

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 16<sup>TH</sup> DAY OF OCTOBER 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: Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

**Present:** Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Lori Snyder.

**Absent:** Randy Hesser.

2. A motion was made and seconded (*Wolgamood/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18<sup>th</sup> day of September 2014 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Campanello*) 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.

4. The application of *Osolo Township Volunteer Fire Department, Inc.* for an amendment to an existing Special Use for a fire station (Specifications F - #27) to allow for a wireless communications facility (Specifications F - #31.50) on property located on the South side of Buddy Street, 160 ft. East of CR 11, being Lots 3, pt of 2, and pt of 1 of Berry's Subdivision, common address of 24936 Buddy St. in Osolo Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #24936BuddySt-140923-1*. He noted in September of 2014, this came to the Board as a staff item for a potential minor change, but was determined to be a major change.

There were 28 neighboring property owners notified of this request.

Randy Stone, Battalion Chief of Osolo Township Fire Dept., 24936 Buddy Street, Elkhart, was present representing this petition. When Mrs. Wolgamood inquired the height of the existing tower, Mr. Stone explained the existing tower is attached to a chimney-like structure that is their host tower which makes the whole tower 60 ft., and the new tower will be 100 ft. from the ground. Regarding the current tower, he explained it is attached to a masonry structure that has been there for many years and has started leaning. He stated ERS Radio came out and indicated they would not touch it as it is too dangerous. Another radio company came out and were able to put it back up, but they, too, said it is dangerous which is why they are attempting to replace it. He went on to say that the new tower is guaranteed to give the Fire Department better communications. Presently, he stated if the Osolo Township Fire Department is in Michigan or Bristol, sometimes they cannot use their radios as they cannot hear each other. The new tower will give them a stronger signal which protects everyone. When Mrs. Wolgamood questioned staff about the number of neighboring property owners notified, Mrs. Wilson indicated 28.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood pointed out that notification of neighbors was their concern when they determined it a major change, and no one was present today.

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

**Motion: Action:** Approve, **Moved by** Doug Miller, **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 fire station (Specifications F - #27) to allow for a wireless communications facility (Specifications F - #31.50) 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 = 5).

**Yes:** Robert Homan, Tony Campanello, Meg Wolgamood, Lori Snyder, Doug Miller.

***\*\*It should be noted Lori Snyder steps down, and Randy Hesser steps in.\*\****

5. The application of ***Ottis & Patricia E. Clemons*** for a Special Use to allow for an agricultural use (keeping of 11 chickens (hens)) on property containing less than three acres (Specifications F - #1) and for a Developmental Variance to allow six existing accessory buildings on both parcels to be closer than 10 ft. to the rear property line with the closest building being 4 ft. (Ordinance requires 10 ft.) on property located on the North side of Willard Road, 1,200 ft. West of CR 5, common address of 27791/27777 Willard Road in Osolo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #27791/27777WILLARD ROAD-140917-1*.

There were 23 neighboring property owners notified of this request.

Patricia Clemons, 27777 Willard Road, was present representing this petition. She said they live on one parcel but own both parcels, and their son and daughter in-law reside in the second residence. She explained they bought 12 hens in April of 2014 and raised them from chicks with her grandchildren. She noted one of her hens died so she owns five and her daughter-in-law owns six of the hens. She went on to say that they house the hens together on the second property. She reported they have no roosters, and they are completely caged. She noted they keep the cage as clean as possible, and they have the hens for the grandchildren and the egg use. Additionally, she said they do not sell the eggs.

When Mrs. Wolgamood inquired about the life expectancy of a chicken, Mrs. Clemons said she did not know for sure but noted they lost one as a chick. She guessed three to five years as the life expectancy. As the hens do not start laying until they are approximately six months old, she said they just started getting eggs from them in the last two months. Regarding the signed petition they previously submitted with the petition, she indicated everyone in the neighborhood signed the petition except the adjoining property owner to the west. Mrs.

Wolgamood confirmed that this is adjacent to where the hens are kept. She asked about the petitioners' willingness to relocate the chickens, and Mrs. Clemons stated it would be somewhat laborious but they are willing to do that if it means keeping the hens. Of staff, Mrs. Wolgamood inquired if the complaint was more than having the chickens on less than three acres. Mr. Mabry reported the complaint noted not enough acreage and no Special Use permit. Regarding the lifespan of a chicken, he noted, based on his research, it is 8-15 years. Mr. Hesser added that hens do not keep producing eggs that long.

Regarding the Developmental Variance, Mr. Hesser asked Mrs. Clemons if she understood staff's note about the existing buildings remaining until improvement/replacement is needed. She expressed understanding and noted she is okay with that. She went on to say that she believes the one existing building that is four feet from the property line is the chicken coop. She reported that most of the neighbors they spoke with did not even know they had chickens.

When Mrs. Wolgamood inquired about any smell and the frequency of cleaning the coop, Ms. Clemons said there is no odor. She stated she cleans the pen at least once a month and also uses cedar chips that cut down on any smell. When Mr. Hesser inquired about the use of the property to the north, Mrs. Clemons reported it was previously a pasture field for horses and cows. She said now they just mow the field, and noted that owner signed the petition as well. She reported the neighbor on the east side has lived there for years and previously had farm animals. Additionally, Mrs. Clemons noted that neighbor has no problem with them moving the chicken coop to the east side of the property if they are required to relocate the coop.

There were no remonstrators present.

Mr. Campanello asked staff if the recommended approval means that the petitioners must get rid of five hens to lower the total number to six. Unless the Board would modify the commitment to allow the petitioners to keep the hens until they die off, Mr. Mabry said yes.

The public hearing was closed at this time.

There was discussion about the request including two different parcels, possibly specifying the number of chickens per lot, and the legal description including both parcels.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **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 Special Use to allow for an agricultural use (keeping of 11 chickens (hens)) on property containing less than three acres (Specifications F - #1) 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.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a maximum of 11 hens with no roosters permitted on the address of 27791 Willard Road. After the demise of five of them, they can only have up to six hens.
3. The hens must be caged at all times.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

**Motion: Action:** Deny **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis and the Staff Note as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow six existing accessory buildings on both parcels to be closer than 10 ft. to the rear property line with the closest building being 4 ft. (Ordinance requires 10 ft.) be denied.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

6. The application of **Robert E. Howard & Mary J. Howard** for a Special Use for a home workshop/business for a photography studio to be operated by the petitioner's son (Specifications F - #45) and 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 11, 1,200 ft. North of CR 4, common address of 51780 CR 11 in Osolo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #51780CR 11-140918-1*.

There were 22 neighboring property owners notified of this request.

Allen Howard and Mary Howard of 51780 CR 11 North, Elkhart, were present on behalf of this request. Mr. Howard stated he would like to convert one of the existing buildings into a photography studio. When Mrs. Wolgamood inquired, Mr. Howard stated he will be operating the studio with no other outside employees, and he lives at this address. He indicated photographs will be taken by appointment only so there will be minimal traffic.

Mr. Campanello noted the four vehicle parking area. When he inquired about adequate room to turn around and not back out of the driveway, Mr. Howard indicated there is enough room and reported there will be no semi traffic. Mrs. Wolgamood confirmed the building in question is labeled "shop" on the site plan and asked if the photography studio will utilize the entire building. Mr. Howard reported he will just be using half of the building, labeled "studio" on the site plan. Mr. Hesser inquired about the use of the barn, which Mr. Howard said is a two car garage and storage. When Mr. Hesser asked about the previous use of the subject building, Mrs. Howard stated they used to have a business there years ago.

Mr. Mabry submitted a signed letter from a neighboring property owner in support of the request *[attached to file as Staff item #1]* which was provided to board members this date. Mrs. Wolgamood indicated the letter was from Sheral Bradley who is a neighbor to the north and provided Mrs. Howard with a copy of the letter. When Mr. Hesser questioned the wording in Finding #3 of the Developmental Variance of "obsolete", Mr. Mabry indicated they probably could have used a better choice of words on that and indicated the intent would be to say the building would be unusable for the home workshop/business. Mr. Hesser suggested striking the last sentence of #3.

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** Tony Campanello, **Seconded by** Robert Homan 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 for a home workshop/business for a photography studio to be operated by the petitioner's son (Specifications F - #45) 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 = 5).

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Doug Miller 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 approval of this home workshop business will require the conversion of previous agricultural space to non-agricultural usage for the studio.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. The buildings have been in existence since 1981.
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 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 following commitment imposed:

1. The Developmental Variance for accessory square footage is limited to the current structures as shown on the submitted site plan.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

7. The application of *Galen W. Yoder & Eilene K. Yoder* for a Use Variance for a heating and renewable energy business in an A-1 district on property located on the East side of CR 31, 1,900 ft. South of CR 20, common address of 58856 CR 31 in Middlebury Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #58856CR 31-140922-1*. He amended #3 "does not arise" and #4 finding should be "would not".

There were seven neighboring property owners notified of this request.

Paul Hochstetler of Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners. He stated the owners have been running a business for several years but just moved to this property recently. He explained they have done a few things backwards. He said the petitioner contracted with a portable building manufacturer, ordered a building, and

was told that he did not need a building permit for a portable building. When the petitioner hired an excavator to set the building, the excavator informed Mr. Yoder that a permit was required. As Mr. Hochstetler does business with Mr. Yoder, Mr. Yoder sought Mr. Hochstetler's opinion of the need for a permit which Mr. Hochstetler indicated would be required.

Mr. Hochstetler noted there are too many employees, with up to five, for a home workshop/business because his children are not old enough to work in the business. The request for a Use Variance was recommended as the number of employees is above the criteria for a home workshop/business even though the reality of the case is that the business itself is more of a home workshop. He went on to say that the employees do not actually work on site, but there is a storage building where parts/supplies are stored. The employees come to the site with trucks and trailers, load their parts, and go to the construction sites. The business operations are not really any different than an electrical or plumbing contractor who operate out of their homes, park their trailer next to the garage, keep supplies inside for the business, and do not actually have workers on site, but would have more than the two allowed outside employees for a home workshop.

Regarding the driveway, Mr. Hochstetler stated it was an existing farm driveway. Mr. Yoder talked to the Highway Department and was given permission to improve that drive with gravel. The drive was pointed out on the aerial photo. Mr. Campanello confirmed the location of the portable trailer near that drive. Regarding Finding #2 creating a hardship for the property to the south, Mr. Hochstetler noted there is an existing buffer of trees along the property line, and the petitioner is willing to improve it if necessary. He went on to say that the location was chosen based on the existing driveway so Mr. Yoder would not have to install a new one.

Noting there are quite a few of these mobile businesses in the area, Mr. Hochstetler reported he did some research to attempt to locate other Use Variances because he knows there is a lawn business up the road, another contractor/construction business on the same stretch of road, and farm equipment stored in a building along the road. However, Mr. Hochstetler stated he could not find any that had actually applied for a variance. He said the only two located with approved variances are to the south; one, on property with a pond, has a home workshop/business for woodworking with possibly two outside employees. The other business is Ideal Welding farther south, which is a much larger business but it qualifies for the Special Use because he has four of his boys working for him. But as far as generating traffic and volume of business in the area, he said this request is much smaller than the approved Ideal Welding. Mr. Campanello noted other approvals are not portable buildings. Mr. Hochstetler said they are proposing to put this portable building on a foundation because it is much too large to be considered portable. He went on to explain that is why he listed it as a "stick built" structure because they will have to meet those codes.

Regarding Finding #3, Mr. Hochstetler noted in his research he saw in another Use Variance approved in July 2014 for an electrical contractor, that criteria was answered by saying that there were other surrounding businesses also using agricultural land to operate business on and thereby the need arises. While he would not necessarily consider that a good answer, he did not know of a better answer. He went on to say that the same would be true in this request as there are businesses in the adjoining area that are operating on agricultural land. In response to Finding #4, he stated that denial would create a hardship for the property owner as this is a small

business, and the petitioner cannot afford to rent a large building in town and move to a business district.

When Mr. Campanello inquired about the type of materials stored in the building, Mr. Hochstetler indicated solar panels, wiring for in-floor heating, generators, small tools used at the job sites, foam insulation, and reflective foil. Mr. Campanello further asked about the possibility of multiple jobs going on at the same time. Mr. Hochstetler reported there are two crews of two or sometimes three employees that are always out so on any given day, there are two job sites. Regarding the previously approved Use Variance on CR 27 for an electrical contractor, Mr. Hochstetler indicated this would be a very similar operation as they do not actually work on site. The office is there, and they store parts there.

When Mr. Homan asked how many vehicles and trailers the petitioner owns, Mr. Hochstetler said he was not sure but knows the petitioner has two job-site trailers with pick-up trucks which Mr. Hochstetler believes the petitioner owns. Mr. Homan further inquired if the vehicles are to be stored inside the building, and Mr. Hochstetler indicated only materials are stored inside the building. He went on to say that parts would be delivered in a box truck. When Mrs. Wolgamood asked if the trucks and trailers would sit outside at this location, Mr. Hochstetler indicated the drivers take the trucks home most of the time, but the trailers would be parked behind the building. Although he does not know the frequency, he said the trucks may be parked there occasionally.

When Mrs. Wolgamood questioned the placement of the building so far away from the subject residence and so close to the adjoining residence, Mr. Hochstetler said he believed it is because of the existing driveway. If approved and imposed as a condition, he said he is sure the petitioner would be willing to cooperate and move away from the adjoining property to the south. When Mrs. Wolgamood inquired about the shrubs planted as buffering, Mr. Hochstetler said they are tall enough to be a visual block.

Regarding the driveway, Mrs. Wolgamood asked if the Highway Department was aware that it is no longer going to be an agricultural driveway. Mr. Hochstetler said he was not involved in that conversation so he did not know. She asked if Mr. Hochstetler or the Yoders talked with the neighbor to the south, Mr. Hochstetler stated he has not, and Mr. Hesser indicated the questionnaire says no.

Noting that two outside employees are allowed in a home workshop/business, Mr. Campanello questioned Attorney Kolbus about the number of outside employees allowed in a home workshop/business on-site versus off-site. Mr. Kolbus indicated it is two total and noted the ordinance states two outside employees, but does not distinguish on-site or off. As another approach, Mr. Hesser asked if a Use Variance could be conditioned upon the business being operated by the owner of the residence or as "owner/operator on site". Mr. Kolbus said it could be as a commitment. Noting he has other concerns as well, Mr. Hesser indicated he would be concerned if the business was being operated by someone other than the resident of the house.

Mr. Campanello suggested tabling the request to allow the petitioner to return with another proposal for a home workshop/business where there was a condition that two employees could be on-site and two off-site. Mrs. Wolgamood indicated that would still be a Use Variance. She went on to say that she felt staff was correct in telling the petitioner that they do not qualify for a home workshop/business which is unfortunate. Mr. Homan indicated he is not settled on the vehicle issue as it is outside storage and another disqualifying issue of a home workshop.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood commended Mr. Hochstetler on his competence and noted she and the Board appreciate the work he does preparing for hearings and presenting petitions. Attorney noted Mr. Hochstetler does his homework.

Mr. Hesser stated he has concerns, and the request is border line. If they had only two employees and the request was for a home workshop, he said he would still have some concern such as outside storage. He indicated he is bothered that someone puts their business that far away from their house and so close to an adjoining residence. He noted he understands why they did that, given the reasoning. He also pointed out that the owner to the south is not here to object. The fact that the request is a Use Variance, he said he cannot get past Findings #3 and #4, the peculiarity of the property requiring it and the strict enforcement being an unnecessary hardship.

When Mr. Campanello suggested the petitioner came back with a revised site plan, Mr. Hesser said, in his view, it will not change the issue of being peculiar to the property.

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

**Motion: Action: Deny, Moved by** Tony Campanello, **Seconded by** Randy Hesser that the Board adopt the amended Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance for a heating and renewable energy business in an A-1 district be denied.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

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

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

***\*\*It should be noted that Mr. Hesser steps down at this time.\*\****

9. The staff item for Southside Elementary School – 95-1404 – was presented by Brian Mabry as a request for a site plan amendment for a new sign. Paperwork was provided to Board members today prior to the hearing (included in file). He noted the new sign would be a 96”x46” double sided, non-illuminated sign with an overall height of 70 inches. Additionally, he indicated the site plan shows the placement of the sign in relationship to the right-of-way line which is eight feet from the property line. Mr. Campanello noted familiarity with the subject property and area including it being a low-traffic area and Playview Place being a dead-end street. He also reported that the proposed sign would not interfere with any vision or view. When Mrs. Wolgamood questioned a sign on the property currently, Mr. Miller recalled the current sign is rather small, like 2’x3’, similar to an entrance sign.

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

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

**Vote:** Motion passed (**summary:** Yes = 4, No = 0, Abstain = 1).

**Yes:** Robert Homan, Tony Campanello, Meg Wolgamood, Doug Miller.



10. The next staff item was the Planning Calendar. Mr. Mabry noted copies were provided to the Board of the 2015 Planning Calendar which has been approved by the Plan Commission. He indicated the only change is the BZA submittal deadline which was moved one week earlier due to support staff congested deadlines.

11. The last staff item presented by Mr. Mabry was the review of the Zoning Ordinance consolidated draft. He read the power point that was presented at the open houses around the county. He indicated the Plan Commission hearing is tentatively scheduled for November 19, 2014, in the evening and tentatively set for the Board of County Commissioners on December 15, 2014, at their normal meeting time. He reiterated these dates are tentative and may have to be pushed back another week or so if necessary due to continued changes to the Ordinance. He noted February 1, 2015, is the proposed effective date.

12. Mr. Mabry noted this was Doug Miller's last meeting and thanked him for his service on both boards. He went on to say he will be missed and hard to replace.

13. The meeting was adjourned at 10:16 a.m.

Respectfully submitted,

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Deborah Britton, Recording Secretary

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Doug Miller, Chairman

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Tony Campanello, Secretary