

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF DECEMBER 2008 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser, with the following board members present: Meg Wolgamood, Robert Homan, Tom Lantz, and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; Ann Prough, Code Enforcement Officer; and James W. Kolbus, Attorney for the Board.
2. A motion was made and seconded (*Lantz/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of November be approved as read. The motion was carried with a unanimous roll call vote.
3. A motion was made and seconded (*Wolgamood/Lantz*) that the legal advertisements, having been published on the 6th day of December 2008 in the Goshen News and on the 8th day of December 2008 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.
4. A motion was made and seconded (*Homan/Wolgamood*) that the Board accepts the Zoning Ordinance and Subdivision Control Ordinance as evidence into the record and the motion was carried with a unanimous roll call vote.
5. A motion was made and seconded (*Miller/Wolgamood*) that the Board accepts the Staff Reports as evidence into the record. A roll call vote was taken and the motion was carried with a unanimous vote.
6. There were no postponements of business items.
7. The application of **Wayne J. Sommers (lessor) and Celco Partnership d/b/a Verizon Wireless (lessee)** for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the North side of Toledo Road, 207 ft. West of Rowe Street, common address of 2232 Toledo Road in Elkhart Township, zoned B-3, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083440*.

There were 8 neighboring property owners notified of this request.

Stuart Harrison, 42 W Spruce, Canton, Illinois, was present representing Verizon Wireless. Mr. Harrison then submitted coverage maps of this area to the Board *[attached to file as Petitioner Exhibit #1]*. He explained that Verizon Wireless would like to put a 100 ft. pole on the Sommers' property, which would be located approximately 230 ft. back from the right-of-way. The tower would set in the back corner in an area surrounded by factories and large warehouse businesses. The leased property has dimensions of 70 ft. by 90 ft.

Mr. Harrison said there are a couple of dead zones in this particular area and Verizon needs to upgrade their emergency services. They have tried to co-locate on a tower to the west, but it is full and there is no ground space to lease. Verizon is trying to find a location that would satisfy the radio frequency engineers.

The service maps were then explained to the Board by Mr. Harrison. He said the first page shows the current service areas and the second page indicates what the coverage would be after the proposed tower is placed. The red or white areas indicate dead zones and the blue areas indicate that service is available.

Mr. Harrison said the proposed tower will be a monopole with a platform on top, which will be 100 ft. tall. There will be room for a couple of co-locators, which Verizon Wireless would permit.

Mrs. Wolgamood asked if the platform on top is included in the 100 ft. and Mr. Harrison said the actual height of the operation will be 100 ft. There will be a six ft. lightening rod that sits on top, so it will actually be a total of 106 ft. The antenna will set underneath the lightening rod. This is not an FAA required site to be registered because it's less than 200 ft.

Riena Sommers, 23558 Williams Lane, Elkhart, was present in favor of this request. Mrs. Sommers indicated that she and her husband own the property and she feels this would be very good for the community.

Mr. Hesser indicated that there was a signage issue in the past and asked if all of that has been worked out. Mr. Harrell said everything is legal, but there is a mobile home on site that the staff will need some information on.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a wireless communications facility (Specifications F - #31.50) be approved as submitted with compliance with all proposals recommended by Cellco Partnership. A roll call vote was taken and the motion was unanimously carried.

8. See page 3, item #13 for Special Use/Variance for *Steve & Kristy Peel*.

9. The application of *Daniel Schmucker* for a Special Use for an agricultural use for the keeping of two horses on a tract of land containing less than three (3) acres, and for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance (Specifications F - #1.00) on property located on the North side of CR 46, 760 ft. East of St. Joseph County Line Road (Ash Road), common address of 30863 CR 46 in Locke Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083457*.

There were 4 neighboring property owners notified of this request.

John Schmucker, 69368 W. County Line Road, Nappanee, was present on behalf of this request. Mr. Schmucker explained that they would like to have two horses on the property for transportation.

Mrs. Wolgamood asked when they will remove the old barn and Mr. Schmucker said hopefully by spring of 2009. A demolition permit has already been obtained from the Elkhart County Building Department.

Mrs. Wolgamood also asked how long this has been a two acre parcel and Mr. Schmucker said the prior residents lived there for 42 years and the land remained as it is now.

Mr. Homan asked if there is fenced pasture land and the petitioner said yes. The property has been surveyed and they are going to put up a fence.

Mr. Hesser asked how they will dispose of the waste and Mr. Schmucker said he has a 40 acre farm where he can spread the manure.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood asked if they should include owner/occupant in the conditions, but Mr. Hesser didn't feel it was necessary.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for an agricultural use for the keeping of two horses on a tract of land containing less than three (3) acres, and for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance (Specifications F - #1.00) be approved with the following condition imposed:

1. The waste from the horses is to be disposed of on a regular basis.

10. The review of a Special Use #20073242 for *Gilberto Buenrostro (buyer) and Traco, LLC/Tim Martin (seller)* was presented at this time. Mr. Harrell explained that in 2007, they petitioned for an athletic soccer field on CR 38. The request was tabled to allow the petitioner to provide a more detailed site plan, but nothing has ever transpired since then. Mr. Harrell said the staff would like the Board to dismiss the request or deny it.

Mrs. Wolgamood asked if anyone has been using the facility and Mr. Harrell said no, there is nothing there. He remembered the petitioner having trouble with the highway entrance, so that may have stopped some of the progress.

Mr. Homan asked if the information in the packets included the original site plan or if the site plan was an original and Mr. Harrell indicated it was an original.

Mr. Hesser asked if the petitioner should be given any notification and Mr. Kolbus said yes. Mr. Kolbus said the staff should notify the petitioner to let them know the request will be set as a tabled item for next month and will be acted upon.

A motion was then made and seconded (*Hesser/Wolgamood*) that this item be tabled until the January 15, 2008, Board of Zoning Appeals meeting with the petitioners being notified, with the understanding that if the Board doesn't hear anything further from the petitioners regarding this request, then it will be dismissed. The motion was then carried after a roll call vote was unanimously taken.

11. The application of *Steve & Kristy Peel* for a Special Use for warehousing and storing of an equipment truck (Specifications F - #44) and for a Developmental Variance to allow the total square footage of accessory structures (8,448) to exceed the total square footage in the primary structure (2,820), a difference of 5,628 sq. ft., on property located on the West side of East

County Line Road, 1,885 ft. North of CR 40, common address of 65653 East County Line Road in Clinton Township, zoned A-1, came on to be heard.

There were 3 neighboring property owners notified of this request.

There was no one present for this request.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that this request for a Special Use for warehousing and storing of an equipment truck (Specifications F - #44) and for a Developmental Variance to allow the total square footage of accessory structures (8,448) to exceed the total square footage in the primary structure (2,820), a difference of 5,628 sq. ft., be tabled until the January 15, 2008, Board of Zoning Appeals meeting with the following condition imposed:

1. If the petitioner fails to show up at the public hearing, the request will be acted upon in their absence.

After a unanimous roll call vote was taken, the motion was carried.

12. The application of *Green Willow Meadows, LLC* for an Appeal to allow for the construction of a second residence on a single zoning lot on property located on the Northwest corner of CR 131 and CR 10, common address of 54331 CR 131 in York Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083467*.

There were 5 neighboring property owners notified of this request.

Rees Regier, 20255 Eagle Hill Lane, Goshen, was present representing Green Willow Meadows, LLC. Mr. Regier said they would like to add a mother-in-law quarters that would be detached from the existing residence. This parcel has been in the family for 80 years and they don't want to separate it. The daughter has moved back to the farm from Texas and would like to have her own place to stay, but they don't plan on separating the farm.

Mr. Hesser asked who would be living in the new home and Mr. Regier said the mother lives in the existing home. The daughter has moved here to help take care of her mother and would like to build her own residence next door. He explained that all of the children own the parcel in equal shares and would like to have the parcel remain as one. He indicated they own another 80 acres next door and they also own another 40 acres.

Mr. Lantz asked if there's a hardship involved and the petitioner said yes because they don't want to separate any of the farm.

Mr. Hesser questioned who all owns the LLC and Mr. Regier said there are three children and the mother who each own a quarter of it.

The house is situated on a knoll with a driveway that goes all the way around it, so they would prefer not to put on an addition. They want the building to be detached, but they would like it next door so she can keep an eye on her mom.

Mr. Hesser asked if the Board should limit the use to the owner of the property or an immediate family member. Mr. Kolbus indicated they would have to use an unnamed family member.

Mr. Hesser asked what will happen to the house when the daughter doesn't want to live there anymore. Mr. Regier said it would be vacant unless one of the other children wanted to stay at the farm.

Mr. Kolbus suggested having the petitioners put in a separate tract. Mrs. Wolgamood agreed and indicated that would only be a matter of a legal description and getting the tract recorded. The existing house could be on a separate parcel and then a permit could be issued for a house on the rest of the acreage.

There were no remonstrators present.

Mr. Hesser asked how close the proposed home is to the road and the petitioner said he believes it's approximately 300 ft. Mrs. Wolgamood indicated it's around 250 ft. from the pond to the proposed home.

Mr. Miller indicated it would be 500 ft. back from CR 131.

The public hearing was closed at this time.

Mr. Lantz indicated he feels they need to create another parcel and the Board agreed.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Homan*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for the construction of a second residence on a single zoning lot be denied. A roll call vote was taken and the motion was unanimously carried.

13. The application of ***Michael & Ruth Saupe*** for an Appeal to allow for an existing residence and construction of a detached personal storage building on property not subdivided in accordance with the Subdivision Control Ordinance on property located on the West side of CR 23, 2,700 ft. South of CR 102, common address of 52019 CR 23 in Washington Township, zoned A-1, came on to be heard.

One photo of the property was submitted to the Board by the staff [*attached to file as Staff Exhibit #1*].

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083397*.

There were 3 neighboring property owners notified of this request.

Michael Saupe, 52019 CR 23, Bristol, was present on behalf of this request. Mr. Saupe explained that his father-in-law bought 168 acres in 1964 and built the house for his mother-in-law at that time. The mother-in-law died in 1984 and the father-in-law started the gravel pit. The father-in-law decided he could no longer live in the house and Niblock expressed some interest in buying the gravel pit. He then ended up selling everything but the house and one acre because Mr. Saupe's wife had expressed interest in the house. The house was left on one acre and the rest of the land was sold.

Mr. Saupe said that he and his wife sold their things at that time and moved to Mexico to be missionaries in 1998. They came back to this area two years ago and needed a place to live, so they purchased the house. He decided that they would like to have a storage building on the property, but when he came in to pull the permit, he was unable to do so because it's only on one acre. He would like to get it all taken care of today.

Mr. Lantz asked if it's a stick built house and the petitioner said yes, it's brick. The building for storage will have a barn look.

Mr. Hesser asked about the driveway to the north and the petitioner said the driveway is half his and half is Niblock's.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Lantz/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for an existing residence and construction of a detached personal storage building on property not subdivided in accordance with the Subdivision Control Ordinance be approved in accordance with the site plan submitted. After a unanimous roll call vote was taken, the motion was carried.

14. The application of **Edward R. Miller** for a Special Use for an existing mobile home on property located on the North side of CR 56, 1,100 ft. East of CR 100, common address of 30251 CR 56 in Locke Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083138*.

There were 4 neighboring property owners notified of this request.

Loren Sloat, Attorney, 102 Heritage Parkway, Nappanee, was present representing the petitioner. Mr. Sloat submitted a packet of information to the Board including pictures, a map, a site plan, and a list of conditions *[attached to file as Petitioner Exhibit #1]*. He also submitted a petition in favor of this request from the surrounding neighbors *[attached to file as Petitioner Exhibit #2]*.

Mr. Sloat explained that the proposed property has a long history in regards to the mobile home. They were in a couple of years ago to re-zone the property from M-1 to A-1 so the petitioner could have an agri-business at this location. Mr. Miller has a small engine repair shop where he lives, which was pointed out on the site plan. Mr. Sloat also explained that the mobile home has been on the property since 1984 and was placed there by the petitioner's father.

The previous application for a mobile home indicates that the petitioner wanted it to be a permanent structure, which Mr. Sloat feels is a key matter. The Hearing Officer approved the request in August of 1984. The mobile home doesn't look much different than a stick built home because it has a cement block foundation, windows in the basement and conventional windows. He doesn't feel that the mobile home being within 300 ft. of another home will affect the sales value because the home to the east sold for \$186,000. Mr. Sloat said he questions whether the 300 ft. rule is designed to protect someone who was not legal to begin with.

The entire area is an Amish community and everyone has been approached about this request. All of the surrounding people in the area have signed the petition in favor of this request apart from two people who were not home.

Mr. Hesser asked where the two neighbors live who didn't sign the petition. Edward Miller, 30237 CR 56, Nappanee, indicated that the neighbor on the far east end didn't sign. The other person who didn't sign lives in the cluster of buildings to the north, which was pointed out on the aerial photo.

Mr. Sloat indicated that all of the neighbors within 300 ft. signed the petition. He also pointed out the areas on the map which are zoned A-1 and the areas that are zoned M-2.

Overall, the petitioner's representative said that this mobile home has been here a long time and has been built as a new home. Mr. Miller's father lived in the mobile home originally and has passed away, so the petitioner has purchased it. Mr. Miller is saving this home for his own retirement home and in the meantime, it will be served as a place for young Amish couples to rent for a reasonable amount in order for them to get started in life. Mr. Sloat is suggesting that the Board approve this request as long as the neighbors don't have a problem with it. He

feels that the 300 ft. rule is for the protection of the neighbors so that this won't diminish the value of their home.

Mr. Sloat feels the only issue they will have is making sure that they comply with the Health Department regulations. He has talked with Mr. Hartsuff to figure out what needs to be done with the septic tank. When it was originally put in, a holding tank was put in to be pumped. The petitioner understands that this issue needs to be addressed, so they are in the process of doing that.

Mr. Homan asked if there is a foundation under the mobile home and Mr. Sloat said no and indicated there is a basement underneath.

Mrs. Wolgamood asked if the mobile home is currently being occupied and Mr. Sloat said yes, there is a young couple who just got married that is living there.

Mr. Hesser questioned what happened after the renewal in 2002 and the petitioner indicated he renewed it in 2005, but there wasn't a public hearing. Mr. Harrell indicated that the property was re-zoned from M-2 to A-1 in 2006.

Mr. Hesser indicated he is concerned about the septic system and asked what has been done about that. Mr. Sloat said they have obtained the paperwork from the Health Department for them to go out and do the soil borings and determine what needs to be done. They weren't able to get that done before today's hearing, but they are working with them.

Mr. Kolbus indicated that this mobile home is more like a permanent structure because it has a basement. Mr. Sloat also indicated that the comments from the Hearing Officer indicate that this was proposed as a permanent structure.

Mr. Sloat suggested that the Board put a time limit on condition number three to assure that the septic system gets installed. Mr. Harrell indicated that the Health Department is also aware of the issue.

Mr. Homan asked when the Health Department might do soil borings and Mr. Sloat said probably within the next couple of weeks.

Mr. Homan questioned what the point of the renewal would be since it would be a permanent structure and Mrs. Wolgamood agreed. Mr. Sloat indicated the only reason he put that in there was because of the 300 ft. rule for the protection of the neighbors.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said her concern is the septic issue since it's been a holding tank for several years. She would be in favor of approving the request with a condition giving the petitioner six months to provide the Board proof that a new septic system has been installed with all inspections completed. She suggested having a duplication made of the paperwork given to the Health Department, which could then be submitted to the Building Department for the file.

Mr. Harrell said mobile homes were meant to be portable, but this is considered permanent since it has a basement.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Lantz*) that this request for a Special Use for an existing mobile home be approved as represented on the site plan with the following conditions imposed:

1. Removal of the holding tank and proper installation of the septic and field system to be done in accordance with the Elkhart County Health Department requirements.
2. Documentation showing proof of installation of septic and field system to be submitted for the file within six (6) months.

3. The approved septic and field system is to be reviewed before the Board in six (6) months.

Mr. Kolbus indicated that if the work is completed before the six month period, then the staff can bring it back as a staff item to inform the Board that everything has been completed. A roll call vote was taken and the motion was carried unanimously.

15. The application of **Terry L. Smith** for a Special Use for a home workshop/business for building small trailers (Specifications F - #41) on property located on the East side of CR 35, 1,150 ft. South of SR 120, common address of 53234 CR 35 in York Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083221*.

There were 9 neighboring property owners notified of this request.

Mr. Kolbus indicated that there was some testimony taken last month from some of the remonstrators and based on that; the Board can either dismiss or deny the request. The difference between the two is the time limit of which he can re-apply.

Mrs. Wolgamood asked how long the petitioner would have to wait if the request is denied and Mr. Kolbus indicated six months.

Mr. Harrell indicated that a call was received from the petitioner indicating that he wants to withdraw the request, but a letter was never received.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use for a home workshop/business for building small trailers (Specifications F - #41) be denied. A roll call vote was taken and the motion was unanimously carried.

16. The application of **Jimmie Schmucker (buyer) and Delbert Schmucker (owner/seller)** for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance on Parcel 'A', and for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'B'; on property located on the South side of CR 10, 1,945 ft. West of CR 43, common address of 10862 CR 10 in York Township, zoned A-1, came on to be heard.

Photos of the property were submitted to the Board by the staff *[attached to file as Staff Exhibit #1]*.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083214*.

There were 4 neighboring property owners notified of this request.

Jimmie Schmucker, 10862 CR 10, Middlebury, was present on behalf of this request.

Mr. Homan asked if this is his parent's property and the petitioner said yes and indicated he has lived there since 1967.

From looking at the drawing, Mr. Hesser gathered that the parent's home only has access across Parcel B. Mr. Schmucker indicated there are there are two driveways going to the home.

He then pointed out the location of the existing home and the location of the new home on the aerial photo.

If these parcels are ever owned by someone else, Mr. Homan asked if there would be two separate driveways and Mr. Harrell indicated yes.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an Appeal to allow for an existing residence on property not subdivided in accordance with the Subdivision Control Ordinance on Parcel 'A', and for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel 'B; be approved. After a unanimous roll call vote was taken, the motion was carried.

17. There were no items transferred from the Hearing Officer.

18. There were no audience items.

19. The Agreement for Legal Services was presented at this time. A motion was then made and seconded (*Lantz/Homan*) that the Board approve the Agreement for Legal Services. After a unanimous roll call vote, the motion was carried.

20. The meeting was adjourned at 10:03 A.M.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary