

CHESTERTON BOARD OF ZONING APPEALS
SEPTEMBER 22, 2016
6:30 P.M.

The meeting was called to order at 6:30 P.M. Present were members F. Owens, J. Kowalski, R. Riley and President J. Ackerman. Attorney J. Paulson and C. Nolan were present as legal advisors. Town Engineer M. O'Dell was in attendance. Member K. Goldak was absent. The pledge of allegiance was recited.

APPROVAL OF MINUTES

Member J. Kowalski moved approval of the minutes from August 25, 2016 seconded by member R. Riley and passed by unanimous voice vote.

Member J. Kowalski moved approval of the minutes from August 31, 2016 Special Meeting seconded by member R. Riley and passed by unanimous voice vote.

PRELIMINARY HEARINGS

Fabricio Franco requesting a variance of 4 feet to reduce a front yard setback. **Petition 16-12** Mr. Franco was present. He told the board that the porch had been constructed and one corner encroached into the front yard setback by two feet.

Attorney Paulson advised the petitioner that the property is located in an R-1 Zone. The Town Code Section 506 would need to be indicated. Seventeen copies of the first page of the petition would be required. Notices to the property owners within 300 feet would need to be sent out at least 14 days prior to the public hearing.

Member F. Owens moved to set this item for public hearing on October 27, 2016 seconded by member R. Riley and passed by unanimous voice vote.

PUBLIC HEARINGS

Centier Bank requesting a variance to permit the construction of a freestanding sign in a B-3 Zone, where a free-standing sign is not allowed. A second variance is requested to permit a freestanding sign having a total gross square footage of 152 square feet, where the Ordinance allows 120 square feet, therefore a variance of 32 square feet. A third variance is requested to permit the construction of a monument sign on South Calumet Avenue having a gross square footage of 60 square feet, where the Ordinance gross square footage allowance has already been used, therefore a variance of 60 square feet. **Petition 16-09** (Request To Continue) Attorney G. Babcock was present as representation for the petitioner. He told the board that the ATM is technically considered as signage. He needed to go back and calculate the existing signage verses the requested signage.

BOARD OF ZONING APPEALS
SEPTEMBER 22, 2016
PAGE 2

Member J. Kowalski moved to grant the petitioners request for a continuance on this item seconded by member F. Owens and passed by unanimous voice vote.

James Kurczewski requesting a variance to construct a front porch which is 18 feet 6 inches from the front lot line where the Ordinance requires a 20 foot front yard setback, therefore a variance of 1 foot 6 inches. **Petition 16-10** Rules for conducting a public hearing were read aloud. The secretary verified proof of publication, notification and payment. Attorney G. Babcock was present as legal representation for the petitioner. Mr. Kurczewski was in attendance. Attorney Babcock told the board the petitioner purchased his home in 1980 and the front porch was 6 feet. Over time the petitioner had made improvements and added onto the porch. The home is located in an R-3 Zone with the Ordinance requiring a 20 foot setback.

Mr. Kurczewski told the board he was having their roof redone and the contractor wanted to tie the roofline into the porch. The building department informed the petitioner that there is a front yard setback violation. The porch is currently encroaching into that setback by 1 foot 6 inches.

Attorney Babcock respectfully requested the board to consider granting the variance request.

Mr. Mike Harding of 918 S. 18th St. was present to speak in support of the petition. He commented that his neighbor had done a nice job with the improvement. It's one of the nicest homes in the neighborhood.

There was no one present to speak in opposition to the petition. The public comment portion of the public hearing was declared closed.

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

Joyce A. Fleming Revocable Living Trust requesting a variance to reduce a front yard setback from 25 feet to 5 feet therefore a variance of 20 feet. A second variance is requested to reduce a side yard setback from 10 feet to 0 feet therefore a variance of 10 feet.

Petition 16-11 The secretary verified proof of publication, notification and payment. Mr. C. Fleming the husband of the petitioner was present. He was accompanied by Richard Hudson. Power of Attorney documentation was submitted for the file. The petitioner Joyce Fleming was unable to attend tonight's meeting because of illness. Mr. Fleming told the board the property was purchased in the year 2000 and they subdivided the parcel into three lots Zoned R-2. One home was built on a single lot which over the passage of time was sold to the Kroft Family. In an effort to save mature maple trees there was one driveway installed to be accessed by both properties. That driveway easement was recorded. Their new home design is laid out to accommodate a single level design. The design of the home would be placed on the two remaining lots neighboring the Kroft home. When the property was subdivided there was a variance to reduce the front yard setback from 25 feet to 15 feet.

BOARD OF ZONING APPEALS
SEPTEMBER 22, 2016
PAGE 3

Attorney J. Paulson advised the petitioner that the best practice moving forward would be to not place a variance on top of an already existing variance, so the revised petition would revert back to the original setbacks of 25 feet. Therefore, variance request number one. It was suggested by Town Engineer M. O'Dell that the idea of using the dual access driveway between the existing Kroft home and the new construction be reconsidered. His suggestion was to give up the easement and install the driveway in the front of the home. If the home is placed as suggested the easement would be deeded over to the Kroft's. All things considered the home would be placed 3 feet away from the driveway resulting in a reduction of a side yard lot line of zero. He respectfully requested the board to grant the variance requests.

Mr. John Kroft of 108 Wilson St., Chesterton was present to speak in support of the petition. He said that there are agreements in place that will allow each to have the room that they need. He would also gain the driveway.

There was no one present to speak in opposition to the petition. The public comment portion of the hearing was declared closed.

Town Engineer M. O'Dell clarified the placement of the home with Richard Hudson. He suggested having the property line be the edge of the driveway and the overhang of the new construction be two feet from the lot line therefore the side of the house being three feet from the lot line. With a zero lot line a maintenance agreement would need to be in place.

Mr. Fleming and Mr. Kroft agreed that easements can be problematic. Mr. Kroft wants three feet of grass that he owns and he can mow.

M. O'Dell said the drawing presented needs to be revised to indicate the house is 10 feet from the property line. The drawing would be a part of the building permit process and not a BZA issue. Attorney J. Paulson agreed.

Member J. Kowalski noted that the deed would be recorded. Mr. Fleming said the Flemings and the Krofts would terminate the easement and the Krofts will receive a deed for the 10 feet of property.

There was some additional clarification about easements and setbacks. Sidewalks would continue along the properties frontage.

Attorney J. Paulson said she understood that the same Findings of Fact were used when variances were granted in the year 2000 but upon review she did not find them to be legally sufficient. She commented that it was a board's decision. Additionally the address of the property needed to be included on the Findings.

**BOARD OF ZONING APPEALS
SEPTEMBER 22, 2016
PAGE 4**

Member F. Owens argued that in theory you could put the house in the driveway. Attorney J. Paulson was in agreement. With the easement in place the lot line will move when the transaction between neighbors is complete and that is a private matter between them. She said she didn't have an issue with the board's approval as it is today because of that understanding. She said she would have an issue placing conditions when essentially the issues are personal issues between property owners. You create a burden for the town to make sure transaction is complete.

Mr. Fleming said it was a step by step transaction.

Member R. Riley said he could see that Mr. Kroft is very comfortable with the agreement.

The Findings of Fact were revised to provide additional clarity. A condition was added as follows; (This variance is valid only if the home is built while the property is owned by the Joyce A. Fleming Revocable Living Trust.)

Member F. Owens moved to close the public hearing grant the variance request and accept the Findings of Fact as revised; the front yard setback was reduced from 25 feet to 9 feet and the side yard setback was reduced from 8 feet to 0 feet and the above condition was added. Finding number 3 was revised to include (a one story home cannot practically be built on the lot due to the typography of the lot.) The motion was seconded by member R. Riley and passed by unanimous roll call vote.

OLD BUSINESS- None

NEW BUSINESS- None

MISCELLANEOUS BUSINESS- None

ADJOURNMENT

There being no further business before the board member R. Riley moved adjournment seconded by member F. Owens and passed by unanimous voice vote. The meeting adjourned at 7:50.

Respectfully submitted,

Gail A. Murawski, Secretary

Approved:

J. Ackerman, President