

BZA MINUTES

AUGUST 19, 2013

Members present: Phil DeHaven, Lee Deguise, Charles Addington, Dan Rismiller, Myron Cougill.

Members absent: Bill Davis, Christy Starbuck.

Staff present: Jamie Stump; Executive Director.

Legal representation: Jason Welch.

Others present: See attached sheet.

The meeting was called to order by Chairman Lee Deguise at 7:00 PM.

Chr. Deguise: The first item on the agenda tonight is to approve the minutes of the last meeting. Do I have any motions for such?

C. Addington: So moved.

M. Cougill: Second.

Chr. Deguise: All in favor signify by saying aye. "Ayes". Opposed (none). Motion is to approve the minutes.

BZA 2013-9-V (Derry Hobson, Winchester)

Chr. Deguise: First petition we are going to do tonight is BZA 2013-9-V. Derry Hobson. Would you please step forward sir. This is a recorded public meeting so I am going to ask you to state your name and address please.

D. Hobson: Derry L. Hobson. Our address here in Winchester is 446 S. Main St., but we live in Texas 5213 Balmoral Lane, Flower Mound, TX.

Chr. Deguise: Okay thank you. Do you plan on speaking as well?

N. Connor: Yes sir. My name is Nathan Connor, attorney. My address here in town is 111 N. Main St., Winchester.

Chr. Deguise: Thank you very much. Okay Mr. Hobson I don't know if you have done this before but I will explain what we are going to do. First of all did you receive Article 5, Conduct of Hearing from Jamie?

D. Hobson: Yes I did.

Chr. Deguise: Okay. What we are going to do here is ask you to state why you are here and what your petition is about in your own words basically and if there are questions from the board we will direct them towards you sir.

D. Hobson: We have purchased the property at 446 S. Main and our intent was to develop that property. It has a house on it today but of course the age of that house means that it does not comply even today with current setback laws. I don't know exactly what year they were changed in but the law today requires 25 feet from Main Street.

D. Hobson: It is 25 feet from George Street and 20 feet from the rear property which is to the west, which would be between Meridian and Main Street and of course the setback between the two property lines is 6 feet. That is the only one that complies today. We are asking for a variance to move those to what I have given on a plot plan which is very close in the front, 24'7" from George Street side. It is basically 8'4" and from

the rear I have also asked for a variance from Winchester but you know that has not been heard yet so I would be roughly 8 feet off of the rear setback. Today the house is 2.4 feet over the easement outside of the property line.

Chr. Deguise: Did you say your future plans would also interfere with Winchesters easement is that what you are saying?

D. Hobson: It already does. But I am asking for a variance on that because it is as is built today.

Chr. Deguise: I understand. Would you like to add anything sir?

N. Connor: The petition to vacate the easement is in the works. It will be filed with the city, most likely tomorrow. I also have for your convenience a copy of the area plat map and I do have a site plan that lays out.....

Chr. Deguise: I am assuming it is the same one we have.

N. Connor: Okay. I also have a picture of the.....

J. Stump: I actually make copies of everything the petitioner gives me for the board members so they have a feel for what the petitioner is wanting.

N. Connor: The house as it sits now is in pretty poor condition. Mr. Hobson's plans as he stated would be to demolish that home and rebuild an era correct, I guess, new home.

Chr. Deguise: Any questions from board members?

C. Addington: What are your plans on that? What is the date when you are going to start?

D. Hobson: After I get through this I will try to figure that out. I don't know a date. Just so you know my wife and I grew up here. I was born in this building in 1950. This was our home.

Chr. Deguise: You mean this house that you are taking down?

D. Hobson: No. That was a little before my time. I don't know, that house dates back to, I believe 1905. I don't know all the owners, Mr. Walker was probably the most prominent in recent years. He probably lived in it for over 50 years.

Chr. Deguise: Any other questions from board members? None. Ok thank you very much. At this time I would like to ask if there is anybody here who has anything to add, either in opposition or support of this?

S. Herron: Is that a historical home?

Chr. Deguise: I don't know ma'am. We wouldn't have that information on this board.

S. Herron: It was my understanding that all those houses down through that area was on the historical landmarks.

Chr. Deguise: I couldn't answer that question. This board doesn't deal with that part. Would either of you like to have anything on record? If you do I need you to come forward.

J. Stump: I need your name for the record.

S. Herron: Sharon Herron, 511 S. Main St., Winchester.

Chr. Deguise: Is that it? Does anyone else have anything to add in opposition?

F. Newman: Just a question....

J. Stump: Could you come up to the microphone so we can record this?

F. Newman: Sure. What was the variance they were.....I live next door and Monna Goforth owns the house that I live in.

Chr. Deguise: Hold on one second. This is a recorded hearing, can you please state your name and address.

F. Newman: Foster Newman, 438 S. Main St., Winchester. We were just wondering what they were asking for in a variance?

Chr. Deguise: Mostly side yard, backyard and front yard setback on one side. The other side will already be ok.

F. Newman: I live on the north side.

Chr. Deguise: If I remember right that side is the side that is okay.

F. Newman: That is what I thought that it wasn't in the.....

J. Stump: They sit on a corner lot so it has double setbacks off the streets. Each front setback off both those streets is 25 feet from the right-of-way.

F. Newman: Oh I see.

J. Stump: The house that is there now sits real close. For them to build a new one they had to come before the board to get a variance to set it there.

F. Newman: I see, so it is more a variance to be close to the street?

J. Stump: Right.

Chr. Deguise: Not to you.

J. Stump: Right.

Chr. Deguise: Yours is already, they are already in compliance with that setback. In this case if it wasn't for the fact that George Street is a street, they would be in compliance on that street. Like Jamie said, they are being required to have double what would have been the setback because there is a street on that side as well. I mean it is not one of the major streets in town, persay, but they are getting hit with the corner lot having two major setbacks and then their setback in the back side is really beyond this board to completely approve because of the fact that is actually an easement that belongs to the city.

F. Newman: Yes that easement is 10 foot, 5 feet for each.

Chr. Deguise: It looks like about 10 feet. I don't have the exact measurements on my map.

F. Newman: Eddie Walters went and got half that setback on his property, which is two doors north of me. He was able to extend his fence back another 5 feet.

Chr. Deguise: Right and that will be up to the City of Winchester to make that decision. This board is basically based upon the county's zoning, which is off the streets.

F. Newman: Got you.

Chr. Deguise: The city will have to deal with their own easement. They own that easement. So we are juston your side no, your side is already there.

F. Newman: I see. My side meets the setbacks. There was a surveyor out there and resurveyed the lines and it's all set. Okay thank you very much.

Chr. Deguise: Thank you for coming forward. One more time, anyone have any questions for the board? Hearing none, with that being said I would entertain a motion if someone has one.

P. DeHaven: I make a motion we approve the request.

C. Addington: Second.

Chr. Deguise: All those in favor signify by saying aye. "Ayes". Opposed (none). Now I need a motion for a roll call vote.

D. Rismiller: I will make that motion.

M. Cougill: Second.

Chr. Deguise: All those in favor signify by saying aye. "Ayes". Opposed (none). Jamie we are ready for a roll call vote now.

A roll call vote was taken: Bill Davis, absent; Lee Deguise, yes; Charles Addington, yes; Myron Cougill, yes; Phil DeHaven, yes; Dan Rismiller, yes; Christy Starbuck, absent.

Chr. Deguise: You are approved for what you applied for here. We have no say over what Winchester says over theirs. That is completely up to them sir. Good luck with that application and you are done with us tonight.

D. Hobson: Okay. Thank you very much.

J. Stump: Whenever you are ready just come up to the office for your permits.

N. Connor: Will there be.....

J. Stump: If they want a copy of the tally sheet I can do that or a copy of the minutes. We don't have anything else that they get that says this was approved.

N. Connor: Okay. Thank you.

BZA 2013-5-CU (Apostolic Restoration Church, Union City)

Chr. Deguise: Next up on the agenda is BZA 2013-5-CU Apostolic Restoration Church.

J. Welch: I am going to be able to help a little bit here before we get started. The reason we had this set for a hearing again is I was wanting to give Mr. Hughes an opportunity to come in with his clients and present anything else to the board they would like to present. The second reason is we did not make any findings of fact or reasons for the decision that we made and I think it would be appropriate in this particular case under the circumstances for us to adopt a finding of fact. Whether the board decides to grant or deny the application, I think it would be appropriate to make findings of fact. I think the first thing would be to give Mr. Hughes an opportunity to present anything else he would like to present.

Chr. Deguise: Okay. Who is speaking? Please state your name and address for the record. This meeting is recorded.

M. Payzant: My name is Mark Payzant, 10480 W. Windsor Road, Farmland, Indiana.

Chr. Deguise: Thank you sir. And you are speaking as well?

W. Hughes: My name is William Hughes. I am an attorney with Beasley & Gilkison at 110 East Charles Street in Muncie, Indiana.

Chr. Deguise: Thank you.

W. Hughes: I'll make a presentation this evening along with Mark, his wife Suzan is here and several individuals who have participated in their ministry in Union City. The request is to grant a Conditional Use permit for the property at 212 W. Pearl Street in

Union City for the use as a church. I have several documents here to submit. I have put them all in one packet. If I can distribute those then we can refer to them as I go along.

J. Welch: We will note Mr. Hughes that the board will take notice of all evidence and testimony presented at the prior hearing at this time.

W. Hughes: The first page you have in front of you is a picture of the building itself. At that time it was the Lyon Paint Store. It has been vacant since then. The applicant is the Apostolic Restoration Church Inc. It has an agreement to purchase the building and I do want to correct a misrepresentation, I think it was made at the May meeting. It was suggested that the current owner did not want this approved. Mr. Livingston is here this evening and he very much supports this request for a conditional use. At your May meeting this board voted 5-1 to deny the request as Mr. Welch said, there were no findings adopted so we don't really know the basis for the denial. We have then asked the Randolph Circuit Court to review your decision and by agreement between Mr. Welch and I we have come back here tonight to ask you to reconsider. I have reviewed the minutes of that May meeting and the thing that struck me is there was almost no discussion about the church. There was a lot of discussion about other possible uses in the area but I think it is important that you have that information in order to make a proper decision. Mark and Suzan are the founders of the church. Mark serves as its president. You will find on the second page of the materials their certificate of incorporation issued by the Secretary of State. They live in Farmland. They began their ministry in Union City in 2010. Both Mark and Suzan are graduates of the Apostolic Bible Institute with a bachelors in Theology and Apostolic studies and the third and fourth pages of your materials are there promise. The Apostolic Restoration Church to tell you just briefly about it, it does adhere to a fundamental Christian Doctrine in the Pentecostal tradition. I refer you to more information to the next two pages of material that sets out their doctrinal beliefs and references the biblical underpinning of their ministry. At the present time the church activities are conducted on three days of the week and the church operates two small buses. The next page of your materials is a typical schedule that can vary from time to time. You'll notice down at the bottom they indicate that they have had attendance of 40 on Sundays and 48 on Thursdays. That can vary as well. I think Suzan told me that recently they had 57 participants and 11 visitors from another church organization so it is what they want is obviously growth. A special focus of their ministry is working with Hispanic/Americans and they do teach a bible study class in Spanish. That tells you a little about the church. Your ordinance sets out three criteria for improving a conditional use permit and these criteria to my recollection were not really discussed in the minutes either. The first criteria is that there won't be construction or development that would not conform to the developmental standards of the C-2 district in which this property is located. In a C-2 district there is no minimum lot area or width or side or rear setbacks. There is a height restriction which this building meets. The front setback and landscaping requirements, this building was built in 1958 so it is grandfathered.

W. Hughes: If there were any changes to the exterior structure of the building, they would have to conform to your ordinance. They understand that. Second criteria is the where the use of the property is a church would adhere to the general character of and not be substantially detrimental to the use and development in the vicinity of the

property. As to the general character property in the vicinity there is in that same block across the street the Day Star Grace Brethren Church at 229 W. Pearl Street. In addition there are at least 5 other churches within 1,500 feet of this location. The Wesley, the United Methodist Church, First Christian Church, St. Mary Catholic Church, Church of the Brethren and Evangelical United Methodist Church. Those latter two are in Union City, Ohio. As to being a detriment to existing uses, no one has come forth to claim that this church would interfere in any existing uses in any way. There was no evidence presented at your prior hearing and we are not aware of anyone who is making that claim. There was considerable discussion about a speculative use of another building across the street as a restaurant. We are not privy to what is going on. All we know is what we essentially read in your minutes but the building has not sold, it is still listed for sale. There would be no zoning issue. It is certainly zoned for that use. As far as the requirement in your ordinance relating to proximity between establishments serving liquor and a church, that would be up to this board to grant a variance if they came in and requested one.

Chr. Deguise: I don't think we can. That is a State law.

W. Hughes: From your ordinance. No, you can't enforce State Law, but I am talking about your ordinance. You can grant a variance from the terms of your ordinance if they came in and asked. The third standard is the use includes improvements and amenities necessary to minimize any adverse effects on the use and value of surrounding properties. As I said, the building is now vacant and that certainly is a detriment to value of surrounding properties. The existing building is 6220 square feet. It is very adequate to accommodate not only the current level of use and participation in church services and activities but also allows for growth and as I say, that is what they are certainly hoping for. We believe that they meet all of the criteria in your ordinance for a Conditional Use permit. There is one other element I do want to discuss in our petition for review, we sighted legal authority centered generally on the freedom of worship is guaranteed in our Federal and State Constitutions in Laws. I am not here to give you legal advice, that is Mr. Welch's job but I do want to call your attention to the religious land use and institutionalized persons act. This is a Federal Law that was passed by Congress unanimously in 2000. Back when they used to be able to agree apparently. The title of the Law may seem strange and that is because it really embodies two separate ideas. There is a section relating to institutionalized persons guaranteeing their right to religious worship. This typically comes up in the context of prisoners who feel like they are being denied access to their faith while they are incarcerated and there is litigation about that. The Section Law that applies here relates to land use restrictions which are beginning to impose a substantial burden on the free exercise of religious rights without a compelling State interest. I would include in your materials a guideline that was issued by the U.S. Department of Justice Civil Rights Division. If you look in the middle of the first page, it talks about land use regulations. It says they can frequently impede the ability of churches or other religious institutions to carry out their mission of serving the religious needs of their members.

W. Hughes: So Section 2(a) of this act, the religious land use and institutionalized persons act bars zoning restrictions that impose a "substantial burden" on the religious exercise of a person or institution, unless the government can show that it has a

“compelling interest” for imposing the restriction and that the restriction is the least restrictive way for the government to further that interest. This kind of puts a different standard than the one you are normally invested with. You are invested with a great deal of discretion in the cases to come before you, whether it be a variance or a conditional use or special exception, whatever it might be, you are deemed to have expertise in these areas and you have a great deal of discretion. However, when you are dealing with religious institutions and religious liberty there is a big, greater burden here. There has to be some compelling interest as to why you would not allow a church to be established in any zone, whether commercial or residential or industrial. I will call your attention, they site several examples in this little guide and if you look at the bottom of the first page, it says, “A Jewish congregation that has been meeting in various rented spaces that have proven inadequate for the religious needs of its growing membership purchases land and seeks to build a synagogue.” This is an example: “The town council denies the permit, and the only reason given is “we have enough houses of worship in this town already, and want more businesses.” That is just an example that came out of there. If you go back and look at your minutes from the May meeting, some of the testimony that was given by people who are opposed to this request and these are quotes that came out of your minutes, “We just don’t think this is a good location for a church. I am thinking you could find another location. The two churches that we currently have down town will further hinder what we are doing. So I mean there are plenty of churches and I don’t think God discriminates who is coming through the doors.” The individuals who are stating this actually were individuals who had government positions and I think the fact that a representative of a unitive government would say things like that clearly violates what the religious land use act is all about and the way it is intended to be applied as the US Department of Justice sees it. That is why we believe that the denial request constituted it, a clear violation of Federal Law and State Law as well. Part of your rules are that we are required to submit a Plan of Operation and Findings of Fact, which I will do at this time. This is our proposed Plan of Operation and here is the proposed Findings of Fact. The Plan of Operation is quite straight forward. The facility would be used by the applicant Apostolic Restoration Church Inc. It would be used for religious services and church related activities. Primary use would be on Sundays and weekday evenings or Saturdays. However, there would certainly be times during the week that it could be used for administration of the church, pastoral duties or other ancillary activities at any time. No outdoor activities are planned at this location. That was one of the questions in your rules. It really doesn’t accommodate that. Participants of the church will be asked to use publicly available parking where needed. Again most of their activities take place when other businesses downtown are not open, which would minimize any conflict there. The church will comply with all applicable laws and ordinances. As I said before, there are no material alterations planned for the church but any future changes would have to comply with the applicable codes and ordinances. With that we appreciate your patience.

W. Hughes: This has been a rather long presentation but we welcome the opportunity to be heard and ask that you reconsider and give a favorable approval of our request. I would be happy to answer any questions.

Chr. Deguise: I have a few.

W. Hughes: Okay.

Chr. Deguise: First of all, the exhibit you gave us, the U.S. Department of Justice Civil Rights Division, is that a paraphrase document or is that the document in its entirety?

W. Hughes: That is not that act. That is the document that was prepared by the U.S. Department of Justice as a guide and that was taken from their website.

Chr. Deguise: Second, you had spoke to, and it is by no means argumentative it is just to clarify, you had spoke to the fact that the reason for that document and its rule was so that governments or local municipalities wouldn't unfairly restrict houses of worship from a given area but you also stated there were five within 1,500 feet.

W. Hughes: Right.

Chr. Deguise: That seems like a pretty close proximity. I certainly couldn't see how that is limiting. Whether we do or deny or approve, no matter how I look at that one, if there is five houses of worship within 1,500 feet I certainly couldn't see how that is a limiting factor.

W. Hughes: I agree but there could be 10 or 15 or 20, I think I would make the same point. We are up here with this request for this particular entity, this religious organization. Obviously the ones I named there are doctrinal differences between this organization and the United Methodist or the Catholic or any of the other organizations.

Chr. Deguise: Right but the government regulations don't address that because it is a house of worship. With any certain area, regardless of how we decide, I personally wouldn't think that that is restrictive when there are so many within 1,500 feet from that area. That I certainly wouldn't say is restrictive.

W. Hughes: It would be the question of whether this entity is being restrictive.

J. Welch: Mr. Deguise I don't believe he is saying that our ordinance per say is unconstitutional. I think he is saying that this request alone is limited. Correct? He is not saying that we are limiting as a blanket limitation, he is only saying this for their request.

W. Hughes: Right, exactly. Perhaps I was not clear on that. I apologize.

Chr. Deguise: Any other questions from the board? No. Okay thank you very much.

W. Hughes: Okay thank you.

J. Welch: I would note that this is a little bit of an unusual situation compared to what you are used to. Normally for a conditional use, it can't be approved unless we make these three findings that are listed in the ordinance and have gone through by going through Mr. Hughes and generally there doesn't necessarily need to be a finding if there is a denial. However, because this is a religious organization I think a little bit different rules apply and there are some case laws suggesting as in again by Mr. Hughes, that if it is going to be denied then there has to be a compelling state interest and it has to be the least restrictive means to further our state interest and it looks to me like what it all comes down to is number 2 of the Findings," the use adheres to the general character of and will not be substantially detrimental to the use and development in the vicinity of the property included in the request."

J. Welch: So, I think that is what it comes down to is there a compelling state interest in limiting this particular request based on the evidence that was presented before? Not something for the board to sort through and decide on its own.

Chr. Deguise: I understand. Thank you. Okay you can please be seated. Did you have anything to say sir?

W. Hughes: No nothing else.

Chr. Deguise: Thank you for coming up. At this time I would like to ask the audience if there is anyone here to speak for further or against?

R. Livingston: I own the building and I.....

J. Stump: Can you please come forward.

C. Addington: Come up and identify yourself for the record.

R. Livingston: Well I don't have much to say except I own the building and I sold it to the church for those purposes and I don't see any reason for you to say no.

C. Addington: Please identify yourself.

R. Livingston: Richard Livingston. To take this back a little further the reason you turned it down the last time was because they were going to have a bar and a restaurant across the street and that is bologna. I offered a hundred thousand for the bank and they refused but they counter offered at \$150,000.00 so the bank was never in the play at all so it shouldn't have even been that way. That is all I have to say.

C. Addington: Thank you.

Chr. Deguise: Thank you for coming up sir.

J. Welch: Mr. Hughes do your clients have any opposition to tabling this motion temporarily for about 30 days so we can research a little more thoroughly for the board?

M. Payzant: No we have already waited

J. Welch: The reason being sir is this is an issue that has really never been raised before this board before and they understand the points that you have made and they want to consider all options thoroughly prior to making a final decision in this case, I think is the reason and I think based on the unusual circumstances here that would not be an unreasonable request of the board.

J. Stump: Out of 7 we only have 5 members and 3 are new members this year. We have never went through anything like this before.

Chr. Deguise: We can just vote to not take action but I would rather not do it that way.

W. Hughes: I understand and appreciate that you are taking this very seriously and I welcome that. It is a hardship on these folks. They have been operating under this purchase agreement now for 4 months. It does represent a hardship I will say that but as you suggested that is the will of the board there is certainly nothing that we can say.

Chr. Deguise: By no means, this is mostly I guess I am just speaking for myself in this particular reason. I am not speaking for the board in its entirety. I would feel better having more time to research what you have given me. You have certainly given me a lot of papers which I am sure you intended for me to actually read. I could sit here I guess for a couple hours and read it and go over it but I don't think that certainly is what anyone in this room wants to have happen.

Chr. Deguise: If I had time where I feel that my decision is its best decision and best suited to why I am on this board then I would certainly feel more comfortable with that decision. You are asking us to make pretty much in your evocable decision based

upon a very short period of testimony and a very short period of actually getting to look at the material presented.

W. Hughes: As I say I understand and appreciate that. I do observe that there is no one here in opposition at this point and I want the board to feel comfortable with the decision they are going to make so I guess I can leave it at that.

P. DeHaven: Let me say something. My name is Phil DeHaven and I am a member of this board and I am from Union City. We are dealing with two things here. We are dealing with money and we are dealing with religion. We don't get paid for being on this board. We don't even get mileage to come over here to deal with this and what we try to do is members of this board sir is to make the very best possible decisions for this community, over all of the work, over all of the years that has been to develop the ordinances and that is why personally I would like some more time.

W. Hughes: Again, I can't demand otherwise. If that is your will then certainly we will be happy to come back next month.

Chr. Deguise: Do I have any motions to take any action on this BZA 2013-5-CU?

C. Addington: So moved.

Chr. Deguise: All those in favor signify by saying aye.....

J. Stump: Are you going to vote tonight or do you want the 30 days to review?

Chr. Deguise: Motion is available or possible. Certainly not the only ones available. Motions to approve. Motions to decline or motion to table until the next meeting.

M. Cougill: I make a motion to table this until the next meeting.

Chr. Deguise: I have a motion out to table this until the next meeting. Do I have a second?

D. Rismiller: Second.

Chr. Deguise: All those in favor signify by saying aye. "Ayes". Opposed (none). The boards vote was unanimous to table this until the next meeting. This board really feels like we need more time to make a proper decision one way or the other. The applicant has brought in quite a few documents for us to go over and also to contemplate the evidence as presented by council and this board feels it would be in its best interest and the publics best interest to give us some time to think about it instead of making a rash decision either way. Hopefully that is ok with everyone. That is this boards decision.

W. Hughes: The next meeting will be what date?

J. Stump: That is just what I was trying to figure out. It is the third Monday but I don't have a calendar on me.

Chr. Deguise: It would be best if I state that.

J. Stump: Yes I would like that to be in the minutes.

Chr. Deguise: September 16th. This board has tabled this petition BZA 2013-5-CU until September 16' 2013. With that said we are done for tonight. Do I have any motions to close the meeting?

P. DeHaven: So moved.
D. Rismiller: Second.

The meeting adjourned at 7:45 PM.

THE NEXT REGULARLY SCHEDULED MEETING WILL BE HELD SEPTEMBER 16, 2013 AT 7 PM
IN THE CONFERENCE ROOM OF THE RANDOLPH CENTER FOR FAMILY OPPORTUNITY,
WINCHESTER, INDIANA.

Lee Deguise, Chairman

Christy Starbuck, Vice Chairman

Jamie Stump, Executive Director