

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15th DAY OF JULY 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 (*Norman/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of June 2021 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Norman/Campanello*) 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 **Dewayne O. Bontrager** for a Special Use for a home workshop/business for a buggy building business on property located on the East side of CR 43, 1,395 ft. South of CR 42, common address of 67242 CR 43 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-0494-2021*.

There were 16 neighboring property owners notified of this request.

Dewayne Bontrager, 67242 CR 43, Millersburg, was present as the petitioner of this request. Mr. Bontrager explained he just wanted to make sure he had a Special Use permit for his buggy shop. Mr. Hesser asked if he will need outside employees. Mr. Bontrager responded it is just him and his wife working as employees. Mr. Hesser then explained outside employees doesn't include family. Mr. Norman asked if the two hoop buildings are for the buggy shop. Mr. Bontrager explained the hoop buildings are for the farm, not for the business.

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 buggy building 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 6/9/2021 and as represented in the Special Use application.

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

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

5. The application of *Glen Bontrager (Buyer) & Darren L. Eby & Christine R. Eby, Husband & Wife (Sellers)* 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 West side of CR 131, 985 ft. South of SR 120, common address of 53133 CR 131 in York 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-0509-2021*.

There were six neighboring property owners notified of this request.

Mr. Hesser asked if a minor subdivision was needed before coming to the Board. Mr. Auvil stated it was just listed as a requirement before a permit would be issued.

No petitioner was present.

Phil Little, 53085 CR 131, Bristol, was present in remonstrance of this request. He stated he is concerned with the number and type of animals that will be on the property. He went on to say that there is a strip of 5 families on that road with Bonneyville Mill across the street, and it is a park setting. He stressed he fears this will become a barnyard. He continued to say, once horses are allowed on the property then what is to prevent the owners from bringing in pigs and other animals. Mr. Hesser explained the Board will only allow, or deny, what is being asked by the petitioner and the petitioners can't add more animals than what is approved without coming back to the Board with a new request.

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

Mr. Little asked if the property sells, what keeps the new owners from bringing in more animals. Mr. Hesser asked if he has an issue with just the 2 horses. Mr. Little responded, no he doesn't, he just doesn't want it turned into a barnyard. Attorney Kolbus explained that if the current owner were to sell the property, the new owners would have to follow the Board's approval from today, and come in with a new request for more animals. Mr. Little responded he understands but is still concerned about manure smells etc. if more animals get approved. Mr. Hesser stated people can ask for more animals but that doesn't mean the Board will approve them. Mr. Miller explained approval of 2 horses does allow for a foal until it is an adult then one horse would have to go. Mr. Little reiterated he doesn't mind 2 horses only.

The public hearing was closed at this time.

Mr. Hesser asked the Board if anyone had concerns with the petitioners not being present. Mr. Miller responded he doesn't have a concern because it is just for 2 horses.

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 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 6/14/2021 and as represented in the Special Use application.
2. The agricultural use is limited to a maximum of two (2) adult horses at any one time.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Tony Campanello, Roger Miller, Randy Hesser.

Absent: Ron Norman.

*****It should be noted that Mr. Norman rejoined the Board at this time*****

6. The application of *Tri-County Land Trustee Corporation (Land Contract Holder) Homer Miller Jr. & Delores Miller, Husband & Wife (Land Contract Purchasers)* for a Special Use for a home workshop/business for a jog cart business on property located on the Southeast corner of CR 34 & Lakeside Dr., 875 ft. West of E. County Line Rd., common address of 10190 CR 34 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0497-2021*.

There were 10 neighboring property owners notified of this request.

Homer Miller, 10190 CR 34, Goshen, was present as the petitioner. Mr. Homer Miller explained he is building jog carts for training purposes for horses. Mr. Roger Miller asked how much production and quantity he builds. Mr. Homer Miller responded he builds 4 a week on average. Mr. Campanello mentioned it appears the petitioner has enough turn around area for semis. Mr. Hesser asked how often semi deliveries happen. Mr. Homer Miller responded occasionally, only once every 2 months. Mr. Hesser clarified there is room for a semi to turn around on the subject property. Mr. Homer Miller explained there isn't room for a semi to turn around on his property but they park on the road for only a few minutes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated neighbors are used to every couple of months a trailer parking on the road while being unloaded at this point with no complaints being made. Mr. Norman stated that CR 34 isn't a very busy road. Mr. Roger Miller stated normally the Board requires semi turn around area on property, not parking on the roadway. Mr. Norman asked about access from Lakeside Dr. to CR 34, as a possible semi turn around space. Mr. Roger Miller stated he didn't like the look of that option and doesn't like having the semi park on the road. Mr. Norman questioned the petitioner on what time of day the semi would deliver. Mr. Homer Miller came back up, and responded that he schedules the deliveries between 12pm and 3pm.

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 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 jog cart 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 6/9/2021 and as represented in the Special Use application.

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

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

7. The application of *Grace Community Church of Goshen Indiana Inc.* for an Amendment to an existing Special Use for a place of worship to allow for an electronic message center on property located on the Southwest corner of CR 36 & CR 21, common address of 20076 CR 36 in Elkhart 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-0510-2021*.

There were 21 neighboring property owners notified of this request.

Stephanie Lehman, Sign Tech Signs, 1508 Basher Rd., Goshen, was present representing the petitioner. Mrs. Lehman explained the request is to update the current sign with a sign that has a message center in same location. She went on to say a lot of churches are updating to this style of sign. She then explained that the illumination at night is regulated by the state, signs are manufactured to be in compliance with state code and will automatically dim at night. Mr. Hesser clarified that is a requirement of the Zoning Ordinance as well.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he doesn't like the newer signs, but they are in compliance with all the county ordinances. Mr. Norman stated the new sign is not as wide as the current sign.

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 a place of worship to allow for an electronic message center 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 6/14/2021 and as represented in the Special Use application.

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

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

8. The application of *Lena H. Ramer & Naomi H. Ramer* for a Special Use for a home workshop/business for a meat processing business on property located on the Southwest corner of CR 38 & CR 15, common address of 23252 CR 38 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-0508-2021*.

There were 11 neighboring property owners notified of this request.

Charlie Zercher, Kindig and Slot, 102 Heritage Parkway, Nappanee, was present representing the petitioners. Mr. Zercher explained Mr. Martin has operated a custom meat processing business since 1998 with no complaints and would like to add this new shop for more business. He went on to say the owners of animals bring the animals to the property, and he processes them. Mr. Hesser asked if there are freezers in the buildings. Mr. Zercher responded there are freezers in the current buildings though the intent is for additional freezer space in the new shop. Mr. Hesser asked for clarification on the site plan, what is E and what is C. Mr. Zercher clarified that E is the new building and C is the existing building. He continued to explain the new shop is for more freezer space and hours of operation are from 7am-5pm Monday through Friday with only 1 to 2 customers a day for pick up. Mr. Miller clarified there won't be additional outside employees. Mr. Zercher responded no, it is just the owner and his children will help from time to 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** 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 meat processing 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 6/14/2021 and as represented in the Special Use application.

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

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

9. The application of *Mennonite Mutual Land Trustee Corporation (Land Contract Holder) & Tristan Ramer & Lynette Ramer, Husband & Wife (Land Contract Purchasers)* for a Special Use for a home workshop/business for an automotive repair 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 5 outside employees (Ordinance allows 2) on property

located on the North side of CR 50, 1,750 ft. East of CR 3, common address of 28665 CR 50 in Locke Township, zoned A-1, R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0504-2021*.

There were 12 neighboring property owners notified of this request.

Mr. Hesser asked Staff if the petitioners didn't pursue this after approval in 2018. Mr. Auvil responded that was correct.

Tristan Ramer, 28665 CR 50, Nappanee, was present for this request. Mr. Ramer stated the business has been operating on the neighboring property, that is zoned B-3, for 7 years. He explained that the landlord of that building would like to have the building vacated, so he would like to move 400 ft. west onto the subject property. Mr. Hesser asked why he never acted on the 2018 approval. Mr. Ramer responded it was put on hold due to 2020 issues. He added he has put in additional trees, and the building size that is being proposed now is slightly different from previous approval. Mr. Hesser clarified he doesn't own the current building. Mr. Ramer responded that is correct, he is just renting the building. He went on to say the proposed building will go all the way to the back of property, and he will plant trees all along the property lines. He explained they aren't increasing traffic, and he isn't a high volume shop. Mr. Hesser noted the aerial doesn't look like the site plan. Mr. Campanello showed Mr. Hesser on the site plan and aerial where buildings sit versus the septic reserve. Mr. Hesser clarified a new building will be built on the back side of the property. Mr. Ramer explained the building will run east and west on the back northeast corner of the subject property, and the driveway be to the west. Mr. Campanello asked if Mr. Ramer will build the proposed building or the land owner. Mr. Ramer clarified he is the land owner. Mr. Norman pointed out on the site plan the driveway and parking. Mr. Norman stated the ground will permeate the water, since it is gravel. Mr. Ramer clarified the driveway and parking will be crushed concrete. Mr. Hesser asked why he didn't pursue the approved Developmental Variance in 2018. Mr. Ramer responded it was tabled on his end. Mr. Hesser clarified the differences from 2018's approval to today's proposal are increasing from 4 to 5 employees and adding diesel work. Mr. Ramer responded that is correct, and the new building is 40ft. shorter than the previously proposed building. Mr. Ramer explained he submitted signed signatures from all neighboring property owners in 2018. He explained he didn't realize there was a time frame on the approval. Mr. Hesser clarified for the Developmental Variance there is a time frame, but the use doesn't expire unless put in as a condition. Mr. Ramer stated in 2018 there were 4 outside employees with 1 part-time who has now become a full time employee. Mr. Ramer questioned notations of being surrounded by residential. Mr. Hesser clarified the zoning is A-1 so it is considered residential.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked Staff if they wanted this property to be re-zoned as a DPUD instead of a Special Use. Mr. Auvil responded no, they were looking at the larger neighborhood at the 50,000 ft. level, and he is not sure if re-zoning this would be advantageous. He continued to say that just like a DPUD a Special Use limits the site plan. Mr. Campanello asked if Staff recommended denial in 2018 as well. Mrs. Gilbert clarified it was recommended by Staff for denial in 2018. Mr. Norman asked if there were remonstrators in 2018. Mrs. Gilbert stated there weren't any remonstrators. She then stated the Board voted 4-1 for approval in 2018. Mr. Miller explained

he doesn't like this as it is a business in the middle of what should be residential, and will continue to grow as residential. Mr. Hesser stated no one is here to object, it was approved before, and the changes are minor compared to what was approved in 2018.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Special Use for a home workshop/business for an automotive repair shop be approved based on the Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse effect on the neighboring property.
3. Approval will substantially serve the public with providing automotive repair services.

The following condition was 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 6/14/2021 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 for a Developmental Variance to allow for 5 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 (dated 6/14/2021) and as represented in the Developmental Variance application.

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

Yes: Tony Campanello, Ron Norman, Randy Hesser.

No: Roger Miller.

10. The Staff item for *Michael D. Getz (Buyer), Wayne Ross (Deceased), & Jane Alice Sawyer (Sellers)* to set in place conditions and commitments was presented by Mr. Auvil.

Mr. Auvil explained that Staff received a letter from the attorney of Mr. and Mrs. Getz asking the petition be tabled. He mentioned that the Wakarusa Town manager and attorney are present. Mr. Hesser asked if this was in operation already, because they shouldn't be operating without approval. Mr. Auvil responded to his knowledge they aren't in operation. Mr. Hesser explained approval of conditions and commitments was based on the petitioner working with Staff and the Town.

Holly Landis, 100 W. Waterford St., Wakarusa, was present representing the Town of Wakarusa. Mrs. Landis explained from the town's perspective the petitioners haven't done what the town has asked them to do when they initially approached them with this proposal. She continued to say that the town held a meeting in July, and no one came to represent the petitioners. She also explained that neighbors have come forward with concerns about what the plan for the property is as it hasn't been explained well by the Getz's. She stressed that was one of the conditions the town asked of the petitioner's to explain to neighbors what their plan for the property actually was.

Charlie Zercher, Kindig and Sloat, 102 Heritage Parkway, Nappanee, was present as Wakarusa Town attorney. Mr. Zercher stated there was a conversation at the town work session in on June 30th, but neither the Getz's nor their attorney was present. He explained they weren't required to be, but it was a substantial discussion about the conditions the town was proposing, in addition to the conditions Staff had proposed. He continued to say he is not aware of operations having started, but the Town is concerned about how this will get used. The council request the neighbors get answers to their concerns, and the petitioners haven't done that. He clarified the Town has no objections to this being tabled, but they also have submitted their conditions. Mr. Hesser asked if there has been communication between the Town and Staff. Mr. Auvil responded just the memo and email.

Mr. Godlewski asked if there was going to be a time limit on the motion to table this request.

Mr. Hesser responded this request isn't approved until the petitioners come back and conditions/commitments are put in place. He continued to say no operations should be happening until this is approved. Mr. Norman stated Mr. Getz has been in the building cleaning up but no operations have begun. Mrs. Landis explained Mr. Getz paid the connection and water fees as though they were already set to move forward to make connections this week. Mr. Hesser asked Staff their thoughts on deadlines for having this on the August meeting, he feels as though the Staff and Town will need time to get with the petitioners to make conditions. Mr. Auvil responded Mrs. Getz provided a draft site plan showing parking on a non-improved surface which isn't allowed in the Zoning Ordinance. He continued to explain the concern is half of the building is in a flood plain and the other half is in a flood fridge and nothing can get done without DNR approval. He stressed the petitioners can't bring in fill or do excavation. He then stated that the Board, nor Staff, can approve parking in the flood plain. Mr. Campanello asked if it was established that the property is in a flood plain. Mr. Auvil responded the petitioners could go through a DNR process to see if they are in a flood plain or not offically. Mr. Miller stated he's driven through lots of water on those streets. Mr. Auvil stated no parking on grass is allowed per the Town Ordinance, which again the Board can not approve. Mr. Hesser stated the motion should be to continue indeffinatly until Staff puts this back on the agenda to give time to get everyone on the same page. Mr. Auvil stated the conditions they want will be opposed to the petitioner's conditions no matter how much time is given. Mr. Godlewski asked what happens with this debate on the conditions as a Staff Item, because there is obvious contention on these conditions. Attorney Koblus explained that there will be no public hearing needed as it a staff item and to let the Town, Staff, and petitioners each have turn to speak therefore the Board makes a final disission on conditions. Mr. Auvil added that other requests dealing with the days and hours of operation etc are amiable to Staff. He went on to say the conflict is that there is no parking on grass per ordinances from Staff and DNR. Mr.

Campanello asked if he was correct in thinking this operation wasn't weekly just a few times a year. Mr. Auvil responded it was weekly. Attorney Kolbus explained that the Board will make the final disission after hearing everyone's options. Mr. Campanello asked if the Board approves this, does DNR still have the final say on everything. Mr. Auvil responded only on parking, filling, and excavation. Mr. Norman clarified about the auction being the first and third Fridays of the month. Mr. Auvil clarified Staff only has issue with the parking in the flood plain and improvements to the building.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for approval of conditions and commitments for a Special Use for an auction house be tabled indefinitely at the request of the petitioner be approved.

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

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

11. Attorney Kolbus asked the Board about virtual meetings once the State of Emergency is lifted and their decision on whether or not to continue allowing virtual meeting attendance. Not all of the Board members saw that memo in their packets, therefore it was decided the Board needed to decide whether to allow or deny public comments on virtual meetings at the next meeting in August. Mr. Godlewski stated he suggest to approve allowing virtual meetings as the Plan Commission and Commissioners meetings voted to approve. Mr. Miller stated last Plan Commission meeting there was a sick surveyor who was able to attend while staying home. Mr. Godlewski explained that virtural meetings could be recinded later on and everyone would then have to be in person.

12. Mr. Godlewski asked the Board their thoughts about moving the meetings to 9:00 a.m. due to Staff having to come to another building. Mr. Campanello responded he likes 8:30 a.m. due to when there is a heavy agenda, it can sometimes go unil 1:00 p.m. Mr. Hesser, Mr. Miller, and Mr. Norman all agreed they didn't care either way, if it is at 8:30 or 9:00 in the morning.

13. The meeting was adjourned at 9:32A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary