

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF JANUARY 2009 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 and Doug Miller. Staff members present were: Robert Watkins, Plan Director; Larry Harrell, Zoning Administrator; Robert Nemeth, Planner; Dan Piehl, Planner; Mick Slater, Code Enforcement Officer; Kathy Wilson, Officer Administrator; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of December be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Wolgamood*) that the legal advertisements, having been published on the 3rd day of January 2009 in the Goshen News and on the 5th day of January 2009 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 (*Miller/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 (*Homan/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.

** Mr. Lantz arrived to the meeting at this time.*

7. During a brief discussion, the Board decided to have the Officers remain the same as follows: Randy Hesser, Chairman; Robert Homan, Vice Chairman; and Tom Lantz, Secretary.

The Board then made a motion (*Wolgamood/Homan*) to approve the Officers for 2009. A unanimous roll call vote was taken and the motion was carried.

8. The application of **Ron Richardson** for a Special Use for a subordinate dwelling in an R-1 zone (Specifications F - #55) on property located on the East end of Ravine Road & Apple Lane, 550 ft. North of Orchard Drive, being lots 7, 8, & 9 of Orchard Place, common address of 64702 Ravine Road in Elkhart Township, 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 #20083696*.

There were 22 neighboring property owners notified of this request.

Ron Richardson, 64702 Ravine Lane, Goshen, was present on behalf of this request. Mr. Richardson explained that he would like to move his mother-in-law in with him and his wife for the rest of her life. She would like to have her own kitchen, bathroom, garage and some space of her own. He explained that he and his wife would like to take care of his mother-in-law and be close to her. Mr. Richardson also added that all of the services such as the gas, water, sewer, and well, will be added onto what already exists.

Mr. Hesser asked if there will be a separate meter and the petitioner indicated no. They are going to add a new furnace and water heater, but they will use the existing gas service.

Mrs. Wolgamood asked if the entrance will go into a kitchen or a laundry room and Mr. Richardson said the entrance attachment will be made at the front foyer of the house. There will only be one front door, but he might wire in two separate doorbells.

Mrs. Wolgamood asked if he has already been issued the permit to begin for an addition to the residence and the petitioner said yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said when she looked at the definition of a subordinate dwelling, this request is what it is. She feels it has been stretched on other occasions, but this is it. She has no issue with this request at all.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Lantz*) 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 subordinate dwelling in an R-1 zone (Specifications F - #55) be approved. A roll call vote was taken and the motion was unanimously carried.

** Mr. Homan stepped down from the Board at this time due to a potential conflict of interest.*

9. The application of **Grace Bible Church** for an amendment to an existing Special Use for a church (Specifications F - #48) to allow for an addition of a multi-purpose room on property located on the Northeast side of CR 5, 50 ft. North of Sunnyfield Drive, common address of 54230 CR 5 in Osolo Township, zoned R-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 #20083714*.

There were 32 neighboring property owners notified of this request.

Don Shaw, General Contractor from Mid-States Construction, 53697 CR 9 N, Elkhart, was present representing Grace Bible Church. Mr. Shaw explained that the church would like to add a gym facility to utilize for the youth ministry and outreach into the community.

Mrs. Wolgamood asked if there is additional parking required and Mr. Shaw said no. The engineers have told them that no additional parking is required because the parking lot size is based on the sanctuary seating in the main church area.

Mr. Harrell indicated that there is an existing parking area which is rather large.

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 (*Hesser/Lantz*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a church (Specifications F - #48) to allow for an addition of a multi-purpose room be approved as per site plan submitted with all state and local permits to be obtained. A roll call vote was taken and the motion was carried unanimously.

** Mr. Homan returned to the Board at this time and Mr. Hesser stepped down from the Board due to a potential conflict of interest.*

10. The application of ***Middlebury Community Schools (Northridge High School)*** for an amendment to an existing Special Use for a school for two signs (Specifications F - #38) on property located on the Northeast corner of US 20 and CR 35 in Middlebury 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 #20083722*.

There were 55 neighboring property owners notified of this request.

Present representing Middlebury Community Schools was Craig Baker, Facilities Director, 56853 Northridge Drive, Middlebury. Mr. Baker explained that they do propose to put two signs on the property. One of the signs will be located at CR 35 and Raider Drive, which he pointed out on the aerial photo. The sign will be a small brick sign that will be non-illuminated. The wording on the sign will say "Northridge High School."

The second sign they are proposing is located just south of the auditorium complex along US 20. The sign will be approximately 1,621 ft. east of the intersection of CR 35 and US 20 with a north/south orientation. This sign will also be made out of brick and masonry, which will match exactly with the school.

Mr. Baker explained they have talked with Mr. Salee from the Town of Middlebury and they have a problem with scrolling signs. He said they have the capability to use that, but they will not. The Town of Middlebury does allow them to flip the message every couple of minutes, but they will not use any scrolling messages. The illuminated portion of the sign will be approximately 4 x 8 with an amber color for the wording.

Mrs. Wolgamood asked how far back from US 20 the sign will set and Mr. Baker indicated 61 ft. from the centerline of the road.

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 (*Miller/Wolgamood*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for an amendment to an existing Special Use for a school for two signs (Specifications F - #38) be approved provided the signs comply with the sign regulations for the Town of Middlebury and the signs do not scroll. After a unanimous roll call vote was taken, the motion was carried.

** Mr. Hesser returned to the Board at this time.*

11. The staff item regarding the *Update on the Zoning Ordinance Re-write* was presented by Mr. Watkins at this time. Mr. Watkins explained that the Steering Committee finished the interviews yesterday for the companies interested in doing the re-write. They did two interviews, but one of the companies represented two different firms. The Steering Committee met after the interview and selected a firm. The contract negotiations will start tomorrow or next week with a company by the name of Ground Rules.

They have established a fairly aggressive timeline with a deadline of December 15, 2009, to get the Zoning Ordinance completely re-written and re-formatted. Mr. Watkins encouraged all of the Board of Zoning Appeals Members to sit on the Steering Committee to see how everything is coming along. The company is promising a lot of graphics, user friendly information and a digitized final product. When the final product has been completed, the answer to a question regarding the Ordinance should be able to be found within five to ten minutes. Mr. Watkins said he would like as much input from the Boards and the community as he can get.

Mrs. Wolgamood asked Mr. Watkins if he will keep the Board updated on the progress and he said yes, every month.

12. The application of *St. Mary's Antiochian Orthodox Christian Church (buyer) and Verlin R. Chupp (seller)* for a Special Use for a church (Specifications F - #48) on property located on the West side of CR 33, 545 ft. South of CR 38 and South side of CR 38, 805 ft. West of CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Harrell presented the Staff Report/Staff Analysis, which is attached for review as *Case #20083724*.

There were 16 neighboring property owners notified of this request.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, was present representing St. Mary's Antiochian Orthodox Christian Church. Mr. Pharis explained that the Antiochian church was founded in the year 44 A.D. and is one of the five original Christian churches in the world. The location of the parcel was then pointed out on the aerial photo. The railroad tracks and a very large buffer zone are to the south of the proposed property. The seller of the property owns all four of the tracts in this area, so he is aware that the three tracts to the north will be adjacent to a church.

The driveway, as shown on the site plan, is located as far north on the property as they can put it. The reason for that is because the railroad track is elevated and coming from the south, you are unable to see north until you are on top of the track. They wanted to get as far away as they could so there would be a safe ingress/egress onto CR 33 regardless of the traffic flow.

The church currently has approximately 60 members and the site plan has been designed to show that the church can support the growth to 250 members over the next ten to twelve years. Mr. Pharis feels that this request is consistent with the spirit, purpose and intent of the Zoning Ordinance, will not injure the neighbors or the neighborhood and it will serve the public convenience and welfare. He indicated that Father Matthew is also present to answer any questions the Board may have.

Mr. Homan questioned number 15 of the questionnaire because it indicates an additional building will be constructed in the future. Mr. Pharis said they are proposing to build a temple in

the area facing east. They have nice topography to do something with a walk-out look, but the growth is going to drive that.

Mr. Miller asked if the sign is shown on the site plan and Mr. Pharis said yes.

Mr. Homan asked if the sign complies with the Zoning Ordinance and Mr. Harrell indicated the staff will let the petitioner work with Mr. Burrow.

Mr. Kolbus then read language from Specifications H in the Zoning Ordinance, which states, "On a zoning lot where an approved Special Use has been granted by the Board of Zoning Appeals, the sign shall be as designated on the adopted site plan."

Mr. Hesser asked if the staff has a problem with an 8 x 5 lighted sign on the property and Mr. Harrell said no.

Mrs. Wolgamood asked how far away the closest residence is to this property and Mr. Pharis said about one mile, which he believes is a pig farm.

She also asked if they plan on turning the sign lights off at a certain time during the night. Father Matthew indicated he isn't certain about that and Mrs. Wolgamood said there are a number of lighted signs on churches and schools which shine in people's bedrooms.

Mr. Pharis then pointed out the location of the pig farm on the aerial photo. He also pointed out the locations of the houses to the north of the proposed property.

Mr. Hesser feels that the church will be far away from the other residences that it won't be a problem.

Rick Yontz, Lar Lee Farms, 16087 CR138, Goshen, was present to voice a concern regarding this request. Mr. Yontz explained that he owns the land directly south of the proposed property on the other side of the train tracks. He indicated that Lar Lee Farms is approximately three tenths of a mile from where the petitioner is planning to build. According to the neighbors, if the wind is out of the south, they are aware that the livestock is there because they can smell it. He wants the petitioner to be aware that they will be right across the tracks from them.

Mr. Pharis said they are aware that the chicken farm is there. The church will be caught between the chicken farm and the pig farm, but they are fine with it. Mr. Pharis said the church understands where they are and what they are doing, so they aren't going to try and fight the farmers.

The public hearing was closed at this time.

Mr. Homan said it may be wise to turn off the sign during the night-time hours, but that would be the church's decision.

Mr. Miller asked the Board if they have an objection to the size of the sign, but no one had any concerns.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Miller/Wolgamood*) 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 church (Specifications F - #48) be approved with all state and local permits and inspections to be obtained. Signage shall be in compliance with the Elkhart County Sign Ordinance. A roll call vote was taken and the motion was unanimously carried.

13. The application of ***Gilberto Buenrostro (buyer) and Traco LLC/Tim Martin (seller)*** for a Special Use for a athletic (soccer) field (Specifications F - #4) on property located on the South side of CR 38, 2,132 ft. West of CR 19 in Elkhart Township, zoned A-1, came on to be heard.

There were 12 neighboring property owners notified of this request.

Mr. Harrell indicated he talked to Traco LLC, seller of this property, and they have re-sold the property. He asked Traco LLC to write a letter stating that information, but he refused to do so. The staff's recommendation is to deny the request because last month's motion indicated that if the petitioner wasn't present for today's hearing, then the request would be acted upon.

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 (*Miller/Hesser*) that this request for a Special Use for an athletic (soccer) field (Specifications F - #4) be dismissed. After a roll call vote was unanimously taken, the motion was carried.

14. See page 7, item #16 for *Steve and Kristy Peel*.

15. The application of *Lawrence Ramer* for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft., on property located on the North side of CR 38, 2,185 ft. West of CR 11, common address of 25445 CR 38 in Harrison Township, zoned A-1, came on to be heard.

There were 3 neighboring property owners notified of this request.

Mr. Harrell said he has talked to Mr. Doriot and Mr. Pharis regarding this request. The staff has requested a professional site plan for this petition because some of the buildings appear to be over the property line. The buildings on the property are not being used for what they were supposed to be used for and building permits were never obtained for several of the buildings.

At this point, the staff is unsure as to whether Mr. Pharis or Mr. Doriot is going to handle this request. He suggested tabling the petition for one more month because it will take some time to get the site plan together.

Mr. Homan said from the evidence, there seems to be quite a long history with this petitioner and Mr. Harrell said that is correct. Mr. Harrell indicated the property has been red tagged twice for building without a permit and they also found out that it's being used for a business.

Mr. Kolbus asked Mr. Pharis if he had any comments to make and he indicated no.

Mr. Hesser asked why they should set it for next month and Mr. Harrell said that a PUD type of site plan will take a while to put together. He's not sure if anyone is currently working on it, but he suggested that it be tabled with the understanding that it will be acted upon if no one shows next month.

Mr. Kolbus said the Board generally gives the petitioner one more month as a courtesy.

Mr. Hesser asked if the neighboring property owners will be re-notified and Mrs. Wolgamood said yes, if the Board designates that in their motion.

Mr. Hesser said he is inclined to not consider the request until they have complied with the requested information. At that point, they could request that it be set for a public hearing. Mr. Harrell suggested one month because if the petitioner doesn't comply within one month, then the Board can deny it and the staff can proceed with the enforcement on the property.

There were no remonstrators present.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Hesser*) that this request for an 8 ft. Variance to allow for an addition to an existing accessory building 2 ft. from the rear property line (Ordinance requires 10 ft.), and a Developmental Variance to allow the total square footage of accessory structures (11,860) to exceed the total square footage of the primary structure (3,648), a difference of 8,212 sq. ft., be tabled until the February 19, 2009, Board of Zoning Appeals meeting with neighboring property owners to be re-notified and all required site plan information be provided for the staff on or before February 6, 2009. After a unanimous roll call vote was taken, the motion was carried.

16. The application of *Steve & Kristy Peel* for a Special Use for warehousing and storing of construction equipment and concrete forms (Specifications F - #44) and for a Developmental Variance to allow the total square footage of accessory structures (8,448 sq. ft.) to exceed the total square footage in the primary structure (2,820 sq. ft.), 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.

Mr. Harrell explained that this was tabled last month with the condition that it would be acted upon if no one showed up for the request this month.

Mrs. Wolgamood asked if there was any conversation with the petitioner at all and Mr. Harrell indicated no.

Mr. Homan said they talk about sharing buildings and property in the questionnaire and asked what the details are regarding that. Mr. Harrell explained that the parcel to the south was granted permission to have storage for concrete forms, but this is outside of the Special Use classification. The person next door was going in on half of the cost for this building to place it on Mr. Peel's property. If the neighbor is involved in this business as well, then Mr. Harrell said the staff doesn't want the building on the property.

Mr. Hesser asked if there was a public hearing and Mr. Kolbus said no.

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 a Special Use for warehousing and storing of construction equipment and concrete forms (Specifications F - #44) and for a Developmental Variance to allow the total square footage of accessory structures (8,448 sq. ft.) to exceed the total square footage in the primary structure (2,820 sq. ft.), a difference of 5,628 sq. ft., be denied. A roll call vote was taken and the motion was unanimously carried.

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

18. There were no audience items.

19. See page 4, item #11 for *Update on Zoning Ordinance Re-write*.

20. The meeting was adjourned at 9:45 A.M.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary