

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF AUGUST 2021 AT 8:30 A.M.
MEETING ROOMS 104, 106, & 108 – ADMINISTRATION BUILDING
117 N. 2ND STREET, 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; Danny Dean, Planner; Laura Gilbert, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Tony Campanello, Roger Miller, Ron Norman, Randy Hesser.

Absent: Brain Dickerson.

2. A motion was made and seconded (*Miller/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 15th day of July 2021 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Norman*) 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 ***William T. Keckler*** for a Special Use for a ground-mounted solar array on property located on the North side of CR 40 (Main St.), 980 ft. West of SR 15, common address of 19183 CR 40 in Elkhart 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-0559-2021*.

There were 28 neighboring property owners notified of this request.

Shawn Hurley, Power Home Solar, 8735 Breakwater Dr., Fort Wayne, was present representing the petitioner. Mr. Miller asked how large the solar array is going to be. Mr. Hurley responded it will be a 16 panel array, approximately 30 square feet. Mr. Miller asked if any buffering will be needed between the neighbor's properties. Mr. Hurley responded to his understanding this is a double lot with no issues with neighbors, so buffering isn't needed. Mr. Hesser asked if what's represented on the overview in the staff report is representing the northern or southern half of the subject property in respects to where this solar array will be placed. Mr. Hurley responded the solar array will be approximately on the northwest corner. Mr. Hesser stated the dimensions on the aerial aren't correct in containing the whole property. Mr. Norman clarified

the petitioner described where the solar panels will sit on the subject property. Mr. Hesser clarified the subject property owners also own the neighboring property.

There were no remonstrators present.
The public hearing was closed at this time.

*****It should be noted that Mr. Dickerson arrived at this time*****

The Board examined said request, and after due consideration and deliberation: **Motion: Action:** Approve, **Moved by** Ron Norman, **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 ground-mounted solar array 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 (7/2/2021) and as represented in the Special Use application.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

5. The application of **Martha E. Sandoval** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres on property located on the North side of CR 104, 570 ft. East of CR 15, in Osolo 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-0573-2021*.

There were 16 neighboring property owners notified of this request.

Martha Sandoval, 1622 Morton Ave., Elkhart, was present for this request. She explained they want a horse for the children to take care of and to have family time while caring for the horse. Mr. Hesser asked if this is a full size horse or a pony. Mrs. Sandoval responded the horse is 2-3 years old and is a regular sized horse. Mr. Hesser asked if any of the neighbors have animals. Mrs. Sandoval responded one neighbor has dogs. Mr. Dickerson asked about complaints from neighbors. Mrs. Sandoval responded she wasn't sure who complained, but she got a notice about having horse on her property. She continued to say she doesn't understand why someone complained, because this is an empty lot and doesn't know what the horse could have done to cause the neighbors to complain. Mr. Dickerson asked if there are stalls for the horse. She responded there is a barn. Mr. Dickerson asked when the barn was built. Mrs. Sandoval responded the barn was built this year, but they built it without a permit, though she got the permit after it was built. Mr. Campanello asked if the property was zoned A-1. Mr. Hesser responded no, this property is next to A-1, but the property is zoned R-1. There was clarification from Mr. Norman that the property is actually zoned A-1. Mr. Miller asked about manure disposal. Mrs. Sandoval responded they just leave the manure on the grass, but they cleaned it out after the complaint. Mr.

Norman clarified that she just leaves the manure on the ground. Mrs. Sandoval explained the horse wasn't there long enough to make a lot of manure, and it just stays there on the ground, though they could find out where to take it. She clarified the horse isn't at property now. Mr. Norman asked for Mrs. Sandoval to show in comparison to her height how tall the horse was. Mrs. Sandoval put her hand just below her head. The Board determined that the horse was actually a pony not a regular sized horse based on the height she showed.

Matthew Hall, 22343 CR 104, Elkhart, was present in remonstrance. He explained that the property has no running water, electricity, or fencing, and they are burning trash on the ground. He clarified he didn't call in the complaint, but the manure is on his property. He continued to say they are using 400 feet of his privacy fence as theirs, and they have chickens that run all over that look diseased. Mr. Hesser clarified there is also some barbed wire fencing. Mr. Hall responded there is a row of barbed wire. He submitted photos [Attached to file as Remonstrator Exhibit #1]. He went on to say that the barn isn't a barn, it's a shanty made out of fiberglass panels, and it's bringing the property value down. He continued to explain the horse was removed, but all the chickens were left and are all over his yard and garden. He stressed the burning of trash will eventually cause his house to catch fire. Mr. Norman asked about the tree damage in one photo. He responded they are cutting down trees off another owner's property and just leaving them on the ground. He explained he has come home and found the horse on his property several times.

Kenneth Hall, 22171 CR 104, was present in remonstrance representing his brother who is a neighboring property owner. Mr. Miller clarified on the aerial where Mr. Hall's brother lives in relation to the subject property. He explained his brother doesn't want this next to his home, as the acreage is too small, there's no running water, no real barn, and its bringing property value down.

Martha Sandoval came back on to address issues. She stated they were bringing water daily to feed and water the horse. She explained she didn't know the horse was going to the neighbor's house. Mr. Miller asked if they made a fence or was the fence there already. Mrs. Sandoval responded they did the front fence, but the back fence already had wire, so most of the fence was already there. Mr. Hesser asked if this property is a vacant lot. Mrs. Sandoval responded yes. Mr. Hesser asked where she lives. Mrs. Sandoval responded Morton Ave., which is 10 minutes away.

The public hearing was closed at this time.

Mr. Hesser stated a couple months ago the Board had a denial like this where the property owner wasn't living on site.

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

Motion: Action: Deny, Moved by Ron Norman, Seconded by Brain Dickerson 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 denied.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

6. The application of *All Secure Self Storage/Bristol Street, LLC* for an Amendment to an existing Special Use for warehousing and storage to allow for additional self-storage buildings on

property located on the East side of CR 11 (Osolo Rd.), 1,100 ft. South of CR 6, common address of 53218 CR 11 in Osolo 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-0550-2021*.

There were 29 neighboring property owners notified of this request.

Debra Hughes, Marbach, Brady, & Weaver, Inc., 3220 Southview Dr., Elkhart, was present representing the petitioner as the project's civil engineer. She stated previous petitions are under the previous owner, and All Secure Self Storage bought the property in November of 2020. She continued to explain the current owner would like to expand by adding 3 units. She explained they are well prepared to add drainage and grading to meet county standards. She stressed these units will be for individual personal storage, not an RV transportation service, but individuals can store RV's for personal usage. She continued to say that no lighting on the site will affect neighboring residences.

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** Brain Dickerson, **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 warehousing and storage to allow for additional self-storage buildings 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 6/30/2021 and as represented in the Special Use Amendment application.

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

Yes: Brain Dickerson, Tony Campanello, Roger Miller, Ron Norman, Randy Hesser.

7. The application of *Josefina Rosales* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres on property located on the East side of Independence St., 1,660 ft. North of CR 10, common address of 54176 Independence St. in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0584-2021*.

There were 32 neighboring property owners notified of this request.

Charles Barker, 52773 CR 29, Bristol, was present as a translator for the petitioner who was also present. He explained there are only 9 chickens on the property and 2 roosters to breed the chickens, as the chickens are for show and need to be bred. He stated he doesn't understand why this is a big deal because the neighborhood is a wreck with junk cars all over and people using their homes as mechanic shops. He continued to say this complaint was only made due to a rooster crowing in the morning, but it is no different than a dog howling all night or at someone walking.

Mr. Hesser stated this is less of an agricultural use and more like puppy breeding. Mr. Barker responded they breed them for shows and fairs, and these are really fancy, beautiful chickens. Mr. Hesser clarified that the chickens are not raised for eggs. Mr. Hesser asked whether it is still considered agricultural use. Mr. Auvil responded it is an agricultural animal so yes. Mr. Dickerson asked if the chickens are being sold from this location. Mr. Barker responded no, the chickens get moved to another location, because the owners don't want people near the chicken pens on the property. He stressed this is a well maintained property, the pens are cleaned daily, and this isn't like a farm where chickens run all over. Mr. Dickerson asked how long this has been going on. Mr. Barker responded the chickens have been there 2-3 months. Mr. Dickerson asked if they were engaged in breeding and selling chickens prior in another location. Mr. Barker responded no.

David Wickstrom, 53630 Ash Rd., Granger, was present with questions. He explained he doesn't want them to be allowed to have as many chickens as they want, goats, or this to become a farm. He asked if the chickens were caged. Mr. Norman responded yes. Mr. Wickstrom continued saying he doesn't have a problem with a few chickens but doesn't want it becoming a large farm. He asked if his question was answered on if this is approved will they be allowed to bring in as many animals as they want. Mr. Norman responded the Staff approval is limited to no more than 12 chickens, and no roosters. Mr. Hesser asked in light of the petition needing roosters does that change Staff recommendation. Mr. Auvil responded that the rooster is why the complaint was made, and 12 chickens and no roosters is the standard. Mr. Norman asked why Staff recommended for approval, if they couldn't have roosters. Mr. Hesser explained the petitioner needing roosters doesn't change Staff's recommendation, but the Board can change what's approved. Mr. Campanello stated there are 12 total between chickens and roosters. Mr. Norman asked if the petition should say 9 total including 2 roosters and 7 hens. Mr. Auvil clarified he doesn't know how many roosters and how many hens the petitioners have.

Mr. Barker came back up to respond to the issues. He clarified there will only be 6 females and 3 males, and the males are only brought in during breeding season. He stressed there is no intent on bringing more animals in, just the chickens. He stated the owners understand, if they wanted to expand their business, they would be better off in a bigger facility, but that's not what they want to do. Mr. Miller clarified Staff is recommending approval based on 12 chickens and no roosters. Mr. Hesser explained no roosters isn't what is being asked for in the petition though, and the Board can approve any mixture of animals. Mr. Norman stated the only time a rooster has been allowed was last year, where the Board allowed a rooster until it passed away. Mr. Hesser stated this is a different situation though as they are asking to breed chickens, and the Board would have to modify conditions as this is more of a commercial operation. Mr. Dickerson stated this isn't a residential outfit where they are keeping the chickens for eggs, this is more of a business to make money. Mr. Miller stated it's only been 2 months and already a complaint has been made. Mr. Barker stated in the petitioner's defense neighbors will always complain about a rooster crowing, and no one can stop that from happening. Mr. Miller explained the noise of the rooster crow is the reason the Board hasn't allowed roosters. Mr. Barker continued to say he lives on 13 acres, and his neighbors complain about his roosters all the time as well. However, he continued there's nothing they can do, because he lives in an A-1 zone.

The public hearing was closed at this time.

Mr. Miller stated he wouldn't be against approving the request with no roosters. Mr. Hesser stated what is suggested by Staff is based on an egg producing operation, but what is being

asked is different. He added the Board would have to change the findings to allow the roosters. He explained his concern is this isn't a subdivision but it's semi-dense. Mr. Norman clarified where the area is in Elkhart right off of Bristol Street. Mr. Dickerson stated the houses aren't that far apart. Mr. Hesser stated that's his concern the houses are too close with the rooster causing noise. Mr. Dickerson explained when animals are approved with less than 3 acres the condition is no roosters, but this isn't just a personal use, this is commercial use. He continued to say this is taking it out of the typical residential use that has been allowed. Mr. Norman stressed this is about hatching eggs not eating eggs. Mr. Hesser reiterated this is another breeding farm like a puppy mill. Mr. Norman stated that on average a chicken will lay an egg a day except in the hottest days of summer they will stop laying, but the goal being presented is to hatch the eggs, which changes from having just 9 chickens to having also having chicks. Mr. Auvil explained the numbers allowed are for adult animals, not the babies, so it depends on when a chick is considered an adult. Mr. Hesser asked what happens after chicks are hatched. Mr. Barker responded once the chicks are hatched they get moved to another facility right away as there are woods behind the house with snakes and other predators that will eat the chicks. He continued saying the chicks fit through the chicken wire fencing, which is another reason why they are checked on a daily basis. Mr. Campanello explained roosters don't bother him. Mr. Miller stated he doesn't mind roosters either, but the Board has only allowed one rooster in the past. He added that one was about to pass away, so they allowed it until its passing. Mr. Campanello stated they aren't receiving eggs from this like they have allowed in the past, and it's too dense of an area for roosters. Mr. Auvil explained the Board could put a time period on when the roosters would have to be removed. Mr. Campanello asked the petitioner about the life span of a rooster. Mr. Barker responded he doesn't really know. He noted they just end up dead for no reason, but to his knowledge they have a typical life span of any animal. Mr. Dickerson asked if any complaints or letters were sent in opposition. Mr. Auvil responded none to his knowledge. Mr. Dickerson asked the remonstrator if he is against the operation the petitioner is doing or just the number of animals that might be allowed. Mr. Wickstrom responded he would like time to find out from his tenants what their concerns were and why they complained. He continued to say he isn't opposed to someone having some chickens but not a fam. Mr. Norman stated there isn't a need to know who complained. Mr. Dickerson stated, if approval includes a rooster, he would prefer it have a time frame added as to make sure there aren't a lot of complaints, and he is concerned about the precedence that will be set. Attorney Kolbus explained that roosters have an average lifespan of 5-8 years, but they have been known to live up to 15 years. Mr. Dickerson stressed he is concerned about the precedence that would be set, if roosters are allowed. Mr. Campanello explained the petitioners should be given 6 months to remove the roosters. Mr. Miller stated he doesn't want to allow roosters, and Mr. Campanello agreed. Mr. Miller stressed this is only a 2 month old operation that has already received complaints. Mr. Campanello explained the petitioners could take the chickens to the roosters and bring the chickens back. Mr. Dickerson stressed the Staff Report is for no roosters. Mr. Hesser stated the petitioners are asking for a specific operation, which requires roosters, and it should be granted or denied with a time frame. He suggested not approving the operation without roosters.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Brain Dickerson 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 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 (7/12/2021) and as represented in the Special Use application.
2. The agricultural use is limited to a maximum of six (6) chickens and three (3) roosters, at any one time.
3. Approved for a period of six (6) months; any renewal shall be before the Elkhart County Board of Zoning Appeals.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

8. The application of *Hannah Russell* for a Special Use for a home workshop/business for a pet grooming business on property located on the North side of Concord Valley Dr., 430 ft. Northwest of CR 24, common address of 58064 Concord Valley Dr. in Concord 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-0585-2021*.

There were 23 neighboring property owners notified of this request.

Hannah Stump (Russell), 58064 Concord Valley Dr., Elkhart, was present for this request. She explained she wants to turn half of her garage into a pet grooming salon, and she has been in the grooming business for 9 years. She went on to explain that the grooming salons in the area are 2 months out, and she believes this will help the neighborhood and other grooming salons. Mr. Miller asked how many clients she will have per day. Mrs. Stump responded she would have 6 clients per day with 2 pets each on average. Mr. Campanello asked if owners of the dogs stay and wait or leave their animals. Mrs. Stump responded the owners have the option to stay or leave the animals, but many leave the dog in the morning and pick them up on their lunch hour as she closes at 4 pm to ensure no noises when her neighbors are getting home.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked Mrs. Stump if this grows, will she look to expand in a building elsewhere. Mrs. Stump responded yes, but right now this is just for herself at her home and occasionally husband will help bath the dogs. She stressed if it does get too big she will rent a retail space.

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 a home workshop/business for a pet grooming 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 (7/12/2021) and as represented in the Special Use application.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

9. The application of *Graber Homestead, LLC* for a Special Use for a home workshop/business for a bakery 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 Southeast corner of CR 56 & CR 100, common address of 30338 CR 56 in Locke 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-0579-2021*.

Mr. Auvil clarified the Developmental Variance was found not to be needed after the petition had been published so that doesn't need to be voted on. Mr. Hesser noted that the petition asked for a 2 ft. by 3 ft. sign which is bigger than allowed by right and needs to be added into their vote.

There were 13 neighboring property owners notified of this request.

Crystal Graber, 30338 CR 56, Nappanee, was present for this request as the owner of the bakery. She explained her and her sister started this business together and have a license in Marshall County. She stressed she loves to bake and wants to get her license for Elkhart County to have her kitchen next to her house. Mr. Hesser asked where she plans to put the sign. Mrs. Graber showed on the aerial where the sign would go by her driveway to the west. Mr. Hesser clarified a homework shop allows for a 2 ft. by 2 ft. sign, and she is asking for 3 ft. by 2 ft. sign. Mrs. Graber stated she could make a smaller sign if needed. Mr. Hesser asked if the bigger sign was for traffic. Mrs. Graber responded that her house doesn't get picked up on Google and people have a hard time finding her house when they come to pick up their food. Mr. Hesser asked if this is a daily bakery or by special order. Mrs. Graber clarified special order only. Mr. Norman asked hours of operation. Mrs. Graber clarified Wednesday through Friday 9am-5pm, sometimes Saturdays as needed per the special order. Mr. Miller stated he doesn't believe the sign will obstruct anything.

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 bakery 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 (7/9/2021) and as represented in the Special Use application.

Further, the motion also include that a 2 sq. ft. Developmental Variance (Ordinance allows 4 sq. ft.) to allow for the construction of a 6 sq. ft. freestanding sign to be approved with the following conditions imposed:

1. Variance 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 (7/12/2021) and as represented in the Developmental Variance application.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

10. The application of *Town of Wakarusa* for a Special Use for an outdoor recreational use (event venue), for a 17 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of an outdoor recreational center 33 ft. from the centerline of the right-of-way of N. Olive St., for a 5 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for the construction of an event venue 5 ft. from the east side property line, and for a 5 ft. Developmental Variance (Ordinance requires 15 ft.) to allow for the construction of an event venue 10 ft. from the rear property line on property located on the Northeast corner of Waterford St. (CR 40) & Olive St., common address of 116 W. Waterford St. in Olive Township, zoned B-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0582-2021*.

There were 29 neighboring property owners notified of this request.

Phil Jenkins, Jenkins Design & Consulting, 1115 Golfview Dr., Nappanee, was present representing the petitioner. He explained he was hired as an architect to design this facility with indoor and outdoor activities, public restrooms, a large assembly area, a small warming kitchen, office space, and storage space. He submitted an updated building plan [Attached to file as *Petitioner Exhibit #1*]. Mr. Miller asked if the Variances were affected on this updated building plan. Mr. Jenkins responded that the size isn't changing; it just has more detail added to the site plan of the building. Mr. Norman asked if the boundary that is being shown is a mixed use area. Mr. Auvil responded yes, it is a mixed use area as it is in the Town of Wakarusa. Mr. Norman clarified the property itself is mixed use. Mr. Auvil responded no, the property is not mixed use, just the surrounding area.

Jolinda Lengacher, president of committee for this project, 65266 CR 3, Wakarusa, was present for this petition. She stated they have been working on this for several years and have taken a lot of community input. She continued saying the community had all the say in this plan and are very excited about this being approved.

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 an outdoor recreational use (event 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 (7/12/2021) and as represented in the Special Use application.

Further, the motion also included that a 17 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of an outdoor recreational center 33 ft. from the centerline of the right-of-way of N. Olive St., for a 5 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for the construction of an event venue 5 ft. from the east side property line, and for a 5 ft. Developmental Variance (Ordinance requires 15 ft.) to allow for the construction of an event venue 10 ft. from the rear property line 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 (7/12/2021) and as represented in the Developmental Variance application.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

11. The application of *Andrew G. Martin & Susie Martin, Husband & Wife* for an Amendment to an existing Special Use for an agri-business to allow for a new cold storage building, for a Developmental Variance to allow for 5 outside employees (Ordinance allows 2), 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 1, 1,800 ft. South of CR 30, common address of 62332 CR 1 in Olive 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-0577-2021*.

There were eight neighboring property owners notified of this request.

Charlie Zecher, Kindig & Sloat, PC, 102 Heritage Parkway, Nappanee, was present representing the petitioners. He explained that Loran Sloat filed this petition and can't be here today due to a health issue. He stated Mr. Martin started on CR 7 and has continued to grow with multiple petitions over the years. He showed on the aerial where Mr. Martin's properties are all located and that they are adjoining parcels to this subject property. He explained there are 5 outside

employees, and the petitioner forgot over the years that a condition with previous approval only allowed 2 outside employees. Mr. Hesser asked the need for a cold storage building. Mr. Zercher responded this transitioned from a home workshop to an agri-business. He continued that at some point in the BZA history the Staff and Mr. Sloat realized that 80% or more of the business was dealing with trusses strictly for agricultural usage, so it switched to an agri-business as opposed to a home workshop. Mr. Hesser clarified it keeps coming back due to growth but is essentially still an agricultural business. Mr. Zercher explained the cold storage building is basically for storage of trusses and lumber and will be built big enough for a truck to pull straight through. He stressed they aren't expanding the operation; it is just to add more storage. Mr. Zercher stated Mr. Sloat and Mr. Martin understand that if this business expands any more, then this will have to be a DPUD. Mr. Hesser asked if there are any objections from the petitioner on the conditions or commitments. Mr. Zercher responded no.

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 an Amendment to an existing Special Use for an agri-business to allow for a new cold storage building 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 (7/9/2021) and as represented in the Special Use Amendment application.
2. Any further expansions will require a DPUD.

Further, the motion included that a Developmental Variance to allow for 5 outside employees (Ordinance allows 2), and for 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. 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 (7/9/2021) and as represented in the Developmental Variance application.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

12. The application of **Randall Puterbaugh & Cathy Puterbaugh** for a 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing accessory structure 0 ft. from the east

side property line on property located on the South side of Lake Shore Dr., 860 ft. West of CR 15, common address of 22642 Lake Shore Dr. in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0523-2021*.

There were four neighboring property owners notified of this request.

Randall Puterbaugh, 22642 Lakeshore Dr., Elkhart, was present for this petition. He explained he bought the house 4 years ago, and the house needed a lot of work taking 6 months before it was livable. He continued to explain the area he is asking the variance for was a fenced in area when he bought the house alongside the garage, that he believes the previous owner used for their dogs, and he was storing ladders out there. He apologized for not getting a permit, but at the time he bought the house, the owner showed him where a property line stake was already in place 20 ft. away from the fence. He added he didn't even think of getting a permit when enclosing the area. He stated it has been like this for 4 years now, but Mr. Mock came and looked at this area due to a survey being done. He explained that when Mr. Mock ran a string from one stake to another, it wasn't over the property line, but on the property line. He asked what happens at this point, because it has already been built. Mr. Dickerson clarified the only way to maintain this is to go onto the neighboring property, so if the outside needs painted or maintained, he would have to be on the neighbor's property to do so. Mr. Puterbaugh responded yes, he would have to go on their property to maintain it. Mr. Miller asked if he has spoken to the neighbor to try and resolve this issue. Mr. Puterbaugh responded he thought they got along for the past 4 years, but after the survey she didn't agree with the lean-to on the garage. He stated Mr. Mock told him that a fence could be on the property line. Mr. Norman clarified that this is a lean-to on the side of the garage. Mr. Puterbaugh went on to say the lean-to is 41 feet away from the neighbor's house, and it is 28 feet off of his house on the north end of his property. He stated he took more photos showing the shed farther away than the county photos show. Mr. Hesser asked if the Board approves this request does that prevent the neighbor from pursuing a civil remedy. Attorney Kolbus responded no. Mr. Campanello stated there was a previous petition where a corner of a garage was on a property line, but the neighbors worked out a remedy between themselves. Mr. Norman added that was 1 foot off of the property, where this is encroaching on another person's property. Mr. Hesser mentioned that is a question the other property owners will have to be asked since Mr. Puterbaugh is saying he isn't encroaching. Mr. Puterbaugh stated the lean-to could be moved further in as he doesn't store much in it but, his intent was to clean up his property when he bought it. Mr. Dean submitted a survey done by a private surveyor that the neighboring property owner had given to staff *[Attached to file as Staff Exhibit #1]*. Mr. Hesser asked if a different survey had been done. Mr. Puterbaugh responded, no, he didn't do a survey on his own. Mr. Puterbaugh stated he found the stakes in the ground and ran string from one to another which showed his drive was partly over on the neighbor's property. He added he cut that cement out. He clarified he is willing to move the lean-to, but it would be pretty tough.

Gwen Spretnjak, 22650 Lakeshore Dr., Elkhart, was present in remonstrance. She explained her property is on the west side, and she had a survey done in September. She continued saying it showed where Mr. Puterbaugh is on line and even across in one spot. She explained she owns 150 feet of road frontage and 210 feet on the lake side, and she offered to sell Mr. Puterbaugh some of her property to remedy this. However, she added he didn't want to do that. She stressed that he has continued to add to buildings and doesn't care even after survey stakes have been put

in place. She explained that there was a shed by the lake that he did move 10 feet after the survey was done, and now he has a fence around it, which goes 3 feet over onto her property. Mr. Campanello clarified she is on the west side of the subject property. She went on to say he has a swing set that is on her property as well. She added the front outbuilding was a round building, but now it is a square building, which her survey showed he is on her property line as well. Mr. Miller clarified the survey shows it's 40 inches from her property line. Mrs. Spretnjak responded they get along as neighbors, but when it comes to the property lines he doesn't listen to where the property lines are located. She stressed he is up to 25 feet over onto her property. She submitted photos showing where buildings are over the property line *[Attached to file as Remonstrator Exhibit #1]*. Mr. Hesser stated the encroachments are on both sides of the property. Mrs. Spretnjak responded that was correct. Mr. Norman asked about the swing set on the diagram. Mrs. Spretnjak showed where the stakes have been pulled up and taken out. Mr. Campanello stated he noticed her other neighbor has encroached onto her property. Mrs. Spretnjak responded that was handled, and the neighbor offered to buy her property to rectify the situation. She went on to say she has 3 and ¼ lots, and once stakes were put in place the other neighbors have caused no issues.

Pam Fahlbeck, 22618 Lakeshore Dr., Elkhart, was present in remonstrance. She stated she lives on the east side of the subject property. She explained she bought the house in 2016 and has put in work to make the house worth over \$400,000 now. She stated she didn't know where the property line was when she bought the property, so she paid for a survey to be done in order to remove trees. She continued saying when she came back from Tennessee there was a cement pad and a modular home on the subject property, and the stakes were missing when she looked. She explained the stakes were found in the woods between her property and the neighbor's property. She stated they continued to build and add siding and a metal roof on this building. She then explained she wanted to plant pine trees down by the lake and couldn't find her property lines, so she had to pay again to get a survey done just to find out that the neighbor was encroaching on her property. She stressed the surveyor had to resurvey the whole property, because the stakes were missing from the neighbor digging them out. She reiterated she has spent a lot of money to make this house nice and had to have 2 surveys done. She stated the building actually pushes a string out that is run between the survey stakes showing that he is over her property line. She went on to say the modular home that was placed on the property wasn't going to meet the setbacks, but a variance allowed the home to be 2 feet off of the property line. Mr. Norman clarified that the 5 ft. starts from the stakes that run from north to south. Mr. Hesser added the neighbor to the west stated they would be willing to work to transfer part of the property over in a sale to rectify this. Mrs. Fahlbeck responded she suggested a contract be drawn up as a lease to pay for the property being used, but the petitioner didn't want to do that.

Cathy Puterbaugh, 22642 Lakeshore Dr., Elkhart, was present for this petition. She stated the swing set sits in front of the stake on her property, and the swing set was there before the stake was put there. She added the storm blew the stake down not her. She continued to explain she did pound the stake into the ground, so her children can swing and not hit the stake. She noted she wishes the stake could be moved somewhere else.

Randall Puterbaugh came back up to respond. He stated when the offer was made for the lease, it was only about the concrete that was over a few inches, so he just cut it off. He explained the concrete is right on the string not over anymore. He stressed the lease contract wasn't brought up about the building being over.

The public hearing was closed at this time.

Mr. Campanello stated there's nothing here that can't be fixed by the owner. Mr. Hesser stated he agrees and isn't going to pick and choose which items need to be fixed. He recommend that the Board table this for a period of 2 months until the October meeting to allow the parties an opportunity to work this out. Mr. Miller stated it already doesn't sound like they are doing anything now to come to a solution, as no more negotiation has happened since the petitioner denied the first attempts. Mr. Norman agreed with Mr. Miller. Mr. Hesser stated at least one person was willing to work with the petitioner so give them time to figure it out, or the Board will vote on what will be done in October. He continued to explain the Board can't change the neighbor's legal rights in regards to their property being encroached on. He stressed lawyers say it's better to work things out than to sue, so give them time to work things out. He clarified they would only have a month and a half to get a new proposal turned in for the October meeting. Mr. Auvil clarified the filing deadline until the October meeting would be the third Monday in September. Attorney Kolbus stated when there is a tabled item coming back to the Board the petitioner has 10 days before the meeting so that would be October 14, 2021. Mr. Campanello stated the petitioner's lack of caring about property lines has caused the neighbor to pay for a surveyor to come out twice now, and he believes that the Board needs to deny this. He stressed this has already caused enough damage. Mr. Norman stated it sounds like there was an offer to sell the property to the petitioner, and Mr. Puterbaugh wouldn't do that. Mr. Campanello stated that was a very nice offer from the neighbors. Mr. Norman stated one neighbor has already sold some property to rectify issues on her west property lines. Mrs. Fahlbeck stated at one time he said he would buy it, but then changed his mind about buying her property.

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

Motion: Action: Tabled, **Moved by** Randy Hesser, that the request for a 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing accessory structure 0 ft. from the east side property line be tabled until the October 21, 2021 Board of Zoning Appeals meeting. **None secondd.** Motion dies for lack of a second.

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

Motion: Action: Deny, **Moved by** Brain Dickerson, **Seconded by** Ron Norman 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 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing accessory structure 0 ft. from the east side property line be denied.

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

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Roger Miller, Randy Hesser.

13. The Staff Item for the proposed resolution to allow for a new Virtual Meeting Policy was presented by Attorney Kolbus.

Mr. Hesser asked if virtual meetings will be available for every meeting. Attorney Kolbus clarified the resolution is to allow everyone to attend virtually, and it is within the rules that a notice, prior to publishing, must be given, if the meeting is to be fully virtual for that month. Mr. Norman clarified this policy just sets guidelines for electronic meetings. Mr. Miller stated he likes virtual meetings, because there are times when petitioners can't make it in person. He noted the virtual meetings have gone smoothly. Mr. Norman stated this sets guidelines as Board members

can only be virtual for 2 meetings in a row, and 3 members must be present in person. Mr. Hesser asked about emergency exceptions to the 3 members being present. Attorney Kolbus explained only the Governor or Board of Commissioners declaring an emergency is an exception to having 3 Board members present in person.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Ron Norman that the Board adopt the Proposed Resolution Number 2021-01BZA as presented.

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

Yes: Brain Dickerson, Tony Campanello, Roger Miller, Ron Norman, Randy Hesser.

14. The meeting was adjourned at 10:26 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary