

OPEN ADVERTISED PUBLIC HEARING

Dr. Peter Chapman, of Lots 3 and 4 – 18 & 24 Motif Boulevard, approached the BZA.

Dr. Chapman inquired if the board had been in receipt of his letter of opposition; the board confirmed receipt. Dr. Chapman made a formal statement identifying his reasons this case should be denied. He indicated the case should be a re-zone based off the regulations within the Town of Brownsburg Code of Ordinances §§150.209-155.211. He stated that C. Hart Landscaping was seeking bulk storage as part of their case and noted that is not permitted within the present zoning of I-1.

Dr. Chapman further stated his second objection was on the variance process itself. In order to approve a use variance there are 5 criteria that needs to be met. He expressed the following concerns:

1. Bulk Storage (mulch, rock and other raw materials) - He is concerned with the mulch in regards to combustion, insects, and pests. Additionally, the dump trucks present a health hazard with the dust. Should the need arise to re-locate the materials, there would be accelerated levels of noise. He stated there are 200 feet of adjoining property line with only an easement as a buffering zone.
2. If bulk storage were to be allowed this would create an industrial zone which would adversely affect the surrounding property values.
3. Noted there are other less obtrusive landscape businesses within the community which operate without the need for outside bulk storage.
4. Creates an unusual hardship because this property would be tenant occupied – not owner. Requested the tenant look into a properly zoned location.
5. Noted the business interferes with the Comprehensive Plan (page 117); this is a residential and commercial area.

Dr. Chapman requested the petition to be dismissed.

Shane Ray with WXRБ, at 701 N. Green Street, approached the BZA in opposition to case BZUV-10-11-1088.

Mr. Ray stated that his concern is the noise levels. His business, WXRБ, is an adjoining property to the petitioners. He stated that his broadcast window faces the front lot of the petitioner's property. While broadcasting there would be considerable interruption. He asked that the board take into consideration his opposition to this petition.

Stan Radcliffe, Co-Pastor, 26 Motif Road, approached the BZA in opposition to case BZUV-10-11-1088.

Mr. Radcliffe stated that he had reviewed the document Dr. Chapman presented to the BZA and to the surrounding property owners. He shared the concern of Dr. Chapman regarding the property value devaluation. He mentioned that he felt the approval of this petition would have a negative effect on the congregation. Additionally, he felt the noise and dust would have a negative effect on the property value.

CLOSED ADVERTISED PUBLIC HEARING

Eric Willman gave validity to Dr. Chapman's letter; sought clarification of the Town in regards to the processes available to the petitioner.

Todd Barker stated the two processes available to the petitioner were to

1. Petition for a re-zone to a proper zoning district; or
2. State law allows property owner/ tenant to request a use variance

Brett Scowden stated that according to the Code of Ordinances a landscape contractor is a permitted uses within both the C-2 and C-3 district classifications.

Mr. Willman stated the problem was not the business itself but the machinery, materials and storage located on the property that is creating the health hazard.

Mr. Scowden was in agreement and asked that the BZA look to the future and address the occupations that will require storage.

Mr. Barker stated that the Town did receive two additional letters of opposition, from Michael Mull and Dr. Todd Eder.

MOTION: Chuck Walker made the motion to **DENY** variance request BZUV-10-11-1088. Al Wolting seconded, the motion was carried 4-1, with Brett Scowden in opposition of the denial.

F. NEW BUSINESS:

1. BZDV-1-12-1091 Verizon Wireless 1630 S. Green Street

A request for a Development Standard Variance from §155.149(C)(3)(b) of the Brownsburg Zoning Ordinance, To reduce the minimum setback requirements between a wireless communication tower and a primary structure. This property is currently zoned 'I-2'. **ADVERTISED PUBLIC HEARING**

Russell Brown an Attorney with Clark, Quinn, Moses, Scott & Grahn appeared as petitioner's representative.

Mr. Brown presented the height, structure design, acreage, depth of lot and zoning ordinance reference in addition to the lot setback and site plan access. He stated the request to grant the new wireless communication tower would present increased and reliable coverage within the Brownsburg town limits.

Mr. Brown indicated the tower would not emit audible noise or light except as required by the FAA. He stated the future land use recommendations of the proposed location is commercial and will not negatively impact the value of adjacent property.

In compliance with the Town's ordinance, the structure would be screened with trees, buildings, or walls from the view of all surrounding properties. The compound and tower will contain adequate ground space for up to 2 additional carriers to co-locate.

Mr. Brown further expressed the request meets all set-back requirements for adjoining properties. Additionally, the placement of the tower in this location will impact only the property owner; of which are in agreement with Verizon Wireless.

He presented a letter from Keith J. Tindall, P.E. which indicated that should the tower have cause to collapse, the tower is designed to fold on itself.

Mr. Brown stated there are two practical difficulties in regards to the tower; one of which would be economic and the second would be the inability to fully utilize the property.

Mr. Brown presented power point slides referencing increased cell coverage showing demographics for households with cell phone use and/or coverage.

Corey Kelstrom, a design engineer with Verizon Wireless, approached the BZA and showed the differences in coverage without the proposed cell tower and with the cell tower as well as the increased coverage area leading up to the Brownsburg/Avon town lines.

Tom Lacy inquired if there would be increased coverage should different carriers choose to co-locate on the property. Mr. Kelstrom stated he was not in a position to comment on different carriers.

Mr. Lacy inquired as to the property owners where the communication tower will be placed; owners not present at meeting. Property owners are Patricia Trout and John Wittman.

Brett Scowden asked at what point would the tower fail based off the structural design plan that was presented with the petition.

Mr. Brown stated that the numbers indicated on the structural design plan exceed what the ordinance required.

Mr. Scowden addressed the property owner's affidavit and inquired as to who would take full liability if there were a collapse.

Mr. Brown stated there was an agreement with Verizon Wireless and the property owners and that they submitted what was required in the staff synopsis.

Mr. Lacy sought formal clarification of the Town Attorney regarding the affidavit. Tricia Leminger, Town Attorney, stated the affidavit provided requires the acceptance of risk of loss on the site of the tower. There is no acceptance of loss off-site. Furthermore, if the Town was seeking indemnification the affidavit does not meet that. The town could require the petitioner to fully indemnify the Town in the event of loss; paragraph 3 is very limited in that respect.

Mr. Brown stated that he does not have authorization for further indemnification.

Mr. Lacy expressed concern for the safety of the general public if the tower should fall in an unforecast manner; affidavit does not give enough coverage.

Mr. Brown assured the board there were insurance requirements in place between Verizon Wireless and the property owners.

Mr. Willman inquired if the tower were to fall on a surrounding property.

Ms. Leminger stated the affidavit provided does address the risk but there was no indemnification; the town could require a separate clause.

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MOTION: Eric Willman made a motion to **APPROVE** BZDV-1-12-1091 subject to the recommendations by staff on page 17 of the Project Synopsis, seconded by Brett Scowden, motion was carried. 5-0.

H. REPORTS FROM OFFICERS AND COMMITTEES

Todd Barker presented Dawn Brown, recording secretary, resignation of position due to relocation. Tom Lacy welcomed Meegan Morgan to the position of recording secretary.

I. COMMUNICATIONS & BILLS

1. NONE

J. ADJOURNMENT

Motion: Al Wolting made a motion to ADJOURN, seconded by Eric Willman, motion carried 5-0. 7:48 p.m.

This minutes of the February 13, 2012 Board of Zoning Appeals meeting are hereby approved:

Tom Lacy, President

ATTEST: _____
Meegan Morgan, Recording Secretary