

BZAMINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF MARCH 2020 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: Jason Auvil, Zoning Administrator; Mae Kratzer, Planner; Doug Powers, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Denny Lyon.

2. A motion was made and seconded (*Atha/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of February 2020 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Atha*) 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. 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, 1,280 ft. east of CR 15, common address of 22775 Old US 20 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 #SUP-0052-2020*.

There were 24 neighboring property owners notified of this request.

Robert West, 22775 US 20 E., Elkhart, was present for this request. Mr. Miller clarified he would like permission to continue operating his business. Mr. West responded yes, and he has been in business for over 40 years. Mr. Hesser asked if he will file the Commitment this time, and he responded yes. He went on to say he was not aware that a Commitment was required last time.

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 home workshop/business for small-engine repair be approved with the 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 1/23/20) and as represented in the Special Use application.

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

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

5. The application of *Lamar Metzger & Eileen Metzger, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the west side of CR 15, 1,670 ft. south of CR 28, common address of 61323 CR 15 in Harrison 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-0041-2020*.

There were three neighboring property owners notified of this request.

Mr. Auvil stated the solar company typically sends a representative to handle the request, but given the current circumstances they will likely not be present. Mr. Campanello asked if the petition should be tabled until the next meeting, but Mr. Auvil responded he would prefer they move ahead with the request. Mr. Hesser suggested postponing the request until the end of the time slot to see if a representative appears.

Mr. Auvil submitted an email received from the solar company in regards to the hearing [Attached to file as Staff Exhibit #1]. He stated the email mentions that no one is able to attend the meeting. He continued saying they would also like to add two additional panels to the system. Mr. Hesser asked if adding two panels will cause an issue, and Mr. Auvil responded no. Attorney Kolbus explained the Board can approve the request but require a revised site plan showing the additional panels. Mr. Atha suggested the revised site plan be approved by staff.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated his only concern was the location of the array, due to its proximity to the neighboring property. However, no one is present in remonstrance. Mr. Atha asked if staff received anything in remonstrance, and Mr. Auvil responded no.

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 a Special Use for a ground-mounted solar array 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 revised site plan showing the additional panels 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.

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

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

6. The application of *Heather Horst (Buyer) & Thomas C. Chenier & Casilda Cabral Chenier, Husband & Wife (Sellers)* for a Special Use for a home workshop/business for a massage

therapy business and for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the south side of SR 4, 400 ft. east of S. 29th St., common address of 17648 SR 4 in Elkhart Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0090-2020*.

There were five neighboring property owners notified of this request.

Heather Horst, 1416 Wilson Ave., Goshen, was present for this request as the property purchaser. Mr. Campanello asked if she came before the Board for approval of the operation on her current property, and she responded she is currently located inside the City of Goshen. She went on to say Goshen City granted permission to operate out of her current residence. Attorney Kolbus noted the city has not had any issues with her property. Mr. Atha asked how long she has operated at her current location. Miss Horst responded she has been in practice since 1998, and she has operated out of her current residence since 2009 or 2010. Mr. Atha clarified she will purchase the subject property. Mr. Campanello asked if she plans to sell eggs from the chickens, and Miss Horst responded no. She explained she currently owns six chickens, the legal limit in the city for personal use. However, she continued she would like to raise a few more chickens for meat, since she is moving to the country. She noted she is interested in having a rooster for a breeding flock, but she would not have any more than one.

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 home workshop/business for a massage therapy business 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 2/10/20) and as represented in the Special Use application.

Further, the motion also included that a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres 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. The request is approved in accordance with the site plan submitted (dated 2/10/20) and as represented in the Special Use application.
2. The Special Use is limited to a maximum of twelve (12) chickens at any one time, no roosters.

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

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

7. The application of *Victor J. Hagar & Michelle L. Hagar, Husband & Wife* for a Special Use for an indoor/outdoor recreational facility (wedding venue) on property located on the south side of US 33, 960 ft. east of CR 33 (SR 313), common address of 68395 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-0099-2020*.

There were seven neighboring property owners notified of this request.

Alecia Bame, Progressive Engineering, 58640 SR 15, Goshen, was present representing the petitioner. She stated Mr. Hagar would like to operate a wedding venue off of the subject property. She explained the venue would be constructed in two phases. She went on to say the first phase is an outdoor pavilion, and the second would be a building at a later time. She noted Mr. Hagar is also present to answer any questions. Mr. Campanello asked if the mentioned outdoor pavilion is labeled future pole barn on the site plan. Mr. Hesser then pointed out the pavilion towards the back of the property, and Mr. Campanello noted it is a distance off the road with plenty of parking. Mr. Campanello asked if the pine trees shown on the site plan are existing, and Mr. Hagar responded yes.

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 a Special Use for an indoor/outdoor recreational facility (wedding venue) 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 2/17/20) and as represented in the Special Use application.

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

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

8. Mr. Auvil noted staff is finishing up a revision to all of the BZA application/questionnaires. He continued saying Attorney Kolbus reviewed the revisions, and staff is making some final changes. He explained the goal is to make the applications simpler/easier to understand. He stated the revised petitions will be presented to the Board for their input. He added the Board will need to approve the finalized applications, because they are included in the Rules of Procedure.

9. The application of *Melvin J. Lehman & Ruth A. Lehman, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for metal fabricating to

allow for a storage building and to increase the number of outside employees to eight (Ordinance allows two) on property located on the east side of CR 13, 2,400 ft. north of CR 52, common address of 71024 CR 13 in Union 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-0101-2020*.

There were eight neighboring property owners notified of this request.

Melvin Lehman, 71024 CR 13, Nappanee, was present for this request. He stated they would like to demolish two existing buildings, and he pointed them out on the aerial. He continued saying they will then replace those buildings with a new one, and part of it will be used for the Special Use. Mr. Hesser questioned his current number of employees, and Mr. Lehman responded five. Mr. Hesser then asked if that number included himself, and he responded six employees including himself. He went on to explain he has three full-time employees including himself, and the rest are part-time. He added he also has another employee on reserve. Mr. Hesser asked if he plans to expand to have eight full-time employees, and Mr. Lehman responded no. He went on to explain he request eight employees, because he is already over the two allowed. He stressed he does not believe he will ever reach eight employees, but he wanted to be in compliance. Mr. Hesser pointed out the site plan does not show a lot of parking, but he clarified it is adequate for their use. He then asked if customers come to the property, and Mr. Lehman responded his operation is whole-sale. He stressed their products leave the property by UPS or FedEx. Mr. Hesser clarified no customers come to the property for pickup or delivery. He also asked how they receive orders. Mr. Lehman explained all orders come from their distributor, and they then ship the completed products. Mr. Campanello asked what they produce, and Mr. Lehman responded bird products. He went on to say he is classified as metal fabricating, because they produce aluminum bird houses. He explained they produce bird boxes, feeders, and housing. Mr. Miller clarified their operation does not involve a lot of heavy stamping.

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 an Amendment to an existing Special Use for a home workshop/business for metal fabricating to allow for a storage building and to increase the number of outside employees to eight (Ordinance allows two) 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. Any future expansions require a DPUD.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/17/20) and as represented in the Special Use Amendment application.

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

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

10. The application of *John Earl Yoder & Sue Ellen Yoder, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the east side of CR 15, 2,100 ft. south of CR 56, in Union 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-0092-2020*.

There were four neighboring property owners notified of this request.

John Yoder, 72874 CR 15, Nappanee, was present for this request. He stated they would like to construct a residence and barn for horses on a 1.84 acre parcel. Mr. Hesser clarified the petitioner only needs three horses. He then questioned the need for additional storage space, and Mr. Yoder responded it is needed to store buggy and lawn/garden equipment. Mr. Atha questioned the location of their proposed horse pasture. Mr. Lehman stated he did not include fencing on the site plan, and he then pointed it out on the aerial along with the residence and barn. Mr. Atha clarified the pasture will be far enough from the ditch, and he asked if it will all be mud. Mr. Lehman stressed he plans to have a grassy pasture. Mr. Campanello questioned the location of the ditch in concern. Mr. Atha responded he was concerned about the pasture's proximity to the ditch along the road. Mr. Hesser asked if the petitioner owns or is purchasing the subject parcel and the one surrounding it. Mr. Lehman responded he currently owns both parcels, and Mr. Hesser clarified the subject property was split off to construct a new residence. He then questioned access to the new residence, and Mr. Lehman responded he has access to the road. Mr. Atha asked if both parcels will share a driveway at this time, and Mr. Lehman responded they will share a driveway, which he pointed out on the aerial. He explained the subject parcel has road frontage in case the adjoining parcel is sold to someone outside of the family. Mr. Campanello questioned a line on the aerial, and Mr. Lehman stated it is a fence line. Mr. Hesser questioned if staff has any issues with the proposed access, and Mr. Auvil responded no.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha stated he would like a revised site plan submitted showing the pasture for approval by staff. Mr. Hesser request the site plan also show access to the property. He suggested adding a commitment limiting the request to three horses, because the petitioner stated he only needs three. Mr. Campanello asked if the petitioner will needs to reapply, if he decides to have chickens, and Mr. Hesser responded yes on property less than three acres. Mr. Campanello clarified this petition does not include chickens.

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 Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres 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 revised site plan showing the pasture and access to the property for approval by staff.

The following commitments were 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.
2. The Special Use is limited to a maximum of three (3) horses at any one time.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right 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 issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan to be submitted for staff approval and as represented in the Developmental Variance application.

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

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

11. The application of *Daniel Martin & Patricia Carlin, Joint Tenants with Rights of Survivorship* for a Special Use for a home workshop/business for a small motor repair shop and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the east side of Jackie Ln., 875 ft. north of CR 6, 800 ft. east of CR 11, common address of 52846 Jackie 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-0083-2020*.

There were nine neighboring property owners notified of this request.

John Rodgers, 4100 Edison Lakes Parkway, Suite 100, Mishawaka, was present along with his client Daniel Martin, 52846 Jackie, Ln. He explained Mr. Martin currently owns and operates a small engine repair shop, and he is seeking approval to construct a pole barn addition. He noted the petitioner resides on the southern parcel, and the structure he plans to add onto for the small motor repair shop is located on the northern parcel. He went on to say both parcels will be deeded together following approval. He noted Mr. Martin is the only employee. He explained customers bring small motors to the property for repair, and they then return to pick them up once the repair is completed. Mr. Hesser clarified the petitioner does not plan to install a sign, and Mr. Rodgers responded that is correct. He went on to say the properties will be deeded together following approval. Mr. Atha asked if the petitioner plans to have ten customers a day. Mr. Martin stated he averages ten customers a day sometimes more. Mr. Atha questioned if all of his customers are in the parking lot at the same time, and Mr. Martin responded no. He clarified he has around ten throughout the day. He explained he typically operates from 7 a.m. to 5 p.m., but he sometimes works after hours. Mr. Campanello asked if he works on snow blowers and smaller equipment or just starters/motors. Mr. Martin responded the majority of his work is on starters and alternators, including commercial work for a fork lift company, INDOT, and the Elkhart Fire

Department. Mr. Campanello asked if semis deliver to the property or just UPS. Mr. Martin responded semis so not come to the property, and mostly just UPS and FedEx make deliveries. Mr. Hesser clarified he does not have any employees, and Mr. Martin responded his wife takes care of the paper work for him.

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** 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 a Special Use for a home workshop/business for a small motor repair shop 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 legal descriptions of both subject lots must be recorded on a single deed.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/7/20) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right 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 issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 2/7/20) and as represented in the Developmental Variance application.

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

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

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

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary