

CHESTERTON BOARD OF ZONING APPEALS
JULY 23, 2020
6:30 P.M.

The meeting was called to order at 6:30 P.M. Present were members F. Owens J. Ackerman J. Carney and R. Riley who chaired the meeting. President J. Kowalski was absent. Town Engineer M. O'Dell, Town Manager B. Doyle and Fire Chief J. Jarka were all in attendance. Attorney J. Paulson was present as legal advisor. The pledge of allegiance was recited.

APPROVAL OF MINUTES

Member F. Owens moved approval of the minutes from June 25, 2020 seconded by member J. Ackerman and passed by unanimous voice vote.

PRELIMINARY HEARINGS

BenLew Enterprises, LLC. Brian Lewandowski and Brandon Bennett requesting for Parcel A: a variance to allow an R-1 residential use in a B-2 Zone. A second variance is requested to allow a reduction of a front yard setback from 25 feet to 16.95 feet, therefore a variance of 8.05 feet. A third variance is requested to reduce a side street setback from 25 feet to 20.62 feet, therefore a variance of 4.38 feet. A fourth variance is requested to reduce a side yard setback from 10 feet to 4.48 feet, therefore a reduction of 5.52 feet. A fifth variance is requested to reduce a side yard setback from 10 feet to 9.06 feet, therefore a variance of 0.94 feet. A sixth variance is requested to increase lot coverage from 40 percent to 42 percent therefore, an increase of 2 percent. A seventh variance is requested to reduce the required lot size from 9500 square feet to 5986.7 square feet therefore, a reduction of 3513.3 square feet. For Parcel B: an eighth variance is requested to allow automobile storage use which is currently being used as an office in a B-2 Zone. A ninth variance is requested to reduce a side yard setback from 8 feet to zero feet therefore, a variance of 8 feet. A tenth variance is requested to reduce a side yard setback from 8 feet to 6.48 feet therefore, a reduction of 1.52 feet. An eleventh variance is requested to reduce a rear yard setback from 10 feet to 0.43 feet therefore, a reduction of 9.57 feet. A twelfth variance is requested to increase lot coverage from 30 percent to 91 percent therefore, an increase of 59 percent. **Petition 20-10 (CONTINUED from May 28, & June 25, 2020)**

Town Engineer M. O'Dell told the board that Mr. Lewandowski had been in front of the Plat Committee earlier in the month. He would be amending his petition requesting variances on the two newly platted parcels. He is currently looking to continue Petition 20-10

Member F. Owens moved to continue Petition 20-10 until the August meeting seconded by member J. Ackerman and passed by unanimous voice vote.

PUBLIC HEARINGS

Michael and Melissa Topor requesting a Developmental Standard Variance for the reduction of a side yard setback from 10 feet to 4 feet therefore a variance of 6 feet. **Petition 20-13**

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Rules for conducting a public hearing were read aloud. The secretary verified proof of publication and notification. She told the board the petitioner had attempted to pay for their notice of publication prior to tonight's meeting but the Chesterton Tribune is still operating administratively with limited availability.

Attorney J. Paulson advised the board that if the board approved the petition it should be contingent upon receipt of payment by the petitioner to the Chesterton Tribune.

Mr. and Mrs. Topor were present. They told the board they are scheduled to have their pool installed within days and have complied with all the necessary requirements.

Town Engineer M. O'Dell told the board he had no issue with the petition.

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 hearing was declared closed.

Member J. Carney moved to close the public hearing accept the Findings of Fact and grant the variance request contingent upon payment to the Chesterton Tribune for the publication. The motion was seconded by member J. Ackerman and passed by unanimous voice vote.

Earl and Kathy Clark requesting a Developmental Standard Variance to increase lot coverage from 30 percent to 41 percent (11 percent increase.) A second Developmental Standard Variance is requested to reduce the side yard setback from 8-feet to 3-feet therefore a variance of 5-feet. **Petition 20-14** The secretary informed the board that the notice of publication had occurred but the petitioner's neglected to have the notice to property owners within 300 feet sent out in a timely manner. No receipts or verification was received by the secretary.

Attorney J. Paulson suggested that if the notices were not sent out in a timely manner the board should not conduct a public hearing this evening. That is a statutory requirement. Since notice was published if there were any persons wishing to speak on matters of this petition, they should be given the right to speak. The petitioner would be required to re-notice property owners within 300 feet with the August 27, 2020 meeting date in a timely fashion.

There was no person present to speak in support or in opposition to the petition.

Member J. Ackerman motioned to continue the public hearing until August 27, 2020 seconded by member F. Owens and passed by unanimous voice vote.

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Lukas Weldon requesting a Special Exception to convert a portion of an existing building to indoor storage (mini warehouse), where the Ordinance allows for a Special Exception, subject to meeting the Ordinance criteria. **Petition 20-11**

Lukas Weldon requesting a Use Variance to allow the establishment of a distillery, where the table of Uses does not show said use available in the Town of Chesterton. **Petition 20-12**

The secretary verified proof of publication, notification and payment for Petitions 20-11 and 20-12.

Attorney G. Babcock was present as legal representation for the petitioner. He was accompanied by Vernon Brown the potential end user of the property. Attorney G. Babcock told the board Mr. Brown of Chesterton Brewing is looking to lease 124 N. 8th Street, which is Zoned B-3. The front portion of the building is where the distillery is proposed the back portion of the property would be used as a mini warehouse. A mini warehouse is allowed in a B-3 Zone but, a Special Exception is required to be sure the use meets the six criteria listed in the Findings of Fact. Attorney distributed a site plan depicting the proposed layout of the building.

Mr. Vernon Brown told the board he has been in process engineering for over 25 years. He said he had worked in Gulf of Mexico on several oil platforms which is very volatile and dangerous environment. He walked members of the board through the layout noting the location of the 125 gallon still. This still would also be partnered with a spirit safe which comes at an additional cost. The safe collects all the vapors and liquids until they can be evacuated into another container. The distillery license they are looking to obtain from the federal government is an artisan license. This would be very small in scale like a micro-brewery. The license would allow them to sell 750ml. and a 375ml. bottle of spirits. Furthermore, the license allows them to serve a taste, a drink or even a mixed drink. It does not allow them to serve anything that someone else makes.

Attorney G. Babcock said this use currently does not appear in the Ordinance Table of Uses. He asked the board to consider this a good location for such a use. He would distribute two lists of conditions that would be imposed. One list for the Special Exception to operate the distillery and one list for the Use Variance being requested; hereto attached and made a part of these minutes. Mr. V. Brown still needs to secure a federal and state license as part of the permitting process. He would also be required to comply with the state fire and building code.

The east end of the building with is approximately 1100 square feet. Mr. Brown's idea is to have seasonal storage that he could control. Each unit of open floor area would be about 300 square feet or 10 feet by 30 feet. A large garage door located on the northeast corner of the building would allow access. The intent is to have boats, RV's, jet skis and that sort of seasonal storage that would stay put for nearly 6 months without having the renters of the space coming and going limiting access. The parking lot offers ample space for maneuvering large RV's and trailers. He noted surrounding neighbors where this use would have little impact from the proposed storage.

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They are also proposing a 3-hour fire wall between the distillery/tasting room and the storage area.

Attorney G. Babcock said that after conversation with the architect it is believed that with the installation of the fire wall, they might have the ability to store additional manufactured spirits on the storage side. If it was determined that they couldn't do that, they would be limited to 120 gallons total. He respectfully requested to board to look favorably upon their request with the imposed conditions and grant the Use Variance and Special 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.

Town Engineer M. O'Dell said they have no concern that this is an F-1 occupancy classification. The concern is that once spirit gallons on the premise go from 120 to 120.5 you now have a high hazard occupancy and that would require a sprinkler system. No exceptions. Additionally, you are proposing storing another 120 gallons on the storage side of the building.

Mr. Brown's quick calculation noted 120 gallons is equal to 600 750ml. bottles which is very small out-put. He commented that if he looks at what the brewery sells in beer in a week's time, they don't even output that. He said "In looking at the building code the addition of the three-hour fire wall allows the storage area to be considered two separate buildings although it's under the same roof."

Fire Chief Jarka asked if spirit goes from the still into 750ml. bottles.

Mr. Brown said no. It first goes into an earth grounded steel container from there it goes into bottles. He walked members of the board through the short version of the process and calculated the drinkable/bottleable ratio of the process. He told the board that ultimately, he would like to have the storage side for aging a 31-gallon barrel. They would be carrying other products like moonshine pears, moonshine pickles, moonshine cherries.

Town Engineer M. O'Dell and Fire Chief Jarka ultimately shared the same concerns of going over the 120-gallon restriction. He asked "Your saying, you're not going to go over the 120-gallon limit." Mr. Brown said yes that's correct.

Member R. Riley clarified that there would be no more than 240 gallons of spirit on the premise at all times, 120 on the distillery side and 120 on the storage side. He wondered if the 240-gallon restriction would meet Mr. Brown's needs.

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Mr. Brown said yes 240 total gallons. He felt that 240 gallons would be sufficient. If proof of concept works, his intent is to come back before the town and ask to increase production and install a sprinkler system.

Fire Chief Jarka commented that the fire code would restrict spirit or any other flammable by product of the still to go over 120 gallons. He said that in working with the school system they can not go over 120 gallons of hand sanitizes because of its flammability.

Member J. Ackerman asked if there would be a tracking system in place given the importance of only having potentially 120 gallons on each side of the fire wall. He asked if they would stop production once those gallons are reached.

Mr. Brown said that would be a tremendous amount of capitol to have sitting in a bottle. "It's a lot of spirits that my wallet probably couldn't take." His business plan is to distill once a week. At the brewery down the street they go through about 5 cases of distilled spirit per week.

Fire Chief Jarka commented that the distilleries he knows of are much larger in scale. (Journeyman, 18 Street and Three Floyds.) Those places all distill, age and store on site and they all have sprinkler systems.

Town Engineer M. O'Dell expressed concern that an overstock could be taken off the premise and stored in an alternate location thereby creating a hazard somewhere else without the town's knowledge.

Chief Jarka said it is a violation of fire code to have alcohol stored in a storage unit.

Mr. Brown said the TTB would not allow spirits to be stored in an alternate location without permission. Additionally, it would need to be stored within a ten-mile radius otherwise other permitting would need to be obtained. "You either notify the TTB or you go to jail. It's that simple."

Member F. Owens said he has worked on solvent storage type buildings where storage is off premise to avoid different hazard classifications. He commented that Scott Vitrtue of Virtue Architects is a very knowledgeable partner to be working with on this project.

Town Engineer M. O'Dell said he and the fire chief had meet with Mr. Brown and Scott Virtue months ago. "I know Vern Brown to be an upstanding business man but there's still a trust issue here. As the building commissioner and fire chief how do we enforce and monitor that production?"

Member R. Riley agreed that it is a valid concern but not something that should prevent the board from denying the petition. He suggested having access to the production log.

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Mr. Brown told the board the production log process for a distillery is very tedious. There are various stages of transfer, production and storage in the distilling process that must be tracked.

M. O'Dell commented that there is still the issue of flammability. We don't have a distillery in town nor have we ever. He believed a sprinkler is the solution when dealing with a high hazard potential. The business plan is at that threshold and the town can't make him install the sprinkler.

Member J. Ackerman asked what the cost is to install a sprinkler.

Mr. Brown said just to install a water line from the road into the distillery is approximately \$30,000.00 and to install sprinklers in just the front of the building would be another \$20,000.00. "That's \$50,000.00 that I just don't have."

Member F. Owens initiated additional conversation regarding Indiana State Fire Code Regulations.

Member R. Riley agreed that the board would be looking for some very specific conditions regarding applicable codes and access to a production log.

Attorney J. Paulson said she had no issues with the petition. She suggested that the board consider continuing the public hearing until more refined conditions could be worked out between the petitioner, the fire chief, the building department and legal review.

Member J. Ackerman said he is supportive of the concept and agreed that technical language and conditions needed to be carefully crafted.

Member J. Carney and member F. Owens echoed the previous board members concerns.

Member J. Carney moved to continue the public hearing for Petitions 20-11 and 20-12 until the August 27, 2020 meeting. The motion was seconded by member F. Owens and passed by unanimous voice vote.

OLD BUSINESS- None

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NEW BUSINESS- none

MISCELLANEOUS BUSINESS- None

ADJOURNMENT

There being no further business before the board member F. Owens moved adjournment seconded by member J. Ackerman and passed by unanimous voice vote. The meeting adjourned at 7:30 P.M.

Respectfully submitted,

Gail A. Murawski, Secretary

Approved: