



# LAPORTE COUNTY BOARD OF ZONING APPEALS

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**ANNEMARIE POLAN**  
Building Commissioner

August 19<sup>th</sup>, 2014

Dear Members:

The regular meeting of the La Porte County Board of Zoning Appeals was held Tuesday, August 19<sup>th</sup>, 2014, at 6:00 p.m. in the Assembly Room of the County Complex.

MEMBERS PRESENT:      Melissa Mullins Mischke  
                                    Glen Minich                                      Candice Nelson

OTHERS PRESENT:      Annemarie Polan, Recording Secretary, Attorney Doug Biege;  
Darlene Pavey, Secretary

The Pledge of Allegiance.

Melissa Mullins Mischke said that she will entertain a Motion for the July 15<sup>th</sup>, 2014 meeting minutes.

Candice Nelson made a Motion to approve the meeting minutes for July 15<sup>th</sup>, 2014.

Glen Minich said that he also read the minutes and he questioned if Doug was present at the July 15<sup>th</sup> meeting.

Attorney Biege said that he was present.

Candice Nelson said that she will amend the Motion to show that attorney Biege was present at the July 15<sup>th</sup>, 2014 meeting instead of Attorney David McCain. Glen Minich seconded.

All approved. Motion carried 3-0.

- 1. The Petition for Aaron & Amber Forrester** to add one bedroom and an entry way with thirty two (32') feet setback instead of the required sixty (60') foot setback on one (1) acre. This property is located at 4331 S. 550 E., La Porte, IN., Washington Twp., zoned A. **(This Petition was rolled over from May 20, 2014 meeting to June 17, 2014 at 6:00 p.m.)**

Melissa Mullins Mischke said that we will move this Petition down to the end to see if they show up.

- 2. The Petition for Joseph C., & Patricia A. Putnam** for continued placement of a mobile home under new ownership. This property is located at 8749 E. Sunnyside Dr., New Carlisle, IN. Hudson Twp., zoned R1B. **(This matter was tabled from the July 15<sup>th</sup>, 2014 meeting to August 19<sup>th</sup>, 2014.)**

Glen Minich made a Motion to table this Petition to the September 16<sup>th</sup>, 2014 meeting so that a Building Inspector from the La Porte County Building Commission could go out to this site to make sure that this is not a manufactured home vs. trailer. Candice Nelson seconded.

Board members did tell Mr. Putnam that if this is a trailer they would grant a four (4) year variance on this mobile home.

All approved Motion carried 3-0.

Annemarie Polan, Building Commissioner said that she will have one of her inspectors go out to that property prior to the next meeting and we would have documentation to submit to the Board members on or before the September 16<sup>th</sup>, 2014 meeting.

- 3. The Petition for William Gillespie** to place a mobile home on this property while constructing a new residence on this property. Variance was granted to place a mobile home and build a residence on this property on March 20<sup>th</sup>, 2007, but took no action. This property is located at 7365 S. 700 W., Union Mills, Clinton Twp., zoned Agricultural on 19.46 acres of land.

Attorney Biege said that legal is adequate.

Melissa Mullins Mischke asked Mr. Gillespie if he could explain to her between 2007 when you were granted the variance and now what took place that stalled this.

Mr. Gillespie said that he got married; kids and finances.

Melissa Mullins Mischke asked Mr. Gillespie if he already has the mobile home purchased.

Mr. Gillespie stated no.

Melissa Mullins Mischke asked Mr. Gillespie if he has any idea what year mobile home he would be purchasing.

Mr. Gillespie said 2000.

Glen Minich told Mr. Gillespie that he went out to that property and he saw some stakes. Mr. Minich asked Mr. Gillespie if that is going to be where the septic is going, or is that for the trailer.

Mr. Gillespie said the stakes were for the trailer placement.

Glen Minich told Mr. Gillespie that there is a seventy-five (75') foot easement there and if the county would ever want to come in and clean that ditch, they would have to take those trees out; they would have to put all that sand on that ditch bank. Glen said that we've got to stay clear of that.

Melissa Mullins Mischke asked Mr. Gillespie how long he thinks it's going to take to start building.

Mr. Gillespie said that they're hoping within the three year time period. Mr. Gillespie said that they have everything already in line; they have the house picked out that they're building and they have the contractor lined up. Mr. Gillespie said that they want to pay their land off in full before they move forward. Mr. Gillespie said that he wants to be a little bit smart about this and pay off the land and be free and clear of the land so they can build what they want.

Attorney Biege asked Mr. Gillespie if this request changes the previous variance request you had to split.

Mr. Gillespie stated yes. Mr. Gillespie said that his sister and brother-in-law were going to buy five (5) acres from him and that split went through, and then he got laid off and it went by the wayside.

Attorney Biege asked Mr. Gillespie if this transaction is closed.

Mr. Gillespie said that they backed out of the five (5) acres. Mr. Gillespie said that he still owns the five (5) acres.

Melissa Mullins Mischke said that the property in its entirety is 19.46 acres.

Mr. Gillespie said that is correct.

Mr. Gillespie said that they never came back for that easement.

Glen Minich said that the question is whether we need to rescind the previous variance if we were to grant the new variance.

Attorney Biege said that if we put the five (5) acres back in we will have the two-hundred (200') feet of road frontage. Attorney Biege said that we have one-hundred fifty (150') foot of frontage now.

Glen Minich said that a variance was granted and it wasn't acted upon, how do we know if it's null and void. Glen Minich said that Annemarie Polan said that she just checked to make sure that there was no recording of any split in the last few days.

Annemarie Polan, Building Commissioner, said that she just checked today.

Attorney Biege asked Mr. Gillespie if he's granted this mobile home if he's willing to rescind the variance for the five (5) acres.

Mr. Gillespie asked what that means.

Attorney Biege said that as the Board of Zoning Appeals records stands right now, you could split off the five (5) and sell it. The Board may be less inclined to grant your mobile home variance if you're at one-hundred fifty (150') feet, which is less than required and you sell the five (5) acres. Attorney Biege said that if we rescind the variance -- take it back, the 19.46 acres is intact, you will have your two-hundred (200') feet of road frontage.

Mr. Gillespie said that he was unaware that the road frontage changed from two-hundred to one-hundred fifty.

Attorney Biege told Mr. Gillespie that he has to make the request.

William Dean Gillespie made a Request to rescind the variance that was granted on June 18, 2013 for Rick St. Germain (buyer) and William Dean Gillespie (owner) to split the nineteen and forty-six hundredths (19.46) acre parcel into two parcels.

Glen Minich said that we don't want to put mobile homes in the county because we can't supervise that.

Mr. Gillespie said that if he can't sell the mobile home after the house is built, the mobile home will be destroyed.

Melissa Mullins Mischke asked if there are any remonstrators here this evening for Petition No. 3, for or against.

Melissa Mullins Mischke asked if there are any questions from the Board.

Melissa Mullins Mischke said that she will entertain a Motion.

Glen Minich made a Motion that we grant this Petition for William Gillespie to place a mobile home on the property while constructing a new residence on this property. The property is located 7365 S. 700 W., Union Mills, Clinton Twp., zoned Agricultural on 19.46 acres of land, which had a previous variance which was rescinded by the previous owner in conjunction with granting a three (3) year non-renewable variance to put a mobile home on the property while the new home is being constructed.

Candice Nelson seconded.

Melissa Mullins Mischke asked if there are any questions, comments, or concerns.

All approved. Motion carried 3-0.

- 4. The Petition for Nancy Durham (buyer) and Monica Lorimer (seller) MM5.LLC** to purchase the property occupied by Constructive Pathways Montessori School, which has been in existence for twelve (12) years at the same location. A "Special Exception" was granted for the Montessori School on March 16<sup>th</sup>, 2007, however the Motion stated that at such time the building is sold or the business is under new ownership, a new "Special Exception" must be obtained. This property is located at 4303 N. Wozniak Road, Michigan City, Coolspring Twp., zoned R1B on 1.145 acres.

Attorney Biege said that legal is adequate.

Melissa Mullins Mischke asked for name and address for the record.

Nancy Durham, 4303 N. Wozniak Road, Michigan City.

Melissa Mullins Mischke asked Ms. Durham what she would like to do this evening.

Ms. Durham said that she has owned the Montessori School on Wozniak Road for twelve (12) years and up to this point she has been renting the property. Ms. Durham said that at this time she would like to purchase this property so that the school can continue.

Melissa Mullins Mischke told Ms. Durham that this property is well maintained and she likes the approach of the vehicles when they are dropping the children on and off.

Glen Minich asked Ms. Durham the number of students she has.

Ms. Durham said that they have fifty-five students enrolled for the fall and they have a morning and afternoon class. Ms. Durham said that they have pre-school children.

Glen Minich asked Ms. Durham if she is a licensed day-care facility.

Ms. Durham said that they're not a day-care; they're a pre-school. Ms. Durham said that they actually looked into the licensing twelve (12) years ago and they told us that since they were not a full-time day care that there would not be any licensing, but they went ahead and followed the same suggested guidelines as far as adult to child ratios; lighted exit signs; first aid CPR training and fire drills.

Glen Minich asked if she belongs under anybody's jurisdiction as to follow-ups.

Ms. Durham said that is correct.

Attorney Biege asked Annemarie if she has taken a look at this.

Annemarie Polan, Building Commissioner, asked attorney Biege if he meant that she went out to the site.

Attorney Biege said a request for a "Special Exception". Attorney Biege asked Annemarie if a "Special Exception" is required.

Annemarie Polan, Building Commissioner, said that Ms. Durham had called several times and we were trying to get back to her. Annemarie said that all she had to go on was the previous minutes and they said that any new owner had to come back for a variance.

Attorney Biege said that there is a difference between schools and commercial and trade schools.

Board members speaking amongst themselves.

Annemarie Polan, Building Commissioner, said that the Motion said that at such time the building is sold, or the business is sold and a new ownership, a new "Special Exception" must be obtained since this is only personal to the individuals involved. Annemarie said that was in the Motion and that's why we had to tell her to come in.

Attorney Biege said that by definition, a "Special Exception" is the person, not the property. Attorney Biege said that a "Special Exception" presumes that all the zoning requirements are there, it's just that essentially that function – that activity would be reviewed by the BZA as a "Special Exception", but that use is allowed in the district. Attorney Biege said that he's looking, but he's not seeing (inaudible). Attorney Biege said that he thinks it would be up to the Board to interpret whether or not schools, elementary, middle and high, would fall within a pre-school. Attorney Biege said that the day-care requirements are different.

Board members speaking amongst themselves.

Attorney Biege said that he just found it. Attorney Biege said that day-care centers – commercial- preschools in R1B is a “Special Exception”.

Melissa Mullins Mischke asked if there are any remonstrators here this evening for Petition No. 4.

Melissa Mullins Mischke asked if there are any additional questions, or comments from the Board.

Melissa Mullins Mischke said hearing none, she will entertain a Motion.

Candice Nelson made a Motion that we approve the Petition for Nancy Durham (buyer) and Monica Lorimer (seller) MM5.LLC to purchase the property occupied by Constructive Pathways Montessori School as a “Special Exception” that was granted on March 16<sup>th</sup>, 2007. Glen Minich seconded.

Ms. Durham said that she would like to clarify that it’s MM5.LLC.

Candice Nelson said that this property is located at 4303 N. Wozniak Road, Michigan City, Coolspring Twp., zoned R1B on 1.145 acres.

Glen Minich seconded.

Melissa Mullins Mischke asked if there are any questions on the Motion.

All approved. Motion carried 3-0.

Melissa Mullins Mischke said that we will go back to Petition No. 1.

**1. The Petition for Aaron & Amber Forrester to add one bedroom and an entry way with thirty two (32’)feet setback instead of the required sixty (60’) foot setback on one (1) acre. This property is located at 4331 S. 550 E., La Porte, IN., Washington Twp., zoned A. (This Petition was rolled over from May 20, 2014 meeting to June 17, 2014 at 6:00 p.m.)**

Glen Minich asked Annemarie if she knows the standing of this Petition.

Annemarie Polan, Building Commissioner, told the Board members that this can be dismissed because this is the third time that they haven’t shown up. Annemarie told the Board members that they have the right to dismiss this.

Melissa Mullins Mischke said that we can either make a Motion to Table or Dismiss.

Glen Minich made a Motion to dismiss this Petition from our Agenda. Candice Nelson seconded.

Melissa Mullins Mischke asked if there are any questions on the Motion

All approved. Petition Dismissed. 3-0.

Attorney Biege said that he was planning on giving a draft of the Joint Zoning Ordinance to the Plan Commission members, however he may delay a month because we need to clarify mobile and manufactured housing.

Annemarie Polan said that she spoke with Felmon Martinez and he's the gentlemen that had the flea market on Highway 6 & 35. Annemarie said that he was to have four (4) sales per year and he called her yesterday and he wanted to know if he needed to come back because his year is up for this variance. Annemarie said that he's having a sale this coming weekend, but he's hardly had any sales at all. Annemarie said that she went out to look at the property today and took some pictures. Annemarie said that he put up a fence and it was in pretty good shape. Annemarie said he had a few things outside that looked personal, but she said he was starting to move a few things out to get ready for his sale.

Annemarie Polan, Building Commissioner, asked the Board members if they want him to come back before the Board.

Melissa Mullins Mischke asked Annemarie if there have been any complaints.

Annemarie Polan, Building Commissioner, said that we've had no complaints and he really hasn't had many sales.

Melissa Mullins Mischke asked Annemarie the month we granted that variance.

Annemarie Polan, Building Commissioner said that it was August 23<sup>rd</sup> of 2012.

Glen Minich asked Annemarie how many personal sales a property owner is allowed on his property.

Annemarie Polan, Building Commissioner, said that they're allowed more than what he's doing, but his is on a grander scale and that's why he had to come in.

Attorney Biege asked Annemarie if he had written findings on this Petition.

Annemarie Polan, Building Commissioner, said that she believes there are findings, but she didn't bring them with her.

Glen Minich said that if there are no complaints, as far as he's concerned he's okay.

Melissa Mullins Mischke said that she would like to look at the meeting minutes just to confirm if we said we'd give him a three (3) year variance, but we wanted temporary for a year, to make sure there were no complaints.

Attorney Biege said that if we go back to look at what the Board's decision was, the Findings of Fact and Conclusions of Law dictate. Attorney Biege said that meeting minutes include discussion, but it also includes interpretation by the Board's secretary. Attorney Biege said that Findings of Fact and Conclusions of Law are final and that's what the Board can take into consideration.

Annemarie Polan, Building Commissioner, said that the minutes discussed actually comes down to the Findings of Fact and Conclusion of Law.

Attorney Biege said for example, when we say mobile homes are non-renewable, you can't bind the future BZA. Attorney Biege said that we are simply recommending to the future BZA that a renewal be denied. Attorney Biege said that individual Board comments are non-binding on past petitions.

Glen Minich said that we need to get together with the realtors. Glen said that it's kind of on our agenda that in the future if you sell a mobile home on a lot and it's not in a mobile park, do not expect a renewal to the new owner.

Annemarie Polan, Building Commissioner, said that she could compose a letter and send to the local realtors.

Melissa Mullins Mischke said that this is her eighth year on this Board and Paul Zona, a previous member commented on almost every meeting that she was in that the realtors are the ones who need to be educated on the variance for mobile homes, just as much as homeowners themselves.

Annemarie Polan, Building Commissioner, said that Mike Schultz came over to see her and he was talking about our mobile homes when we grant a variance for two or three years, he said that there assessment period changed from March 10<sup>th</sup> or 15<sup>th</sup> to the regular calendar year, January through December and he wanted to know if the Board wanted to take that into consideration.

Glen Minich said that if they would come to us in March or April, we would say we're going to give you three years up until the date of December 31<sup>st</sup>.

Attorney Biege said that he wants to talk to Mike.

Melissa Mullins Mischke asked attorney Biege to look into that and get back with the Board.

There were remonstrators here this evening for property located on 100 North, Michigan City who thought there was going to be a Petition for a Variance to run a business on 100 North. As no Petition has been filed with the Building Department this matter is closed.

Melissa Mullins Mischke asked if there is any other business before the Board of Zoning Appeals this evening.

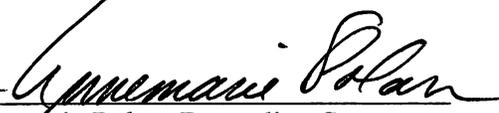
Melissa Mullins Mischke said that she will entertain a Motion for adjournment.

Candice Nelson made a Motion to adjourn. Glen Minich seconded.

All approved. Motion carried 3-0.

There being no further business, meeting adjourned at 7:05 p.m.

  
Melissa Mullins Mischke  
Vice President

  
Annemarie Polan, Recording Secretary