

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF MARCH 2012 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 Vice-Chairperson, Doug Miller, with the following board members present: Robert Homan, Tony Campanello, Meg Wolgamood, and Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Ann Prough, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Office Manager; 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 16th day of February 2012 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 March 2012 in the Goshen News and on the 4th day of March 2012 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, Subdivision Control Ordinance and Staff Reports as evidence into the record and the motion was carried with a unanimous roll call vote.

5. There were no postponements of business items.

6. The application of *Marlin E. & Molly J. Crist, Ethel L. Culp, Trustee of the Ethel L. Culp Revocable Living Trust, and Gregory L. & Rebecca S. Schrock (owners)* for a Special Use to allow for a church conference on property located on the East side of CR 13, 1,500 ft. North of CR 36, common address of 63634 CR 13, in Harrison 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 #63634CR 13-120215-1*.

There were six (6) neighboring property owners notified of this request.

* (*It is noted that Randy Hesser arrived for the meeting at this time.*)

Donald Crist, 63465 CR 11, Goshen, was present on behalf of this request. Mr. Crist explained that he is the foreman of a committee of seven people who are organizing this four day event. He said they were advised by their neighbor, David Hess, to apply for this Special Use.

Mrs. Wolgamood asked if this is an overnight event and Mr. Crist replied yes. He explained that they open up their homes for people to stay overnight, and some choose to go to hotels. When asked if anyone will stay on the premises overnight, Mr. Crist said no. He did say, however, that there may be a few RV's that will stay in the parking lot, but they do not advertise that you can come and stay there overnight.

Mrs. Wolgamood questioned the mode of transportation for most of the people who are coming. Mr. Crist said it would be all automobiles and there will be no horses and buggies.

When she asked what temporary means with regard to the proposed buildings, Mr. Crist said it will be a solid structure with posts in the ground, but it will only be there a couple of weeks. If time and weather permits, everything will be gone by Tuesday night.

She then asked how often the trash will be removed during this event. Mr. Crist said they will be naming their committees in about a month and there will be a sanitation committee to address this. He visualizes that it will be removed daily.

Mrs. Prough explained that last year, the staff met with the Commissioner's Office, Tom Byers, Dave Hess, Sheriff's Department, Health Department, Building Department and the Highway Department and everything was reviewed at that point. It was determined at that time that they needed to apply for a Special Use permit. The staff reviewed everything with the petitioners prior to them sending in the application.

She noted they had an event similar to this one in 1990 and at that point, Bob Watkins was involved with the Health Department. Mr. Watkins had been out to the site and he indicated they do a wonderful job and this event is very organized.

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/Campanello*) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, this request for a Special Use to allow for a church conference be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Conference to be held May 18 through May 21, 2013.
3. All required permits to be obtained.

A roll call vote was taken and the motion was carried with a unanimous vote.

7. The application of ***Tri-County Land Trustee Corporation (owner) and Henry D. Troyer, Lovina J. Troyer, Kenneth Stoltzfus and Elizabeth Stoltzfus (occupants/operators)*** for a Special Use for a home workshop/business for repairing tools (Specifications F - #45), and for a Developmental Variance to allow for a 32 sq. ft. sign (Ordinance allows 8 sq. ft.) on property located on the South side of US 20, 575 ft. West of CR 33, common address of 15130 US 20 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #15130US 20-120220-1*.

There were six (6) neighboring property owners notified of this request.

Present on behalf of this request was Kenny Stoltzfus, 15176 US 20, Middlebury. Mr. Stoltzfus said he is requesting a Special Use to repair tools for his neighbors.

Mr. Miller asked how deliveries are handled and the petitioner said they are delivered by UPS once or twice a week and people also drop them off. He indicated the number of deliveries vary week by week.

Mr. Campanello asked if there will also be sales of equipment and Mr. Stoltzfus replied no. They are currently working on tools, air compressors and pressure washers.

When Miller asked if customers will need to back out onto US 20, the petitioner said no.

Mrs. Wolgamood questioned what types of tools he will be working on and the petitioner said cordless screw guns, hammer drills, impacts, air tools, battery tools, corded tools, skill saws and sawzall. He indicated that a chainsaw would be the largest tool he would be working on.

Mr. Hesser asked the petitioner to address why a smaller sign would not be feasible. Mr. Stoltzfus said it would be, but that is the only advertisement they are doing.

Larry White, 58066 Hemminger Drive, Goshen, was present in support of this request. Mr. White said as a neighbor, there are no noise issues and the sign is professional looking. He feels they provide a service to the community and is happy to have them there.

The public hearing was closed at this time.

After driving by this property, Mrs. Wolgamood said she didn't feel the sign was that much out of character, but she did ask if it is located within the right-of-way. Mrs. Prough said it is within the 55 ft. setback, but the petitioner has agreed to move it back. She said the site plan has been changed to represent that it would be relocated; however, she advised the petitioner to wait to see if this request is approved before they went to the expense of moving it.

Mr. Homan said he personally feels that eight feet is too small, but he acknowledged that is the requirement. He agrees the sign is probably appropriate for its location, but he pointed out that the Board has held other petitioners to the exact definition of home workshops more often than not. Mrs. Wolgamood agreed with his comment; however, she said this property is on a State/Federal Highway and it doesn't just have three or four vehicles going by in a half hour.

Mrs. Wolgamood asked if Mr. and Mrs. Stoltzfus (children) live in the residence to the east and the Troyers (parents) on the property to the west, which is not included in this request, and Mrs. Prough said that is correct.

Mrs. Wolgamood then noted that the Troyers and Stoltzfus' are listed as the occupants/operators where they are named in the petition, but Commitment #2 says owner/occupant. Mrs. Prough explained that the staff has always stipulated the owner/occupant of the residence for home workshop/businesses, but she was advised by Mr. Kolbus that they cannot do that in this case as a trust cannot occupy a residence. She then amended Commitment #2 to read, "The business to be operated by the occupant of the residence on site."

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 home workshop/business for repairing tools (Specifications F - #45) be approved in accordance with the Staff Analysis with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after Board of Zoning Appeal action on the petition for placement in the petition file.

The following commitments, as modified by the Board, were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The business to be operated by the occupant of the residence on site.
3. No outside storage or display related to the business.

A roll call vote was taken and the motion was carried with a unanimous vote.

A motion was then made and seconded (*Miller/Wolgamood*) that in accordance with the Staff Analysis, the Board approve the request for a Developmental Variance to allow for a 32 sq. ft. sign (Ordinance allows 8 sq. ft.) with the following condition imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

Prior to voting on the motion, Mr. Hesser said he too agrees the sign is not inconsistent with what's around it, and it is not obnoxious or intrusive in any way. However, he does not feel that it will result in an unnecessary hardship by not allowing it.

A roll call vote was then taken and the motion carried with Mr. Hesser voting in opposition.

8. The application of ***Douglas W. & Margaret Stuckey*** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the East side of Bristol Avenue (CR 8), 181 ft. South of Hemsberd Street (CR 14), common address of 408 Bristol Avenue in Middlebury Township, zoned A-1, came on to be heard.

There was one (1) photo of the property 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 #408BristolAve-120207-1*.

There were 19 neighboring property owners notified of this request.

Doug Stuckey, 408 Bristol Avenue, Middlebury, was present on behalf of this request. Mr. Stuckey would like to build a new primary home, and once the new home is completed, the existing home will be demolished as it is beyond repair. They will continue to live in the existing home and once the new home is complete, the existing home will be demolished apart from the mud room and two-stall garage.

Mrs. Wolgamood questioned the temporary driveway. Mr. Stuckey said the existing driveway is concrete and will be utilized during construction. When that driveway is removed, the access will be the north of the existing home. If he can't get trucks through that area, there is more room to the north, which is about 75 feet from the existing concrete drive. In that case, stone would be put down so mud wouldn't be brought out into the existing road.

When asked if he has checked with the Highway Department regarding what they would require for a temporary driveway, Mr. Stuckey said he had not.

Mr. Hesser clarified there is no difference in the road access and it will stay the same.

Mr. Homan asked when construction will begin and when he anticipates it will be completed. The petitioner said he is hoping to start within the next two months. The earliest would be around the middle of the April and the latest would be after Memorial Day. With the size of home he wants to construct, he expects that it won't take any longer than six months.

Mr. Hesser asked if the current garage is the detached garage that will remain and the petitioner said yes.

There were no remonstrators present.

Mrs. Prough reported that Mark Kanney received a call from Mark Salee, the Middlebury Town Manager, and he indicated the petitioner would be required to have city water and sewer as the property is located within the boundaries of the Town of Middlebury. Mr. Stuckey said he is aware of that and would actually prefer that. He then explained that there is a manhole on the adjoining property and city sewer comes to his property.

Mr. Campanello asked if there will be a basement and Mr. Stuckey said it will be a walkout basement.

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/Miller*) 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 second dwelling on a parcel be approved with the following conditions, as modified by the Board, imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The new house and demolition of the existing house to be completed within eighteen (18) months of the date of approval.
3. All required permits to be obtained, including a demolition permit of the existing residence.
4. A permanent Certificate of Occupancy to be issued upon verification the existing residence has been demolished.

A roll call vote was taken, and with a unanimous vote, the motion was carried.

9. The application of ***Norman E. & Katie C. Lehman (occupants/operators) and Tri-County Land Trustee Corporation for Tri-County Land Trust (owner)*** for a Developmental Variance to allow existing signage to exceed the signage requirements for a home workshop/business, a Developmental Variance to allow existing signage to be located within the required front yard setback for a home workshop/business, a Developmental Variance to allow existing signage to exceed the height requirements for a home workshop/business, and a Developmental Variance to allow no more than three employees who do not occupy the residence on site, on property located on the North side of CR 16, 1,900 ft. East of CR 116, common address of 11401 CR 16 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]*.

Mrs. Prough presented the Staff Report/Staff Analysis, which is attached for review as *Case #11401CR 16-120220-1*.

There were eight (8) neighboring property owners notified of this request.

Present on behalf of this request was Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris. He was present representing Norman Lehman, who he reported was also present in the audience.

When this was presented to the Board in January, Mr. Doriot said he was under the impression he had already applied for the signs. He then submitted a copy of the January 19, 2012 minutes of the Elkhart County Board of Zoning Appeals *[attached to file as Petitioner Exhibit #1]*.

Mr. Doriot explained that a representative from the Visitors Bureau spoke in favor of this request at the last public hearing. Also, all of the neighbors had signed a petition in favor of the petitioner's operation.

In presenting a PowerPoint presentation, Mr. Doriot reviewed a photo of the existing building with the Board. The location of this property was pointed out on an aerial map, and the location of the expansion approved in January. After showing a photo of the petitioner's signage, numerous signs on neighboring properties were also displayed.

A video of Elkhart County that can be seen on the Visitor's Bureau website was shown, and Mr. Doriot notes that Dutch Country Market is part of this. Also reviewed was a video of signs along the road resembling the old Burma Shave signs in the past.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood does not feel that numerous signs will attract customers any more than just a couple of signs. She indicated the wording can change at the bottom of the existing sign on site. She feels that the signage is excessive and some appear to be on the neighboring property.

Mr. Homan feels this site far exceeds the definition of a home workshop/business. He's not sure what constitutes a sign and what constitutes decoration such as the jelly bean sign. Signage to him is what advertises the business, and he feels the Burma Shave type signs are not necessary. He indicated he has no objection to the sign on the building.

Mr. Doriot interjected that the staff indicated to him that the Burma Shave type sign was a sign, so that's why he put it on the site plan.

It was Mr. Campanello's opinion that the signage is decoration and he has no objection to them.

Mr. Miller feels the Burma Shave type signs in the country are more for decoration. He pointed out the signs have been on site for quite awhile.

Mr. Hesser feels this usage and signage is not inappropriate for the area. Although he finds nothing offensive about this business, he feels that it has exceeded the definition of a home workshop/business. He then recalled that Mr. Doriot had indicated in January that they would apply for a PUD should the business expand any further.

In discussion regarding employees, Mr. Doriot clarified them to be seasonal part-time employees. However, he did say it may be close to full-time during the summer.

The Board examined said request, and after due consideration and deliberation, a motion was made and seconded (*Wolgamood/Homan*) that based on the Findings that this will not be injurious to public health, safety, morals or general welfare; will not cause substantial adverse affect on the neighboring property; and will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance, this request for a Developmental Variance to allow existing signage to exceed the signage requirements for a home workshop/business, a Developmental Variance to allow existing signage to be located within the required front yard setback for a home workshop/business, and a Developmental Variance to allow existing signage to exceed the height requirements for a home workshop/business, be approved by the Board with the following signage permitted:

1. The 8" x 4' single-sided open/close sign.
2. The main sign, which includes the letter sign (2' x 8') double-sided, the logo sign (3' x 8') double-sided, and the product sign (18" x 24") double-sided.

The motion failed to pass based on the following results of a roll call vote: Homan – yes; Campanello – no; Wolgamood – yes; Miller – no; Hesser – no.

A motion was then made and seconded (*Homan/Wolgamood*) that based on the Findings that this will not be injurious to public health, safety, morals or general welfare; will not cause substantial adverse affect on the neighboring property; and will result in an unnecessary hardship in the use of the property through the strict application of the terms of the Zoning Ordinance, this request for a Developmental Variance to allow existing signage to exceed the signage

requirements for a home workshop/business, a Developmental Variance to allow existing signage to be located within the required front yard setback for a home workshop/business, and a Developmental Variance to allow existing signage to exceed the height requirements for a home workshop/business, be approved by the Board with the following signage permitted:

1. The open / close sign (8' x 4' single-sided)
2. The three (3) signs by the highway known as the main sign, which includes the letter sign (2' x 8' double-sided), the logo sign (3' x 8' double-sided), and the product sign (18' x 24' double-sided).
3. The sign on the building designated on the site plan as the 2' x 8' Jumbo Jelly Bean sign.
4. The county road signs, other than the main sign, to be omitted, which includes the 18' x 24' product sign in the yard, the highway Burma Shave style signs, and the 2' x 6' Dutch Country Market sign (located at the western edge of the property).

A roll call vote was taken and the motion did not carry based on the following results: Homan – yes; Campanello – no; Wolgamood – yes; Miller – no; Hesser – no.

Mr. Miller then moved that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the requests for a Developmental Variance to allow existing signage to exceed the signage requirements for a home workshop/business, a Developmental Variance to allow existing signage to be located within the required front yard setback for a home workshop/business, a Developmental Variance to allow existing signage to exceed the height requirements for a home workshop/business, be approved by the Board with the following condition imposed:

1. Approved in accordance with the site plan submitted.

The motion was seconded by Mr. Campanello, and was carried with the following results of a roll call vote: Homan – yes; Campanello – yes; Wolgamood – no; Miller – yes; Hesser – no.

A final motion was made and seconded (Wolgamood/Campanello) that the Board adopt the Staff Analysis as the Findings of the Board, and based upon these Findings, the request for a Developmental Variance to allow no more than three employees who do not occupy the residence on site be approved with the following condition imposed:

1. Approved as represented in the petitioner's application.

A roll call vote was taken and the motion was carried based on the following results: Homan – yes; Campanello – yes; Wolgamood – no; Miller – yes; Hesser – no.

10. The application of **Nelson R. & Ruth E. Gingerich** for an amendment to an existing Special Use for an agri-business for a feed mill and a fencing business to allow for the construction of an addition to the feed mill for feed storage (Specifications F - #56) on property located on the North side of CR 20, 1,100 ft. East of CR 22, common address of 15459 CR 20 in Middlebury Township, zoned A-1, came on to be heard.

The public hearing was reopened on a motion by Mrs. Wolgamood and a second by Mr. Homan. The motion was carried unanimously.

Mrs. Prough presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #15459CR 20-120119-1*. She then submitted a copy of the revised site plan dated February 24, 2012 to the Board [attached to file as *Staff Exhibit #1*], which shows how they have rearranged their storage area for the fencing business to allow for trucks to enter and exit. Also submitted were six (6) photos of the site [attached to file as *Staff Exhibit #2*] dated February 27, 2012,

which shows the area that has been revised. Mrs. Prough said she turned into the property and backed around, and she believes it is an adequate area to provide for semi traffic.

David Bontrager, Jr., 59723 CR 33, Middlebury, was present representing the petitioners. Mr. Bontrager explained they revised the site plan to indicate that there is a turnaround on site.

Mr. Hesser asked if the semis will be able to turnaround in the winter as previously discussed. Mr. Bontrager said it will be top coated with more stone to make a better grade to get in and out. The timeframe for completing that was questioned by Mrs. Wolgamood and Mr. Bontrager said within the next 45 days.

Mr. Homan said the Hemlock trees are close to the road (at the southeast corner of the building by the road), which is a safety issue and he feels they should be cut back. Mrs. Prough thinks the Board required that the trees be installed along the south and east sides of the driveway, but she's not sure about the west side.

When asked if those trees are in the right-of-way, Mrs. Prough said yes, but Code Enforcement was asked not to address that.

Mr. Hesser pointed out they need to eliminate the condition of planting pine trees from 2001. Mr. Campanello feels they can keep them trimmed and maintained to make it safer. After further discussion, the petitioner was advised to trim the Hemlock trees for safety reasons.

There were no remonstrators present.

Mr. Miller suggested the petitioner be given ninety (90) days to install more stone since this is the rainy season.

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/Miller*) 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 an agri-business for a feed mill and a fencing business to allow for the construction of an addition to the feed mill for feed storage (Specifications F - #56) be approved with the following conditions imposed:

1. All required permits to be obtained.
2. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff within sixty (60) calendar days after BZA action on the petition for placement in the petition file.

In addition to the conditions, the following commitments were also imposed by the Board:

1. Approved for the owner/occupant of the residence on site.
2. Days and hours of operation to be Monday through Friday, 8:00 a.m. to 5:00 p.m. and Saturday, 8:00 a.m. to noon.
3. One (1) employee who does not reside on site.
4. The pine tree buffer to be maintained on the south and east sides of the storage area for the fencing business.
5. Approved in accordance with the revised site plan submitted on February 24, 2012 and as represented in the petitioner's application.
6. No parking, loading, or unloading in the road right-of-way of CR 20.
7. The turnaround area shown on the revised site plan dated February 24, 2012 to be maintained with a dust-free surface.

A roll call vote was taken, and with a unanimous vote, the motion was carried.

11. There were no items transferred from the Hearing Officer.
12. There were no Staff/Board items.
13. On a motion by Mr. Miller, a second by Mr. Hesser, and a unanimous roll call vote, the meeting was adjourned at 9:59 a.m.

Respectfully submitted,

Kate Keil, Transcriber

Kathleen L. Wilson, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary