

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21th DAY OF APRIL 2022 AT 9:00 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; Laura Gilbert, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Deb Cramer, Steve Warner, Randy Hesser, Ron Norman, Roger Miller.

Absent: David Miller.

2. A motion was made and seconded (*Miller/Cramer*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of March 2022 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Warner/Cramer*) 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 ***Allen Bontrager & Rosanna Bontrager, Husband & Wife*** for a Special Use for a home workshop/business for a custom poultry processing business on property located on the North side of CR 10, 1,840 ft. West of CR 43, common address of 10819 CR 10 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-0150-2022*.

There were 19 neighboring property owners notified of this request.

Paul Bontrager, 11855 W 250 N, Middlebury, was present representing the petitioner. Mr. Miller asked if they are already processing poultry at the subject property, and Mr. Bontrager responded yes. Mr. Miller asked the size of the building was and how many employees are going to be working in the facility. Mr. Bontrager responded that he wasn't sure on the size of the building, though he thinks it is 40 ft. by 80 ft. Mr. Hesser stated the size of the building is on the site plan. He then asked if this was an existing building. Mr. Bontrager responded that it is a new building that was just put up. Mr. Hesser clarified there is no house on the property. Mr. Bontrager stated he doesn't know when a house will be put on the property, and no permit for a house has been applied for at this time. Mr. Hesser asked if there is a septic system on the subject property. Mr. Bontrager responded there is a septic system on the property, because there is a toilet and water for processing. He continued saying that the State inspected the facility, and they were approved with IDEM regulations. Mr. Miller asked if the waste would be broadcast on the fields or go through the septic. Mr. Bontrager responded the waste will be broadcasted on the field. Mr. Hesser stated on the questionnaire it was put that a total of 9 outside employees were needed. He asked if this is a correct number of employees, and how many are employed now. Mr. Bontrager responded that is probably how many that are needed, though he is unclear as how many are working now. Mr. Miller asked if they only ran one day a week when Mr. Paul Bontrager ran his

processing facility. Mr. Bontrager responded that he used to run 3 days a week. Mr. Miller asked where the poultry comes from. Mr. Bontrager responded some of the poultry comes from their customers, or they get retail chickens brought in from outside sources. Mr. Miller asked how long he was in operation before Mr. Alan Bontrager took over. Mr. Bontrager responded he started operations in 2005.

Jason Auvil read two emails that were sent to Staff [*Placed in file as Staff Exhibits #1 & #2*]. The first is from Ryan Schrock, it is in support of the request. He has been a client of Mr. Paul Bontrager, and the services are essential to their farm's operation. He continued to say the place is kept clean and small operations are vital for family farms for product to be put into the community market. The second letter was from Glen Hochstetler in support of the petition. He explained that small operations are vital for family farms.

Jeremy Tallman, 11306 Echo Valley, Middlebury, was present in remonstrance. He explained the purpose of the Zoning Ordinance is to protect the rights of property owners, freedoms to live in an attractive community, and to be free from the encroachment of potential, incompatible uses. He continued to say that a slaughter house is only allowed in the M-2 zone, which is for heavy manufacturing and he believes a Use Variance is required. He stressed a Use Variance is an exception to the regulations, rather than a right. He went on to explain section 3.7-3 of the Zoning Ordinance states that any negative finding of the criteria must result in a denial of the Use Variance. Mr. Hesser clarified this request isn't for a zone change. Mr. Tallman stated that on the application there are specific items related to what is acceptable for a home workshop, and none of the items of this request are within the bounds of a home workshop. He stressed that in an A-1 zone it is allowed as an accessory use to slaughter, process, and package animals that are raised on site, and Mr. Bontrager informed the Board that they aren't going to be doing that with this request. He went on to say that uses not included in an A-1 zone are slaughtering, processing, and packaging of animals, and that is what is being asked for in this petition as a slaughtering facility. He reiterated that a home workshop/business must be carried out in a home or accessory structure, and only operated by the occupants of the residence and a maximum of 2 employees. Mr. Hesser asked how long he has lived in this area. Mr. Tallman responded his whole life. Mr. Hesser asked if he was aware of this operation has been in business since 2005. Mr. Tallman responded that this operation hasn't been on this property since 2005, and the building went up in 2021. He stated it is prohibited to have outdoor display, noise, smoke, dust, and odors which can be detected beyond the subject property with a home workshop, and on the application they state this will all happen. He stressed he doesn't see how this request could be approved, because there is nothing on the application that will support any of the must haves that are needed in the Zoning Ordinance for what is acceptable in an A-1 zone for a home workshop/business.

Andrew Goul, 10799 CR 10, Middlebury, was present in remonstrance. He explained his line of sight, out of his back door is the barn on the subject property. He continued to say that he can hear generators going all day and night, and it takes away from the peacefulness that they wanted when they moved out to the country. He stressed he hopes the Board will see that the slaughter house doesn't fit the neighborhood or community with the smell and noise it produces. Mr. Miller asked when the noise started with the generators. Mr. Goul responded the generators started about 6 months ago. He stated that they moved in July of last year, but the barn wasn't finished being built at that time. He added a lot of the work didn't get done until about 3 – 4 weeks ago to get it ready for operation, as well as traffic having increased through this building process.

Marcus Bontrager, 11301 Fisher's Pond, Middlebury, was present in remonstrance. He stated his concern is the spreading of the waste in the fields, and he showed that the subject property is at the highest elevation. He explained all of the run-off from the fields will drain into the wetlands to the West and into his property as well. He then submitted elevation maps [*Placed in file as Remonstrator Exhibit #1 & #2*].

Michael Lee, 54395 CR 43, Middlebury, was present in remonstrance. He explained that the winds from the subject property will blow right towards his home. He stated that he approached the petitioner, when he was made aware of what he was going to be doing on the property, and the petitioner stated there was nothing the neighbors could do about it. He added he was told he already had all the approvals he needed to start the process. He stressed he doesn't see how this can occur based on how the operation will be run. He went on to say that he has invested a lot of money in building his home, and this will reduce his property value due to the smell of chicken waste. He added he won't be able to sell his property at the value that it is worth.

Tom Wogomon, 10945 CR 10, Middlebury, was present in remonstrance. He stated that he keeps hearing that this is a family run business, but there is no residence on the property. He stressed they want to put up a slaughter house in his community, but the petitioner doesn't want to live in this community. He reiterated the slaughter house will bring flies and smells.

Josh Ostrom, 11325 Fisher's Pond, Middlebury, was present in remonstrance. He stated he has concerns about property value and smells. He explained that he has seven kids, and his one daughter suffers from migraines. He stressed smells are one of her biggest triggers, so she won't be able to go outside in their yard if this goes in. He also showed a map of the wetlands where the drainage of the waste would affect his property.

Nancy Bontreger, 10871 CR 10, Middlebury, was present in remonstrance. She stated that when she called the Planning and Development office about this last summer, she was told that the petitioner asked to raise chickens, and the application wasn't for processing. She stressed that the noise, smell, and pest, which will come from this, will stop her from being able to sit on her back deck.

Jeff Stauffer, 10931 CR 10, Middlebury, was present in remonstrance. He explained that Mr. Alan Bontrager came to his residence to ask him to sign a variance from IDEM, in order to put a holding tank 900 ft. out of his front door. He continued to say that he told Mr. Alan Bontrager that he wouldn't sign the variance as he doesn't want a holding tank to be that close to his home. He stressed there is a wetland on both sides of his driveway, and the wetland flows from his home to SR 13. He went on to say the waste will come directly into the wetlands that are supposed to be protected.

Fritz Fry, 10761 CR 10, Middlebury, was present in remonstrance. He stated he is concerned about everything everyone has stated already. He continued to say that what frustrates him is that the petitioner didn't apply for a permit to begin with, and then didn't apply for the right type of permit. He went on to say he understands that every drive in Elkhart County is supposed to have a culvert, and this property doesn't have one, which will cause more issues with flooding in the area. He asked who enforces the IDEM rules, because he doesn't feel the petitioner will follow the rules. He then submitted letters from other neighbors who couldn't make it to the meeting [*Placed in file as Remonstrator Exhibits #3-#8*].

Paul Bontrager came back on to respond to the concerns. He stated when he ran the business they had neighbors on each side, and there was some smell but not too much. He continued to explain that they used to pump out the waste water through sprinklers. Mr. Hesser

asked if this was a new location that was built in 2021. Mr. Bontrager responded that he was previously talking about the slaughter house at his home in Lagrange County. Mr. Hesser clarified this is a new business on the subject property. Mr. Bontrager responded that is correct. Mr. Warner asked if the petitioner has plans to spread the affluent on his property or on a different property. Mr. Bontrager responded the waste will be spread on the subject property. Mr. Warner asked why there isn't a culvert. Mr. Bontrager responded that he doesn't know what the deal is on that, and he assumes they just forgot to put the culvert in. Mrs. Cramer asked if anyone currently lives on the property. Mr. Bontrager responded no, though Mr. Allen Bontrager was planning on getting a residential permit. However, he added he is not sure when that will happen. Mrs. Cramer asked if the generators are inside the building. Mr. Bontrager responded yes, but there are refrigerator trucks sitting outside. He went on to say the trucks have been running since January. Mr. Miller asked if the waste water tank has been built that was requested by IDEM. Mr. Bontrager responded yes, just outside of the building. He noted they cannot apply waste water on the field in the winter time, but the petitioner made plans with Culver Duck to have the waste pumped in the winter. Mr. Miller clarified waste will be held in the tank during winter and spread in the summer. Mr. Warner stated that having Culver Duck take the waste is a great idea for all year long. Mr. Norman asked if a culvert is a requirement for the development of the property, how many gallons the tank will hold to ensure it will cover all winter, and if electricity will be run to the building instead of the use of generators. He continued saying that Special Uses aren't to add substantial effect to the neighboring properties, and generators cause too much noise if they are going to be run 24 hours a day 7 days a week. Mr. Bontrager responded he assumes the culvert will be put in. Mr. Miller stated the Board doesn't regulate the culvert. He then asked how many gallons the waste tank will hold. Mr. Bontrager responded he believes it is a 2,000 gallon tank. He went on to say generators will run full time, but the freezer units shut on and off when they reach certain temperatures. Mr. Miller clarified the processing plant will run 3 days a week but generators will run all day all year long. Mr. Norman asked if the generators will kick on at 2:30 a.m. Mr. Bontrager responded yes. Mr. Warner stated mufflers were put on generators for another petition that had generators running. Mr. Hesser asked Staff if a processing facility is a permissible agri-business under an A-1 zone. Mr. Auvin responded no. He explained for a home workshop/business the house is considered the primary use, and the business is the secondary use. He continued to say that the Zoning Ordinance says that a slaughter house has to be in an M-zone. Attorney Kolbus stated the specific use overrides the general use, therefore the slaughter house overrides the agri-business.

The public hearing was closed at this time.

Mr. Hesser stated he has several concerns, and one of the concerns is there is no time limit for the placement of a house on the subject property. Mr. Auvin explained in order for this to become legal the requirements are a revised site plan showing a house, a permit pulled for the house, and then a year to build the house. Mr. Hesser stressed there are some inconsistencies from what the questionnaire states and what is being represented today. He noted when living in the agricultural area there are smells and sounds that come with living in the area but not to this scoop. He continued to say that if this had been here before people moved in, then he would understand leaving the business, but this is already a built up neighborhood with this request being pushed into that neighborhood. He went on to say that it is crystal clear, to him, that this will be the primary use and not the secondary use. He stressed he understands the need for processing of poultry in the County, but he believes this is torturing the definition of a home workshop/business. Mr. Norman

stated he agrees with Mr. Hesser. Mr. Miller noted they could put in a confinement facility in this location, and it would be allowed in the A-1 zone. Mr. Auvil stated they could put 3,500 hogs on the property without a Special Use. Mr. Hesser stressed he understand that, but saying it could be worse isn't a justification for going around the intent of the Zoning Ordinance. Mr. Auvil clarified that in an A-1 zone there doesn't need to be a house to build an agricultural building, and unfortunately the Staff that issued the permit had a misunderstanding as to the use of the building. He continued to say whether it was mentioned that it would be for chickens, another agricultural use, or a slaughter house, there is no record to what information was shared with Staff at that time. He continued saying all Staff knows is that there is a valid permit for an agricultural building on this property.

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

Motion: Action: Deny, **Moved by** Roger Miller, **Seconded by** Deb Cramer that this request for a Special Use for a home workshop/business for a custom poultry processing business be denied based on the following Findings and Conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare by providing local poultry products.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

5. The application of ***Sean Buttler & Danielle Sainz, Husband & Wife*** for a Special Use for an agricultural use for keeping of animals on a tract of land containing less than 3 acres located on the South side of Spring Creek Trl., 685 ft. Southwest of Spring River, East of CR 13, common address of 58972 Spring Creek Trl. 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-0157-2022*.

There were 17 neighboring property owners notified of this request.

Danielle Sainz, 58972 Spring Creek Trl., Elkhart, was present for this petition. Mr. Miller asked if she was okay with being limited to only having 4 chickens and no roosters. Mrs. Sainz responded that they definitely don't want roosters. She asked if she was able to go up to 6 chickens to make sure they have enough eggs, but 4 chickens will be fine if that is what is granted. Mr. Miller explained the Board generally limits approval to 12 chickens, but if she states 6 chickens, then that's what would be approved. Mrs. Sainz stated she would like to go with more chickens just in case. Mr. Miller asked if she would like request approval of 12 chickens. Mrs. Sainz responded yes, though she doesn't think she will ever have that many.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Steve Warner 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 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 (3/14/2022) and as represented in the Special Use application.
2. The use is limited to a maximum of twelve (12) chickens at any one time, no roosters.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

6. The application of **Trinity Lutheran Church of Elkhart Inc.** for an Amendment to an existing Special Use for a place of worship and school to add 1 new sign on property located on the Southeast corner of CR 6 & West County Line Rd., common address of 30888 CR 6 in Cleveland 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-0161-2022*.

There were 66 neighboring property owners notified of this request.

Randy Whiteman, US Signcrafters, 216 Lincoln Way East, Osceola, was present representing the petitioner. He submitted a diagram of the sign and it's dimensions [*Placed in file as Petitioner Exhibit #1*]. He stated they are asking for a sign along CR 6 to advertise the services of the church. He explained that the closest neighbor has woods between their home and the location of the sign, and the sign will go off at night and turn back on in the morning. Mrs. Cramer stated the drawing is not very clear, and asked for a comparison to where this sign will be placed from where the other signs are currently located. Mr. Whiteman responded the other signs will be removed and discontinued. Mrs. Cramer asked how many feet from the round-about the sign will be place. Mr. Whiteman responded it will be over 1,000 ft. away as they don't want to interfere with traffic's line of sight. Mrs. Cramer asked if the setback will be the same as the current sign. Mr. Whiteman responded that they will meet the County's required setbacks. Mr. Miller asked if Staff was okay with the current site plan. Mr. Auvil stated that Staff would prefer to have a revised site plan. Mr. Whiteman stated he would gladly submit a new site plan. Mr. Auvil stated that the State regulates signs be manufactured to have them dim at night. Mr. Whiteman reiterated that the petitioner will program the sign to be shut off at night, because there isn't much traffic on that road at night 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** Roger Miller, **Seconded by** Deb Cramer 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 and school to add 1 new sign be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The petitioner must provide a revised site plan for Staff approval.

The following commitment was imposed:

1. The request is approved in accordance with the site plan to be submitted for Staff approval and as represented in the Special Use Amendment application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

7. The application of **Dale R. Borkholder & Esther E. Borkholder, Husband & Wife** for a Special Use for a home workshop/business for an animal feed store, for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a 20 ft. Developmental Variance (Ordinance requires 55 ft.) to allow for an existing sign 30 ft. from the centerline of the right-of-way of CR 50 on property located on the Northeast corner of CR 50 & CR 117, common address of 21407 CR 50 in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvin presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0160-2022*.

There were four neighboring property owners notified of this request.

Charlie Zercher, Kindig & Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. He explained that the petitioner wants to add on to the existing building, which put him over the allowed by right square footage. He added it also brought up the need for a Special Use as he will be selling horse feed. He went on to say that in addition there is a need for a Developmental Variance for the sign, as the petitioner would like to put a sign out front for people to see his business. Mr. Hesser asked why the application says no for needing a sign. Mr. Zercher responded on the Special Use it should have said yes, but the Developmental Variance application has the sign included. Mr. Miller asked if semi-trucks will be coming for deliveries and pick-up. Mr. Zercher responded it will mainly be small box trucks but a semi-trailer has room to pull in and turn around on the subject property.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** 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 an animal feed store 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 (3/14/2022) 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 20 ft. Developmental Variance (Ordinance requires 55 ft.) to allow for an existing sign 30 ft. from the centerline of the right-of-way of CR 50 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 (3/14/2022) and as represented in the Developmental Variance application.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

8. Staff Item: Rescission for **Todd Hines** of a Special Use to allow for an agricultural use (keeping of five horses) on property zoned R-1 at the request of the petitioner.

Mr. Auvil presented the Staff item. He explained this request needs to be rescinded, so it can be tied to a different residential property.

Mr. Hesser asked if the new Special Use has come to the Board yet. Mr. Auvil responded it will be next month.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that a Special Use to allow for an agricultural use (keeping of five horses) on property zoned R-1 be rescinded at the request of the petitioner.

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

Yes: Deb Cramer, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

9. The meeting was adjourned at 10:05 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary