

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF JUNE 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; Danny Dean, Planner; Laura Gilbert, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. A motion was made and seconded (*Dickerson/Norman*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of May 2021 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/Dickerson*) 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 Roger Miller joined the Board at this time****

4. The application of *Cristina Giles & Evan Giles, Wife & Husband* for renewal of a Special Use for a home workshop/business for a carpentry/home improvement business on property located on the Northwest side of Glenmoor St., 370 ft. Northeast of Dover Ct., Northwest of CR 1, common address of 52933 Glenmoor St. in Cleveland Township, zoned A-1, came on to be heard.

Mr. Dean presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0339-2021*.

There were 38 neighboring property owners notified of this request.

Evan Giles, 52933 Glenmoor St., Elkhart, the property owner, was present requesting permission to approve the request he was granted last year. He stressed he is the only employee, and this property is a place for him to store his equipment. He noted his main focus is landscaping, and he occasionally cuts down trees. He then submitted 5 letters of support from the neighbors [Attached to File as Petitioner Exhibit #1]. Mr. Campanello clarified the questionnaire says home workshop for carpentry and home improvement business, though Mr. Giles stated he is a landscaper. Mr. Giles responded he is a landscaper though he can do a little bit of everything. Mr. Campanello asked why this is considered a mill, and Mr. Giles responded he owns a saw mill. He went on to say it is a portable trailer. He continued to say one of the neighbors took issue with it last year, and he is trying to follow all of the rules. Mr. Hesser clarified he stores all items inside. Mr. Campanello asked how many times he gets his mill out. Mr. Giles responded it has not left the premises since last year, and he has only used it half a dozen times at his residence in the past year.

There were no remonstrators present.

Mr. Hesser asked Staff if there had been any complaints. Mr. Dean responded he wasn't aware of any complaints. Mr. Campanello asked the reason for the recommendation of denial. Mr.

Dean responded land use conflict and to protect the residential area. Mr. Norman noted the property is well maintained, and the submitted letters corroborate that. Mr. Giles stressed everything in the Zoning Ordinance states this is allowed with a Special Use. Mr. Hesser noted the representation is part of the record.

The public hearing was closed at this time.

Mr. Hesser asked what the commitments and conditions were last time this was brought before the Board. Mrs. Gilbert read to the Board the previous commitments and conditions. Mr. Norman asked if there was only one complaint filed, and Mr. Dean responded he believes so. Mr. Hesser noted the type of operation presented and density of the neighborhood, causes the immediate reaction to say no, though the petitioner has explained it is a very limited operation that happens to fall within this definition. He continued saying he is okay with eliminating the time limit. There was a discussion about a time period to be added to this petition.

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 renewal of a Special Use for a home workshop/business for a carpentry/home improvement business 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. The Special Use will substantially serve the public convenience and welfare.

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 commitments were imposed:

1. The request is approved in accordance with the site plan submitted (04/26/2021) and as represented in the Special Use Amendment application.
2. All operations related to the home workshop/business must take place within the confines of the accessory structure or off-site.
3. No outside storage related to the home workshop/business is permitted.
4. Approved for a period of three (3) year, any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

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

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

5. The application of *Monroe Ramer & Valeta M. Ramer, & Their Successors, as Trustees of the Monroe Ramer & Valeta M. Ramer Trust Agreement* for a Special Use for a campground (1 unit) on property located on the West side of CR 11, 1,200 ft. North of CR 42, in Harrison Township, zoned A-1, came on to be heard.

Mr. Dean presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0410-2021*.

There were 16 neighboring property owners notified of this request.

Steven Ramer, 455 E. Woodview Dr., Nappanee, was present for this request. He stated the property is in a trust, which he is 1/3 owner, and he has signed approval from his siblings, who are the other beneficiaries. Mr. Hesser clarified the cabin will be placed in the woods at the north end of the property. Mr. Ramer noted this is the extension of a project he started with his father. He stated they built a small pond, and this would be a retreat for the family. He continued to say the primary use is day time usage, but they will make provisions for overnight use. He explained they will install solar panels with a backup generator, and there will be no well. Mr. Hesser clarified that there wasn't going to be a well.

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** 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 a campground (1 unit) be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 5/17/2021 and as represented in the Special Use application.

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

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

6. The application of *Turkey Creek Real Estate Holding Company LLC* for a Special Use for a retail greenhouse and roadside stand on property located on the West side of CR 8, 745 ft. North of CR 12, common address of 55039 CR 8 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Dean presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0402-2021*.

There were 11 neighboring property owners notified of this request.

Matt Gorsuch, 55039 CR 8, Middlebury, was present as the owner of Turkey Creek Real Estate Holding Company. He explained they grow trees, shrubs, perennials, and have a greenhouse with annuals and hanging baskets for retail sales. He added they also sell mums and pumpkins in the fall. Mr. Hesser asked how long the business has been on the property, and Mr. Gorsuch responded four years doing the greenhouse. He went on to say he has a passion for growing plants, and they purchased the land next to them that was previously owned by his father-in-law.

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 retail greenhouse and roadside stand be approved with 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 5/11/2021 and as represented in the Special Use application.

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

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

7. The application of **John A. Freel & Rose M. Freel, Husband & Wife** for a Special Use for a ground-mounted solar array on property located on the West side of Homer Ave., 3,595 ft. South of Hively Ave. (CR 18), common address of 58211 Homer Ave. in Concord Township, zoned R-1, came on to be heard.

Mr. Dean presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0405-2021*.

There were five neighboring property owners notified of this request.

Rebecca Michelin, Solar Energy Systems, 8015 W 1350 N, Nappanee was present for the petitioners. She explained they would like to install a ground-mounted solar array on the south end of the property. She noted it will not be visible from the road, and they will meet the county's required standards. Mr. Hesser asked if the 50 ft. setback was from the centerline or property line. Ms. Michelin responded its 50 ft. from the property line. Mr. Hesser asked if there is a neighbor to the south, and Ms. Michelin responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 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 5/11/2021 and as represented in the Special Use application.

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

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

8. The application of *Monroe R. Martin & Eva W. Martin, Husband & Wife* for a Special Use for a home workshop/business for a welding/repair shop on property located on the Northwest corner of CR 11 and CR 138, common address of 65417 CR 11 in Harrison Township, zoned A-1, came on to be heard.

Mr. Dean presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0384-2021*.

There were 11 neighboring property owners notified of this request.

Monroe Martin, 65417 CR 11, Goshen, was present for this request as the property owner. He stated he would like to have a small repair shop for agricultural use. Mr. Hesser asked if he just had one employee other than himself. Mr. Martin responded he does not have any employees currently, but he may have one in the future. Mr. Campanello asked if he anticipates growing. Mr. Martin responded it will not be feasible to grow in the building he's currently using.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if Mr. Martin understood the request from Staff for a revised site plan. Mr. Martin responded he wasn't quite sure. Mr. Hesser asked him to come back up. Mr. Hesser explained the site plan needs to be more to scale showing the specific setbacks from the property lines, the size of the properties, the driveway, and the size of the buildings/their locations from the road. Mr. Campanello suggested it may be easier to have it done on a survey or plat. Mr. Hesser asked about semi deliveries. Mr. Martin responded he will have a few, but his driveway is large enough for them to turn around on the property. Mr. Campanello pointed out the circle driveway on the aerial. Mr. Campanello explained the Board doesn't want semis backing in from the road or backing out onto the road. Mr. Miller asked if the barn is where the driveway is located. Mr. Martin responded yes. Mr. Dean stated Staff would like to add, in addition to the items already discussed for the revised site plan, the usages for each building also needs to be included. Mr. Martin asked where he would need to submit the revised site plan. Mr. Dean responded at the office where he submitted the application for the Special Use.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that 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 welding/repair shop be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A revised site plan is required showing the entire property and all existing and proposed structures and their sizes, setbacks, and uses.

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 = 5).

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

9. The application of **Michael D. Getz (Buyer), Wayne Ross (Deceased), & Jane Alice Sawyer (Sellers)** for a Use Variance for an auction house on property located on the East side of Washington St., 450 ft. of CR 40 (Waterford St.), common address of 200 N. Washington St. in Olive Township, zoned R-2, came on to be heard.

Mr. Dean presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0384-2021*.

There were 11 neighboring property owners notified of this request.

Bill Davis, Davis & Roose, 116 E. Clinton St., Wakarusa, was present representing the petitioner. He asked Mr. Getz to come forward and speak before he gave his presentation.

Michael Getz, 65401 Cedar Rd. Wakarusa, was present as the petitioner. He explained they had an auction house for 9 years on State Road 19, but they had to move due to all the buildings being sold. He went on to say the property has been vacant since the previous owner passed away. He continued saying the buildings are cement block buildings with just electricity run. He noted it is a nice quiet area directly across the road from Millers Merry Manor. He stated they plan on cleaning up the property and have sold items for several years, along with a hay, straw, and wood sale. Mr. Hesser asked about parking, and Mr. Getz responded there is no parking on the property currently. He explained they plan to put a stone drive down that would allow for 60 cars to be parked. Mr. Hesser asked where the 60 cars will fit. Mr. Getz responded the cars would be parked on the yard. He stated the north building will be for storage, and the south building will be for an auction house. Mr. Campanello noted they plan to park along the ditch. Mr. Getz explained the ditch takes care of the water in the area. He went on to say Wayne Sawyer stored millions of dollars of cars and carousels in the buildings, and he wouldn't have been able to do that if they flooded. He noted everything will be stored inside the building. He mentioned Mr. Sawyer had rugs under the cars for oil and when he pulled the rugs back there was no signs of dirt or water. Mr. Campanello believes retail would be the best use for the property. Mr. Getz went on to say almost every week they clean out real-estate properties for people, he has been auctioneering for 43 years, and it is a family oriented business. He continued to talk about the parking, explaining they will install a stone driveway off the street and another exit off of the property. He added there is no water or sewer at the property. Mr. Hesser clarified he is committing to install water, sewer, and the drive. Mr. Getz responded yes, and he added the town was worried about the school buses. He explained people will come to the property at 5p.m. and the auctions will finish at 8:30p.m. with 3 rings on the 1st and 3rd Fridays of the month. He doesn't believe there is an issue with traffic at that time of day for school buses or anyone. Mr. Hesser confirmed it is just on Fridays that they would hold the auctions. Mr. Getz noted the previous owner hosted the Boy Scouts and reunions in the building. He stated he does not believe he is hurting the community. He noted his family was born in Wakarusa. Mr. Hesser noted the questionnaire omits a lot of the details, and they have hours of operations listed as noon to 8:30 p.m. Mr. Getz responded they bring items to the property Mondays and Tuesdays, and they accept items from 5p.m. to 7p.m.

Bill Davis came on and submitted a packet to the board *[Attached to file as Petitioner Exhibit #1]*. He explained on page 1 is the proposal that is being brought forward, and he stressed auctions are not injurious to properties. He went on to say watershed comes into the ditch at the property, and whatever is done on his land will not be injurious to the surrounding properties. He continued saying he included the title work in the submitted documents including the subdivision to the north that was purchased by the school. He went on to address on the next page, the county assessment

showing the land has been assessed and taxed for commercial purposes. He explained Jeff Sawyer is the previous owner's son, and that the southern building was constructed in 1968 by Walter Blosser, which went before Planning and Zoning in Wakarusa. He explained the north building was constructed in 1972, and Wayne Sawyer applied for a variance to building within 45 ft. of the ditch in 1980. He stated this is now a legal nonconforming structures, and the previous owner had shows a few times a year with several people in attendance. He continued onto page 13 showing the flood map with the floodway/flood fringe, which he explained the land is 50% is in the floodway with the rest in the flood fringe. He pointed out on the next page the watershed, and the extent of the watershed. He stated he looked into the statutes about building in the floodway, and in the State of Indiana, no residential structures are allowed in the floodway, but existing buildings can be repaired. He believes most of this land is unavailable for the standard R-2 uses, and that the land usage being proposed is peculiar. He went on to say, attached on page 19 is the Comprehensive Plan prepared by the town in 1980 which states the Elkhart County Zoning Ordinance adopted the zoning map. He noted he could not locate what the zoning map included at that time. He referenced page 22, which is a fold out, and he pointed out this area was to be used for public land including churches, schools, fire stations, and so on. He included the Master Plan update that notes between the times of the plans there was concern about the loss of commercial activity in Wakarusa. He noted that the nursing home is considered commercial, but there is residential use on the west side across the street and on the east side across the ditch. He continued saying the parcel joins public purpose land from the north and the south, being the church and school usages. He also attached a copy of the 2006 Comprehensive Plan, and asked if the material will be put on record. Attorney Kolbus explained that all material will be on record as an exhibit. Mr. Davis stated that this operation will be consistent with the proposed land use plan, and they do not plan to increase flooding. He noted they have spoken to the neighbors and submitted a petition signed by some of neighbors in favor of the request. He explained this will not affect the neighboring property owners, because to the property is adjacent to school grounds on the north and a church to the south. He continued saying the conditions peculiar to the property include the floodplain, and denial would cause unnecessary hardship. He is unaware of other uses that could happen on the property as building would not necessarily be allowed. He explained the proposed use will maintain a sense of community and rural character. He went on to say they wanted a surveyor to provide a parking plan, but they could not find one to get that done in time. He noted they have spoken about the hours they would like to conduct activities. He request approval of the Use Variance, and they will work out conditions with Staff. Mr. Campanello asked if the Town of Wakarusa is behind this request.

Mr. Getz came back on to respond and stated the town was only concerned about traffic flow and suggested installing another gate for parking. Mr. Campanello again asked if the town of Wakarusa is willing to work with them on this property. Mr. Getz responded they are working to obtain city water and sewer. Mr. Hesser stated saying the town was only concerned with traffic flow is not an accurate statement as they presented other concerns.

Laura Gilbert, 201 N. Olive Street, Wakarusa, across the ditch from the subject property, was present in remonstrance. She stated for the record she is the Administrative Manager for Planning and Development not a planner, so she didn't write the Staff report or help in their decision. She explained she is filling in for the recording secretary as that person is out sick, but the final minutes will be done by the secretary. She stated her husband is on the town council and

was out of town for work purposes, but he wrote a letter which she read *[Attached to file as Remonstrator Exhibit #1]*. She explained that the church was not in favor of this petition, and they were not going to give permission to use their parking lot.

Mrs. Getz, 65401 Cedar Road, Wakarusa, was present for this petition. Mrs. Getz stated they did speak to neighbors who were home. She explained there were certain neighbors that she went to their homes three times. She continued that some people finally answered the door and their responses were in favor of this request. She explained they did receive an estimate for water and sewage from the town. She noted the church mentioned their concern that people might accidentally park in their parking lot on nights of auctions, and their biggest concern was that the parking lot be cleaned up. She went on to say they have let the town know they will put in sewage and water including restrooms. Mr. Dickerson asked if their plan was to put restrooms in, and Mrs. Getz responded yes.

Mr. Getz came back on to respond to the noise concern that was presented. He explained that everything will be inside and they will install ceilings with insulation. He added they will spray the walls with paint. He continued to say that nothing will be sold outside of the building. Mr. Hesser asked if the doors will be opened during auctions. Mr. Getz responded there will be doors on the north end but when they put the heating and air conditioning in the doors will only be opened when people go in and out. He then pointed out that between the remonstrator's house and their building there are trees. He stated the church to the south has 2 acres of black top parking and he wants to keep everything on #5 stone. Mr. Hesser clarified the plan is to have water and sewer for indoor restrooms, and Mr. Getz responded that was correct.

The public hearing was closed at this time.

Mr. Hesser stated based on the representations made the Board has a better idea of what will be done on the property. He went on to say he does not believe the proposal adds to the drainage issue. Mr. Miller stated the only surface being added is #5 stone that is natural for permeation. Mr. Hesser explained the biggest obstacles for him is the peculiarity of the property and the unnecessary hardship, but based on history he is satisfied with the hardship. He went on to say he is concerned with parking, because it is not laid out well. He continued to say he believes there need to be several conditions and commitments, and due to Staff recommending denial there aren't any to go off of at the moment. Mr. Hesser asked if the Board has ever passed a petition and then delayed conditions and commitments. Attorney Kolbus responded that the Board can grant the petition, and then table until the following month's meeting to add specific conditions and commitments, this has been done before. Mr. Campanello asked if the Board puts specific conditions and commitments to the land, would this still have to be approved through the Town of Wakarusa. Attorney Kolbus responded no, the town does not need to approve this request, they just approve re-zonings. Mr. Dickerson clarified the town can, however, address the issue of parking on the grass. Attorney Kolbus responded yes. Mr. Hesser stated on the revised site plan will likely require variances. Mr. Dickerson asked if the Board can put a time period to review the request in a year. Mr. Campanello responded he didn't believe that was necessary, because this will either work or it won't work. Mr. Dickerson noted his concern is the noise for the neighbors. Mr. Campanello noted a fire station would cause noise, and this would not be every day. Mr. Campanello stated this use has been in Wakarusa for a long time. It was discussed that the auction house was being proposed for only 2 days a month as to other uses that could cause potentially daily noise. Mr. Godleski pointed out that parking slots need to be shown on the site plan, because

there will be a minimum number of parking spaces for the building use. Mr. Dickerson asked Mr. Godleski the requirements for a site plan of this nature. Mr. Godleski responded they only require a certain degree of information on the site plan, but the town may require more information. Mr. Hesser stated they have approved RVs to be parked on grass for storage in the past. Mr. Godleski reiterated that the site plan still needs to show the number of parking slots.

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 Use Variance for an auction house be approved (subject to conditions and commitments to be finalized at the July 15, 2021 Board of Zoning Appeals meeting) 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. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a conditions that it is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the subject property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

Vote: Motion passed (**summary:** Yes = 4, No = 1, Abstain = 0).

Yes: Brain Dickerson, Tony Campanello, Ron Norman, Randy Hesser

No: Roger Miller.

10. Mr. Godlewski came on to say Plan Commission is considering extending virtual meetings. The thought is to continue them through the end of the year. Attorney Kolbus noted the state laws allow virtual meetings as long as the state of emergency is in place. Plan Commission will decide next month, if they want to continue holding meetings virtually. Attorney Kolbus will write up a proposed resolution to set the policy.

11. The meeting was adjourned at 9:56 a.m.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary