

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF MARCH 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.

2. A motion was made and seconded (*Norman/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of February 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 ***Benton Prairie School (Buyer) & Connie J. Swinehart (Seller)*** for a Special Use for a school on property located on the South side of SR 13, 675 ft. East of CR 46, 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-0088-2022*.

There were four neighboring property owners notified of this request.

Mervin Stoltzfus, 60112 CR 41, Middlebury, was present representing the petitioner. He explained he is helping the school get their permits, because the community has out grown their one room school house and is in need of another school. Mr. Miller asked if he was the builder. Mr. Stoltzfus responded no, he is just helping get things around for them.

There was 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 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. An administrative subdivision is required.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (2/7/2022) and as represented in the Special Use application.

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 ***Rosetta Groff & Michael Groff, Wife & Husband*** for a Special Use for a ground-mounted solar array on property located on the North side of Shavano Peak Dr., 880 ft. West of Alverstone Dr., 1,490 ft. North of CR 14, common address of 13743 Shavano Peak Dr. in Middlebury 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-0098-2022*.

There were 30 neighboring property owners notified of this request.

Ryan Lengacher, Wellsprings Solar, 1085 N 850 W, Shipshewana, was present representing the petitioner. He shared a power point presentation on his computer. He explained that when the petitioner's came to him, he did some research on the property, and realized they couldn't put the solar array on the roof, due to the gables of the roof. He went on to say that on the second lot, behind the home, they can clear some trees and place the solar panels on that parcel. He stressed that the petitioner isn't looking to use the energy all the time but mainly use it as back-up power for the home, instead of a generator powered by gas. He continued saying that the arrays are 8 panels by 2 panels deep, so there will be 16 panels total that will fit within the setbacks allowed by right. He showed which trees will be taken down and which will be staying on the aerial. He stressed the arrays will be placed 25-30 ft. from each other. He then showed, on the power point, a photo of the neighboring house that with trees and underbrush won't see the panels from where they are proposing to place them. Mr. Miller asked if battery storage will be in the garage. Mr. Lengacher responded yes, as well as the inverter. Mr. Miller asked if more fire protection was being put in place. Mr. Lengacher responded there is no extra fire protection needed as the battery case is steel encased and has been manufactured for placement in homes and garages. Mr. Hesser stated question 10 mentions that the Summit's approval letter was attached, but he doesn't see it in the file. Mr. Lengacher responded that he did have a copy of the HOA agreement, which may not have been added when the application was submitted. He then submitted a copy to the Board [*Placed in file as Petitioner Exhibit #1*]. Mr. Hesser asked if permission was required from the HOA in the subdivision. Mr. Lengacher responded yes, it was required for a ground-mount solar array, and the HOA won't allow solar panels on the front of the house.

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 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 (2/14/2022) and as represented in the Special Use application.

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 *Elsie Gingerich (Land Contract Holder) & Francisco Sesmas & Maria Torres, Husband & Wife (Land Contract Purchasers)* for a Special Use for an indoor recreational facility (boxing training facility) and for a 4 ft. Developmental Variance (Ordinance requires 15 ft.) to allow for a residence 11 ft. from the rear property line on property located on the West side of 11th St., 465 ft. North of CR 20, common address of 57847 S. 11th St. in Concord Township, zoned R-1, R-4, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0102-2022*.

There were 16 neighboring property owners notified of this request.

Alyssa Sawyer, Architectural Group 3, 201 Nappanee St., Elkhart, was present representing the petitioner. She stated this is a great new use of an existing structure to revitalize the area and maintain property values. Mr. Hesser asked what the building is used for now. Mrs. Sawyer responded that it is currently a barn with utilities, and the building department toured the site and determined the building is in good condition. Mr. Hesser clarified the larger building was the church then asked if any church related activities will still take place. Mrs. Sawyer responded no. Mr. Warner asked if this request is for training only without any bouts with spectators. Mrs. Sawyer responded it is not anticipated, but there will be sparing with another facility for training purposes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if anything needs to be done of the existing church Special Use. Mr. Auvil explained this Special Use would replace the church Special Use.

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 an indoor recreational facility (boxing training facility) 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 (2/14/2022) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance (Ordinance requires 15 ft.) to allow for a residence 11 ft. from the rear property line 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 (2/14/2022) and as represented in the Developmental Variance application.

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

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

7. The application of *Patrick M. Rafter & Lauren E. Rafter, Husband & Wife* for a Developmental Variance to allow for the construction of a residence on property with no road frontage served by an access easement on proposed lot 1 on property located on the North side of the access easement, East of CR 3, 1,045 ft. North of CR 2, 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 #DV-0959-2021*.

There were 11 neighboring property owners notified of this request.

Blake Doriot, B. Doriot and Associates, P.O. Box 465, New Paris, was present representing the petitioner. He explained they are trying to build a home for the Rafters, and they would like to live closer to their 3 horses that are on the property. He showed on the aerial where the easement is on the south side of the property and where the split of the subdivision will happen. He submitted an updated deed [*Placed in file as Petitioner Exhibit #1*] and explained that the deed states on the second page “together with a non-exclusive access easement described as follows”, which is the 60 ft. wide stretch of land on the south side of the property. He went on to say that this easement also accesses the county park to the east, there is traffic on this easement that is not generated by the Rafters. He stressed the Rafters use the easement 2 times a day right now to tend the horses, so traffic will not increase much. There was a discussion about names on the deed and who they are. It was clarified that the name on the deed was the previous owners of the property. Mr. Doriot explained the Rafters contacted the neighbors and offered to go in on half of the maintenance cost of the easement. Mr. Miller asked if there was a water issue that needed to be taken care of. Mr. Doriot responded no, that wasn't an issue on this property. Mr. Norman clarified the easement is 60 ft. wide and accesses the subject property and the park. Mr. Hesser asked if the neighboring properties have access through this easement as well as the subject property. Mr. Doriot responded he believes that is correct. Mrs. Cramer asked if the easement goes straight through or goes up and turns. Mr. Doriot responded the easement goes straight through the property to the park, and there is a sign at the entrance of the park telling the hours of the park. Mr. Norman clarified the easement itself is a gravel lane, and the petitioners will help maintain the easement to their home. He then clarified the proposed house location on the aerial. Mr. Doriot stated the County wouldn't allow this to be blocked in without an access. Mr. Miller asked if the County maintains the gravel easement. Mr. Doriot responded that he is unclear as to who maintains the gravel. Mr. Miller clarified they aren't putting in a new easement, it is existing. Mr. Hesser asked if an agreement was made for the maintenance of the easement. Mr. Doriot responded no agreement has been made.

Lauren Rafter, 55789 Apple Rd., Osceola, was present for this petition. She explained her understanding is that the previous 2 owners have always accessed this property through the

easement. She added currently there are 2 addresses to this property, one through AEP as 50860 CR 3, and the other address is the deeded address of Golden Pond Trail. She continued to say there is no access from Golden Pond Trail to the subject property as there is a curb with no driveway. She showed on the aerial where their property and the neighboring properties are located. She went on to say they are in the process of making sure there are no drainage issues with the horses, and they adopted the cats out that were living out of the barn to families. She added they have improved the easement with crushed asphalt. She stressed they offered to the neighbors to improve their driveway and their section of easement, but they didn't take them up on the offer. Mr. Hesser asked to clarify there is no access for lot 1 from Golden Pond Trail, but lot 2 will have access. Mrs. Rafter responded yes, lot 2 is being subdivided off and will have access to Golden Pond Trail, but her Aunt will be building a house there. She stressed they won't be able access their property through that lot. Mr. Hesser asked if the park is land locked as well, except for the easement. Mrs. Rafter responded yes, that is correct, but there is an ATV access, and a lot of the residences use this easement to access the park.

Mr. Hesser asked Mr. Doriot if the neighboring lots were all one parcel at one time. Mr. Doriot responded he doesn't know for sure, but in all his years of surveying he can almost say for sure that they were all one parcel at one point in time. Mr. Auvil stated that the park was given or sold to the County about 5 years ago, and the County wouldn't have taken possession without having an access point. Mr. Norman asked if the park owns the 60 ft. easement. Mr. Doriot responded no, it is not a non-exclusive easement, and it depends on whose property the easement runs through as an encumbrance, that will show in the title.

Dawn Kissel, 50808 CR 3, was present in remonstrance. She stated that when they bought their property they weren't aware of the access easement to the park or to the Rafter's property, as they bought this at the Sherriff's sale. She continued to say that after talking to Kathy Gordon, the previous property owner, she agreed to sell them the subject property when she was ready to sell, as she was getting too old to have the horses. She stressed they didn't push the easement issue at the time, because they were going to buy the property. She went on to say they had conversations with the County Parks Department about removing the easement, and they were informed that the County doesn't use it and had no issues having that access easement removed. She stressed that it isn't a public access, it is just a County access to maintain the park itself. She further explained that since they have lived there people will walk up and down their easement across their property to get to and from the park, so they were hoping to buy the neighboring property and close off that easement access. She explained they got an attorney to remove that easement after finding out the property had been sold, and her understanding was that the property would be accessed through Golden Pond Trail. However, she continued then the property got sold to the Rafters, and now they want to use the easement. She went on to explain the history of the property starting when Kathy Gordon owned the property and Golden Pond Subdivision went in. She explained the subdivision it land locked her property, so Mrs. Gordon had to have an easement put in for access to her horse barn. She stressed that the previous owner asked permission to use the access easement to get to her horses, and that it is incorrect that the public uses this access easement. She explained her concerns of having more traffic on the easement will create a lot more work to keep the easement maintained, as crushed asphalt will cost them money they can't afford. She stressed their priorities are to fix up their home and not the driveway when it won't just be them causing it to decay. She stated they believe that the easement wasn't granted right in the first place, when this easement

was established for access to the horse barn. Mrs. Cramer asked where the access to the park is for the public. Mrs. Kissel responded it is from CR 3 down their driveway, through the Rafters' property, and through the gate. Mrs. Cramer asked for clarification for public access. Mrs. Kissel responded the public access is off Williams Lane. Mr. Norman clarified that the park goes well past what is shown on the aerial. Mr. Hesser stated that the white lines on the aerial identify tax parcels and asked if she has 2 parcels. Mrs. Kissel clarified on the aerial which parcels are hers. Mr. Norman asked about the easement not being properly granted. Mrs. Kissel submitted a letter from her attorney about the deed not being correct according to her findings [*Placed in file as Remonstrator Exhibit #1*]. Mr. Norman asked if she knew when the easement was granted, and if it was an investment company that owned the land when that happened. Mrs. Kissel responded the easement was granted back in 1996, and it was not owned by an investment company. She explained there have been at least 3 other property owners since then, then the investment company, and they bought it. She continued saying it was established by the original property owner from when the property was land locked prior to the subdivision going in. She stressed they have no issues with the Rafters building a home, but they can use access through Golden Pond Trail and not on their access easement. She stressed use of the easement will cause them more financial hardships. Mrs. Cramer asked if there is another property to the west that is also land locked. Mrs. Kissel responded no, the property to the west has a driveway that connects to CR 3. Mr. Miller clarified that the property west of the proposed property is also using the access easement. Mrs. Kissel responded that is their property. Mrs. Cramer asked if they use the easement to access CR 3. Mrs. Kissel responded they have an easement to their other parcel of property, but they own the easement to CR 3. Mr. Hesser explained that an improper easement in the deed is a legal matter. It was clarified that the subdivision has already been approved.

Mr. Doriot came back on to respond. He stated that the Rafters bought the property with title insurance, and it is stated in the deed that they have a non-exclusive access easement to the property. He stressed that Golden Pond subdivision wouldn't have been designed to have livestock traffic come through, when it was created.

The public hearing was closed at this time.

Mr. Hesser asked Attorney Kolbus if he had seen the deed. Attorney Kolbus stated it doesn't matter what his opinion is, and it is fact sensitive. Mrs. Cramer stated according to the deed they have the right to use it. Mr. Miller stated the Board is looking to approve a residence without road frontage; the Board isn't approving the easement or whether or not it is legal. Mr. Hesser stated if this was a new proposal to create an easement that wasn't there before it would be an entirely different matter, as this is a self-created issue, but this easement has been here. He stressed the legality isn't for the Board to decide. He continued to say that he won't include the second sentence of finding #3 from the Staff Report as they choose to use this access easement. Mr. Miller stated this isn't a good solution, but there's nothing the Board can do. Mr. Hesser stressed he understands the remonstrators concerns, though without things in writing there isn't anything anyone can do.

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 Developmental Variance to allow for the construction of a

residence on property with no road frontage served by an access easement on proposed lot 1 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 (12/21/2021) 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 of a Special Use for *David C. Miller* for a Special Use for a campground (20 units) at the request of the new property owner.

Mr. Auvil stated there is a voluntary request to rescind the Special Use for a campground by the new owner.

Mr. Hesser clarified this was the Glamping Special Use.

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

Motion: Action: Rescind, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for -+a Special Use for a campground (20 units) be rescinded at the request of the new property owner.

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 10:02 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary