

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20th DAY OF JANUARY 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: Roger Miller, Ron Norman, Randy Hesser.

Absent: Deb Cramer.

2. A motion was made and seconded (*Miller/Norman*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of December 2021 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Norman*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

4. A motion was made and seconded (*Miller/Hesser*) to elect the following Board members: Mr. Hesser as Chairman, Mr. Miller as Vice Chairman, and Mr. Norman as Secretary.

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

Yes: Ron Norman, Roger Miller, Randy Hesser.

5. The application of ***Boyer Creek School*** for a Special Use for a school on property located on the West side of CR 33, 765 ft. North of SR 4, in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0912-2021*.

There were eight neighboring property owners notified of this request.

Jerimiah Hochstetler, 54824 CR 33, Middlebury, was present representing the petitioner. He stated the petitioner wants to build an Amish school that will hold 27 students and 11 parents. He explained that their current school has 59 students and 22 parents, and it is overcrowded. He went on to say that they will use bikes and buggies as transportation. Mr. Hesser clarified the entrance will be off of CR 33, on the southeast corner of property. He then asked if the site plan was satisfactory to Staff. Mr. Auvil 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** 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 school 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) and as represented in the Special Use application.

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

Yes: Ron Norman, Roger Miller, Randy Hesser.

6. 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.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0940-2021*.

There were 20 neighboring property owners notified of this request.

Crystal Welsh, Abonmarche, 303 River Race Dr., Goshen, was present representing the petitioner. She stated the property owner is trying to do site work to level out the property, and they currently have someone interested in taking the material. She explained the petitioners are assuming that there will be material removed from the property over the next 5 years. She went on to say there is no intention of building a pit, but to level the property out so that it will eventually be mowable and useable. Mr. Hesser asked if the petitioner would object to a 5 year limitation. Mrs. Welsh responded no. Mr. Norman asked about making improvements to the entrance area, as that area is falling apart at the north and south entrances. He added the lanes aren't wide enough, and there isn't a truck lane for trucks to exit the road. He stressed the road is nothing but mud from the trucks leaving the site. Mrs. Welsh responded she doesn't know if the petitioner would be willing to make those improvements. Mr. Miller clarified access to the property is a dirt road. Mr. Hesser asked if the work is contracted out. Mrs. Welsh responded the land would be available for people to come extract material on their own. Mr. Norman asked what they are doing currently for soil containment for run off. Mrs. Welsh responded there is a SWPPP. She explained that is how this all started as it was brought in to get a SWPPP done, and they figured out the Special Use was needed.

*****It should be noted that Mrs. Cramer arrived at this time*****

Brian Wilson, 10760 CR 4, Middlebury, was present in remonstrance. He stated that they are running a minimum of 40 dump trucks a day past his house from 7:30 a.m. to 3:30 p.m. He explained the trucks are cutting the corners onto his property, there is no silt fence so water is running right into his property, and raw sewage was dumped on this location for years. He continued to say that there were no soil samples taken, or service records because, it is not being run as a business. However, he stressed they are selling the soil for profit, and hydraulic lines have busted on the excavators. Mr. Miller asked how long they have been hauling material off of the property. Mr. Wilson responded a month and a half, and that a semitrailer went back this morning

at 7:30 a.m. to be loaded. He added it is non-stop 5 days a week. He stressed dirt from the trucks is running down to CR 17 and will eventually start dropping over into the Toll Road. He reiterated that Middlebury Septic had a permit to dump sewage on this land, and the sewage is 4 ft. from his property line. Mr. Hesser clarified Middlebury Septic is still dumping on the property. Mr. Norman stated the traffic is a problem, if commercial trucks are sitting in the road, impeding traffic and causing a back-up of traffic. Mr. Wilson stated that there are normally 3-4 trucks lined up 4 times a day.

Mrs. Welsh came back up to respond to the issues. She stated she sees the concerns and will work with the property owner to communicate with the company taking the material to make sure they are in line with the SWPPP. She added she will talk to them about with limited hours of operations for the trucks. She explained the operator isn't the property owner so there is a conflict of what is happening now versus what may happen when it is a different operator in the future. Mr. Hesser explained if this is approved, it should have limited hours of operations, and it will apply to all operators. Mr. Norman asked if they will be able to work with a company on traffic control, because if trucks are waiting on the road and cars are trying to pass those trucks it can cause accidents. Mrs. Welsh responded she believes that was a condition to their SWPPP permit, though she can't speak to the person operating the excavation as they are not her client. She stressed through that they are to follow the conditions of the SWPPP. Mr. Miller stated there is a lot of operations going on to be able to last 5 years. Mrs. Welsh responded the contract is for 5 years for what is being removed now and will not last the 5 years, or take all that they hoped to see get taken out. Mr. Norman asked if there is a buffer between the operation and the neighbor that is here in remonstrance.

Mr. Wilson came up to show where the trees are on his property line. Mr. Miller clarified that he said there was nothing keeping dirt and water off of his property. Mr. Wilson responded that is corrected, and then showed where a swamp was located between the two properties.

Mrs. Welsh came back up. Mr. Norman asked if there was currently a silt fence in place. Mrs. Welsh responded she isn't the inspector for the SWPPP, so she doesn't know. However, she added they do need to comply with the rules. Mr. Norman stated they do need to follow the rules, but it doesn't mean that they are complying. Mrs. Welsh continued to say that they will communicate with Soil and Water and MS4 to rectify the mentioned issues. Mr. Auvil stated to Staff's knowledge no complaints have been made. Mr. Hesser asked if this falls within the mineral extraction. Attorney Kolbus stated there are enough houses in the area, so the County regulates what happens. Mr. Hesser asked if there is a way to address the traffic issues. Mr. Norman responded that like any construction project, if there is any impeding traffic, then someone needs to be there to control the traffic flow. He noted there are trucks lined up and backing up traffic to where they can't see to pass. Mr. Auvil stated he can't speak for the Sheriff's Department but he knows that trucks aren't allowed to park on county roads. He added the Sheriff's Department would tell truck drivers they have to leave, if they knew what was happening. Mr. Miller stated they have only been operating for a month, and haven't been told, nor has their SWPPP been inspected. He added he is tempted to give this a year; and then if everything is working well by then to let it continue. Mr. Norman stressed they are disturbing 30 acres of land without a silt fence and right now the Board doesn't know if they are following the SWPPP regulations. Mrs. Welsh responded that the county will shut them down if they are in non-compliance with their SWPPP, and she will communicate with all parties that they may have to shut down to get the issues fixed.

Miller stated it is really difficult to schedule trucks as it is their job to get there and back without causing a traffic back-up, and to let the Sheriff's Department and SWPPP enforcement do their jobs. Mrs. Cramer asked if SWPPP can address the dirt running on the road as well. Mrs. Welsh responded that is correct they will address that. Mr. Hesser asked about hours of operation. He clarified there are no hours of operation on the application. Mrs. Welsh stated if 7:30 a.m. is too early, then they will follow whatever approved hours are given. Mr. Hesser asked if they work on weekends. Mrs. Welsh responded no, it is just 5 days a week, operating from 7:30-3:30 as of right now. Mr. Norman mentioned on the questionnaire the petitioner put "no" for noise, vibration, smoke, odor, heat, glare, and dust, and he doesn't believe that, as heavy trucks are creating that type of environment for the neighbors. Mrs. Cramer stated if this gets approved there needs to be a deadline for the issues to be fixed. Mr. Hesser reiterated that if this gets approved, it would be short term with limited hours, and it is only to be approved once they are operating in compliance with the rules. Mrs. Welsh asked if this could be tabled a month to see if MS4 can get a better idea of what violations of the SWPPP, if any, need to be fixed. Mr. Hesser responded he has no objection to that, though they aren't legally operating right now, but he would like answers to these questions. Mrs. Cramer reiterated traffic needs addressed as well, as it doesn't fall under SWIP. Mr. Norman clarified the environment falls under the SWPPP, not traffic, and if they have a permit then they have taken steps to make this legal.

There was one remonstrator present.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Ron Norman that this request for a Special Use for resource extraction be tabled until the February 17, 2022, Advisory Board of Zoning Appeals meeting at the request of the petitioner.

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

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

****Mr. Hesser stepped down from the Board at this time****

7. The application of *Fairfield Community Schools Building Corporation* for an Amendment to an existing Special Use for a school to allow for a free standing sign on property located on the East side of CR 31, 590 ft. North of US 33, common address of 67240 CR 31 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-0939-2021*.

There were 20 neighboring property owners notified of this request.

Stephanie Lehman, Sightech Signs, P.O. Box 835, Goshen, was present representing the petitioner. She explained this is a request to install a new road sign, it will be a double sided sign, and will maintain a setback that will not impede traffic. She continued saying that this sign will allow traffic to clearly see the entrance to the school. Mr. Miller clarified this is along CR 31, and will not be on the highway. Mrs. Lehman then showed a picture of the sign that was included in the Special Use submission.

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 an Amendment to an existing Special Use for a school to allow for a free standing sign 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 (12/7/2021) and as represented in the Special Use Amendment application.

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

Yes: Deb Cramer, Ron Norman, Roger Miller.

Excused: Randy Hesser.

****Mr. Hesser returned to the Board at this time****

8. The application of *Elkhart Conservation Club, Inc.* for an Amendment to an existing Special Use for an indoor/outdoor recreation facility to allow for 2 free standing signs on property located on the West side of Riviera Dr., 405 ft. South of Lexington Ave., common address of 55515 Riviera Dr. 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-0949-2021*.

There were 38 neighboring property owners notified of this request.

Warren Allender, President of Elkhart Conservation Club, 30009 CR 16, Elkhart, was present for this petition. He explained that the activity is for 2 signs, one on Riviera Dr. and one on Old US 20. Mr. Hesser asked if the only entrance is off of Riviera Dr. Mr. Allender responded that is correct. Mr. Hesser clarified the Old US 20 sign is to tell traffic where the entrance is located. Mr. Allender responded that when driving down Old US 20 people don't really know where to go from there.

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 an Amendment to an existing Special Use for an indoor/outdoor recreation facility to allow for 2 free standing signs 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 (12/13/2021) and as represented in the Special Use Amendment application.

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

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

9. The application of *Israel Flores Garcia* for a Special Use for commercial parking (tow-truck) on property located on the Southwest side of CR 45, 390 ft. Northwest of Old CR 17, common address of 22468 CR 45 in Concord 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-0897-2021*.

There were 14 neighboring property owners notified of this request.

Attorney Maryellen Baker, 227 S. Main St., Elkhart, was present representing the petitioner. Attorney Baker asked the Board if this could wait until 10 a.m. for the petitioner to show as he went to the wrong building and was on his way. It was granted to wait until Mr. Flores was there to continue this petition.

See item #11 on page 8.

10. 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. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0314-2021*.

There were 19 neighboring property owners notified of this request.

Mr. Auvil stated the site plan is to be approved today, as this request was already approved. Mrs. Gilbert clarified the request was approved contingent on conditions and commitments to be approved at the following hearing. Mr. Auvil stated Staff needed approval from DNR, and they gave permission for a gravel parking lot area. He continued to say the Town of Wakarusa has reviewed the site plan, and they are in concurrence with site plan. He submitted the letters from the Town of Wakarusa [Attached to file as *Petitioner Exhibit #1*]. Mr. Davis submitted a newer site plan [Attached to file as *Petitioner Exhibit #2*]. Mr. Hesser asked if the public hearing was closed or left open. Attorney Kolbus responded that the public hearing needed to be reopened, as a motion to approve was done. Mr. Hesser reopened the public hearing.

Bill Davis, Davis & Roose, 116 E. Clinton St., Wakarusa, was present representing the petitioner. He stated he recalled the Board had voted 4-1 to approve the petition. Mrs. Gilbert clarified it was approved subject to conditions and commitments being finalized July 15, 2021, but that it was tabled at that meeting. Mr. Davis stated parking on the grass was the biggest hurdle, because the Town of Wakarusa was opposed to parking on the grass. He added they have given approval for parking on gravel as well as DNR, because the Elkhart County Zoning Ordinance doesn't approve of parking on grass. He continued saying that the site plan was redone to show where the crushed gravel will be put for parking, and the entrance will be off Washington St. with a new exit to the north side of the building. He then explained that DNR initially approved the first proposal for gravel drives, but then approved their second proposal for gravel parking. He submitted the second letter of approval from DNR [Attached to file as *Petitioner Exhibit #3*]. He stressed he has

engaged with the Staff on conditions and drafted a set of proposed conditions and submitted the proposed conditions *[Attached to file as Petitioner Exhibit #4]*. Mr. Hesser clarified that Staff has seen the proposed conditions. Mr. Davis stated that the only thing not on the conditions was that the petitioner will sign the commitment form as it is a general procedure for the Special Use. He added that the hours of operations would be defined more carefully in section 2 for exactly when they will do auctions. He stressed there was a concern for staying within regulations of food services with the Health Department, and they will follow all those rules. He added no port-a-potty will on the site. Mr. Auvil stated these conditions were the first set that were suggested after the first hearing, and he is sure everything has been covered and addressed. Attorney Kolbus clarified it was different language, but these conditions look the same as Staff's.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller asked if the neighbors have been asked about this proposal. Mr. Auvil responded this was already approved back in July, so remonstrators already had their chance to speak. Mrs. Cramer stated there were a couple of remonstrators then, and the hours of operations were the biggest issue.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Ron Norman that this request for a Use Variance for an auction house be approved with the following conditions imposed:

1. The request is approved in accordance with the site plan submitted (04/12/2021) and as represented in the Special Use application.
2. 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 (1/20/2022) and as represented in the Use Variance application.
2. Auctions, defined as the oral offerings by auctioneers of items for sale to the highest bidders and the knocking off of such sales when the highest bidders have been determined, but not including deliveries by consigners, set up, payments by the highest bidders, removal of purchased items by the highest bidder, and other related activities, shall be conducted during the hours from 5:00 p.m. to 8:30 p.m. on the 1st and 3rd Fridays of a month and not at other times.
3. Auctions, as so defined, shall be conducted in the south building and not outside.
4. There will be no storage outside of the buildings and pavilion and no voice amplification outside of the south building.
5. All developments shall comply with applicable law, including especially Article 10 of the Elkhart County Zoning Ordinance and state statutes and regulations applicable to development within a floodway.
6. All activities shall comply with applicable law, including especially the Elkhart County Food Service Ordinance and related state statutes and regulations.

7. Violation of any of these conditions may result, following notice and a hearing in revocation of the use variance.

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

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

11. The application of *Israel Flores Garcia* for a Special Use for commercial parking (tow-truck) on property located on the Southwest side of CR 45, 390 ft. Northwest of Old CR 17, common address of 22468 CR 45 in Concord Township, zoned A-1, came on to be heard.

Attorney Baker came back on and stated that Mr. Flores is not aware that Staff is recommending denial, and he received a letter from the investigator that he should come in for a Special Use. Mr. Hesser clarified that this Staff Report was the same as the previous report before this was tabled. Attorney Baker stated the petitioner has been clearing up the nuisance violations for parked cars on his property. Mr. Dean clarified photos from Staff were taken back with the original petition. Attorney Baker submitted a photo of the tow truck on the property [Attached to file as *Petitioner Exhibit #1*]. She explained the neighbors are also in violation and submitted photos of the neighbors in violation of having cars parked in grass [Attached to file as *Petitioner Exhibits #2-12*]. Mr. Hesser stated that the Board almost never grants this type of request. Attorney Baker explained the tow truck is being stored at the home; it is not being operated at the residence. Mrs. Cramer asked where the business is operated from and what that address would be.

Israel Flores, 22468 CR 45, Goshen, was present for this petition. He explained he works up to 70 hours a week, sometimes on Sundays as well, and this is a part time thing he does. Attorney Baker clarified that the tow truck leaves the residence when Mr. Flores leaves in the mornings and he drives it back for the truck to be stored at the residence in the evenings. Mrs. Cramer stated at the last meeting it was stated that he is bringing cars back to his property. Mr. Flores responded when the junk yard closes after 5 p.m. on Sundays, he will bring them to his home then take them to the junk yard the next day. Attorney Baker asked if the Special Use was just permitted to store the truck, but not bring the vehicles back to the residence, would that be something that could work. Mr. Auvil stated he drives by this location many times to and from work, and he has seen multiple cars on his property, not just on Sundays. Mr. Flores responded when Covid hit he didn't have a job and had to make money by towing and working on vehicles. Mr. Auvil stated that he has witnessed seeing 4-6 vehicles parked in the grass and behind the property there has been demolitions of RV's and trailers. Attorney Baker responded that it was confirmed that he did use that as scrap money when he wasn't working during Covid, and it was a temporary situation that isn't happening anymore.

There was no remonstrators present.

The public hearing was closed at this time.

Mrs. Cramer stated it isn't just parking that is being asked; it is also to be towing as well. Mr. Hesser clarified that the request is just for parking. He continued saying that this is a tricky one, because there are semitrailers parked in driveways all around the county. He continued saying the Zoning Ordinance is against them, and the Board almost always denies them. Attorney Kolbus clarified the County is complaint driven. Mr. Norman stated this is a 1-ton truck and not a big commercial 26 thousand pound towing capacity truck. Mr. Miller stated there are a lot of violations with trucks being parked along this road, and if this gets approved would this

start allowing others to park their vehicles on residential properties. He continued saying that in denying this it will keep in the spirit of what the Board does, though he thinks this is more of a personal vehicle with towing capacity. Mr. Auvil stated from Staff perspective it is the towing of cars back to the property, and the working on cars, as the main issue.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for commercial parking (tow-truck) be approved based on the findings and conclusions of the Board:

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 (11/15/2021) and as represented in the Special Use application.
2. Only the tow truck is approved, no other commercial or towed vehicles are allowed.
3. Approved for a period of one (1) year, any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

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

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

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

Motion: Action: Amend Approval, **Moved by** Randy Hesser, **Seconded by** Ron Norman that this request for a Special Use for commercial parking (tow-truck) be approved based on the following findings and conclusions of the Board:

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

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

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

12. The meeting was adjourned at 10:11 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary