

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17TH DAY OF APRIL 2014 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, Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Doug Miller, Meg Wolgamood, Randy Hesser.

Absent: Robert Homan, Tony Campanello.

2. A motion was made and seconded (*Hesser/Wolgamood*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of March 2014 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Wolgamood/Hesser*) that the legal advertisements, having been published on the 5th day of April 2014 in the Goshen News and on the 4th day of April 2014 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 (*Wolgamood/Hesser*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

**** It should be noted that Mr. Miller informed the audience that with three Board members present, their decisions must be unanimous to move forward.****

5. The application of *Harlan Martin & Doris Martin* for a 3 to 1 depth to width ratio Developmental Variance to allow for an existing residence on property located on the East side of CR 17, 1,208 ft. North of CR 42, common address of 66780 CR 17 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #66780CR 17-140324-1*.

There were nine neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner who was also present. He submitted a copy of his power point presentation [*attached to file as Petitioner Exhibit #1*]. Using the aerial photo, he pointed out Mr. Martin's farm, residence, and dairy farm. He also noted some land that Mr. Martin recently purchased. He indicated the location of the property and the sparsely populated area of the county. On the aerial, he indicated a 19 or 20 acre piece sold off of the earlier farm some years ago and the access to the buildings is by a lane. He said Mr. Martin is interested in the northern piece which adjoins his farm, and there is a party that is interested in purchasing the southern piece and access to the buildings. By nature of the

fact that it is not real convenient to make 250 feet to satisfy the requirements to not need a 3 to 1 variance, they have gone 100 ft. wide at the road and put the lane and the 100 ft. with the southern parcel (Parcel B). He indicated if they were to add another 150 ft. onto the strip, they would be adding six acres to Parcel B and taking six acres away from Parcel A. He also noted it would be making a cumbersome piece to farm because it would only be 250 ft. wide north of the lane. He said the lane is a natural demarcation for dividing this property.

He stated the buildings on Parcel B are at the very extreme east side of the property and hardly visible from CR 17. He indicated they had the property surveyed and pointed out the stakes showing the width of road frontage. He reported the parcels in the area are similar in size, being approximately 30 to 40 acres. He noted they met requirements of the ordinance, and there is no adverse affect on any adjoining property owner as the lane and buildings have been there for many years. It will have no affect on traffic, and the requirement of a 250 ft. frontage would be detrimental to them because it would flip six acres from one parcel to the other, make an inconvenient piece to farm, and not make a lot of sense. When Mr. Hesser inquired about access to Parcel A and the possibility of a curb cut, Mr. Sloat said Mr. Martin will access this parcel for farming purposes from his own property.

Ron Pletcher, 66786 CR 17, Goshen, was present in favor of this request. He stated his residence adjoins the lane to the south, and he does not see any reason for the required 250 ft. of road frontage.

Lorell Nihart, 25799 Lake Drive, Elkhart, was present in remonstrance to this request. He noted that staff recommended denial of this request. As a tax payer, he expressed that rules are set up by Planning & Zoning and every hearing is to request a variance of some type from those rules. He noted what he sees this morning and has seen in the past is that there is paid staff and a Plan Director who make recommendations and the Board overrules them. Although he does not know the petitioners in this case, he suggested following the rules and staff's recommendation.

Mrs. Wolgamood questioned if CR 17 is paved or gravel. Mr. Sloat indicated it is gravel. Mr. Godlewski noted County Highway is paving to CR 142 beginning this fall which will include this area.

To address the remonstrator, Mr. Sloat said the rules also provide for an opportunity to have a public hearing to discuss deviation from the rules. He added if they just went by the rules, there would be no purpose for this board. The rules provide for this forum that they can address issues that are different from the rules so it can be decided if it is appropriate or not to do.

The public hearing was closed at this time.

Mr. Hesser noted the Board has disagreed with staff by both granting and denying requests which is the purpose or job of the Board, to decide whether this is a situation to deviate from the rules or whether the requirements have been met or grounds for that. He expressed he always has concern when a flag pole type lot is created although the circumstances here are a little different with the lane having been there for a long time, the neighbor has no objection, and the way the surrounding areas are.

Mrs. Wolgamood mentioned that it is farm land basically in that area and not a lot of residences. She noted the amount of farmland that would be taken away with the additional 150

ft. to meet the 250 ft. requirement. She also stated that essentially nothing is changing except the property line, and there is a house there on Parcel B. Mr. Miller expressed agreement with Mrs. Wolgamood. Mr. Hesser noted that he does not agree with Finding #2 that it will cause adverse affect on surrounding properties. He expressed concern with Finding #3 as it does not make it unusable but the standard is an unnecessary hardship which it is, although self-created. But under the circumstances, the way it has been presented, in light of the neighbor most affected by it, and in this case, to take away six acres of farmland is not necessary to be consistent with the spirit of the zoning plan.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as amended by the Board as the Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. The splitting of the subject property into two large parcels will not impact these aspects.
2. Approval of the request will not cause substantial adverse affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

and based upon these, further moved that this request for a 3 to 1 depth to width ratio Developmental Variance to allow for an existing residence be approved.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Meg Wolgamood, Randy Hesser, Doug Miller.

*****It should be noted that Tony Campanello arrived at this time.*****

6. The application of *Morning Star School Trustees, an Unincorporated Educational Association* for an amendment to an existing Special Use for a private school (Specifications F - #38) to allow for the construction of an addition on property located on the North side of CR 142, 250 ft. East of CR 11, common address of 24915 CR 142 in Union Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #24915CR 142-140324-1*.

There were three neighboring property owners notified of this request.

Clyde Selby, 30195 CR 40, Wakarusa, was present on behalf of this request and noted he is a member of the school board. He reported the school was designed in 1987 for approximately 25 students which is the number in attendance this year, and it is very full. He also reported they are anticipating five additional students so it is time to enlarge the school a bit. He said their goal is to make provisions for up to 40 students. They would like to extend to the east, making more classrooms and more recreational room.

Lorell Nihart, 25799 Lake Drive, Elkhart, was present and spoke in favor of this request. In light of the staff report and lack of complaints for years, he said he believes that the Board

should approve this request. Regarding the Board, he said he feels they have to make some pretty hard decisions at times. In his opinion, when people in support and remonstrance to a petition give testimony, the Board needs to consider both sides very seriously. He pointed out that neighbors know their neighborhoods and what the petitioners are trying to do. He said he thinks too many times when remonstrators speak against requests, the Board does not really listen to them.

There were no remonstrators present.

The public hearing was closed at this time.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a private school (Specifications F - #38) to allow for the construction of an addition be approved 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 for placement in the petition file.

The following commitment was imposed:

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

7. The application of *Nathan R. & Janice Books (lessors) and Studio 7 Tattoo (Chris Kaercher) (lessee)* for a Special Use to allow for a tattoo parlor in a B-3 district (Specifications F - #58) and for a Developmental Variance to allow the tattoo studio to be less than 1,000 ft. from any "R" district, church, school, day care, public park, or any residential use on property located on the North side of Old US 33 and South side of Rosen Court, 275 ft. East of Best Avenue, being Lot 24 of Elm Ridge Place, common address of 28445 Old US 33 in Baugo Township, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #28445OLD US 33-140324-1*.

There were 15 neighboring property owners notified of this request.

Chris Kaercher, 58021 Morgan Street, Elkhart, was present on behalf of this request. He said they are starting a business which in turn adds additional business to the Elkhart area, noting the restaurant and hardware store nearby. When Mrs. Wolgamood inquired if they were already established there, Mr. Kaercher reported there is another tenant in the building for another month. Upon her questioning, he stated this business will take up the entire building. Pointing at the parcel behind the subject parcel on the aerial, Mrs. Wolgamood asked about the use of the building which Mr. Kaercher stated he believed it is a house. When she inquired further about the parcel catty-corner behind, he reported it is another hardware store. Mr. Campanello noted it is part of Central Hardware's property. Noting this parcel is zoned R-1, Mrs. Wolgamood asked

staff about the zoning surrounding the subject property which is R-2 and B-3. When she questioned if this property used to be a flea market, Mr. Kaercher said yes.

Lorell Nihart, 25799 Lake Drive, Elkhart, was present, speaking in favor of this request. Knowing the area of US 33 which is primarily business in nature, he feels it will not impact the residence anymore than the other businesses located nearby and will fit in with other businesses in the area.

There were no remonstrators present.

The public hearing was closed at this time.

Although she did not have an opportunity to do so, Mrs. Wolgamood indicated that she wanted to drive past this site and was hoping the building behind this parcel was anything but a residence. However, she said she agrees with the staff recommendation in this case, and stated that US 33 has been B-3 for years and is not going to change. If this were just a Special Use permit for a tattoo parlor in a B-3 zone, she does not believe there would be any question from anybody but being within 1,000 ft. of a residence is always questionable. In this instance, she does not have an issue with either of the requests.

Noting a home he is working on in that area and driving past there, Mr. Miller said he does not believe there is a business location along that stretch where this business could be placed that is not within 1,000 ft. of a residence. Mrs. Wolgamood also noted there is manufacturing in that area as well. Attorney Kolbus stated that staff did confirm notice to the residence immediately behind this property, and nothing has been received in response. Mr. Hesser suggested removing the second sentence in #3 of the findings in the staff analysis for the Developmental Variance.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for a tattoo parlor in a B-3 district (Specifications F - #58) be approved with the following conditions 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 for placement in the petition file.
2. All appropriate permits related to public health must be obtained prior to establishment of the tattoo business.

The following commitment was imposed:

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

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis, as amended by the Board, as the Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. The property is isolated from the residential area by virtue of its location on a major highway, across from a heavy industrial switching yard.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

and based upon these, further moved that the request for a Developmental Variance to allow the tattoo studio to be less than 1,000 ft. from any "R" district, church, school, day care, public park, or any residential use be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

8. The application of *Joseph M. Sears (buyer) and Larry A. Sears (seller)* for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the South side of CR 104, 1,384 ft. East of CR 21, common address of 19270 CR 104 in Washington Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #19270CR 104-140324-1*.

There were 10 neighboring property owners notified of this request.

Joseph Sears, 19270 CR 104, Bristol, was present on behalf of this request. He reported he currently resides on the property and was given a double-wide home that he wants to place there. Repairs need to be made to the home and in the meantime, he would like to reside in the existing mobile home on the property. When Mrs. Wolgamood asked about the extent of the repairs and time frame for completion, he suggested six months to make it habitable. He agreed that he could have the home repaired and livable with the mobile home removed within a year.

Lorell Nihart, 25799 Lake Drive, Elkhart, was present and spoke in favor of this request. He noted the request would be an improvement to the property and value. He asked for an explanation of the "commitment" process from the Board Attorney. Mr. Kolbus stated it is a legal document in the real estate records in a chain of title. Mr. Nihart further asked about someone coming back to the board with a request after a commitment. Attorney Kolbus stated it would be up to the Board to decide whether or not to grant the request or hold the petitioner to the original commitment.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood noted her major questions were regarding how long this will take which Mr. Sears addressed. She also indicated she thought it was a good idea to get rid of the mobile home and put a house there. She suggested placing a time frame on the approval.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved 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 for placement in the petition file.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The removal of the single-wide mobile home must be completed within one year of this date (April 15, 2015).

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

9. The application of *John E. & Geneva Faye Yutzy* for a Use Variance to allow for two additional outside employees, for an amendment to a site plan for an existing Special Use for a home workshop/business, 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 CR 36, 660 ft. East of CR 31, common address of 15733 CR 36 in Clinton Township, zoned A-1, came on to be heard.

Mr. Kanney presented the Staff Report/Staff Analysis, which is attached for review as *Case #15733CR 36-140324-1*. He noted the need to table this request with notification from the Health Department of a major health violation with the existing septic system on the property. Mr. Kanney indicated he spoke with the Health Department on April 16, 2014, and some movement has been made but no solution has been found at this time.

There were six neighboring property owners notified of this request.

Attorney Kolbus suggested discussion should occur as to length of time to table, renotification, and possible dismissal if not resolved in 60 days to give all parties some guidance as to the thoughts of the Board. Mr. Hesser said his recommendation would be to table this request for up to a certain number of months. Mrs. Wolgamood suggested tabling the request for three months which Mr. Miller agreed with. It was noted the request could be acted upon if not brought back within three months.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Table **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for two additional outside employees,

for an amendment to a site plan for an existing Special Use for a home workshop/business, 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 tabled for up to three months and if the petitioner fails to appear, the Board will act on this request at the July 17, 2014, meeting of the Elkhart County Advisory Board of Zoning Appeals.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

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

11. The staff item for Perry Jr. and Esther Hershberger – 00CR 28-130923-1 – was presented by Mark Kanney. He explained they received a 3 to 1 depth to width Developmental Variance in October of 2014 and were to obtain an ILP within 180 days or ask the full Board for an extension. Due to the weather this winter, they were unable to get the ILP and are requesting an extension for another 90 days to do so. When Mrs. Wolgamood mentioned that normally they are only granted for 90 days, she questioned if the Hearing Officer granted an extension or if it was originally granted with a request for 180 days. Mr. Kanney indicated Page 2 and 3 of the memo is the result letter that was sent to the petitioner so he assumes the Hearing Officer granted the 180 days.

The Board examined said request, and after due consideration and deliberation:

Motion: Action: Approve **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the request be considered a minor change.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).

Yes: Tony Campanello, Meg Wolgamood, Randy Hesser, Doug Miller.

12. The next staff item was the distribution and signing of the Advisory Board of Zoning Appeals Rules of Procedure which was presented by Chris Godlewski. He noted the Board approved them last month. He indicated signatures of the Chairman, Doug Miller, and Secretary, Tony Campanello, were needed today.

13. **Motion: Action:** Adjourn **Moved by** Tony Campanello, **Seconded by** Randy Hesser to adjourn the meeting.

During the process of the roll call vote, there was a brief discussion while Mrs. Wolgamood explained her negative vote. She stated the Lorell Nihart, who was present wishing to address the Board on a separate issue, would keep coming back until he is heard. She suggested that the Board has the right to suspend the rules if they wish, and she would rather hear it while the agenda is short. Mr. Hesser said if someone wants to place an item on the agenda they are welcome to through the normal process with the proper procedure, notification, and staff review. In the meantime, he added that Mr. Nihart needs to understand that if he wants to put something on the agenda, he should not be communicating with any of the Board members because they are not supposed to see or discuss items until they receive the staff report. It was suggested that this is possibly a change in procedure from the past.

Vote: Motion passed (**summary:** Yes = 3, No = 1).
Yes: Tony Campanello, Randy Hesser, Doug Miller.
No: Meg Wolgamood.

The meeting was adjourned at 9:40 am.

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary