

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

Roll Call.

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

Absent: Roger Miller, David Miller.

2. A motion was made and seconded (*Norman/Cramer*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of January 2022 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Norman/Warner*) 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 *Miriam J. Sanchez Joa De Ferreras & Jacyr Ferreras Jimenez, Wife & Husband* for a Special Use for a ground-mounted solar array on property located on the East side of Garver Ave. 710 ft. North of Forestview Rd., West of CR 113, common address of 59384 Garver Ave. 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-0016-2022*.

There were 23 neighboring property owners notified of this request.

Jeremy Thompson, Power Home Solar, 919 N. Main St., Mooresville, was present representing the petitioner. He explained they want to put solar panels on the property in order for the petitioner to have his own power to provide heat and backup power for electronics. He continued saying they can't use roof-mount panels due to the fact that the house faces east to west, and it is more efficient if the solar panels are facing south. Mr. Warner asked if batteries are used for storing of the power. Mr. Thompson responded yes, the batteries are stored in the basement, and that would be the case if it was roof mounted or ground-mounted.

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** Ron Norman, **Seconded by** Randy Hesser 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 (1/6/2022) and as represented in the Special Use application.

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

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

5. The application of **Andrew J. Hochstetler & Marla R. Hochstetler, Husband & Wife** for a Special Use for a home workshop/business for constructing of portable storage barns on property located on the Northeast Corner of SR 13 & CR 146, common address of 69388 SR 13 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-0042-2022*.

There were eight neighboring property owners notified of this request.

Andrew Hochstetler, 69388 SR 13, Millersburg, was present for this request. He wants to be able to have a homework shop so he can work out of home. Mr. Hesser asked if he understands what Staff is asking for on the revised site plan about not having a sign in the right-of-way of SR 13. Mr. Hochstetler asked for Staff to clarify which sign needed to be moved. Mr. Dean stated that Staff will work with him on where the sign needs to be moved, and it is the sign on SR 13 that is the issue. Mr. Norman asked if the workshop will be running off a generator. Mr. Hochstetler responded that is correct.

Don Martin, 1306 Pebble Ct., Goshen, was present in remonstrance. He stated his family owns property that is adjacent to the subject property. He explained he has been working with Surveying & Mapping, Inc. to survey the property in order to split the land. He went on to say that he appreciates that Mr. Hochstetler wants to start up a business, but this will generate noise from 6 a.m. to 2 p.m. and will interfere with sleep and phone conversations when on the patio only 50 ft. away. He submitted pictures that were taken in February of outside storage and signs advertising a business, that didn't have approval *[Placed in file as Remonstrator Exhibits #1-#9]*. He showed on aerial where his property was located. He stressed his request is that the Board enforce the Zoning Ordinance as written. He noted that an air compressor runs from 60-90 decibels, nail guns run from 90-100 decibels, and OSHA says that anything over 85 decibels will cause harm. He reiterated he doesn't like standing in the way of a neighbor wanting to better himself, but this will cause noise issues from 5 a.m. until 6 p.m. 5-6 days a week. Mrs. Cramer asked if the generator was currently running at this time. Mr. Martin responded he was there after 2p.m. so he can't speak to, if the generator is in use. Mr. Hesser asked if he lives next door to the petitioner. Mr. Martin responded no, but they are currently turning their land into a subdivision to put houses on to rent out. Mr. Hesser clarified if the lot with the house on it to the east is not owned by Mr. Martin. Mr. Martin responded that is correct, he owns the lots with road frontage along SR 13 that runs up to the subject property.

Mr. Hochstetler came back on to responded. Mr. Hesser asked if there is currently a generator being used, and how many hours a day it is being used. Mr. Hochstetler responded from 6a.m.-11p.m., then he takes lunch at noon, and starts back up at 1p.m. Mr. Hesser asked where the generator is located on the property. Mr. Hochstetler clarified where the generator is located. He

stressed that he can barely hear the generator from inside his home so he is unsure how anyone else could hear it off of the property. Mr. Norman clarified that the generator is all enclosed. Mr. Norman asked if he would be willing to put a muffler on the generator. Mr. Hochstetler responded he would be willing to do that. Mr. Warner asked if all work was done inside the shop. Mr. Hochstetler responded that is correct. Mrs. Cramer asked if semi-trucks will be coming in to pick up material. Mr. Hochstetler responded no, only a pick-up truck with a special trailer.

The public hearing was closed at this time.

Mr. Hesser stated he doesn't have an issue with this request with or without the muffler on the generator, as the generator is inside an enclosed building. Mrs. Cramer stated it is in a motor room, so that's better than outside. Mr. Norman asked if there was an objection to the 6a.m. start time. Mr. Hesser stated the only objection is from the north, and it isn't developed yet. He added this is an agricultural area there will be noise. Mr. Warner stated the noise from SR 13 traffic alone is a lot.

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

Motion: Action: Approve, **Moved by** Ron Norman, **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 a home workshop/business for constructing of portable storage barns 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 approval by Staff showing the freestanding sign out of the SR 13 right-of-way.

The following commitment was imposed:

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

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

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

6. The application of *Michael Kossler & Patricia Kossler, Husband & Wife* for a Special Use for a home workshop/business for gunsmithing on property located on the Northeast side of Ne Ce Dah Dr., 2,150 ft. North of CR 18 (Hively Ave.), common address of 24591 Ne Ce Dah 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-0024-2022*.

There were 12 neighboring property owners notified of this request.

Michael Kossler, 24591 Ne Ce Dah Dr., Elkhart, was present for this request. He explained he wants to clean and repair firearms, when he doesn't have his Federal License. He continued saying that it takes about 3 months to get his license. Mrs. Cramer asked where he is asking for a proposed sign, as the site plan shows there is a pole barn that seems to be in the way of where the sign is shown. Mr. Kossler responded the sign will be on the fence, and not on the road. Mr. Norman asked if he planned on doing test fires of the firearms. Mr. Kessler responded yes, he does

that now, and has spoken with the Sheriff's Department about what is allowed. He continued saying he is allowed to fire guns on his 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** 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 a Special Use for a home workshop/business for gunsmithing 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 (1/12/2022) and as represented in the Special Use application.

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

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

7. The application of **Bontrager Holding Group, LLC** for a Special Use for a salvage yard on property located on the West side of CR 8, 1,600 ft. Southwest of CR 21, common address of 19757 CR 8 in Washington Township, zoned M-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0022-2022*.

Mr. Hesser asked for clarification on the parcels and their zoning. Mr. Dean clarified it is all zoned M-2, and they are all one parcel.

There were eight neighboring property owners notified of this request.

Amy and Brian Howard, 9140 W. 270 N., Shipshewana, were present for this request. Mrs. Howard explained they are the tenants of the property and Bontrager Holding Group, LLC is the owner of the property. She continued to say that they want to turn this into an auto salvage yard. She went on to say that all material will be inside, nothing is processed in the shop, as they are just a holding facility. She explained they work with automotive shops in the area, though they would like to start being opened to the public as well. Mr. Warner asked if part of the process is dealing with IDEM. Mrs. Howard responded yes, she is working with IDEM, because of the mercury that is found in parts of the vehicles. She stated that once this is approved then she will finalize their permits through IDEM, and they will bring in the approved containers for the parts that have to be processed in a regulated way. She continued saying IDEM will then take them off site. Mr. Norman asked if there are any certifications that they must have in order to run this salvage yard. Mrs. Howard responded yes, they have to have a salvage recycler's license. She explained they couldn't transfer their license from their old facility, so they have to get a new one. Mr. Norman asked if there is a rule about fencing around the property. Mrs. Howard responded she has not heard of one, but would be willing to put a fence up if needed, though all operations are indoors or behind the building.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser clarified that the owner has given consent. Mrs. Howard responded yes, he has given consent.

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

Motion: Action: Approve, **Moved by** Ron Norman, **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 a Special Use for a salvage yard 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 (1/11/2022) and as represented in the Special Use application.

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

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

8. The application of *Lloyd E. Troyer & Rhoda A. Troyer, Husband & Wife* for a Special Use for a cemetery on property located on the West side of CR 37, 3,230 ft. South of SR 120, 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-0041-2022*.

There were 14 neighboring property owners notified of this request.

Lloyd Troyer, 13708 CR 8, Middlebury, was present for this request. He explained he wants to have a cemetery for the Amish to use. Mr. Hesser asked if this cemetery is for a certain family or for general use. Mr. Troyer responded no, it is for general use.

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** 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 cemetery 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 (1/18/2022) and as represented in the Special Use application.

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

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

9. The application of *Mark Seeley & Grace Seeley, Husband & Wife (Buyers) & Tony Nguyen & Southana Nguyen, Husband & Wife (Sellers)* for a Special Use for an agricultural use for the keeping of animals, for a Special Use for a roadside stand on property located on the North side of CR 16, 2,005 ft. West of Middleton Run Rd., common address of 23833 CR 16 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-0034-2022*.

There were 34 neighboring property owners notified of this request.

Mark and Grace Seeley, 60324 Missouri Ave., Goshen, were present for this request. There was confusion about mortgage holders, and it was clarified that the Board was looking at the wrong petition. Mr. Seeley stated they want to buy the property to be their residence and to have the acreage for animals to do 4-H. Mr. Hesser asked what kind of animals. Mr. Seeley responded all types of animals including horses, pigs, chickens, and sheep. He continued to say that this was a horse farm previously, and it is already fenced in and has a barn with stalls. Mr. Hesser clarified they wanted to treat this as if it were zoned A-1. He continued to say that with this size lot, if it were zoned agricultural then there wouldn't be a limit to the amount of animals or type of animals. He asked Staff if they were okay with treating this as if the property were zoned A-1. Staff confirmed they were in agreement to treat this property as zoned agricultural. Mrs. Cramer asked if they were going to be adding another fence inside the current fence. Mr. Seeley responded yes, they are going to put in additional fencing to make smaller paddocks for animals to be separated in order to make this double fenced for security. Mrs. Cramer asked about fencing as the neighboring property is in the city limits. Mr. Seeley responded yes, and there is existing barbed wire fence along the east/west property lines.

Julie Circle, 56818 Raider Dr., Elkhart, was present in favor as the realtor representing the seller. She stated she is representing the buyer, and he is in favor of this request. It was clarified she is representing the seller, not the buyer.

James Kocielko, 23779 CR 16, Goshen, was present in favor. Mr. Kocielko stated he owns the property due east that runs parallel with the subject property. He continued to say he is in favor of this petition as long as they are going to make changes to the fencing.

Jeanne Kern, 57000 Wyncrest Circle, Goshen, was present in remonstrance. She stated she wanted to have some clarification about the roadside stand, as that wasn't discussed. She asked what is going to happen with parking for this roadside stand.

Mark and Grace Seeley came back on. Mr. Seeley stated there is a circle drive in front of their home, that will have enough parking for up to 8 cars, and there would be overflow parking in front of the barn. He went on to say they submitted the roadside stand with this petition to make sure that when they buy the property they aren't breaking any rules. He explained it will be for seasonal produce with no parking along the road. Mrs. Seeley stressed the fencing is their main concern, as they want their animals to be safe and stay on the property. Mr. Norman asked since this is zoned R-1, do the restrictions apply to the amount of animals. Mr. Auvil responded the intended of use will be treated as if this was zoned A-1. Mr. Hesser asked if that applies to setbacks as well. Mr. Auvil responded yes. Mr. Auvil stated that this is the original zoning from 1989, and this is a vast parcel that Staff didn't feel needed a limitation of animals as it is for 4-H purposes on 10 acres. He added the Board can add a limitation on the amount of animals. Mr. Norman asked the petitioners the number of animals they will have at a time. Mr. Seeley responded that they

don't really know, because it is 10 acres of land. He continued to say that for 4-H, children can take 3-4 animals at a time, therefore he isn't sure exactly what number of animals they will have at a time. He added his children may change which animals they want to do from year to year.

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** 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 a Special Use for an agricultural use for the keeping of animals, and for a Special Use for a roadside stand 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 (1/14/2022), as represented by the petitioner in the Special Use application, and at the public hearing on February 17, 2022.

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

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

10. The application of **Anthony M. Martin & Karen R. Martin, Husband & Wife** for a Special Use for a home workshop/business for the repair and fabrication of ag equipment, for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a 5 ft. Developmental Variance (Ordinance allows 25 ft.) to allow for an accessory structure 30 ft. in height on property located on the East side of CR 13, 1,000 ft. North of CR 52, common address of 71316 CR 13 in Union 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-0038-2022*.

There were five neighboring property owners notified of this request.

Charlie Zercher, Kindig and Sloat, 102 Heritage Pkwy., Nappanee, was present representing the petitioner. He submitted a petition that is signed by all of the residential neighbors in support of this petition, [*Placed in file as Petitioner Exhibit #1*]. He went on to say that a new building would be built to help the business grow, and the petitioner has been in business for a long time without realizing he needed a Special Use. He stressed the building is to help keep all materials stored indoors. He explained that the vehicles in the photo Staff took in front of the building are personal vehicles and not a part of the business. Mr. Hesser asked if there is only one employee. Mr. Zercher responded that is correct. Mr. Hesser asked him to address the need for the 30 ft. height of the building. Mr. Zercher responded that the original drawing of the building was for this height, and the need is for enough clearance for indoor storage.

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** 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 a home workshop/business for the repair and fabrication of ag equipment 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 (1/18/2022) 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 5 ft. Developmental Variance (Ordinance allows 25 ft.) to allow for an accessory structure 30 ft. in height 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 (1/18/2022) and as represented in the Developmental Variance application.

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

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

11. The application of *Merle Yoder* for a Special Use for a home workshop/business for a horse tack workshop and feed store 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 South side of SR 120, 300 ft. West of CR 29, common address of 16466 SR 120 in Washington 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-0968-2021*.

Mr. Hesser stated he didn't see a site plan and asked where the site plan was at, as there is a request for a new building. Mrs. Gilbert showed a site plan from the file, and made copies for the Board.

There were 13 neighboring property owners notified of this request.

Merle Yoder, 16466 SR 120, Bristol, was present for this request. He explained he wants to have a feed, harness and wholesale shop. Mr. Warner asked how big of trucks will be on and off the property. Mr. Yoder responded just box trucks. Mr. Warner explained that semi-trucks would need room to move on and off the property without backing onto and off of the road. Mr. Hesser asked where the new building was going to be located. Mr. Yoder showed on the site plan where the new building would be put on the property. Mr. Dean clarified there are wetlands where the petitioner wants to put the building. Mrs. Cramer clarified the other existing buildings aren't in the wetlands.

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** 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 a Special Use for a home workshop/business for a horse tack workshop and feed store 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 either (a) a revised site plan for staff approval showing the new accessory structure out of the wetland or (b) a US Army Corps of Engineers letter of permission to build the new accessory structure in the wetland.

The following condition was imposed:

1. The request is approved in accordance with (a) the revised site plan to be submitted for staff approval or (b) (if a letter of permission is submitted) the site plan submitted (12/22/2021) 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 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 (a) revised site plan to be submitted for staff approval or (b) (if a letter of permission is submitted) the site plan submitted (12/22/2021) and as represented in the Developmental Variance application.
3. The petitioner must provide either (a) a revised site plan for staff approval showing the new accessory structure out of the wetland or (b) a US Army Corps of Engineers letter of permission to build the new accessory structure in the wetland.

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

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

12. The application of *Die-Com LLC* for a Use Variance to allow for an addition to an existing storage building on property located on the South side of CR 4, 855 ft. East of CR 15, in Osolo Township, zoned DPUD, E-3, GPUD, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0983-2021*.

There were seven neighboring property owners notified of this request.

Monty Craven, 53071 Trinity Ct., Elkhart, was present for this request. He explained he wants to put an addition onto the existing building in order to store his mobile home. Mr. Hesser clarified it is just for inside storage and asked how many RV's he wants to store. Mr. Monty responded this is just for his own personal RV, and his existing building isn't big enough. Mr.

Hesser asked if the existing building is used for personal storage. Mr. Craven responded yes, it stores his bobcat and other items.

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** Deb Cramer that this request for a Use Variance to allow for an addition to an existing storage building be approved with the following Findings and Conclusions as amended by the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community. This is an existing structure in a transitional area adjacent to a manufacturing area.
2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner. This is a 3.41-acre parcel in a moderately dense mixed-use area, and the property will be used for indoor storage.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The structure and use predate the GPUD E-3 zoning.
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.

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 (12/29/2021) and as represented in the Use Variance application.

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

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

13. The application of *Eugene Hochstetler & Susan Hochstetler, Husband & Wife* for a Special Use for resource extraction on property located on the South side of CR 4, 2,060 ft. East of SR 13, in York Township, zoned A-1, came on to be heard. The Staff Report/ Staff Analysis, which is attached for review as Case # SUP-0940-2021, was presented at the previous hearing.

Mr. Auvil read the introduction to refresh the Board as to what the petition was for.

Mr. Hesser clarified this petition was for removal of dirt and gravel, and the main issues were for dirt on the road.

Crystal Welsh, Abonmarche Consultants, 303 River Race Dr., Goshen, was present representing the petitioner. She stated she wrote down the questions that the Board wanted answered from the last meeting and submitted them [Placed in file as Petitioner Exhibit #1].

Dana Bontrager, 59285 CR 33, Middlebury, was present representing the petitioners. He explained he contacted the adjacent land owner about his concerns with truck traffic, and verified there was no encroachment onto his property. He continued to say that all SWPPP requirements

have been met, and they are looking to make sure the hours of operation are at a decent time for the neighboring property owners. He stressed the owners' intent is not to have a gravel pit, but they have a 5 year plan, with 2-3 years of nothing happening. Mrs. Cramer asked the about the hills being removed and the slop being only 16 ft. tall and 600 ft. long as that isn't enough to not make a pit. Mr. Bontrager stated there a significate difference in elevations on the property. He showed on the aerial the area that is being excavated. Mr. Norman asked if the silt fence was put in. Mr. Bontrager responded that a silt fence wasn't required, as everything is contained within the property.

Collin Stanger, DJ Construction, 55888 Jefferson Hills Dr., Osceola, was present for this request. He stated that Mr. Bontrager has been submitting his SWIPPP reports without showing any issues, and they added more number 2's in order to help get more dirt off truck tires before leaving the property. He went on to say that Middlebury Septic is still dumping material on the far south side of the property, but it is not being dumped then taken off site. Mrs. Cramer asked about the waste disposal being certified. Mr. Collin responded he wasn't sure, but it is on the other side of the property. Mrs. Cramer stated that if waste is on the same property, then it could be an issue with waste being removed. Mrs. Welsh responded there shouldn't be any cross contamination as the application of waste and removal of materials are on two separate sections of the property.

Brian Wilson, 10760 CR 4, Middlebury, was present in remonstrance. He stated that since last meeting there has been no dumping of waste. He stated his concern is where they are excavating in the center of the field, and the raw sewage that is encroaching his property line and the swamp. He went on to say that at the last meeting it was stated this isn't being run as business, but that can't be true as these trucks won't haul without being paid. He stressed down the road to the east, on the north side of the road, is another operation, and the road is being abused to the point of falling apart. Mr. Warner stated that Middlebury Septic has to follow within the rules and setback guidelines. Mr. Hesser stated that the septic issue isn't a part of the petitioner's request. Mr. Norman asked if it is the same operation on both the north and south sides of the road. Mr. Wilson responded no, they are different.

Mr. Bontrager came on to respond. He stressed there aren't 40 trucks going in and out, as they only have about 5 trucks. However, he added the trucks will run in and out all day. He continued to say the truck drivers will radio each other as to not have a traffic flow issue.

The public hearing was closed at this time.

Mr. Norman stated that his understanding is that if you are disturbing more than an acre of ground there must be a silt fence, whether or not there is run off. Mr. Auvil stated there is an approved SWPPP, which is under MS4's jurisdiction, and if MS4 didn't require the silt fence then that is under their call. Mr. Hesser asked what hours were proposed. Mrs. Gilbert clarified hours weren't listed in the questionnaire.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **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 resource extraction 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.

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (12/7/201), as represented by the petitioner in the Special Use application, and at the public hearing on February 17, 2022.
2. Approved for a period of five (5) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.
3. Approved hours of operation between 7:30 a.m. and 3:30 p.m.

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

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

14. Attorney Kolbus presented a staff item for a motion for the Amendment of the change of the Rules of Procedure in regards to the time of the meeting and the meeting location from back in October.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Deb Cramer that the Amendment to the Rules of Procedure be approved.

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

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

15. The meeting was adjourned at 10:29 a.m.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary