

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF NOVEMBER 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: Chris Godlewski, Plan Director; Mae Kratzer, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

Absent: Roger Miller.

2. A motion was made and seconded (*Campanello/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of October 2020 be approved as read. The motion was carried with a unanimous roll call vote.

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

****It should be noted that Mr. Hesser recused himself and stepped down****

4. The application of **Baugo Community Schools** for an amendment to an existing Special Use for schools to allow for elevated and ground-mounted solar arrays on property located on the west side of CR 3, west end of CR 24, 1,770 ft. north of CR 22, common address of 58901 CR 3 in Baugo Township, zoned A-1, R-1, R-2, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0824-2020*.

There were 109 neighboring property owners notified of this request.

Matt Schuster, Jones Petrie Rafinski, 300 Nibco Parkway, Elkhart, was present representing Baugo Community Schools. He explained Baugo Schools is seeking an amendment to their Special Use to allow for elevated and ground-mounted solar arrays.

Charles Swiercz, Performance Services, 4670 Haven Point Blvd., was also present along with David Wolford from Baugo Community Schools. Mr. Schuster pointed out the proposed locations for the arrays. He then submitted some concepts to the Board [*Attached to file as Petitioner Exhibit #1*]. He request approval of the solar arrays. Mr. Atha questioned if the arrays will cause a reflection in the crowds at games due to their angles. Mr. Swiercz responded the arrays are mounted at the highest angle possible and manufactured with an anti-glare, anti-reflective surface. He added there should be no glare.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello noted the proposed arrays will take up a lot of the space around the football field, but it is a good idea. Mr. Atha questioned maintenance of the vegetation under the arrays. Mr. Wolford responded they will plant a slow-growing grass that will require less maintenance.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **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 an amendment to an existing Special Use for schools to allow for elevated and ground-mounted solar arrays 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 10/12/2020 and as represented in the Special Use application.

Vote: Motion passed (**summary:** Yes = 3, No = 0, Abstain = 1).

Yes: Joe Atha, Tony Campanello, Ron Norman.

Abstain: Randy Hesser.

*****It should be noted that Mr. Hesser returned to the Board at this time*****

5. The application of **James A. Goldsborough & Tina L. Goldsborough, Husband & Wife** for a Special Use for a wrecking yard on property located on the south side of CR 12, 200 ft. west of CR 1, common address of 30266 CR 12 in Cleveland Township, zoned M-2, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0812-2020*.

There were 13 neighboring property owners notified of this request.

James Goldsborough, 30266 CR 12, Elkhart, was present for this request. He explained he picks up impound and accident vehicles, which he then brings back to his property until the insurance company collects them. Mr. Hesser asked if he works on the vehicles or if the request is simply for an impound lot. Mr. Goldsborough stated his family owns Tom's Auto Salvage, but his parents are selling the salvage yard. He went on to say he plans to relocate the towing aspect of the operation that has been in business since 1958. Mr. Hesser reiterated the petitioner will not work on vehicles at this property. Mr. Atha asked if he plans to put gravel down for the lot, and Mr. Goldsborough responded he will put down crushed asphalt. Mr. Atha questioned fluids leaking from damaged vehicles. Mr. Goldsborough stated most fluids leak onto the road after an accident, and they clean up everything at the scene. He noted vehicles do not come to the lot with fluids. Mr. Norman asked what happens to the totaled vehicles. Mr. Goldsborough responded the insurance company still picks up the vehicle and takes it to an auction. He stressed he will no longer be in the salvage business.

Lon Zimmerle, 30351 CR 12, was present in remonstrance representing Betty Zimmerle as her Power of Attorney. He pointed out the 39 acre parcel she owns on the aerial. He noted she owned the property with her husband for 40 years, before he passed away 6 years ago. He added his family has owned the property for approximately 100 years. He stated she is concerned with the appearance of the subject property, potential noise, ground-water contamination from leaking vehicles, and impact on her property value. He explained his family owns approximately 140 acres west of the mentioned one, which they believe this operation may also impact.

Mr. Goldsborough came back on and stated they will install a new metal fence on the property. He added all fluids from vehicles are left at the accident scene. Mr. Norman clarified the property is already zoned manufacturing.

The public hearing was closed at this time.

Mr. Hesser stated he had some concerns due to the wrecking yard description, but he could not find any other classification for the proposed use in the Zoning Ordinance. He noted a wrecking yard is allowed in an M-2 district with a Special Use. He went on to say it does not appear to be a high-impact use, based on the questionnaire and representations of the petitioner. He stressed he will not work on vehicles, but simply store them on the property. Mr. Norman mentioned several manufacturing businesses exists on the south side of Cleveland Rd.

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 a Special Use for a wrecking yard 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 only parcel 20-05-03-201-020.000-005.

The following commitment was imposed:

1. The request is approved in accordance with the revised 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, Ron Norman, Randy Hesser.

6. The application of *Nathanael M. Martin & Verna M. Martin, Husband & Wife* for a Special Use for a home workshop/business for a woodworking shop, for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a Developmental Variance to allow for 4 outside employees (Ordinance allows 2) on property located on the north side of CR 36, 2,000 ft. east of CR 13, common address of 23601 CR 36 in Harrison Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0817-2020*.

There were 11 neighboring property owners notified of this request.

Nathanael Martin, 23601 CR 36, Goshen, was present for this request. He stressed 30 acres does not support a dairy farm on its own, so he started using the manure building for woodworking. He then pointed out the mentioned building on the aerial. Mr. Hesser clarified the building is 60'x120'. He questioned how much the Developmental Variance request will exceed the storage allowed, and Mrs. Kratzer responded it is approximately 1,100 sq. ft. over what is permitted. Mr. Hesser then asked the number of current employees, and Mr. Martin answered three. He went on to say he may add another one, if needed. Mr. Atha clarified the Developmental Variance for more storage than allowed is needed, because the building was previously used for agriculture.

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** 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 woodworking shop 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 10/9/2020 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, and a Developmental Variance to allow for 4 outside employees (Ordinance allows 2) be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are 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 10/9/2020 and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

7. The application of *Ace Monard & Karen Monard, Husband & Wife* for a Special Use for a home workshop/business for an industrial service business and for a Developmental Variance to allow for 3 outside employees (Ordinance allows 2) on property located on the southwest side of CR 115, 540 ft. northwest of CR 20, common address of 58897 CR 115 in Concord Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0794-2020*.

There were 11 neighboring property owners notified of this request.

Ace Monard, 58897 CR 115, Goshen, was present for this request. He stated they have a small service company that services manufacturing facilities in the Elkhart County area. He continued saying their work primarily takes place at the job site, but the technicians come to the subject property to pick up their service vehicles. He stressed 90% of their work is done at the job site. He explained they would like to use an existing 1,000 sq. ft. building on the property for small fabrication jobs. Mr. Hesser questioned what service work they provide. Mr. Monard responded they troubleshoot and repair machines along with oil changes and preventative maintenance. He mentioned they occasionally fabricate a production line for a company, but it is

essentially a maintenance company. He noted they may want to add another employee in the future. He stressed they will follow the county's rules/regulations. He added his customers over the last six years have been willing to let them fabricate in the factory when needed, if the county will not allow it on the subject property. He went on to say he believes they can accommodate/alleviate any concerns from the neighbors and Board. Mr. Campanello asked if he works on C & C machines at companies, and Mr. Monard responded yes. Mr. Campanello asked if they construct machines on site. Mr. Monard stated they are currently fabricating a floating, custom design, saw for a company that manufactures lily pads. He stressed they do not intend to start manufacturing machines, but they would find a commercial location, if they go that direction. He added their 1,000 sq. ft. building is not large enough to manufacture machines. Mr. Hesser clarified he currently has three outside employees, and he asked if they work on the subject property or off-site. Mr. Monard responded they all work at the job site, but one does go back to the shop when they need something fabricated. He went on to say he has a milling machine and iron worker in the shop, but they subcontract out their more extensive work to a machine shop. Mr. Atha noted a concern about waste from the operation ending up in the river. He asked if any waste from the job site is brought to the property. Mr. Monard responded all waste is kept at the job site until Safety Clean, who he has a service agreement with, picks it up to properly dispose of it. Mr. Norman clarified all oil and contaminants are disposed of by Safety Clean and all EPA guidelines are followed. Mr. Atha questioned disposal of waste from milling on the subject property. Mr. Monard responded they recycle any waste and keep the property well-kept/clean. He stressed he just purchased the subject property, and it is a very nice location. He noted he would like to take down his smaller outbuilding and replace it with a comparable one in the future. Mr. Atha stated he may need to return to the Board for approval to replace the building, since the request is approved in accordance with the submitted site plan. Mr. Godlewski explained a less than 20% increase can be approved by the Board as a staff item, or less than 10% can be approved administratively. Mr. Atha noted the Board cannot approve an additional employee without another meeting, since only three outside employees were requested. Mr. Norman questioned if a 4'x8' sign is compliant, and Mr. Hesser responded he believes it would require a Developmental Variance. Mr. Monard stated he does not have to put up the sign. Mr. Hesser pointed out a home workshop/business is generally allowed a 4 sq. ft. double-sided sign. Mr. Monard explained they had a sign plasma cut with their name, that he was planning to attach to the fence, but it is not necessary. He went on to say customers do not come to the property, so he is okay not having a sign.

Andy Wesdorp, 22340 Canyon River Dr., was present with some questions, not in remonstrance. He stated he was concerned about the sign, since the only sign on CR 115 is for River Oaks Community Church. He went on to say that concern has already been addressed. He went on to say Mr. Monard has been a great neighbor so far. He then pointed out his residence and additional parcel on the aerial. He noted a concern about polluting the stream, but he spoke to the petitioner on the phone who handled his concerns. He then pointed out an existing chain link fence, which partially runs between the two properties. He also noted an open area between the properties where he would like hemlocks or a different natural buffer to be planted. He explained the buffer will block his view of vehicles coming and going, and he believes he can work out the details with the petitioner. He stated Mr. Monard operates an honorable business.

Adam Markley, 22240 Canyon River Dr., was also present in favor of this request. He stated he agrees with Mr. Wesdorp, and Mr. Monard is a great neighbor.

Mr. Monard came back on and stated he will work with the neighbors. He noted they plan to finish the fence and plant trees in the mentioned area. He added they will work with the neighbors on any concerns they may have in the future.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus suggested adding an additional commitment that the petitioner work with the neighbors to provide a buffer in the mentioned location, if the Board believes it is needed.

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 a Special Use for a home workshop/business for an industrial service 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 commitments were imposed:

1. The request is approved in accordance with the site plan submitted 10/5/2020 and as represented in the Special Use application.
2. The petitioner must work with the neighbors to provide a natural buffer between their properties, as represented in the hearing.

Further, the motion also included that a Developmental Variance to allow for 3 outside employees (Ordinance allows 2) 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 10/5/2020 and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Ron Norman, Randy Hesser.

8. The application of *Daniel R. Mullet & Esther E. Mullet, Husband & Wife* for a Special Use Renewal for an outdoor recreational use to allow for an RV campsite and picnic shelter on property located on the east side of CR 15, 3,200 ft. south of CR 32, common address of 63638 CR 15 in Harrison Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0813-2020*.

There were 11 neighboring property owners notified of this request.

Mr. Hesser questioned why renewal on the previous request was only for one year. Mrs. Kratzer responded the neighbors had issues with the property. Mr. Atha recalled the usage of the property was questionable, whether the use was a public or private campground.

No petitioner was present. It was found that he submitted a letter with his petition stating he would not be present for the hearing.

James White, 63652 CR 15, the neighboring property owner adjacent to the subject property was present in remonstrance. He then pointed out his residence on the aerial. He stressed their concern is the large groups of people that utilize the property. He went on to say he assumes the petitioner rents the property to the different groups, and a large one was there on Labor Day. He added the groups using the property create a large amount of noise. He went on to explain they have an issue with the shooting range, because they shoot 100s of rounds at a time even into the night. He stressed the petitioners gun their engines, blow their horns, and scream obscenities at their residence when they drive by it. Mr. White noted their residence is only 600 ft. from the pavilion that was constructed without a permit and is noisy. He added another concern about their property value, if this request is approved permanently. He then questioned the need for the 100+ parking spaces noted in the application. He pointed out the shelter was approved as an open pavilion, but it is now enclosed with what he believes to be living area in the second story. He reiterated their concerns are the noise, vicinity of the drive to their residence, and the way the petitioners treat them. Mr. Atha questioned how often large groups of people stay on the property, and Mr. White responded about every holiday.

Beth White, 63652 CR 15, Goshen was also present in remonstrance. She stated a large group used the property on Labor Day Weekend, and Mr. White added multiple 15-passenger vans took people back to the property. Mrs. White noted the woods echo, and they could hear people laughing, talking, and singing. She then pointed out a residence adjacent to the subject property and stated the owners sold their property because of the campsite. She stressed that neighbor felt like his only option was to move, because he is tired of this operation. She added she does not mind shooting, but the petitioners shoot 100s of rounds, all day long. She continued saying they like to shoot, but they would not shoot all day long out of courtesy for their neighbors. She noted the petitioners harass and scream at them after every meeting. She explained she contacted the Sheriff's Department, and they advised her that she could take out a harassment order against them. She stressed she will obtain a restraining order if the harassment continues after this meeting. She explain one night they shined their headlights in their windows and screamed obscenities at them, while they were trying to sleep. She went on to say they do not bother the petitioners, and they only show up at the meeting once a year to fight the campground. Mrs. White explained the petitioners have eight children with spouses/significant others who also invite their friends to the property, and everyone who drives by their house harasses them. Mr. Hesser questioned where the entrance to the property is located. Mrs. White pointed out the entrance to the property on the aerial right next to their residence. She went on to say they considered constructing a wall between their residence and the neighboring property, but she does not believe they have enough room between the pond and their driveway. She reiterated the harassment, shooting, and signing are all problems. Mr. White noted the petitioners' driveway is located 70 ft. from their residence. Mrs. White explained they put up a trail camera to see what was going on, and they have caught the petitioners throwing garbage into their yard. She questioned how many issues increasing the number of people allowed at the campground will cause. Mr. Hesser clarified the open shelter

depicted on the site plan is actually enclosed. Mr. White added there appears to be a second story living quarters with a stairway leading to it. They both stressed they do not go onto the subject property, but it is close enough that they can see it from theirs. Mrs. White added the petitioners' children have parties on the property until 1:30 a.m., which she would be fine with, if they did not harass them on their way out. Mr. White then addressed a question in the questionnaire regarding the need for well and septic, and he asked how no well or septic is needed when a bath house with toilets is located on the property. Mr. Norman questioned the location of the bath house, and Mr. White pointed out the general location on the aerial just north of the shelter.

Gary Miller, 63627 CR 15, Goshen, was also present opposed to this request and pointed out his property on the aerial. He explained his property is right across the street from the subject property, and he pointed out the petitioners' drive. He added Mr. & Mrs. Mullet live approximately a mile down the road, so no one is on the property to supervise the events. He agreed with what the Whites said, and he has witnessed the harassment. Mr. Gary Miller questioned if people camping on the property will also be allowed access to the shooting range. He then pointed out the narrow driveway back to the property, and he stressed it is difficult for vehicles exiting the property to see the road. He went on to say the driveway is narrow enough that people have driven through their yard to get onto the road. He request the driveway be widened to alleviate people driving onto his property, if this request is approved. He stressed this is a bad situation, and the use does not appear to fit into the neighborhood.

The public hearing was closed at this time.

Mr. Hesser stated he has some concerns that the site plan does not represent what is actually on the property along with the use issues. He questioned if staff can conduct a site visit to see what is actually on the property to ensure the site plan accurately represents it. Mr. Campanello suggested the request be denied, and the petitioner be present for the hearing, if they reapply. Mr. Hesser pointed out the petitioner cannot reapply for a denied request for six months. Mr. Godlewski responded he does not believe they will be camping much in the next six months. Attorney Kolbus added there may be building code issues if the building was enclosed without a permit. Mr. Hesser stressed an enclosed building was not approved by the Board. Mr. Norman questioned, if a septic system is associated with the mentioned bath house. Mr. Hesser stated the site plan is incorrect, if the mentioned buildings are on the property. Mr. Campanello noted this request has come before the Board multiple times with remonstrators, and he stressed it has become a problem. He went on to say the petitioner is not present, and he believes they wanted it to slide by. Mr. Hesser mentioned he did not see the mentioned statement that the petitioner would not be present at the hearing. Mrs. Kratzer responded the letter simply states they will not attend for personal reasons, and it does not go into detail on why. Mr. Atha stated this request looks great on paper, but it has been back before the Board twice due to issues with the neighbors that have not gotten any better. He continued saying it appears to have actually gotten worse. Mr. Godlewski stated the Board can make a favorable or unfavorable decision and still have staff conduct a site visit. He went on to suggest they make a decision, since the petitioner did submit representation that they would not attend the hearing. Mr. Hesser questioned if the public hearing will need to be reopened to receive a report from staff regarding a site visit, and Attorney Kolbus responded yes. Mr. Hesser explained he would vote for denial, if staff confirmed the buildings mentioned by the remonstrator are on the property. He continued saying the petitioner did submit a letter that they were unable to attend the hearing, and he would like verification that they deviated

from approval. He stated the petitioner was not present to dispute the claims of unapproved buildings. He suggested tabling the request for a month to allow staff time to make a site visit. He reiterated any buildings in addition to those reflected on the site plan and previously approved are a violation, and he would deny the request for that reason. He again stressed he would like verification of the violation/misrepresentation. Mr. Atha added he believes the petitioner has done other things that would incline him to vote for denial. Mr. Campanello stated he is also in favor of denial, and the petitioner can always reapply in six months.

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

Motion: Action: Deny, Moved by Ron Norman, Seconded by Tony Campanello that this request for a Special Use Renewal for an outdoor recreational use to allow for an RV campsite and picnic shelter be denied based on the findings and conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a large 17.54-acre parcel in a residential and agricultural area, and the property will remain residential and agricultural in character.
3. The Special Use will substantially serve the public convenience and welfare by providing local outdoor recreational opportunities.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Joe Atha, Ron Norman, Tony Campanello.

No: Randy Hesser.

9. The meeting was adjourned at 9:41 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary