

Town of Porter
Board of Zoning Appeals
Meeting Minutes
July 21, 2004

A. The meeting was called to order at 7:02 p.m.

B. Pledge of Allegiance

Present: Mr. Beckman, Mr. Bell, Mr. Snyder, Mr. Liebert, and Mr. Niepokoj.
Quorum was established. Also present were Mr. Mandon and Mr. Lyp.

C. Consideration of minutes from previous meetings.

Motion to approve the minutes of the June 16, 2004 meeting as written made by Mr. Liebert;
second by Mr. Bell. Motion carried 5 – 0.

D. Audience Participation

None

E. Preliminary Hearings

1. Mark Markovich/Mark I Construction – Petition for variance at 316 Spring View Drive to build a home with first floor square footage and total square footage lower than required minimums.

Mark Markovich was present to speak about the petition. He has a buyer for the house as proposed and wants to build that home, which is similar to the rest of the homes in the subdivision in both size and price. Therefore he is requesting this variance from the new Zoning Ordinance (ZO) square footage requirements.

Question by Mr. Bell: Do you own the lot? Answer – Yes.

Question by Mr. Niepokoj: Is this the subdivision north of I-94. Answer – Yes.

Question by Mr. Snyder: Are the pictures of the homes you provided us similar to the one you want to build? Answer – Yes. In fact, one of them is the exact same house plan on a slightly smaller scale.

Motion to set Mark Markovich developmental standard variance to public hearing at the next regularly scheduled BZA meeting made by Mr. Bell; second by Mr. Beckman.

Comment by Mr. Bell that he wants to keep all such requests on a case-by-case basis and does not want to revisit the ZO or change the existing standards within it.

Mr. Beckman stated that the current ZO might have put Porter into a higher housing cost bracket than the Town may want. Perhaps we do need a discussion on the ZO square footage requirements. He is afraid of setting a precedent for such variances as this.

Mr. Markovich stated that developers can build homes to the ZO standard but the size and cost become a problem for 2-story buildings when building in an old subdivision.

Motion passed 5 – 0.

2. David and Cheryl Lagestee – Petition for variance at 420 Wagner Road for a third accessory structure.
3. Included with application is a letter requesting a waiver for the variance application fee.

Chuck Parkinson, attorney, represented the petitioners. Stated the third accessory structure has already been built at a cost of approximately \$32,000. It was after-the-fact that it was declared that a variance was required and that the building is non-conforming as a third accessory structure. He requested that we set the petition to public hearing for a developmental standards variance.

Mr. Parkinson also requested that the \$100 variance application fee be refunded due to construction startup being based upon the building permit being issued and the money spent to date before finding a variance is required.

Motion to deny request for application fee refund made by Mr. Bell; second by Mr. Niepokoj.

Motion passed 4 – 1, Mr. Beckman voting no.

Motion to set David and Cheryl Lagestee developmental standard variance petition to public hearing at the next regularly scheduled BZA meeting made by Mr. Bell; second by Mr. Beckman. Motion passed 5 – 0.

D. Public Hearings

None

E. Old Business

1. Paul G. Nelson – petition for variance at 1371 Old Porter Road to locate a billboard on a portion of the property for advertisement purposes.

Mr. David Babcock, attorney for petitioner, reviewed the history of the petition to date, including that the Porter Town Council has approved the rezoning [contingent upon BZA and Plan Commission approval of the related petitions]. He provided the Board with an information packet from Landscape Illumination to show how the lighting will not affect the neighboring homeowners. Gave the Board the petitioner's version of the findings regarding the five criteria for granting a variance and inclusion of a voluntary ban on selling advertising space to adult oriented businesses. Mr. Babcock requested that all items he has presented the Board be added to the official record: Petition application, platted survey map, Landmark Sign Group info, Faulk engineering, copy of minutes from the Porter County Drainage Board meeting, Landscape Illumination info, and findings and decisions.

Motion to deny variance request on the basis that it does not meet the five criteria required for a variance, specifically there is no hardship created by strict application of the ZO and granting a variance will interfere with the Comprehensive Plan made by Mr. Bell; second by Mr. Liebert.

Mr. Bell read from the June 22, 2004 Town Council minutes so that members knew the rezoning was approved contingent upon approval of this variance and a Plan Commission subdivision approval.

Mr. Lyp and Mr. Mandon explained why the Town Council, the BZA, and the Plan Commission are doing what each are doing and in this order to address the procedures required to approve or deny the three petitions.

Question by Mr. Snyder: If the applicant meets all five criteria for granting a use variance are we required to approve the request. Answer – Yes.

There was a discussion on whether or not the five criteria have been met.

Question by Mr. Snyder: Do we need to look at the legal status of the existing signs in the area? Answer – that question is irrelevant to the current petition.

Mr. Liebert stated he believes granting the variance will interfere with the Comprehensive Plan. Neither the recent Zoning Map adoption nor the latest Comprehensive Plan review by the Plan Commission attempted to change the zoning in this area from R-1 despite the presence of I-94. Therefore it should remain R-1.

Motion passed 3 – 2, Mr. Beckman and Mr. Snyder voting no.

F. New Business

1. Discussed what was needed from the BZA secretary to ensure proper communication of notices and recommendations from the BZA to the Porter Town Council. The Council should get the same info each time so they may make an informed decision and Board members and staff will know what meeting date the Council will address each issue. Mr. Mandon recommended adding a Findings section to the agenda after the Public Hearing section.
2. Mr. Lyp will prepare the Findings of Fact for the Paul G. Nelson variance petition.
3. Mr. Lyp gave the Board an update on the Schoenfelt litigation. The Court will be holding a factual hearing soon.
4. In answer to a question by Town Councilman Paul Childress at the June 16, 2004 BZA meeting there are approved Findings of Fact for the 2003 Lagestee BZA petition at 420 Wagner Road. The Findings were approved at the December, 2003 BZA meeting.

I. Adjourn

Motion to adjourn by Mr. Bell; second by Mr. Liebert. Motion carried 5 – 0.

Meeting adjourned at 8:10 p.m.

Bruce Snyder
Chairman

Lisa Liebert
Secretary