

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16TH DAY OF JULY 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 Vice-Chairperson, Roger Miller. Staff members present were: Jason Auvil, Zoning Administrator; Mark Kanney, Planner; Liz Gunden, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Tony Campanello, Roger Miller, Suzanne Weirick.

Absent: Randy Hesser.

2. A motion was made and seconded (*Campanello/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of June 2015 be approved as read. The motion was carried with a unanimous voice 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 voice vote.

4. At Mr. Auvil's request, Suzanne Weirick officially introduced herself as a full-time Board member.

5. The application of **TOBT2, LLC** for a 30 ft. Developmental Variance to allow for the construction of a (north) RV storage building 45 ft. from the centerline of the right-of-way of West Lawrence Street (Ordinance requires 75 ft.), a 15 ft. Developmental Variance to allow for the construction of said building 10 ft. from the west property line (Ordinance requires 25 ft.), a 15 ft. Developmental Variance to allow for the construction of said building 10 ft. from a south property line (Ordinance requires 25 ft.), and a 15 ft. Developmental Variance to allow for the construction of a (south) RV storage building 10 ft. from a west property line (Ordinance requires 25 ft.) on property located on the South side of West Lawrence Street, 900 ft. West of Main street (SR 13), common address of 301 W Lawrence St. in Middlebury Township, zoned M-1/R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #301WLAWRENCEST-150610-1*.

There were six neighboring property owners notified of this request.

Todd Taylor, 508 Crystal Valley Drive, was present representing TOBT2, LLC for this petition. He stated they would be constructing two structures, both running north and south. He went on to say that the 120'x48' building would go next to the apartments (on the left side of the aerial photo) which would allow for RV access through two existing curb cuts to pull in and turn around with no backing onto the road. He noted the second smaller 50'x30' storage building would be next to the tower. When Mr. Campanello questioned if he built the accessory structure which was approved in 2013, Mr. Taylor reported that staff advised him to not put the building on the site plan as it may cause confusion. When Mr. Miller expressed confusion about

the proposed use of the property, Mr. Taylor explained this would be rental of storage units for RV's that belong to outside individuals as a business. When Mr. Campanello asked about the eave height, Mr. Taylor reported the overhead doors would be 14 ft. so the eave height would be 15 ft.

Mr. Auvil submitted an email from Mark Salee, Middlebury Town Manager *[attached to file as Staff Exhibit #1]*.

Mr. Homan inquired if the petitioner had spoken with the property owner of the rental property next door which Mr. Taylor reported he had not. Mr. Homan did note that they would have received notification of the hearing. Mr. Campanello asked Mr. Taylor to point out the location of the existing building on the aerial which is located in the small parcel on the southern portion of the aerial. Referring to the site plan, Mr. Homan noted a measurement from the front of the building going East which indicates 160 ft. east, he questioned if that includes the driveway. Mr. Taylor reported he believes they are actually closer to 212 ft. along there.

Mark Salee, Middlebury Town Manager, was asked to come forward. Ms. Weirick asked about any possible sewer concerns. He stated there is a water line to the water tower for which there is an easement, but the buildings are not impeding access to those lines as far as he knows.

There were no remonstrators present.

The public hearing was closed at this time.

When Mr. Miller questioned the staff's reason for denial, Mr. Auvil said a smaller building will still achieve the goals of the petitioner. He went on to say this request is for substantial encroachment into the setbacks. Mr. Campanello noted he do not believe the proposed location of the building will cause safety issues with traffic pulling out onto the roadway. He questioned if there would be any other possible uses of the property with the water tower located so closely nearby. Ms. Weirick mentioned concern with long-term development with regard to the close proximity to a major intersection on the North end of the 120 ft. building. Mr. Campanello questioned the type of building being considered which Mr. Taylor indicated will be insulated pole structures. Addressing Mr. Auvil's comment that a smaller building would be allowed with the same results, Mr. Taylor pointed out that it would not be the same as the building size would affect the return on the investment. A smaller building would have less units resulting in about a 4% margin on the return on the investment.

Mr. Miller said he does not have a problem with this request being in that area and noted it is probably a good use for that land as he does not see anything else going in there. He went on to say that he feels it is a quiet use and expressed that his only concern is with the setback lines. He also expressed understanding of the petitioner's concern about losing a bay if the size of the building were reduced. Mr. Campanello commented that everything around it seems pretty well established and was not sure that any long term plans would be affected by this approval. Mr. Homan also indicated the only question is the setback to the North. He expressed agreement with Finding #3 by staff, but in terms of actual use of the land, he feels this is probably a pretty good use for the land.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Suzanne Weirick that this request for a 30 ft. Developmental Variance to allow for the construction of a (north) RVstorage building 45 ft. from the centerline of the right-of-way of West Lawrence Street (Ordinance requires 75 ft.), a 15 ft. Developmental Variance to allow for the construction of said

building 10 ft. from the west property line (Ordinance requires 25 ft.), a 15 ft. Developmental Variance to allow for the construction of said building 10 ft. from a south property line (Ordinance requires 25 ft.), and a 15 ft. Developmental Variance to allow for the construction of a (south) RV storage building 10 ft. from a west property line (Ordinance requires 25 ft.) be approved based on the following 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.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property because of the unique nature of M-1 zone in the middle of residential zones.

The following condition was imposed:

1. Approved in accordance with the revised site plan to be submitted for approval by staff and as represented in the application.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Suzanne Weirick.

6. The application of ***Ron Payette and Patricia Payette*** for a Use Variance for an existing bulk food store in an R-1 district on property located on the West side of CR 23, 1,000 ft. North of CR 146, common address of 69295 CR 23 in Jackson Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #69295CR 23-150612-1*.

There were nine neighboring property owners notified of this request.

Ron Payette, 69295 CR 23, New Paris, was present on behalf of this request. He explained that they moved to the subject property in 2008, the recession hit, and he opened the bulk food store. At that time, he said he had a five member family and all were involved in the business. He noted the building was constructed to look like a barn and compliment the area. While he loves operating the store, he said he is currently putting in 12 hour days to keep up with the business, and it has gotten to be too much. He explained they came up with this plan to sell off the house separately from the store so they can downsize into a smaller house nearby and still operate the business. He went on to explain if they can make this work and he can keep workforce in there with fewer work hours for himself every day, he believes this plan will work. However, if this plan does not work out, he said he will have to sell the business sooner or later. He noted he cannot do that with the house and storage as a “package” because, as a realtor said, you would have to find that 1 in 1,000 person that wants to do exactly what he did. He went on to say that the house seems to be in a very desirable location and families would love to have it. He reported he asked his customers what they wanted him to do, and they have expressed that they want him to keep the store going as long as he can because they like it. Although he acknowledged at some point, he will have to do something.

When Board members expressed some confusion, Mr. Payette explained he wants to split the subject property into two parcels with the store on 1.25 acres and the house on just under 1.74 acres. Attorney Kolbus further explained that in splitting the property, when he takes the house away, the store is no longer a home workshop. Noting a home workshop limits outside

employees to two and the questionnaire indicated two or three employees, Mr. Homan questioned if he can operate the store with that number of employees. Mr. Payette said he could easily use four part-time employees. He went on to say that he originally thought it would be best to run the business with two key people totally trained and responsible for their jobs. As he has found out since, it operates better with more employees not having to be key people, and everyone working less hours so if anything comes up, he has more people available for rotation of shifts. As it is now, if an employee cannot make it to work, he has to run the store alone which is nearly impossible. Attorney Kolbus noted this is a stand-alone petition so if the Board would like to allow the petitioner to have four employees rather than “as represented”, they can do so.

Paul Blevins, 18825 Meadow Flower Drive, was present in support of this request. He reported that he and his wife shop in the store as many as four times a week and a store such as this is a valued commodity in any neighborhood. He stated there are plenty of available houses in and around the area for Mr. Payette to choose from to downsize his residence. He went on to say that he has never heard anything bad about the business.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan stated he thinks the worst case scenario is that the bulk food business does not continue, and there would be accessory building on a lot. However, he noted the building is, in keeping with its surroundings, agricultural in appearance, and he does not see that hurts the community or the land use particularly.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Suzanne Weirick 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 for an existing bulk food store in an R-1 district 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. A minor subdivision must be pursued.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 6/12/15) and as represented in the Use Variance application with the exception that the bulk food store owner may have up to four (part-time) employees.
2. Approved for a bulk food store only (including current practices).

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Suzanne Weirick.

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

8. The staff item for Borkholder Trust, Larry J. Borkholder and Alta Mae Borkholder as Co-Trustees – 14835CR 34-150518-1 was presented by Mr. Auvil. He noted at the June 18, 2015, BZA meeting, the Board requested a revised site plan for a Special Use permit for a home

workshop/business on the property. He went on to say that the revised site plan was to show the location and dimensions, allowed under the current Zoning Ordinance, of the proposed furniture finishing building. He stated the revised site plan, received 06/23/15, and included in the Board members' packets for review, shows the proposed furniture finishing business being 80'x60'=4,800 sq. ft. and a change in a 2, 136 sq. ft. personal storage building to an agricultural storage building. He indicated the site plan complies with the Elkhart County Zoning Ordinance and Board approval is needed of the revised site plan.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Suzanne Weirick that the Board approve the revised site plan dated 06/23/15. A voice vote was taken with unanimous approval.

9. The next staff item was Clinton Frame Church – 63846 CR 35-120622-1 presented by Mr. Auvil as a request for a minor change to a site plan for a Special Use permit for a church to permanently close one drive and widen another existing driveway on the church property. He reported the Highway Department is in the process of reviewing this request. He noted receipt of a site plan amendment request letter and proposed site plan on 07/13/15, from DeWayne Bontrager, Church Administrator. He went on to say that a copy of the permit from Elkhart County Highway Department was received this morning. Looking at the site plan, Mr. Homan noted it is essentially a horseshoe driveway, and they would be taking the center leg out. He pointed out that it looks like the eastern exit route on the driveway is off of the parcel that contains the church building. He questioned if the church owns the additional surrounding parcel.

DeWayne Bontrager, Administrator of Clinton Frame Church at 63846 CR 35, responded to Mr. Homan's question stating the church owns approximately 20 areas which includes parcels around the church facility. He reported in the 1960's, there were two driveways with the original building. When they added onto the building in 1999, they added the third driveway, and now they want to eliminate the center one.

As clarification, Mr. Auvil noted he requested this is a minor change.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Robert Homan that the Board declare this request a minor change and approve the change to the site plan. A voice vote was taken with unanimous approval.

10. The last staff item was the Certification of Residency for Suzanne Weirick. Mr. Auvil presented the original form to the Recording Secretary, file marked, and placed in the minutes book.

11. The meeting was adjourned at 9:13am.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary