

Town of Porter
Board of Zoning Appeals
Meeting Minutes
June 16, 1999

A. The meeting was called to order at 7:03 p.m.

B. Pledge of Allegiance

Present were Mr. Chemma, Mr. Beckman, and Mr. Childress. Mr. Kremke and Mr. Bell were absent. Quorum was established. Also present was Mr. Mandon.

C. Consideration of minutes from previous meeting.

Motion to approve the minutes as written from the May 19, 1999 meeting made by Mr. Chemma. Second by Mr. Beckman. Motion carried 3-0.

D. Audience Participation

There was no audience participation.

E. Old Business

1. **David and Debra Nolbertowicz**: Petitioner requesting a variance on the height of a necessary structure. The petitioner was not present at the meeting. Mr. Mandon contacted the petitioner and was informed they had been issued a building permit. Mr. Childress informed the board that he understands the necessary height adjustment was made for the structure, and that no further discussion of the matter with the BZA was necessary. Mr. Childress will follow up with the petitioner to verify. The issue will now be removed from the agenda for consideration.
2. **Shelton Fireworks**: Petitioner requesting to vary from the maximum size and height of an on-premise sign. The petitioner was not present at the meeting. The petitioner was given additional time to construct a better proposal for the board, but has failed to follow through with the request. The attorney for the petitioner has been contacted, and reported no action on behalf of his client. Mr. Beckman proposed final action on the issue be taken.

Motion to deny the request for variance from the maximum size and height of the on-premise sign was made by Mr. Beckman. Mr. Chemma amended the motion to include reference to the motion stating intent for denial if the requested criteria had not been met in the May 19, 1999 meeting minutes. Mr. Chemma seconded the motion. A vote was called. Mr. Chemma – Yes, Mr. Beckman – Yes, Mr. Childress – Yes. Motion carried 3-0.

E. New Business

1. **Preliminary Discussion**: Jim Sheeran requesting a use variance for an outdoor sales operation. Mr. Mandon indicated that after reviewing the codes, it is unclear if a use variance will be necessary for this petition. Mr. Mandon noted he does not see a distinction between outdoor and indoor sales in a C-3 district.

Jim Sheeran was present to explain his intentions to create an outdoor flea market with approximately 50 dealers on Friday, Saturdays, and Sundays as a seasonal operation. He stated there would be no sales of firearms or alcohol, and

that outdoor restroom facilities would be available to the public.

Mr. Beckman asked for clarification of the conflict in the codes. Mr. Mandon indicated provisions on the issue are contemplated in the codes. He suggested there is a presumption of allowance, but the BZA needs to go on record to define what is allowable. Further discussion between the members and Mr. Mandon to discuss and define certain terms in the codes. Mr. Beckman indicated he would support a variance that was limited in time and on a trial basis before a final decision on allowances in this issue was reached. Mr. Childress indicated he was unable to vote on the issue. Mr. Chemma questioned whether a permanent structure would be placed on the site for this purpose. Mr. Sheeran indicated the tents would only be erected on the weekends, and would be removed during the week.

Mr. Childress requested any opinions from any members of the public who may be opposed or proponents of this particular issue. Norm Tapper, 521 1st Street was concerned about parking provisions. Mr. Sheeran stated there is 3 acres available for the proposed flea market, 1 for the market itself, and 2 acres for parking.

A motion to set this issue for public hearing on a request for a use variance at the July 21, 1999 meeting. Second by Mr. Chemma. A vote was called. Mr. Chemma – Yes, Mr. Beckman – Yes, Mr. Childress – Yes. Motion carried 3-0.

2. **Public Hearing:** Bill and Jody Bennett requesting a use variance to construct a motel/hotel complex. Mr. Mandon indicated a public hearing was advertised for this evening, and that Mr. Kennedy needs to review the paperwork to make sure it was appropriately advertised for.

Terry Heistand presented the request on behalf of the petitioners. The property in question is currently zoned C-1 and vacant at this time. At the suggestion of the Plan Commission, the petitioner is requesting a use variance for the property, as opposed to re-zoning. The proposed building is a three-story motel/hotel complex complete with meeting rooms and swimming pool.

The Public Hearing was opened at 7:41 p.m. Mr. Childress requested comments from the public that were proponents of the request. There were no proponents.

Mr. Childress requested comments from the public that were opponents to the request. Attorney Bob Welsh was present to speak on behalf of several residents who own land adjacent to and near the property in question and were present as remonstrators to the petition. Mr. Welsh submitted the formal remonstrance petitions signed by the residents to be added into record.

Mr. Welsh referenced the Porter Zoning Ordinance, page 26A, section 5.16 that indicated Prohibited Uses that states properties under C-1 zoning are prohibited from having hotels/motels upon it. He also referenced page 130 which indicated the authority of the BZA in section 12.393 by the Porter ordinance which guides the operations of the BZA, the BZA is prohibited from violating the ordinance by allowing a hotel/motel through a variance in a C-1 zoned property. Mr. Welsh referenced a case in the state of Indiana in the town of Newburg (Stevenson, 1974) which is prevailing law on this issue.

Mr. Welsh stated the petitioner has the burden of proof of an unnecessary hardship on 5 elements that must be met unanimously. Mr. Welsh indicated that the fourth element regarding an unnecessary hardship has not been met. Mr. Welsh took the liberty to have an appraiser make a site inspection of the property, and review the zoning ordinance for C-1 with respect to permitted uses. The affidavit states, in the appraisers opinion, the property could be appropriately utilized for C-1 zoning, and if a hotel/motel is allowed it will have an adverse affect upon the residential property values because of the transient nature of the business. At this point, Mr. Childress allowed the residents to speak on behalf of themselves. Following is a summary of each of their concerns:

1. Bruce Nepekoj, 565 N. 3rd Street: parking, the unusual zoning of this particular parcel, truckers parking and running their vehicles overnight.
2. Joseph Goycich, 527 1st Street N: increased traffic, water supply, police reports indicate high-problem traffic area
3. Laura Crownover, 525 N. 3rd Street: increased traffic congestion, concerned for the safety of the children with the temptation of a hotel nearby.
4. Stan Davis, 590 N. 3rd Street: Chesterton already has 5 hotels, Porter doesn't need one as tourism has little effect on the need, traffic concerns.
5. Norm Tapper, 521 1st Street: entrance to the hotel is on a blind curve, drainage, property appears abandoned and is not kept up, moral concerns, semi-truck layovers.
6. Craig Cromwell, 504 Hjelm: traffic concerns, appreciates the rural appearance of the area.
7. Pat Voss, 510 E. Hjelm: traffic, water supply, appreciates the rural aspect of the area.
8. Lois Davis, 590 N. 3rd Street: a hotel of this magnitude belongs in a larger city, traffic concerns.
9. Steve Nepekoj, 595 N. 3rd Street: concerned over what venue a request like this should be settled in. Mr. Childress and Mr. Mandon explained the responsibilities of the BZA and it's purpose in reference to zoning and use variances.
10. Larry Ardess, 1621 Main Street: property values.
11. Carol Nepekoj, 565 N. 3rd Street: safety of walking and biking on the roads in question, concerned that the residents felt an obligation to remonstrate an issue that should have been policed by the BZA without need of their objections.

The public hearing was closed at 8:30 p.m.

Mr. Heistand provided rebutting testimony to the concerns of the residents. He stated that utilizing the planning process to keep land vacant was inappropriate. Mr. Heistand also pointed out that the laws regarding use variances were developed after the Newburg case Mr. Welsh referenced in the remonstrance petitions.

Mr. Heistand stated the affidavit by the appraiser contracted by the remonstrators was hearsay, and that the petitioners did not have the opportunity to question the means by which the conclusions were drawn. He also pointed out this particular location is ideal for commercial development because it is an arterial location in the town. Mr. Heistand explained the proposed development would be up-scale and not suited for truck traffic, as the parking area is not large enough to accommodate semi-trucks.

Mr. Heistand provided a draft of findings about the project to the board to emphasize the appropriateness of the development and the request for the use variance.

Jody Bennett answered the concern about the abandonment of the property by stating he made attempts to clear and maintain the area two years ago, and was met with opposition from the adjoining residents to his presence on the property.

Mr. Childress requested Mr. Heistand's opinion regarding unnecessary hardship, and to address his interpretation of the prohibited use portion of the ordinance. Mr. Heistand stated he believes the idea of prohibited use is null and void with the development of use variances. Mr. Childress solicited the benefit of Mr. Welsh's opinion on the issue, as Mr. Kennedy was unavailable to speak on behalf of the town at that particular time. Mr. Welsh stated he believes the town has the full authority to follow its ordinance with reference to prohibited use with no acknowledgment of use variances.

Mr. Mandon stated he believes Mr. Welsh was not correct in his interpretation, and followed with his staff recommendation on this petition. He stated that five criteria must be met, in whole, to grant a use variance, and this has not happened. He pointed out two criteria in particular have not been met in this case; 1) There is nothing peculiar to the property, and 2) a hardship has not occurred. Based upon these two criteria not being met, Mr. Mandon is recommending denial of the petitioner's request.

Mr. Childress requested comments from the board members. Mr. Chemma acknowledged the feelings of the remonstrators, and that traffic concerns will always be an issue in this area. He also noted that truck traffic at the proposed site might not be a concern and that winter activities are becoming more prevalent in the area. Mr. Chemma pointed out the petitioners may now be forced to petition the Plan Commission for a C-3 re-zoning.

Mr. Beckman pointed out there are dangers with undeveloped property, and he encouraged the remonstrators to work with the petitioners to reach an agreeable solution for the property.

Mr. Childress agreed with Mr. Mandon's assessment regarding no hardship existing at this time. He also stated he had concerns about the definition of prohibited uses. Mr. Childress went on to emphasize his opinion that the town is very underdeveloped for commercial use and could benefit from the development of projects such as the one the petitioner was requesting.

Mr. Mandon followed up by stating the idea of prohibited use in the ordinance was a moot point because it was written prior to the development of use variances.

A motion to deny the request for a use variance based upon the information discussed was made by Mr. Chemma. Second by Mr. Beckman. A vote was called. Mr. Chemma – Yes, Mr. Beckman – Yes, Mr. Childress – Yes. Motion carried 3-0.

E. Adjourn

Motion was presented by Mr. Chemma to adjourn. Second by Mr. Beckman. Meeting adjourned at 9:05 p.m.

Paul Childress
Chairman

Lisa Liebert
Secretary