

Town of Porter
Board of Zoning Appeals
Meeting Minutes
September 15, 1999

A. The meeting was called to order at 7:00 p.m.

B. Pledge of Allegiance

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

C. Consideration of minutes from previous meeting.

Motion to approve the minutes from the August 1999 meeting as corrected was made by Mr. Bell. Second by Mr. Beckman. Motion carried 5-0.

Mr. Childress introduced new Board of Zoning Appeals member Bruce Niepokoj to the board members and audience.

D. Audience Participation

There was no audience participation.

E. Old Business

James Sheeran: Mr. Mitchell Peters present to speak on behalf of James Sheeran to request a use variance to establish an outdoor sales business. The board had requested additional information, and review of the petitioners request, thereby continuing the matter from the Public Hearing stage. Mr. Peters indicated he spoke with Mr. Kennedy about details in the request, and that his client, Mr. Sheeran, was agreeable to the suggestion of a conditional use of the property until October, 2001.

Mr. Childress questioned if the public would be permitted to comment upon the matter. Mr. Kennedy stated the hearing was closed at the previous meeting. Mr. Childress questioned that since the petition had been revised, would it be permissible to hear comments. Mr. Kennedy stated public comment would be allowed, as the rules did not state otherwise. A summary of public comment is as follows:

1. Karen Pisowicz, 8 McDashowicz Drive: favors the petitioner's request.
2. Maureen Dresch 1395 N. Waverly Road: favors the petitioner's request.
3. Rick Finkerton, 1382 Cloverleaf Road: favors the petitioner's request.

Mr. Childress questioned Mr. Mandon's opinion. Mr. Mandon stated his report on the request has not changed since the last meeting as the criteria for granting a use variance has not been met. He stated the law points out there must be something peculiar to the property to grant a use variance, and that several uses under it's current zoning would benefit the town. He stated, therefore, that he disagrees with granting a use variance. Mr. Kennedy declined comment on the issue. Mr. Mandon also added the petitioners concessions stated that no firearms would be sold or permitted, no illegal activities, etc., and that he hoped that no matter what the petitioner planned for the property, these things would apply.

Mr. Bell stated he agreed with Mr. Mandon's findings, and that the petitioner has been unable to prove hardship. He also

stated that neighboring areas should be considered in the decision.

Mr. Chemma referred to special provisions under the guidelines governing C-3 zoning. He stated he believed an outdoor sales establishment would not be a good use for the property.

Mr. Beckman declined comment.

Mr. Peters pointed out the hardship incurred by the petitioner is that they are unable to pave the surface of the property for financial reasons. He pointed out there is dust in the area as a result of the other businesses surrounding the property. He also stated the petitioner had been patient and produced the requested changes to his request at each meeting. Mr. Peters believes the operation would not be detrimental to the area. He also pointed out that although the zoning does not provide for the use of outdoor sales, it does not exclude it. Mr. Peters stated his client is willing to undergo any restrictions placed upon the property.

Motion by Mr. Bell that the petition is denied based upon finding of fact. Second by Mr. Beckman. A vote was called: Mr. Beckman – Yes, Mr. Chemma – Yes, Mr. Bell – Yes, Mr. Niepokoj – Yes, Mr. Childress – Abstain. Motion carried 4-0.

Mr. Sheeran stated he felt the decision was both ambiguous and capricious, and that it could be possible that an outside body will make the final decision.

Public Hearing, AT&T/Tom Tittle: Rick Pinkerton owns the property immediately to the east of the property in question. He is a helicopter pilot and is against any more towers in the area.

Mr. Mandon stated he received a phone call from INDOT and there would be no more curb cuts off the cloverleaf. He further stated he agrees the petitioner has exhausted what was requested of him. He pointed out that there are legal statutes that apply to these requests, and deferred to Mr. Kennedy regarding the legal issues.

Mr. Kennedy pointed out the zoning ordinance in the town that refers to building heights, discusses wireless towers, among other things. He stated a use variance would be required to construct towers in the town above the heights limits. The requirements for use variance are as set out in the State Statute. Mr. Kennedy pointed out that the federal statutes give a minimum amount of guidance and leave it open for judicial decision. Mr. Kennedy read the provisions of 47 USC 332(C)(7). He pointed out the town is not stripped of its rights to control zoning in the municipality. In deciding the petition, the town must defer to its zoning ordinance and the State Statute on use variance.

Mr. Beckman questioned if this particular issue could be better decided under the revised BZA rules. Mr. Mandon stated that the new rules would not address the situation in particular. The use variance statute sets forth the fire standards. The only condition met to grant the variance would be the peculiarity of the property, because there are other towers there. He stated another concern would be it being detrimental to the surrounding property which it probably is.

Mr. Bell pointed out requests for use variance for the current towers in the area were handled on a case-by-case basis. He further pointed out that this request is negatively affecting abutting property. The property owner to the west has petitioned to rezone to R-1. It is all developable. The owner of the 25 acres adjacent is also concerned about the towers falling onto his property.

Mr. Niepokoj asked why this particular location is desirable for tower construction. Mr. Kopeny pointed out that the prime location is within ½- mile of this site to maximize communication coverage. Mr. Niepokoj also asked if the tower could be located in an open farm field off I-94, instead of the entrance to the Indiana Dunes State Park. Mr. Kopeny stated he had made every attempt to co-locate on the current towers, but they were insufficient for AT&T uses. He stated he is certain any carriers willing to locate in the area would be able to locate upon the newly constructed tower.

Mr. Bell asked a question about the federal statute, and Mr. Kennedy stated that the statute provides that the municipality cannot unreasonably discriminate against the petitioner on the construction of such towers.

Mr. Beckman asked how many additional towers could be placed in the area. In Mr. Kopeny's opinion, there could be a maximum of 10.

Mr. Kopeny pointed out an outside firm is establishing the soundness of the structures in question for co-location, and is therefore unbiased.

Mr. Childress stated he was certain other requests would be placed before the Board to construct additional towers, because AT&T's tower will not meet their specifications. Mr. Kopeny stated it was unlikely that would happen, because companies like to co-locate, but you cannot force other current carriers to relocate to the AT&T tower.

Mr. Beckman thanked Mr. Kopeny for his patience and efforts in this record, but he is not in favor of the request.

Mr. Bell stated that AT&T has an alternative available, and moved to deny the petition. Second by Mr. Chemma. A vote was called: Mr. Beckman – Yes, Mr. Chemma – Yes, Mr. Bell – Yes, Mr. Niepokoj – Yes, Mr. Childress – Yes. Motion carried 5-0.

Discussion of BZA Rules and Procedures: Mr. Childress questioned if there were any changes to the corrections. Public comment was heard on the issue. A summary is as follows:

1. Greg Babcock: re: Article 6, Filing of Petitions. Concerned there was no fee established for administrative appeals. Article 7, section 3; request to delete the certification requirement. Article 9, section 1; change judgment to determination. Article 9, section 11, staff review; concern over petitioner not informed appropriately prior to meetings. Article 3, Section 2; preliminary preparations for requests.
2. Terry Heistand: concern over the order in which matters are addressed during a meeting.

Public Hearing, Travel Centers of America: Mr. Wayne Hickson, Hedrick Sign Company, proposing to update and refine signage at the former Travel Port truck stop, which is now Travel Centers of America.

The Public Hearing was opened at 8:33 p.m. Mr. Childress requested proponent comments. There were none. Mr. Childress requested opponent comments. There were none. Public Hearing closed at 8:34 p.m.

Mr. Mandon provided his recommendation that the petitioners request be approved, as the overall appearance will be improved.

Mr. Bell questioned what the calculated square footage of the signage is at this time, and what it will become with the changes. Mr. Hickson stated he did not have the exact figures, but that the new proposal will eliminate 600 square feet of signage.

Mr. Chemma questioned if the signs on the tanks will be removed. Mr. Hickson indicated they would be removed.

Motion by Mr. Beckman to approve the petitioner's request. Second by Mr. Bell. A vote was called. Mr. Beckman – Yes, Mr. Chemma – Yes, Mr. Bell – Yes, Mr. Niepokoj – Yes, Mr. Childress – Yes. Motion carried 5-0.

Public Hearing, Stor for Le\$\$: Mr. Terry Hiestand present to speak on behalf of the petitioner. The petitioner is requesting a variance on a height restriction to allow for storing items/objects taller than 15' upon the property.

The Public Hearing was opened at 8:50 p.m. Mr. Childress requested proponent comments. There were none. Mr. Childress requested opponent comments. There were none. The Public Hearing was closed at 8:51 p.m.

Mr. Mandon provided his recommendation that the petitioner's request be approved based upon finding of fact.

Mr. Childress questioned how many variances had been approved for the petitioner in the past. Mr. Bell didn't believe there had been any variances approved in the past, and that storage buildings are appropriate in I-1 zoning. Mr. Bell pointed out there is a difference in warehouses and mini-warehouses, in which mini-warehouses are allowed.

Mr. Childress stated he believed the petitioner had been granted a use variance in the past with the condition of placing sewer on the property. Mr. Hiestand researched his documents and found that the variance was granted with the condition of septic upon the property.

Motion to approve the petition for a height variance based upon finding of fact by the Planner by Mr. Bell. Second by Mr. Beckman. A vote was called. Mr. Beckman – Yes, Mr. Chemma – Yes, Mr. Bell – Yes, Mr. Niepokoj – Yes, Mr. Childress – Yes. Motion carried 5-0.

Public Hearing, John Scott: Petitioner requesting a variance to add a garage and porch onto an existing structure. Mispublication of meeting date/time. The matter will be addressed at the next meeting.

F. New Business

There was no new business.

E. Adjourn

Motion was presented by Mr. Bell to adjourn. Meeting adjourned at 9:15 p.m.

Paul Childress
Chairman

Lisa Liebert
Secretary