

Burns Harbor Board of Zoning Appeals

Minutes of Tuesday, September 27, 2016

The Board of Zoning Appeals of the Town of Burns Harbor, Porter County, Indiana met in its regular session on Tuesday, September 27, 2016 in the Town Hall. The meeting was called to order by Board of Zoning Appeals President, Bernie Poparad at 7:00 pm.

The Pledge of Allegiance to the American Flag was recited.

Roll Call:

Tracy Freeze	Absent
Gordon McCormick	Present
Timothy Minier	Present
Kevin Tracy	Present
Bernie Poparad	Present

Additional Officials Present

Building Commissioner-Bill Arney
Attorney-Christine McWilliams
Secretary-Marge Falbo

Minutes

Tracy moved to approve the minutes of August 23, 2016. McCormick seconded the motion.

Motion carried by all in favor vote.

Communication, Bills, Expenditures

None

Report of Officers, Committee, Staff

None

Preliminary Hearing

Poparad invites Renee Holiday to the podium and asks her to state her request.

Poparad asks Secretary Falbo if the application is complete and correct. Falbo replies yes.

Poparad asks Attorney McWilliams if she has looked over the application. Attorney McWilliams says she has looked at it and there were a couple of things missing for some of the proposed findings that we need to address.

My name is Renee Holiday with Serenity Environmental Services. I am the Vice President, also attending is Michael Vargas, he is the President and owner of the company. We come to the Board today for two reasons, a Use Variance and Developmental Standards Variance. We would like to purchase the property at 246 Melton Road, Burns Harbor, IN, but prior to purchasing the property we would like to get permission to establish our business there and operate at that location.

Poparad asks Holiday to explain what her business is.

Holiday says Serenity Environmental is an industrial cleaning service. We specialize in cleaning of grease traps, catch basins, lift stations and sewer cleaning.

Poparad asks Attorney McWilliams to address the missing pieces in the application.

Attorney McWilliams says everything in the application for the Developmental Standards Variance was in order. She continues to say in paragraph 3 of the Use Variance the petitioner checked it "Will Not" result in practical difficulties and in paragraph 4 the petitioner checked it "Will Not" constitute an unnecessary hardship. For the Board to consider the variance the petitioner would have to check one of those as "Will". Attorney McWilliams also says she would suggest to the Board that the petitioner amend it for the Public Hearing. Attorney McWilliams says for paragraph 5, there were no facts provided as far as why it would not interfere with the Comprehensive Plan and again this can be amended.

Poparad says we will have a Public Hearing at our next meeting and ask Secretary Falbo what that date is. Secretary Falbo replies our next meeting is on October 25.

Poparad asks the Board members if they agree to put this request on the agenda for October 25.

Minier moved to set Renee Holiday, Serenity Environmental Services' request to purchase property at 246 Melton Road, Burns Harbor in order to establish an industrial cleaning business at that location for a Public Hearing on October 25, 2016. Tracy seconded the motion. Tracy-Aye, McCormick-Aye, Minier-Aye, Poparad-Aye. Motion passed.

Public Hearing

Poparad says before we open the Public Hearing, I invite Richard Friday to the podium to state his request.

Friday says we would like an additional pole barn on our property which house wood working equipment that is currently stored at my son's home in Chesterton. This is the main purpose for building it. I'm 94 and I'm not here too much longer and he'll be taking over.

Poparad asks Secretary Falbo if the remaining paperwork was submitted. Secretary Falbo says yes I have everything right here.

Poparad asks Attorney McWilliams if all the paperwork was in order with you. Attorney McWilliams says correct.

Poparad opens the Public Hearing.

Poparad asks for public comment in favor. No comment in favor.

Poparad asks for public comment in opposition. No comment in opposition.

Poparad asks for questions from the Board. No questions from the Board.

Poparad closes the Public Hearing.

Minier moved to accept Mr. Friday's Developmental Standards Variance for his pole barn. McCormick seconded the motion. McCormick-Aye, Minier-Aye, Tracy-Aye, Poparad-Aye. Motion passed.

Old Business

Bob Kerr-Lake Shore Ford

Appeal of a Decision of a Town Council requesting an extension of time to permanently pave graveled area.

Poparad asks is there anyone here representing Bob Kerr. Poparad asks Building Commissioner Arney if he has talked with Kerr. Building Commissioner Arney says he said he was going to be here tonight. He turned in the paperwork that we were going to discuss.

Poparad tells Building Commissioner Arney that he needs to tell Kerr to be present at the next meeting. Building Commissioner Arney says he will contact him. There are some issues we needed to discuss tonight and based on my conversations with Attorney McWilliams, Kerr will need to go in a different direction with his request.

New Business

Amended BZA Petitioner Applications

Attorney McWilliams says it was discussed at our last meeting that the process for residents who want to seek any type of variance from this Board has been a little confusing. This has led to a lot of amended paperwork, so with the Board's permission, I essentially tried to revise the applications to make them more clear. There was an original checklist and I thought those instructions were pretty bare bones and still left a lot of confusion for how petitioners had to answer some of the questions on the applications when they are seeking variances. I did a lot of research into State law, the Town's code and neighboring communities to try and see how this process was handled so we can make it simpler and easier to understand. So essentially anybody could walk in off the street and be handed paperwork and be able to fill it all out. I believe what I have provided the Board relatively achieves that. I amended the actual applications and found a couple of discrepancies between the Town's code and the State code. I revised the applications to be consistent under Indiana statutes.

The Use Variance application is the one that had the most substantive changes as previously there was not a requirement that the Use Variance arise from some condition particular or peculiar to the property. That's within the State code as a requirement and it is one of the factors the Board has to consider in order to grant or deny a variance. If the Board adopts this new application, it would now be a part of the proposed findings the applicant would need to submit with their application packet.

The Developmental Standards Variance application's substantive change was the proposed findings did not have "either does or does not interfere substantially with the Comprehensive

Plan.” That also needed to be in the application, as it’s under Town code and it’s a statutory requirement so that was added. I changed a little bit of the wording. I added the word “BECAUSE” to a lot of it to signal to people what’s expected of them. “Because of the facts shown as follows” is where some of the confusion fell and I think just changing the word to “BECAUSE” signals to people to provide a reason. Additionally, with the new instructions that will be provided with these applications, it very specifically states that they need to provide reasons for why the Board should essentially grant the variances.

I have spoken with the Secretary on how these applications could be presented to the petitioners. Each one, a Special Exception, a Developmental Standards and a Use Variance would each have their own individual packet so any time anyone approached the Secretary after being given their denial from the Building Commissioner for a permit she could have a whole packet ready to hand to them and for the most part it would be self-explanatory. That should limit the Secretary’s involvement because as of right now she has a heavy involvement in helping these petitioners and realistically that should not really be her job. Obviously, the town seeks to try to make this process easy for everybody and that’s why the Secretary thus far has helped as indepthly as they have. I think if we make this process a little bit more self-explanatory then the Secretary can be less involved which is technically how it should be.

Essentially, with all of the applications there would be an External Variance Checklist or an External Special Exception Checklist which outlines the process that each petitioner is going to go through and it gives them exactly what is expected of them and what they can expect at the Preliminary and Public Hearings. I did find an issue that arose since I circulated these to the Board, I would amend on all the checklists under the Public Hearing Section where it mentions Notice having to be given in the Chesterton Tribune and that Notice must also be posted at the Town Hall state “ten (10) days prior to the Public Hearing.” There is also a Meeting Reminder that would accompany the application packet and that really spells out to the petitioners what the Board is looking for in order to approve this. It gives them an idea of what they essentially need to be putting forth in their proposed findings and decisions. I’ve come up with some example questions because there is a lot of confusion by the petitioners and I think even quite frankly some of the Board members and the Secretary about what those proposed findings need to say and what they are actually asking. So for each type of variance or for the Special Exception I have provided some example questions that the petitioners can seek to answer which would clarify what they are asking, me, the petitioner to do. This will give the petitioner an idea of what the Board is looking for in order to grant their request. For example, the Meeting Reminder, if the five (5) factors are **not** answered in those ways and the Board doesn’t have supporting information to have those findings, the Board can **not** grant those variances. Most often times, I have understood the Board not to want to deny a variance based on a technicality. This would hopefully keep that from occurring as often or forcing parties to have to regularly amend or have the Public Hearings continued and have to come back and make this an unduly long process just because of technicality. This is really where all of those changes come from and I hope the Board has had an opportunity to review them. If you have any suggestions, if there is anything you didn’t like, if there was something missing you would like added, please certainly speak up because this is intended for discussion.

Poparad asks Secretary Falbo what she thinks. Secretary Falbo says she really likes the changes, they are self-explanatory and she believe the process will be much easier going forward.

Poparad asks Building Commissioner Arney if he has looked them over. Building Commissioner Arney says he actually just now looked them over and he likes them.

Poparad says we're trying to simplify the process to make it easier for everybody to come before the Board without difficulty because it is self-explanatory.

Attorney McWilliams says the other documents I prepared are for Internal Use. The outline of the variances and Special Exception application process is really designed to be something that would be a part of any Board members' binder and once you have experience in this area, you will know the process, know what to expect, something like this would essentially become obsolete. But, because the Board changes regularly and you have people that come in that have had no prior experience, this is a way of explaining the process and what the Board members can expect will occur as far as how someone even gets to be before the Board. This breaks down that process and once you know the process, you won't have to utilize it as much, but it's intended to allow anybody walk into the position and know what they can expect about people coming before the Board.

Attorney McWilliams says the other documents I prepared are Checklists for the Board members. I would suggest at least until each member is familiar with what they should be looking for in order to grant or deny variances that they bring the checklist to the Public Hearing. Make sure when comparing the petitioners proposed findings to their checklist that their finding of those things are included in the proposed findings and if they're not those are the questions that the Board should be seeking answers to at the Public Hearing portion. With each checklist were examples of reasonings, just as I provided in the Meeting Reminders for the petitioners. I tried to provide some targeted questions that the Board members can look at and try to consider. Some will be applicable to some situations; some will have no applicability whatsoever depending on the facts of each request. They are really just designed to give the members an idea of what they should also be looking for and what they need to find in order to grant variance. Essentially, the goal should be making sure that certain factors are met in order to grant a variance. If all of those factors are not present, the Board has an obligation to deny the variance.

Poparad says a lot of people come into a Public Hearing and are apprehensive about what's going to happen, what will take place, and I think this really helps us out a lot and he thanks Attorney McWilliams for preparing these documents.

Minier says these are excellently written and will help us to ask the right questions to make our decisions.

Attorney McWilliams says ultimately is it so all the proper decisions are being made. If a variance is granted, then it's granted on proper grounds. If it should be denied, because the facts don't allow you to grant it, then it should be denied. This will make for a cleaner process on both ends, both for the Board and also for any of the petitioners.

Good of the Order of the Community & Any Other Business

McCormick says so we are going another year without blacktop at Bob Kerr's parking lot.

Building Commissioner Arney says just to bring everyone up to speed on this if you aren't familiar, Kerr came in and there was an agreement that when the asphalt plants opened he would asphalt. We sent him letters earlier in the year last year, to asphalt, and he said he was trying to get the funds together to do so. The last letter I sent to him, he waited a couple of months until it was too late to do it, and then decided to appeal my decision. In general conversation with him, not that he doesn't want to pave it but that he needs a little bit more time again. So, at this point, I will contact Mr. Kerr and send him a letter instructing him that he needs to apply for what should be a Developmental Standards Variance. However, it's a tricky one because he wants to use the lot

but he has to change the current status of the lot to make it conforming as to pervious surface. I believe that will fit into a Developmental Standards Variance versus a Use Variance.

Building Commissioner Arney addresses Attorney McWilliams and says I think we need to talk some more about this because it's a tricky one. It could also fit in the category of a Use Variance. This is the approach he needs because, as you know, he is past the 30-day window to appeal my decision and McCormick is right in that he keeps pushing it further back. We have neighbors that want to do what he's doing and we need to address that.

Poparad says he needs to get going.

Building Commissioner Arney says he will be very stern with him. He needs to be at the next meeting and address that, otherwise he needs to start paying the violations and come in to talk to us about paving.

Poparad asks Building Commissioner Arney about the issue with the Tarnowsky property being mowed. Building Commissioner Arney says they are mowing but not between the sheds. Poparad says Freeze had mentioned that they have an obligation to keep everything neat and tidy. Being there is no house on the property, only the two sheds, there should be no outside storage or anything else.

Announcements

None.

Adjourn

Tracy moved to adjourn at 7:30 pm. Minier seconded the motion. **Motion carried by all in favor vote.**

APPROVED on November 22, 2016

Bernie Poparad, President

Marge Falbo, Secretary