS**  
**JULY 23, 2015**  
**6:30 P.M.**

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

**APPROVAL OF MINUTES**

Member J. Kowalski moved approval of the minutes from June 25, 2015 seconded by member J. Ackerman and passed by unanimous voice vote.

**PRELIMINARY HEARINGS**

**John and Carol O'Brien** requesting a variance to construct a two car garage in place of a one car garage that was destroyed by fire on May 29, 2015. **Petition 15-08** Mrs. O'Brien said that in May their garage caught fire. They are looking to rebuild the garage and add some extra space.

Attorney J. Paulson said the petitioner is looking to construct a two car garage in place of a one car garage. The construction of a two car garage would violate multiple conditions of the Zoning Ordinance.

Town Engineer M. O'Dell asked if homeowners would be keeping the slab that is currently there. The petitioner said "Yes." He explained that the current site of the garage needed to be at least 5 feet from the side property line and it is currently at 4.4 feet from the property line. The current slab is also encroaching on the alley easement. The former garage is considered legal non-conforming.

Mr. O'Brien said he thought that they would be grandfathered in with the location of the garage.

Attorney J. Paulson advised the petitioners that if a structure is damaged due to fire, they can rebuild the structure to the exact footprint that was preexisting. The problem is that they are expanding the structure and now current existing setbacks come into play. That is why they need variances. It is because they are expanding that they lose the grandfather status.

M. O'Dell told petitioners they could rebuild what was preexisting without any variances because of the grandfather clause but they could not expand without obtaining variances.

Member F. Owens said that if they could expand in the direction towards the house they wouldn't need a variance. They could leave a portion of the concrete slab from the alley and move the new structure towards the corner of the lot and not towards the neighbor.

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Attorney J. Paulson went through her list of deficiencies with the petition just in case it was still necessary seek a variance. She advised them to use the GIS website to determine property owners within 300 feet. The current list looked incomplete. Any new documents would indicate August 27, 2015 as the public hearing date.

M. O'Dell said he would work with the petitioner on the position of the new garage and perhaps with the shift of the garage they wouldn't need the variances.

Member J. Kowalski moved to set this for public hearing at the August 27, 2015 meeting seconded by member J. Ackerman and passed by unanimous voice vote.

### **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** Rules for conducting a public hearing were read aloud. The secretary verified proof of publication, notification and payment. Daniel J. Duehren and Doug Dolan of Dolan Realty Advisors, LLC were present as representatives for the petition. They were accompanied by Abdelnasir Shata a radio frequency engineer with Verizon Wireless. Mr. Dolan said Verizon Wireless has a severe coverage problem in this area of Chesterton. They had looked for industrial and commercial properties in this area for the tower but found none within 2 miles of the underserved southwest quadrant of Chesterton. Since the last meeting SBA Towers has added decorative landscape and reduced the tower height from the original asking of 115 feet to 85 feet. 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. They have also insured the maximum separation from the existing residents. The nearest residence is 469 feet away. He commented that the direction of the future is the use of the cell phone in the home with no land line.

Mr. Nasir Shata said his concern is for lack of coverage in building. He said this is the only area in the south portion of town available to give users reliable coverage.

Mr. Dolan respectfully requested the board to consider granting the variance requests.

Rebecca Cope of 1018 W. Lincoln was present to speak in support of the petition. She presented a letter from Rev. Erik Grayvold which was read into the record; hereto attached and made a part of these minutes.

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Mr. Tom Bush of Chesterton said he had made some inquiries around town and spoke with the chief of police who told him that along the 1100 corridor they had some problems with Wi-Fi and police laptops used in their police cars. This cell tower would insure more reliable coverage.

Lois Fancher of Notre Dame Rd. Chesterton was present. She entered into the record a letter in support of the petition from a neighbor who is having problems with poor cell phone reception. A letter from Tim and Lisa Stephenson was read into the record; hereto attached and made a part of these minutes.

Mark Mainville of 1460 Maximillian Dr., Chesterton was present to speak in opposition to the petition. He said he is a Verizon customer and has not had a dropped call or data problem. He went door to door and got over 60 signatures from friends and neighbors who are opposed to the cell tower. He read data pulled from a publication in the National Institute of Science and Law June 2014. Home buyers in residential areas where a cell phone tower exists receive as much as 20% less for the value of their home. The New York Times references a law suit wherein the lawyer states that if your home is near an antenna your property value is going down. He expressed environmental concerns for how this might impact the bird population and migratory birds in this area.

Mr. Scott Rosenaw of 1410 Maximillion Dr., Chesterton was present to speak in opposition to the petition. He said he has been in the wireless profession since 1989 and is an RF Engineer. He said he understands service issues and dropped calls. He expressed concerns for property values. He understood the church would benefit financially from the tower but in his opinion this was a transfer of wealth from surrounding residents. He said he would like an opportunity to look at the RF plots before a decision is made. That is not the only place to put that tower. If that tower could be placed a block away where there are trees then nobody would have to see it. He also suggested putting in a distributive antenna system "DAS." He said there are options here that he would like explored before putting in an antenna.

There being no other persons wishing to speak, the public comment portion of the public hearing was declared closed.

Mr. Dolan understood that any cell phone tower draws some opposition. He said they sent out 70 notifications to property owners and only two spoke here tonight. The propagation map for this area clearly indicates there is unreliability in this area. There is a need for a cell phone tower in this area. He commented that environmental issues cannot be a part of this consideration. He said DAS has a completely different radius and coverage. The coverage ratio and footprint of DAS is very small.

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Nasir Shata said DAS would work in a small footprint area like a campus but DAS would not work in a town. DAS has to have a line of sight from the main source to the resource antennas.

Attorney J. Paulson reminded the board that it is federal law that as long the tower meets with the FCC regulations you can not consider environmental aspects. She commented that what the board is looking at tonight is not whether a cell phone tower is or is not needed in that location. Rather, whether or not the standards qualify for the developmental or use variances.

Town Engineer M. O'Dell said he would like to see the landscape and footprint as depicted added into the BZA conditions.

Member J. Kowalski said he understands both side of the issue from people who spoke in favor and people who spoke in opposition to the petition.

Member F. Owens said the Findings of Fact are general in nature and not about the property itself. He commented that the third finding deals with the strict application of the Ordinance will or will not result in a practical difficulty in the use of the property for which the variance is sought. In this case he did not see the practical difficulty for the property. The property has many uses. It's not true that the only use for this property would be a cell phone tower.

Member J. Kowalski said those that support this petition make a point but it doesn't affect the property.

Member J. Ackerman said the only hardship to the church is the lack of wireless service. The pastors dropped calls are unfortunate but the Findings of Fact don't reflect any other affects on the church. The pastor can use a land line not making this necessarily a hardship.

Member F. Owens advised petitioners to strengthen the Findings of Fact in light of the property. How does this affect the property?

Mr. Dolan remarked that a cell phone tower was approved last month by this same board. He finds it hard to understand what the hardship was in their petition. That bigger tower is much closer to residential.

Attorney J. Paulson said each petition is looked at on its own merit. That is not relevant to your petition before the board tonight.

Mr. Dolan said he was just looking for some consistency. He felt they had proven hardship, they've proven the coverage is needed. They have also shown no property in the entire search area that fits the criteria for a cell phone tower. There is no commercial or industrial property within the search area. You effectively exclude this entire part of Chesterton.

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Member F. Owens said the last petition was granted in an industrial area which is much different from this. However the board makes its decision on each petitions merit.

Member J. Kowalski said you have to look at the density in the proposed area. They are going to have to look at that tower every day. He said he didn't believe a cell tower would affect property values that much. He commented he was not a professional appraiser.

Member F. Owens said Findings of Fact are key in helping the board make their decisions.

Mr. Dolan said he feels they have the right to do business. He feels they have gone to great lengths and demonstrated that this is the very best site in this area. He feels they have demonstrated the need for the community. Furthermore, they have demonstrated their commitment to the community by amending their petition to lower the tower and provide landscaping. They respectfully requested approval from the board.

Member F. Kowalski said what you're here for is at the cost to someone else. He said the Findings of Fact don't support granting the variance tonight.

Member J. Ackerman said a telecommunication tower is not a permitted use anywhere in the town of Chesterton. Nor are they permitted with a Special Use Variance. Nowhere in the Ordinance is there explicit preference given to an industrial area over residential or over general business.

Member J. Kowalski said he can't make a decision based on Verizon's need to solidify a market so their customers are happy. He would not make a decision based on economics. He would not make a decision at a cost to local residents just so Verizon can put up a tower.

Member J. Ackerman said some type of information that would be beneficial in the draft of the Findings of Fact would be to include the financial benefit to the church and how would that be utilized. If those dollars were not there what services would suffer. The issue of whether or not the area needs the coverage is not related to the church or the property at all. How would the church be impacted if the tower did not move forward?

Mr. Dolan requested an opportunity to gather more information and demonstrate to remonstrators the need for coverage.

Members of the board were in agreement. It was mentioned that all the board members might be in attendance at a meeting next month.

Member J. Kowalski moved to continue this item until the August 27, 2015 meeting seconded by member J. Ackerman and passed by unanimous roll call vote.

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Any additional information would need to be into the town by August 10, 2015. M. O'Dell requested a copy of the RF report. The drawings that would support the revisions made were also requested.

**OLD BUSINESS- None**

**NEW BUSINESS- None**

**MISCELLANEOUS BUSINESS- None**

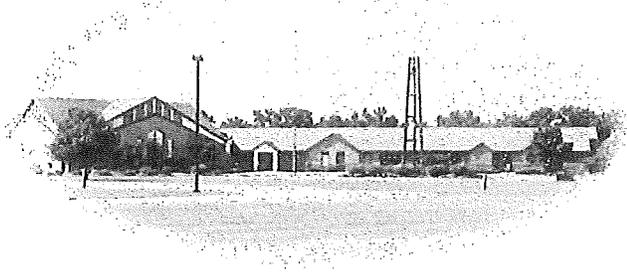
**ADJOURNMENT**

There being no further business before the board member J. Kowalski moved adjournment seconded by member J. Ackerman and passed by unanimous voice vote.

Respectfully submitted,

Gail A. Murawski, Secretary

Approved:



## ***Bethlehem Lutheran Church***

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Erik Grayvold, Pastor

July 23, 2015

To Board Members:

I apologize for my absence from this meeting, but I still wish to explain how the lack of cell coverage on 1100 has impacted our ministry. This past month I have lost a total of 7 ministry cell phone calls while at the church or in the neighborhood in which the cell phone tower would benefit. One of the phone calls was from a senior citizen who was reduced to tears because I could not respond back to her due to the cell phone coverage. Another phone call was a return call from the Lutheran Outdoor Ministry to converse with me concerning our ability to go to confirmation camp. Another time, I missed a call from a parishioner who was informing me about her condition after being in a bad trauma.

Yes, pastors and priests before me have done this job before cell phones, but cell phones have given the church the ability to respond the moment issues come up. My predecessors often could not be at their parishioner's death beds immediately since they could not be contacted at those last precious moments of a person's life. Being able to be present in those last moments in the dying process for the one who is dying and his or her family is a spiritual comfort that cannot be measured by any standard.

Bethlehem Lutheran Church will benefit financially from this endeavor, but we will benefit even more from the comfort and confidence that the congregation will have at being able to contact me at a moment's notice. Thank you for your consideration.

In the peace of Christ,

Rev. Erik Grayvold  
Pastor, Bethlehem Lutheran Church

**"CHANGING LIVES THROUGH CHRIST WITH LOVE AND ACTS OF SERVICE"**



To whom it may concern,

It has come to my attention that it is a possibility that a cell tower may be placed on the property of Bethlehem Lutheran Church on 1100N. I am writing in support of this possibility. As a local resident I often have questionable service in my own home. I currently live in Marquette Point subdivision and my neighbors have also voiced similar concerns. It has become the standard in recent times that families rely solely on their cell phones rather than a home phone. This is true in my family. We have a toddler who is with a babysitter while I am at work making it vital that the sitter also have good cell service in case of an emergency. I would ask that you, please, strongly consider approving the building of this cellular tower for I feel it will benefit many.

Thank you,

Tim & Lisa Stephenson

A handwritten signature in cursive script that reads "Tim & Lisa Stephenson". The signature is written in dark ink and is positioned below the typed name.