

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF MARCH 2016 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: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Liz Gunden, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

**Present:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

2. A motion was made and seconded (*Weirick/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18 day of February 2016 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/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.

**\*\*It should be noted that Mr. Hesser recuses himself and steps down.\*\***

4. The application of ***Dan and Leanne M Brekke*** for a Developmental Variance to allow for the total square footage of the accessory structures to exceed the total square footage of the primary structure on property located on the West side of Cassopolis Street, 450 ft. South of Douglas Avenue, common address of 51047 State Road 19 in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #51047State Road 19-160211-1*.

There were seven neighboring property owners notified of this request.

Dan Brekke, 25934 N Shore Dr, Elkhart, was present on behalf of this petition. Mr. Brekke explained he would like to build a residence with an oversized attached garage and stated he is in agreement with the staff recommendations. Mr. Campanello questioned if this would become their primary residence. Mr. Brekke stated this will be his secondary residence.

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** Suzanne Weirick, **Seconded by** Denny Lyon 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 the accessory structures to exceed the total square footage of 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. Approved in accordance with the site plan submitted (dated 2/11/16) and as represented in the Developmental Variance application.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon.

**Abstain:** Randy Hesser.

***\*\*It should be noted Mr. Hesser returns to the board at this time.\*\****

5. The application of **Joseph L. Miller and Marilyn Miller** for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on property located on the East side of SR 13, 1,500 ft. North of CR 44, in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #00000SR 13-160215-1*.

There were six neighboring property owners notified of this request.

Peter Schnaars of Jones Petrie Rafinski, 4703 Chester Dr, Elkhart, was present representing the petitioners. Mr. Schnaars stated the petitioner is interested in finding a way to develop their 9.65 acres in a way where they have two buildable parcels. After meeting with the staff, he stated they have decided to request a variance for a ten to one length to width ratio. Mr. Schnaars went on to say that because of the way the two parcels are positioned, the parcel to the East is land locked. He went on saying their proposal is to create a flag pole lot where they can access the lot to the East. Mr. Schnaars stated this proposal has advantages that allow the petitioner to do what he would like by creating a minor subdivision. He explained this request will not create any new driveways as the two lots can share one driveway. Mr. Schnaars stated there is no need to revise the existing septic system on the lot to the West.

Joseph Miller, 67600 SR 13, Millersburg, was present on behalf of this petition. Mr. Joseph Miller stated the reason he would like to accomplish what has been presented is because with his mother getting older, he feels the responsibility to take care of her and provide a place for her to live. Mr. Joseph Miller stated he is needing to move his mother closer to his residence because his responsibility to take care of his mother where she is currently located has created a hardship for him. Mr. Campanello questioned what type of home they are planning to build. Mr. Joseph Miller stated they would like to build a modular home on a foundation. Mr. Hesser questioned where they would place the driveway on the lot to the East. Mr. Joseph Miller stated the driveway would go straight East from where it is currently located. Mr. Hesser questioned if Mr. Joseph Miller understood the requirement in the staff report that if the petition is approved, a revised site plan would need to be submitted. Mr. Joseph Miller replied yes.

Bill Davis of Davis and Roose Attorneys, 116 E Clinton St, Goshen, was present in remonstrance representing Christopher and Tracey Mandell. Mr. Davis stated Mr. and Mrs. Mandell are neighboring property owners of the proposed parcels. He went on to say the petition being presented to the board is based upon a false premise that both proposed parcels are contiguous to one another. Mr. Davis submitted a document [*attached to file as Remonstrator Exhibit #1*] that he had drawn up by Mr. Philip Barker. He stated the submitted document validates his statement that the two parcels are not contiguous. Mr. Davis went on explaining the submitted

deeds and their relation to his case. Through his explanation, he stated because both parcels are not touching, it makes the parcel to the East land locked. Mr. Davis stated his purpose with this presentation is that the petition will not work given that Mr. and Mrs. Mandell own the land that is intervening to the proposed parcels. He went on to say the deed Mr. Joseph Miller presented is not the most recent deed, as the size of the parcels have changed since the date specified on the deed submitted by Mr. Joseph Miller. Mr. Miller confirmed that Mr. Davis is stating the parcel to the East is owned by Mr. and Mrs. Mandell. Mr. Davis replied yes and referenced the submitted warranty deed [*attached to file as Remonstrator Exhibit #1*]. Mr. Lyon questioned if Mr. and Mrs. Mandell are willing to divide or sell the piece of land between Mr. Joseph Miller's parcels. Mr. Davis stated that Mr. Joseph Miller knew the parcels were not contiguous and approached Mr. and Mrs. Mandell regarding purchasing the intervening land in order to divide his parcels and Mr. and Mrs. Mandell did not wish to sell.

Mr. Schnaars responded stating the request that is before the board is to obtain a variance. Once the variance is obtained, it will then go before the Plan Commission with a minor subdivision proposal and a certificate of survey; demonstrating that the ownerships involved are under the control of Mr. Joseph Miller. Mr. Schnaars stated they had discussed whether to complete a survey first and proceed with the petition for a variance after, however they decided to petition for the variance first as it was the most cost effective option. He went on to say if the variance were to be denied, there is no reason to spend money on a minor subdivision and a boundary survey. Mr. Schnaars explained if the variance were to be granted and if Mr. Davis is correct in his findings, Mr. Schnaars would not be able to follow up with a site plan and minor subdivision as it would not be eligible. He went on to say he recommends granting this variance as Mr. Joseph Miller has several options for completing this in a way where he can demonstrate that he owns the property. Regarding the information submitted by Mr. Davis, Mr. Schnaars stated the information is not validated by a survey and it is not certified showing reflecting boundary lines. He went on to say if Mr. Philip Barker had done a survey and if it were to be certified that the parcels were not contiguous, then the issue would be settled. Mr. Schnaars explained he has examined the deeds himself and believes there is a strong likely hood that Mr. Joseph Miller does own the parcel to the East; however he has yet to determine this. Mr. Schnaars added that if the end result is Mr. Miller not owning the strip of land, he has an option that will enable him to complete the subdivision as his neighbor to the South is willing to sell him the land necessary to achieve contiguity. Mr. Kolbus stated if the board approves the request for a variance and if the petitioner were limited to purchasing necessary land to the South to achieve contiguity, the petition would need to be resubmitted. Mr. Schnaars noted the frontage and depth to width ratio will not change.

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** Roger Miller 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 7 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted (dated 3/17/2016), today's testimony, and as represented in the petitioner's application.

2. The petitioner must provide a site plan with the parcels reconfigured.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

6. The application of **Richard M. Nelson and Barbara J. Nelson** for a Special Use for a ground mount solar array panel system on property located on the East side of CR 13, 751 ft. South of CR 28, common address of 60810 CR 13 in Concord Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #60810CR 13-160212-1*.

There were 37 neighboring property owners notified of this request.

Roger Method of Solar Energy Systems, 19326 CR 142, New Paris, was present representing the petitioners. Mr. Method stated they would like to install a 16kw photoble tag system. He went on to say that the 16kw photoble tag system will not be near any borders. Mr. Miller confirmed they are only interested in the approval to install the system. Mr. Hesser stated there is a site plan that is not to scale showing the setbacks. If approved by the board, Mr. Miller questioned if the approval will be for a specific size or if the approval provide them the ability to install panels only in that exact location. Mrs. Weirick stated if the site plan is approved, it has to stay within the borders indicated on the site plan. Mr. Miller went on stating if they want to install additional panels, they will have to come back and ask the board for approval.

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** Roger Miller 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 ground mount solar array panel system 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 (dated 2/12/16) and as represented in the Special Use application.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

7. The application of **Michael D. Morehouse and Regina M. Morehouse** for an amendment to an existing Special Use for a wireless communications facility for a second tower, 140 ft. in height, for amateur and commercial radio communication on property located on the Northwest off CR 123 at the 90-degree turn of CR 123, South of CR 50, West of CR 25, in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #00000CR 123-160215-1*.

There were eight neighboring property owners notified of this request.

Pat Mccauley of MapleNet Wireless, 4561 Pine Creek Rd, Elkhart, was present representing the petitioners. Mr. Mccauley stated they would like to replace a 140 ft. tower that fell over several years ago and is currently lying in the trees. He went on to say that this tower will be colocatable for light use commercial. Mr. Hesser questioned if this tower will be a replacement tower or if there will be a total of two towers. Mr. Mccauley stated there is a tower located on the property that is owned by a larger company who is not interested in collocating and providing public use. Mr. Hesser confirmed the existing 200 ft. tower will remain. Mrs. Weirick questioned why the petitioner is before the board if the tower has already been previously approved and this is just for a replacement tower. Mr. Mccauley stated the one that fell was shorter than the proposed replacement tower.

Present in opposition was Richard Zollinger, 71301 CR 123, New Paris. Mr. Zollinger stated approximately 100 ft. of Mr. Morehouse's driveway is located on his property and he never asked permission to install it there. He explained when the first tower collapsed, he noticed someone digging and asked Mr. Morehouse what had happened. He went on to say that Mr. Morehouse explained that it was AT&T. Mr. Zollinger stated he wrongly assumed the digging was for Mr. Morehouse's farming operation where he might have needed more power. Mr. Zollinger went on to say that there is still a fiberoptic stub on the ground where the tower collapsed, and he has to stop people from going across the property. He stated his concerns regarding someone accessing his property without obtaining permission. Mr. Hesser questioned if he has any other concerns or issues aside from the access. Mr. Zollinger stated he would like someone to explain how they intend to install the tower without going across his property. Mr. Hesser stated when an operation like this is approved all neighboring property owners are notified of the meeting ahead of time. Mr. Zollinger stated to his knowledge he did not receive any notifications. He went on to say he thinks there should be a separate notification if they are needing access to someone else's property opposed to a neighboring property owner. Mr. Hesser explained that going across someone's property is a separate issue, however all neighbors are notified before anything is approved. Mr. Lyon questioned if Mr. Zollinger has ever done a survey to identify the correct property lines. Mr. Zollinger stated he has never had a survey on his property.

Mr. Mccauley stated there is already a power meter at the site and there will be no additional power or fiber optic brought in.

The public hearing was closed at this time.

Mr. Hesser stated the issue raised by the remonstrator mostly deals with access, and if there is an issue there it is his responsibility to deal with the issue. Mr. Miller questioned if the board has any evidence of sending Mr. Zollinger notification of the hearings.

***\*\*For the record it does show that remonstrator has been notified of the hearings for this petition and the previous petition.\*\****

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

wireless communications facility for a second tower, 140 ft. in height, for amateur and commercial radio communication 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 (dated 2/15/16) and as represented in the Special Use application.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

8. The application of **Robert D. West, Jr.** for a Special Use for a home workshop/business for small-engine repair on property located on the North side of Old US 20, 1,300 ft. East of CR 15, in Concord Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #00000Old US 20-160215-1*.

There were 24 neighboring property owners notified of this request.

Bernard Feeney, 715 S Michigan St, South Bend, came forward representing the petitioner. Mr. Feeney stated they filed a two lot minor subdivision on this property and were notified after filing that once the subdivision were approved the business would have to be shut down until a variance was obtained. He went on to say they have delayed the minor subdivision approval process until a variance could be obtained to avoid the business having to be shut down for a period of time. Mr. Feeney stated the existing home that is shown in earlier photos is 900 sq. ft. and the business itself consists of 1000 sq. ft. of living space. Mr. Hesser clarified which lots will be subdivided. Mr. Feeney went on to say the house would be located on Southeastern lot and the business would be located on the remainder of the property. He went on to say Robert West Jr. purchased the property from his father Robert West Sr. in 2015. Later in 2015, Robert West Jr. began discussion with Silver Creek Homes to build a new home behind their business where there is room for the house to be built along with necessary septic and replacement systems.

Craig Pauling, Silver Creek Homes, 2260 Cassopolis St, Elkhart, came on to be heard. Mr. Pauling explained the business has been at the same location for 60 years where there is one employee, Mr. West. He went on to say if the business were to continue after Mr. West retires the business would go to their sons, and if they do not want the business it would close down. Mr. Pauling stated the West family currently lives above the actual workshop and their only access to their living space is by an outside staircase. He added as they are getting older and planning for their future, they do not want to be walking up and down stairs anymore. In addition to planning for their future, they have a father who has been in a medical facility that is going to be moving in with them. Mr. Hesser confirmed that their business operation is conducted underneath the house and questioned who lives in the additional house located on the property. Mr. Pauling explained that family members live in the additional house.

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** 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 Special Use for a home workshop/business for small-engine repair 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. 2-lot minor subdivision must be completed.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 2/15/16) and as represented in the Special Use application.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

9. The application of *Miller Daryl J and Dora F* for a Use Variance to allow for the construction of a second dwelling on a parcel or lot on property located on the North side of CR 40, 1/2 mile East of SR 13, common address of 11327 CR 40 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #11327CR 40-160215-1*.

There were six neighboring property owners notified of this request.

Mervin Stoltzfus, Merv's Construction, 60112 CR 41, Middlebury, came on to be heard. Mr. Stoltzfus stated if everything goes according to plan, the petitioners would like to remain living in their existing home until the new home is finished. Mr. Miller questioned if they have issues with getting rid of the existing residence within six months of the new home being finished. Mr. Stoltzfus confirmed it will not be a problem.

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** Roger Miller 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 or lot 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 (dated 2/15/16) and as represented in the Use Variance application.
2. The old residence must be removed within 6 months of completion of the new residence.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

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

11. Mr. Auvil presented the staff item for Osolo Little League (20024058) request for a minor change for an amendment to a site plan. He went on to say the request is specifically for the addition of three billboard signs along the toll road, for the purposes of generating revenue to lower the cost of participation for children and their families. Mr. Campanello questioned if the neighboring property owners should be made aware of this request. Mr. Hesser questioned what type of petition is to be submitted if someone would like to put a billboard or sign on their property. Mr. Auvil stated the size of the sign is dictated by the amount of road frontage. Mr. Auvil added that Osolo Little League has over 1,000 ft. of road frontage and they will need to get a state permit as it is along a state road. He went on to say from a county perspective there is nothing that would require anything additional. Mr. Auvil referenced the Zoning Ordinance and validated the information previously stated regarding road frontage.

Jeff Alexander, President of Osolo Little League, 1643 Victoria Dr, Elkhart, come on to be heard. Mr. Alexander stated their participation, volunteerism, and sponsorship has diminished greatly, so they have started looking into ways to create more awareness and were lead to putting up a billboard. He went on to say after all the research they have done, the one thing he saw in relation to the residential issue is from a state perspective that notifying neighbors within 500 ft. of the sign is required, and there are no neighbors within that distance. Mr. Hesser confirmed the signs will not say Osolo Little League, but will be used for fundraising purposes. He went on to state his concern is if this were to be a vacant field, he questioned if a Special Use permit were to be obtained specifically for the billboard. Mr. Kolbus stated the request would need to be a variance. He added that this request should be looked at as if the question is for this to be a major or minor change. Mr. Hesser questioned the size of the billboard. Mr. Alexander stated the bigger it is the more revenue will be brought in, however a typical billboard is 14'x38'. Mr. Miller stated his concern is he does not think this can be approved as a minor change. Mr. Alexander confirmed they have no issue in coming back with additional information.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick that this request be considered a major change.

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

**Yes:** Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

12. The meeting was adjourned at 9:43 a.m.

Respectfully submitted,

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Amanda Denlinger, Recording Secretary



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Randy Hesser, Chairman

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Tony Campanello, Secretary