

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21ST DAY OF OCTOBER 2010 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, Tom Lantz, Doug Miller, and Robert Homan. Staff members present were: Robert Watkins, Plan Director; Ann Prough, Zoning Administrator; Robert Nemeth, Planner; Duane Burrow, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Wolgamood/Lantz*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of August be approved as read with the following correction: On page 19 under the third paragraph, the last sentence regarding a bed and breakfast should be removed. A roll call vote was taken, and with a unanimous vote, the motion was carried.

3. A motion was made and seconded (*Wolgamood/Lantz*) that the minutes of the last regular meeting of the Board of Zoning Appeals held on the 16th day of September be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

3. A motion was made and seconded (*Homan/Lantz*) that the legal advertisements, having been published on the 8th day of October 2010 in the Goshen News and on the 11th day of October 2010 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/Miller*) 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 (*Wolgamood/Homan*) 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. Hesser stepped down from the Board at this time due to a potential conflict of interest.*

7. The application of **Richard Schmucker** for a 3 to 1 depth to width ratio Variances for Tracts 3, 4 and 5 to allow for the construction of residences on property located on the Northeast corner of CR 14 and CR 31 in Middlebury 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*].

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as Case #*OCR 14-100920-1*.

There were 7 neighboring property owners notified of this request.

Barry Pharis, Brads-Ko Engineering & Surveying, 1009 S. 9th Street, Goshen, was present representing the petitioner. On May 14, 2008, the Board of Zoning Appeals approved three to one Variances for these four tracts. Shortly after that, the petitioner transferred two of the parcels and built a home. In 2008, the economy was going down and the building in Elkhart County had ceased, but the petitioners finally have a buyer for this land. In trying to obtain a building permit, the petitioners learned that the Variances had been voided because the deeds had not been prepared for each tract within 90 days of the approval.

At this point, the petitioners are required to obtain the Variances and also go through the Subdivision Control Ordinance. Mr. Pharis indicated an Administrative Subdivision had been filed for this tract. On November 1st, they plan to file a three lot minor subdivision for one of the proposed tracts and two of the adjacent tracts.

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 3 to 1 depth to width ratio Variances for Tracts 3, 4 and 5 to allow for the construction of residences be approved in accordance with the site plan submitted and as presented in the petitioner's application. After a unanimous roll call vote was taken, the motion was carried.

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

8. The application of **Dennis B. Maloney** for a 26 ft. Developmental Variance to allow for the construction of a residence 24 ft. from the centerline of the right-of-way of North Shore Drive (Ordinance requires 50 ft.), and an 876 sq. ft. lot coverage Developmental Variance to allow for 2,179 sq. ft. of structures (Ordinance allows 1,303 sq. ft. maximum) on property located on the South side of North Shore Drive, 600 ft. West of Linnwood Drive, being Lot 25 of Thompsons Sub., common address of 25912 North Shore Drive in Osolo Township, zoned R-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #25912North ShoreDr-100920-1*. She explained that the Staff Analysis included in the Board's packets was for denial, but the staff would like to amend their recommendation. New information had been received from the petitioner on October 19, 2010, and a copy of that information was submitted to the Board at this time *[attached to file as Staff Exhibit #2]*. Mrs. Prough explained there is a letter, a survey completed by a licensed land surveyor and a new site plan included in the information. She indicated this information addresses the staff's concerns. The changes include the correct lot size, the survey shows there is no encroachment by the adjoining property owner to the west, the size of the house has been reduced, and the setback has been reduced. Based on that information, the staff is changing their recommendation to approval. She also submitted a copy of a letter and photos received on October 18, 2010, in remonstrance to this request from the neighbor to the west *[attached to file as Staff Exhibit #3]*.

There were 3 neighboring property owners notified of this request.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, was present representing the petitioner. Mr. Mosness explained they have no additional comments regarding

the amended staff report. In regards to the letter from the neighbor, Mr. Mosness explained a survey was done and the current house on the property is encroaching. When Place Builders constructs the new residence, they will abide by the side yard setback and it will be about three feet further away from the neighbor than it is now.

Mr. Homan said he felt the additional survey information was very helpful.

Sally Hernandez, Prudential One Realty, 1741 E. Bristol Street, Elkhart, was also present representing the petitioner. Ms. Hernandez explained the sellers of this property are older and they would like to sell the property for the highest and best use. In her opinion, the highest and best use in this area is new construction. The existing home on the property now is 600 square feet on each level and is in a very deteriorating condition with rodent and mold infestation. She feels the current structure on site is injurious to the public health. The petitioner had a number of requests to rent the home, but he decided he would rather sell it.

She explained two houses to the west of the subject property was built in 1999 and it has 3,300 sq. ft. on a lot that isn't much larger than this one.

Mrs. Wolgamood asked what the setback is on that house and Ms. Hernandez said it is approximately 20 feet from the centerline of the road. She noted the home on that parcel is 3,332 square feet and it has a 900 sq. ft. garage. She then submitted information on three houses in the area that are similar to this situation *[attached to file as Petitioner Exhibit #1]*.

The public hearing was closed at this time.

Mr. Homan doesn't feel it looks any different from surrounding properties.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Homan/Miller*) that the Board adopt the orally amended Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a 17 ft. Developmental Variance to allow for the construction of a residence 33 ft. from the centerline of the right-of-way of North Shore Drive (Ordinance requires 50 ft.), and a 331 sq. ft. lot coverage Developmental Variance to allow for 1,634 sq. ft. of structures (Ordinance allows 1,303 sq. ft. maximum) be approved as presented. After a unanimous roll call vote was taken, the motion was carried.

9. The application of **Michael K. Williams** for a Special Use renewal for an existing mobile home on property located on the Southwest corner of Gano Street and Baker Street, 950 ft. North of CR 20, being Lots 74,75,76 & 77 of Revised Locust Grove Sub., common address of 57507 Gano St. in Baugo Township, zoned R-2, came on to be heard.

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

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #57507Gano St-100920-1*.

There were 26 neighboring property owners notified of this request.

Michael Williams, 28367 CR 16, Elkhart, was present on behalf of this request. Mr. Williams said he feels he has been in compliance with all of the conditions. The mobile home is being rented at this time.

Mrs. Wolgamood asked if all four of the staff photos are of this site and Mrs. Prough said yes. She indicated the mobile home is on the north two lots and the accessory building is on the south two lots.

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 renewal for an existing mobile home be approved for a period of three (3) years with a one (1) year review to verify compliance with Conditions "A". A unanimous roll call vote was taken and the motion was carried.

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

10. The application of **Richard A. & Marla Lavanture** for a Use Variance to allow for the construction of a guesthouse to include a kitchen and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 19, 1,177 ft. South of CR 14, common address of 56260 CR 19 in Jefferson 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #56260CR 19-100920-1*.

There were 6 neighboring property owners notified of this request.

Don Swift, Architect, 17884 CR 10, Bristol, was present representing the petitioners. Mr. Swift pointed out the existing house and barn on the aerial photo. The petitioners plan to rent, sell, or give the residence to his son. Their son has one child and two on the way, so they would like to have a guest house on site as they will be to and from the property more often. The petitioners store antique vehicles in the barn and they need more space.

Mrs. Wolgamood asked if this is a single story house and Mr. Swift said it is a single story home with a walkout basement.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said he feels this request is peculiar due to the amount of property involved and the family relationship. Mrs. Wolgamood indicated she also feels this is unique because it is a large piece of land.

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 Use Variance to allow for the construction of a guesthouse to include a kitchen and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved in accordance with the site plan submitted and as represented in the petitioners' application. The motion was carried after a unanimous roll call vote was taken.

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

11. The application of **Ernest L. & Vera M. Bontrager** for a Special Use for a home workshop/business (Specifications F - #45) for a washer repair business on property located on the West side of East County Line Road, 2,300 ft. South of CR 40, common address of 66403 E County Line Road in Clinton 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #66403ECOUNTYLINERd-100920-1*.

There was 1 neighboring property owner notified of this request.

Ernest Bontrager, 66365 E. County Line Road, Millersburg, was present on behalf of this request. Mr. Bontrager indicated they have been operating this home workshop/business since 2001. The request was granted by the Board of Zoning Appeals in 2002. He explained his daughter is moving home and they are building on the seven acre parcel next to this property. They are starting to build the house, but they would also like to build a shop over there.

Mrs. Wolgamood asked if they have started construction on the residence and the petitioner said yes. He indicated the house and accessory building are being built simultaneously.

Mrs. Wolgamood also asked if they sell new or used washers and the petitioner said both. When asked if he has a showroom, Mr. Bontrager said no but indicated there may be a couple standing out.

When asked if there will be any outside storage, the petitioner said no. They do have farm equipment stored outside, but nothing in conjunction with this business.

If this request is approved, Mr. Hesser asked what happens to the petition that was approved in 2002. Mrs. Prough said the request that was granted next door was granted for Mr. Bontrager as owner/occupant only. When he no longer resides at the site, then the petitioner will become void.

Mr. Hesser asked the petitioner if he intends to have two separate businesses. The petitioner said no, he only wants to move the business to the new parcel.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she was concerned that the home workshop building was going to be built before the house. She suggested having a condition added stating that the residence shall be occupied prior to the accessory building being utilized for the home workshop/business.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/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 home workshop/business (Specifications F - #45) for a washer repair business be approved with the following conditions imposed:

1. Approved for the owner/occupant of the residence on site.
2. Approved as per site plan submitted and as represented in the petitioner's application.
3. All required permits to be obtained.
4. The residence shall be occupied prior to the accessory building being utilized for the home workshop/business as proposed.
5. The approval of this Special Use on the seven (7) acre parcel nullifies the Special Use for the home workshop/business for the washer repair home workshop/business on the adjacent 70 acre parcel.

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

12. The application of *Nelson L. & Esther J. Lehman (lessor) and Verizon Wireless (lessee)* for a Special Use for a wireless communications facility (Specifications F - #31.50) on property

located on the North side of CR 36, 4,000 ft. West of CR 31, common address of 16769 CR 36 in Elkhart 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #16769CR 36-100907-1*.

There were 8 neighboring property owners notified of this request.

Karol Fahey, Insite Real Estate, 2210 Midwest Road, Oakbrook, Illinois, was present representing Verizon Wireless. Ms. Fahey explained they are requesting to put up a 120 ft. high cell tower. This tower will accommodate Verizon's antennas and future carriers/antennas at or below this level. Approving this request will allow Verizon Wireless to widen their service coverage area where it is currently lacking. Verizon Wireless feels the proposed location of the tower is well suited as the surrounding area is agricultural. They are asking for a setback Variance from the property to the east.

Mr. Hesser said the staff report only refers to the Special Use and not the setback. Mrs. Prough said the Zoning Ordinance doesn't provide a setback for towers and it was only a policy that was adopted. The staff is recommending the tower be set back the amount that the tower policy states, which would be the height of the tower. She indicated that is not shown on the site plan, but the staff is recommending approval if they can keep the setback at 120 feet.

Ms. Fahey said instead of putting the tower in the center of the property and within a certain distance to the residence, they have located the tower in a better location on the eastern end. They feel the surrounding unimproved agricultural land is better suited for the tower.

Mr. Hesser asked how far the proposed location is from the property line. Ms. Fahey said it basically abuts the property line to the east. They feel locating the tower closest to the eastern property line avoids them having to put it in the center of the property.

There were no remonstrators present.

Mr. Kolbus noted the staff is recommending approval in accordance with the tower policy, which would be a 120 ft. setback. The tower policy indicates it should be one and half times the height away from a residence, but that does not include the petitioner's residence.

Mr. Hesser asked who owns the agricultural property to the east and north and Mrs. Prough said Stephen Fidler. He asked if there has been any contact with Mr. Fidler and Ms. Fahey said not as far as she knows. All of the neighbors have been notified and she indicated no comments have been made. Mr. Hesser indicated he wouldn't be opposed to the request if he knew Mr. Fidler didn't have any issues with where the tower was being placed.

The public hearing was closed at this time.

Ms. Fahey said the unimproved nature of Mr. Fidler's property is one of the reasons why they placed it so close to the property line.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Hesser/Miller*) that the Board adopt the Staff Analysis (as amended by the Board) 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 with the following conditions imposed:

1. All local permits are to be obtained.
2. The tower may be constructed in the proposed location if approval is received from adjoining property owner, Stephen Fidler. Otherwise, the tower is to be located in accordance with the Elkhart County Wireless Communications Facility Policy.

A roll call vote was taken with the following results: Homan – no; Wolgamood – yes; Lantz – yes; Miller – yes; and Hesser – yes.

13. The application of **John D. & Bertha Martin** for a Special Use of an agri business in an A-1 district (Specifications F - #56) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the North side of SR 119, 2,640 ft. West of CR 11, common address of 25389 SR 119 in Harrison 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #25389 SR 119*. She indicated further information had been received from the petitioner addressing the staff's concerns. Therefore, they are recommending approval and recommending the Board accept the conditions that were submitted by the petitioner in the original application. The only change would be in condition number one to read, "Approved for the owner/occupant of the residence on site." Staff also recommends approval of the Developmental Variances per the site plan submitted and as represented in the petitioner's application and the supplemental information that was received.

There were 6 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 at this time including a site plan, pictures of the property in question, a petition in favor of the request, and a list of proposed conditions *[attached to file as Petitioner Exhibit #1]*. He also submitted a packet of supplemental information to the Board *[attached to file as Petitioner Exhibit #2]*. Mr. Sloat explained the petitioner has been doing business at this site for a long time. The property is located on SR 119 and the petitioner owns some of the land surrounding the parcel in question. He pointed out the petitioners' residence and all of his buildings on the aerial photo.

Mr. Hesser asked how long the petitioner has been doing this particular type of work and Mr. Sloat said 20-25 years. He also asked if all of the buildings were constructed before 2000 and the Mr. Sloat said yes, apart from the house. The petitioner is asking to convert the agricultural building into a shop.

Mr. Sloat explained the petitioner fixes agricultural equipment. The sawdust operators bring their trucks in to be retrofitted with augers, drag chains, hydraulics, covers, etc. He designs and builds everything appropriately to fit the equipment. He also works on egg handling equipment, tractors, manure spreaders, etc. Mr. Martin uses a plasma cutter to make the parts and sometimes he cuts parts for other welding shops that don't have this machine. Mr. Sloat went through the pictures included in the packet at this time. He noted the dumpster on site will be holding sawdust, which will be hauled away. He also indicated the majority of the work is agricultural and this type of business shouldn't be located in an industrial park.

Mr. Hesser asked the staff if they would be comfortable enforcing 85% of the business being agricultural and Mrs. Prough said yes. The staff can ask for receipts from the business if they need to.

When Mr. Homan questioned the sign, Mr. Sloat said it is fastened to the electric pole out by the road and it is a smaller sized sign.

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 orally amended Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use of an agri business in an A-1 district (Specifications F - #56) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved with the conditions submitted by the petitioner (as amended by the Board) being imposed as follows:

1. Limited to the owner/occupant of the residence on site.
2. Hours of operation Monday thru Friday 6:30 a.m. to 5:30 p.m.
3. No retail sales.
4. Sign to remain as it currently exists.
5. Outside storage of items related to business activities to be limited to area shown on site plan measuring approximately 400 ft. x 350 ft.
6. Approved in accordance with the representations in the questionnaire and in the presentation.

A roll call vote was taken and the motion was carried unanimously.

14. There were no items transferred from the Hearing Officer.
15. There were no audience items.
16. There were no Staff/Board items.
17. The meeting was adjourned at 10:01 a.m.

Respectfully submitted.

Kate A. Keil, Recording Secretary

Randy Hesser, Chairman

Tom Lantz, Secretary