

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 15<sup>TH</sup> DAY OF JANUARY 2015 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. Staff members present were: Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

**Present:** Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

**Absent:** Tony Campanello.

2. Mr. Hesser formally welcomed Jennea Schirr as a new member of the Board.

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

4. A motion was made and seconded (*Homan/Miller*) 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.

5. Election of Officers for the calendar year 2015 by Mr. Hesser. He noted for the 2014 year, he was Chairman, Meg Wolgamood was Vice Chairman, and Tony Campanello was Secretary. As he is now Hearing Officer, Mr. Homan suggested Mr. Miller serve as Vice Chairman and the positions of Chairman and Secretary remain the same.

After due consideration and deliberation:

**Motion: Action:** Approve, **Moved by** Robert Homan, **Seconded by** Roger Miller that the Board approve the election of Randy Hesser as Chairman, Roger Miller as Vice Chairman, and Tony Campanello as Secretary.

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

**Yes:** Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

6. The application of **Brian L. & Patricia K. Fox** 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 South side of CR 40, 1,326 ft. East of CR 1, being Lots 2 & 3 of Overholser's Sub., common address of 29768 CR 40 in Olive Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #29768CR 40-141219-1*.

There were six neighboring property owners notified of this request.

Brian Fox, 29768 CR 40, was present on behalf of this petition. He said he has been plowing snow for over 30 years and would like to have room to repair his snow plow and dump

trucks as well as get stuff inside out of the weather. When Mr. Hesser asked Mr. Fox if he had any concerns about the recommended conditions and commitments including combining the two lots into one, Mr. Fox indicated he did not have a problem as long as this is approved. He went on to say that he does not want to combine the lots if not approved.

When Mr. Miller inquired about the size of the proposed building, Mr. Fox reported it is 3,200 sq. ft. Mr. Miller further questioned if this request will increase traffic at the subject property and the possibility of this being a business use, Mr. Fox answered no and said that he leaves in the morning and returns in the evening. When Mr. Hesser asked the proposed location of the building, Mr. Fox pointed it out on the aerial.

Kevin Foy of Remax Real Estate, 30590 North Shore Drive, Elkhart, was present in support of this request as he does not believe it would be injurious to the neighbors. As a snow plow owner and operator, he added that it would be nice to have the building to get the plow inside where it can thaw out and be worked on.

There were no remonstrators present.

The public hearing was closed at this time.

When Mr. Hesser confirmed that the Board is still operating under the old ordinance this month, Mr. Mabry added that the new ordinance would not have helped this request due to lot size. Although staff did not think to include it as a recommendation in this case, Mr. Mabry mentioned that sometimes a commitment is added for personal storage only to ensure it does not become a business. When Mr. Hesser asked the petitioner if he understood the additional suggested commitment, with further explanation, Mr. Fox indicated he did.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **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 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 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. The petitioner must submit a recorded deed showing the combination of Lots 2 and 3 of Overholser's Subdivision prior to applying for an Improvement Location Permit for the accessory structure.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted on December 19, 2014, and as represented in the Developmental Variance application.
2. Permanent outdoor storage of boats, trailers, or heavy equipment including, but not limited to wood splitters, is prohibited.
3. Storage is limited to personal equipment.

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

**Yes:** Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

7. The application of *Comunidad Christiana Adulam A/G* for an amendment to an existing Special Use for a church to allow for the construction of an addition (Specifications F - #48) on property located on the South side of CR 38, 220 ft. East of CR 21, common address of 19938 CR 38 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #19938CR38-141210-1*.

There were 10 neighboring property owners notified of this request.

Jose Gutierrez, 1418 Hay Parkway, Goshen, was present on behalf of this petition as the Pastor of the church. He explained they need more space for fellowship and the Sunday school area as the congregation has grown.

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** 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 an amendment to an existing Special Use for a church to allow for the construction of an addition (Specifications F - #48) 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 December 10, 2014 and as represented in the Special Use application.

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

**Yes:** Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

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

9. The first staff item was the Certification of Residency for Jennea Schirr. Mr. Mabry presented the original form to the Recording Secretary.

10. The next staff item was the Rules of Procedure presented by Mr. Mabry. Copies of the Rules of Procedure with the amendments shown by underlines were distributed for each member. He noted the amendments are the result of the Zoning Ordinance update and made by Attorney Kolbus with Mr. Mabry's assistance. Mr. Mabry went over the proposed amendments, giving a brief explanation of each one. He noted clean copies will be distributed next month.

After due consideration and deliberation:

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the proposed amendments to the Rules of Procedure.

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

**Yes:** Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

11. The last staff item was a review of the adopted Zoning Ordinance by Mr. Mabry. Referring to a power point throughout his presentation, which was provided to board members (attached to original minutes), he went over changes to the ordinance. In Article 3, he noted notification of adjacent property owners of a minor change. Regarding Article 4 which establishes zoning districts, he said there are now zoning district purpose statements. If there is a question or uncertainty about zoning lines, BZA will determine zoning district lines.

A big change he pointed out is the 3 to 1 rule which became 7 to 1, making more lots buildable. He also noted a new rule about ponding soils for new houses on newly platted lots after Feb 2<sup>nd</sup>. He noted the options for relief. When Mr. Miller questioned guidelines on the affect on neighboring properties, Mr. Mabry said he believes that would be on a case-by-case basis and staff would have that in mind when making their recommendations. Notification of neighboring property owners might bring up that point. Attorney Kolbus noted a subdivision will be covered in the Subdivision Ordinance which has factors that address water issues on surrounding properties. In matters brought to the BZA, he said he believes that is something that is brought up at the public hearing. If a house was destroyed by fire, Mr. Miller questioned if it could be rebuilt. Mr. Mabry noted Article 8 where it states that a structure can be rebuilt in the exact same footprint, the same size within one year. He noted it would require some thought and discussion with Attorney Kolbus because it would also now have the ponding soils rule in place.

He noted Article 5 contains a use table instead of lists of uses. He noted more uses are allowed in A-1 and R-4 than were previously. Regarding items previously before the BZA, he said churches are now allowed without a Special Use permit in the B and M zoning districts. Additionally, he reported schools are no longer a Special Use in B zoning districts. Regarding accessory dwellings (aka dawdy houses), he indicated they are allowed by right in the new ordinance subject to a set of standards. Home occupations have changed as one outside employee is now allowed rather than no outside employees. He noted home workshop/businesses did not change.

He noted changes in solar panels as in some cases they are allowed by right in the new ordinance. Regarding Article 7, he noted parking generally has fewer required spaces needed but in some cases additional parking can be required. Loading spaces are now optional rather than required. He also noted that "stacking" has been added which is some type of use that requires cars to line up and room for them to line up without bleeding out into the street, right-of-way, or other parking spaces. He noted stacking was added to the ordinance as a way to eliminate some of the DPUD's as was buffering.

Mr. Miller questioned keeping the integrity of a subdivision. Mr. Mabry said deed restrictions or restrictive covenants would need to be followed or met, but this department does not have anything to do with governing or enforcing those.

12. The meeting was adjourned at 9:22 a.m.

Respectfully submitted,

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Deborah Britton, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary