

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17TH DAY OF JANUARY 2019 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; Matt Shively, Planner; Mae Kratzer, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

2. A motion was made and seconded (*Miller/Hesser*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of December 2018 be approved with the following correction: on page 15 the phrase, "the Board adopt the Staff Analysis as the findings and conclusions of the Board and based on these further move" should be removed from the motion to table the request. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Atha/Lyon*) 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. A motion was made and seconded (*Lyon/Atha*) to elect the following Board members: Mr. Lyon as Hearing Officer, Mr. Hesser as Chairman, Mr. Miller as Vice Chairman, and Mr. Campanello as Secretary.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

5. The application of ***James Rinehart & Crystal Rinehart, Husband & Wife*** for renewal of an existing Special Use for a home workshop/business for a lawn care business on property located on the South side of Meadow Oak Ln., 1,440 ft. East of Johnson St., common address of 25748 Meadow Oak Ln. in Osolo Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0767-2018*.

There were 19 neighboring property owners notified of this request.

Jared Rinehart, 25748 Meadow Oak Ln., Elkhart, was present for this request. Mr. Miller clarified the request is for approval to continue an existing business. He also pointed out the questionnaire states that no retail sales take place on the property. Mr. Hesser mentioned the petitioners are listed as James & Crystal Rinehart, and he asked Mr. Jared Rinehart's relationship to the property owners. Mr. Rinehart responded James and Crystal are his parents, and he resides with them since he is a single father. Mr. Atha asked about any current issues with the neighbors, and he recalled noise being a concern at the previous hearing. Mr. Rinehart responded he is not aware of any problems this year, and the neighbors he spoke to were in favor of his business. He continued saying the equipment is not started when he leaves in the morning or when he returns in the evening. He added his equipment is not currently on the property, but

he does store it in the fenced-in back yard during the summer. He explained when he first began his business the equipment was kept in the backyard all year long, and now he stores it at a different location during the winter. Mr. Miller clarified he does not have any signage in the yard. Mr. Rinehart responded he removed his sign, because it was not visible from the required setback. Mr. Campanello asked if Mr. Rinehart sees his business outgrowing this location, and he responded yes. He continued saying his business has already grown considerably but purchasing property is taking longer than he expected. He added he is also a drug and alcohol addictions counselor, and he is growing in other areas besides the lawn care business. He stressed as a single father of two daughters, he needed to live with his parents for their help. Mr. Rinehart asked that approval of the request be granted for longer than a year, unless a complaint is filed. Mr. Auvil stated Staff's Recommendation does not include a time period.

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** Roger Miller, **Seconded by** Joe Atha 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 renewal of an existing Special Use for a home workshop/business for a lawn care business was 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. The request is approved in accordance with the site plan submitted (dated 11/20/18) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

6. The application of **Town of Millersburg** for a Special Use for a wastewater treatment plant on property located 1,125 ft. East off of Wabash St., 1,227 ft. North of CR 42, common address of 198 N. Wabash St. 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 #SUP-0797-2018*.

There were six neighboring property owners notified of this request.

Ben Eldridge, Town of Millersburg superintendent, 201 W. Washington St., Millersburg, was present for this request. Mr. Miller clarified the request is to allow for the construction of a new pole building. Mr. Eldridge pointed out a building on the aerial that was used to store equipment during the winter, but it was falling down. He explained they demolished it and constructed a new building last month. He continued saying it does not have any electricity or plumbing, and it is basically a storage shed to keep their equipment warm during the winter. Mr. Campanello questioned why a professional site plan was not submitted, and Mr. Hesser agreed. Mr. Auvil responded the new building triggered the need for a Special Use, and a better site plan would have been submitted, if the permit required engineered drawings. He stressed he did not believe the scope and scale of the project warranted professional drawings. Mr. Campanello asked if the Town of Millersburg had a site plan from previous projects. Mr. Eldridge stated the

Town made improvements to the wastewater treatment plant in 2007 and 2013 along with upgrades to their water plant in 2011 and 2012. He went on to say he was unaware of the need for a Special Use in order to pull permits, and the impending winter weather had them pressed for time. He explained he drew up the site plan at the counter to start the permit. He added the town will be back to add a third garage stall at their water plant for storage, and a detailed site plan will be approved by state and submitted for that project. Mr. Campanello questioned the history of the property, and Mr. Auvil responded staff does not have record of the mentioned projects. Mr. Campanello clarified the town is now trying to clean up the paperwork. Mr. Eldridge stated the plant has been on this property since 1977. Mr. Campanello stressed he would like a professional site plan, and Mr. Hesser added he believes it would be appropriate to have a new site plan submitted for approval by staff. Attorney Kolbus clarified the request for a new site plan should be made a condition.

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** Roger 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 a Special Use for a wastewater treatment plant 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. The petitioner must provide a professional site plan for approval by Staff.

The following commitment was imposed:

1. The request is approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

7. The application of *Travis Luke & Cheryl Luke, Husband & Wife* for a Special Use for warehousing and storage of dump trucks, equipment trailers, and pickup trucks in an A-1 district on property located on the South side of CR 44, 4,931 ft. West of CR 37, common address of 13940 CR 44 in Benton Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0818-2018*.

There were seven neighboring property owners notified of this request.

Bryan Stout, 54268 CR 37, was present as the property buyer, if this request is approved. Mr. Miller asked if the petitioner would like approval to rent storage space to the public. Mr. Stout responded he would like to store his personal equipment behind the shop building on the east side of the property. He explained his plan to extend a 13ø wide drive to the back of the building and place an aggregate material for parking from the back of the building to the agricultural building. He stressed he wants a place to store his trucks out of the mud. Mr. Miller clarified the trucks are frequently used, and Mr. Stout responded the equipment is for his business. Mr. Miller also asked if he spoke to the neighbors. Mr. Stout pointed out one of the

neighbors owns a semi, and the rest are in favor of this request. He continued saying they met with and explained their plans to all of the neighbors. He added he will only purchase the property, if this request is approved. Mr. Atha asked about the neighbor to the east. Mr. Stout responded an older widow lives there, and her late husband operated a similar business. He added she is excited to have a neighbor willing to help her out. Mr. Hesser clarified he basically plans to put gravel down between the shop and agricultural building, and Mr. Stout added it will be about 110 ft. wide. He pointed out the general area he plans to use for parking and stated it may change a little, once he determines how much room he needs for the trucks and trailers. He stressed he does not want his equipment sitting on mud. He added he also plans to construct a few bunkers to store aggregate materials that he uses at the job sites. He stated he was encouraged by staff to just park there without requesting a Special Use, but he wanted to ensure the property was in compliance before he purchased it. Mr. Campanello asked if he plans to add a buffer on the east side of the drive. Mr. Stout responded he may install a cattle type fence, but he would prefer a natural boarder since he is a landscaper. He continued saying he would rather plant arborvitae trees than install a vinyl fence. He explained his family outgrew their current residence, and they plan to live here for a long time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha asked if the mentioned stalls for material storage should be shown on the site plan. Mr. Stout stated he is unsure where he will place the stalls, and he will construct them out of stacked concrete blocks. Mr. Hesser asked if the petition mentions material storage, and Mr. Stout responded it is in the questionnaire. Mr. Hesser pointed out it is mentioned in question #23. He then asked if staff supports approval of material storage, and Mr. Auvil responded yes.

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

Motion: Action: Approve, **Moved by** Roger Miller, **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 Special Use for warehousing and storage of dump trucks, equipment trailers, and pickup trucks in an A-1 district 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. The request is approved in accordance with the site plan submitted (dated 12/14/18) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

8. Mr. Auvil presented a minor change staff item to an existing Special Use for warehousing and storing under *Emma M. Martin Pers Rep Est of L. M. Martin ½ & Emma M. ½ and Levon M. & Emma M. Martin* (SUP-0362-2016). He explained the request includes adding .5 acres of property and changing the property owners to Ronald Martin & Sheldon Weaver. He continued saying staff recommends approval as a minor change. Mr. Hesser asked the location of the new property, and Mr. Auvil pointed out it is outlined with the skinny white

line on the submitted site plan. Mr. Hesser stated he does not believe any neighbors will be affected by the added acreage.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board approve the request as a minor change.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

9. As a staff item, Mr. Auvil submitted the request to rescind a Special Use for a home workshop/business for a balloon and gift shop for **Debbie Lewis** (964557). He explained she is no longer operating this business, and Mr. Hesser clarified the request is to terminate the Special Use.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for the rescission of a Special Use as requested by the petitioner be approved.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

10. The application of **Jeff A. Hire & Cynthia A. Hire, Husband & Wife** for a Special Use for an overnight campground (1 unit) on property located on the East side of Old US 33 where it forks off of US 33, 1,450 ft. South of CR 148, common address of 70612 US 33 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 #SUP-0825-2018*.

There were seven neighboring property owners notified of this request.

Gene Cornell, 70612 US 33, Ligonier, was present for this request along with Jeff Hire, the property owner. Mr. Cornell stated he would like to maintain a permanent residence on this property, and Mr. Hire has agreed to it. Mr. Hesser clarified Mr. Cornell plans to have a permanent residence on this property, and he questioned the request for an over-night campground. Mr. Auvil explained the Zoning Ordinance does not cover tiny homes, and Staff felt an overnight campground was the best way to bring this property into compliance. He continued saying the Ordinance also does not clearly define a cabin, so they chose this route. Mr. Campanello asked why the request was not brought as a manufactured home, and Mr. Auvil responded staff felt this was the only request it fit. He stressed tiny homes are new in the county, and Staff felt requesting a campground was the only way to have it approved. Mr. Hesser clarified no campers will be kept on the premises, and approval will allow him to use the cabinö as a 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** Randy Hesser, **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 Special Use for an overnight campground (1 unit) 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. The request is approved in accordance with the site plan submitted (dated 12/12/18) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

11. The application of *James A. Lightner & Andria (Padget) Lightner, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district on property located on the South side of Nelson Ave., 180 ft. East of CR 108, South of CR 20, common address of 27468 Nelson Ave. in Concord Township, came on to be heard.

Mr. Hesser stated the public hearing for this request was closed last month, but the Board was unable to reach a decision. He asked if Mr. Miller had an opportunity to read the minutes, and if he is prepared to make a decision or reopen the public hearing. Mr. Miller decided to leave the public hearing closed. Mr. Hesser pointed out the petitioner is present, and they can be asked questions without reopening the hearing.

James & Andria Lightner, 27468 Nelson Ave., Elkhart, were present to answer the Board's questions. Mr. Miller asked if the animals were recently brought to the property. Mrs. Lightner responded the animals have been there for four years, and the complaint was filed by a neighbor due to a property dispute. She went on to say they have a petition signed by their direct neighbors, and Mr. Hesser stated the petition cannot be accepted unless the public hearing is reopened.

Mr. Hesser stated the Board made a motion last month to approve only the chickens, which failed two to two, and a motion to approve the chickens and three goats that failed for a lack of a second. He continued saying the Board could not reach a compromise. He stressed his concern was the number of goats as he felt three was too many, and Mr. Atha agreed. He added the chickens are not a problem. Attorney Kolbus suggested the Board discuss the number of goats, since that appears to be the main concern. Mr. Miller stated he agrees three seems excessive on this property, and he does not believe the Board has a history of allowing that many. He asked staff their thoughts on the number of goats. Mr. Auvil responded most 4-H animals are grain-fed, and he is unsure how much space they then require. He stressed the petitioners are not asking for horses. He mentioned a neighbor dispute brought this use to Staff's attention, and the goats have been there for four years. He stressed staff does not have a problem with this request, since the animals are used for 4-H and health reasons. Mr. Miller stated he is prepared to vote for approval of the Staff Analysis. Mr. Hesser pointed out the Staff Analysis recommends allowing five goats. Mr. Auvil stated the Board can place a year or two limit on this request in case any complaints are received. He recommended the Board impose a one year

review by staff. Mr. Hesser asked if the two residence issue mentioned in the Staff Analysis has been resolved, and Mr. Auvil responded yes. Mr. Hesser stated he believes five goats on this property are too many.

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

Motion: Action: Approve, **Moved by** Roger 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 a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 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. Approved with a one (1) year review by staff.

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/17/18) and as represented in the Special Use application.
2. The use is limited to a maximum of twelve (12) chickens (no roosters) and five (5) adult goats at any one time.

Vote: Motion failed (**summary:** Yes = 2, No = 3, Abstain = 0).

Yes: Tony Campanello, Roger Miller.

No: Joe Atha, Denny Lyon, Randy Hesser.

Mr. Atha stated the problem comes down to the number of goats. Mr. Hesser asked Mr. Lyon if he has a number he is comfortable approving, and he responded no. He continued saying he understands the goats' purpose, but he does not believe they belong in this neighborhood. Mr. Atha stressed the reason for needing the goats is not a land use issue, and Mr. Hesser agreed. Mr. Miller asked the Board the number of goats they feel comfortable approving. Mr. Hesser responded one, because he believes that is manageable in a condensed area. Mr. Lyon stated he does not believe one goat will satisfy the petitioners' needs. Mr. Hesser suggested approving the request for one goat and allowing the petitioners time to remove the remaining goats from the property. Mr. Atha stated he would approve two goats. Mr. Hesser pointed out Mr. Campanello is comfortable with three goats, and Mr. Miller is comfortable with five. He stated he believes two is a compromise. Mr. Campanello stated he will vote in favor of a motion to approve three goats.

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 an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 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. Approved with a one (1) year review by staff.

3. The petitioner has one (1) year to remove any additional goats from the property.

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/17/18) and as represented in the Special Use application.
2. The use is limited to a maximum of twelve (12) chickens (no roosters) and three (3) adult goats at any one time.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Tony Campanello, Roger Miller, Denny Lyon.

No: Joe Atha, Randy Hesser.

Mr. Hesser stated the Board approved the request for three goats, and the petitioners have a year to remove the excess goats. He continued saying staff will review the request after a year for any complaints or problems.

12. The application of *Edd Banks & Lena F. Banks, Husband & Wife* for a Special Use for warehousing and storage of tree service trucks, garbage truck, and semi tractor and trailer in an A-1 zone on property located on the South side of CR 26, 1,508 ft. East of CR 1, common address of 29730 CR 26 in Baugo Township, came on to be heard.

Mr. Hesser stated this request was also tabled at the last hearing since the petitioners' legal counsel was unable to attend the meeting. Mr. Auvil stated staff received a request to again table this matter. Mr. Miller asked their reason for tabling the item again.

Pamela Banks, 56610 Shore Ave., Elkhart, one of the petitioners, was present for this request. Mrs. Banks stated their attorney had a prior commitment making him unable to attend the last hearing. Mr. Hesser asked the name of their attorney, and she responded Donald Berger. She then stated he may be available for the February hearing, but he has a speedy trial that may create a conflict. She continued saying she believes he will be available for the March Board of Zoning Appeals hearing. Mr. Hesser suggested the petition be tabled until March, and their attorney must notify the Board by the February BZA meeting, if he has a conflict in March. He continued saying he does not want to send out notice for a meeting that will not happen. Mrs. Banks stated she explained to their attorney that the Board meets on the third Thursday of every month. Mr. Hesser stressed tabling the hearing does not allow the use to continue, and staff's enforcement action will not be delayed.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for warehousing and storage of tree service trucks, garbage truck, and semi tractor and trailer in an A-1 zone be tabled until the March 21, 2019, Advisory Board of Zoning Appeals Meeting at the request of the petitioners' legal counsel.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

Mr. Auvil asked if the Board would like re-notification sent to the neighbors for the March 21, 2019, Board of Zoning Appeals Meeting. Mr. Atha stated he believes the request should be brought to the neighbors' attention again. Mrs. Britton asked if the request should be advertised in the legal ads. Mr. Hesser stressed he would like to know, if the attorney has a

conflict with the March hearing, by February to prevent notice being sent out for an item that will be tabled again. Mr. Atha reiterated the Board needs to know by the February meeting, if their attorney will be present at the March hearing. Mr. Hesser stated the Board may not act on the request at the March hearing. He stressed since the petition is being moved to March, he would like re-notification sent.

13. The meeting was adjourned at 9:20 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary