

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF FEBRUARY 2023 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: 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 19th day of January 2023 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 *Michael Bontrager, Marion Bontrager, & Susan Bontrager* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres on property located on the South side of CR 42, 1,995 ft. East of SR 13, common address of 11638 CR 42 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-0024-2023*.

There were nine neighboring property owners notified of this request.

Marion Bontrager, 11513 CR 42, Millersburg, was present for this request. He stated he wants to build a small horse barn for 2 horses. Mr. Warner asked if that was the maximum number of horses. Mr. Bontrager responded yes. Mr. Hesser asked what the oval shaped structure was on the aerial, that isn't shown on the site plan. Mr. Bontrager responded it was an above ground pool which isn't there anymore. Mr. Miller asked if the horses will be in the barn full time. Mr. Bontrager responded no, there will be an exercise lot in the back yard. Mr. Hesser asked if the fence is all the way around the back yard. Mr. Bontrager responded right now there are trees and privacy fencing out front, but the barn will be located to the east of the house with the exercise lot. Mr. Warner asked what he will do to dispose of manure. Mr. Bontrager responded he owns 40 acres down the road where they can take the manure.

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** 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 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 (dated 1/17/2023) and as represented in the Special Use application.
2. The agricultural use is limited to a maximum of two (2) adult horses at any one time.

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 *Noah A. Miller & Rebecca C. Miller, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for a farmers market to allow for the relocation and enlargement of a freestanding sign on property located on the East side of CR 43, 1,015 ft. South of CR 10, common address of 54738 CR 43 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-0010-2023*.

There were seven neighboring property owners notified of this request.

Noah Miller, 54738 CR 43, Middlebury, was present for this petition. Mr. Roger Miller asked what the need for another sign is. Mr. Noah Miller responded they run a farmer co-op out of this building, and they go to a couple of different farmer's markets. He mentioned they get asked where they are located all the time by customers. He continued to say that there are times where customers have to come to their building to pick up orders and the customers know there is a building there, but they didn't know what was inside of the building. He went on to say in one of the photos submitted with his application, it shows where they are proposing to put the new sign. He stressed that when he was told he needed an amendment, he stopped all work and came in to apply for the amendment. Mr. Hesser asked if he was replacing the current 2 ft. by 4 ft. sign with a 60 sq. ft. sign, on an 8 ft. by 10 ft. base. Mr. Noah Miller responded it will be just over 11 feet off of the landscaping, with 20 inches of landscaping as it will have a flower bed underneath it. He explained that the reason for going with the timbered style sign was because the entrance of the retail area is built with a timber frame, and they wanted to match the look.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Norman stated the sign compliments the store front. Mrs. Cramer stated a 10 ft. setback should be enough to not block the view of traffic. Mr. Hesser stated there is no setback variance requested, therefore he must stay within the required setbacks. Mr. Auvil explained that most signage has to be 55 ft. from the centerline of the right-of-way, or/and 15 ft. from the property line. Mr. Hesser asked if this complies with those setbacks. Mr. Dean explained in this case the sign can be right at the edge of the right-of-way. Mr. Auvil stated the entire width of the right-of-way is 40 ft. so the sign must be 20 ft. setback at minimum.

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 home workshop/business for a farmers market to allow for the relocation and enlargement of a freestanding 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 showing the entire 20-acre property.

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 Amendment 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 *Jose Antonio Garcia-Hernandez & Marisol Peredia* for a Special Use to allow for a kennel, for a Special Use for a roadside stand, and for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres on property located on the South side of State Line Rd., 4,590 ft. West of CR 15, common address of 23176 State Line Rd. in Osolo 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-0040-2023*.

There were six neighboring property owners notified of this request.

Jose Garcia-Hernandez, 23176 State Line Rd., Elkhart, was present for this petition. He explained he does landscaping and is working hard to making a living. He continued to say he is only having a problem with his one neighbor, due to a chicken jumping the fence occasionally. He stressed he is trying to make sure the chickens stay in his yard with a fence, but when he is at work he can't be there to watch them all day long. He went on to say that sometimes his German Shepard jumps the fence and attacks his neighbor's dog. He stressed he has gotten control of her now, and she doesn't do that anymore. Though, he explained that sometimes the neighbor's kids throw rocks at his dog, and he told them not to do that, because that only makes the situation worse. Further, he continued to say that he isn't going to be breeding the dogs on site, and they are his friend's puppies that he is trying to sell. Mr. Hesser asked how many adult dogs will be on site. Mr. Garcia-Hernandez responded right now, it's just his one female German Shepard. He continued to say that she has gotten out a couple times when he has been out of town, but he calls a friend to go get her. Mr. Hesser asked if the chickens have their own fenced in area. Mr. Garcia responded sometimes the chickens get loose as he likes to have the chickens be free-ranged, but he will have them in a fenced area. He stressed he wished his neighbor would call him and discuss issues instead of calling the police, because he doesn't feel as though he is doing anything wrong. Mr. Norman asked if he considered clipping the feathers so the chickens can't fly over the fence. Mr. Garcia responded he has done it in the past, though he doesn't want to have to do that. He stressed he will clip their feathers, if he has to in order to keep them. Mrs. Cramer asked if currently, there was a

fence around his house. Mr. Garcia responded yes, he has a fence all the way around his property, except at night he leaves the gate open for his brothers to come in. Mr. Warner asked how many total dogs he is looking to keep. Mr. Garcia responded just one dog, and the puppies are there in order to help his friend sell them.

Darrel Roberts, 23264 State Line Rd., Elkhart, was present in remonstrance. He explained he lives on the west side of the subject property. He stated he has never called in a complaint, though he is against this petition. He stressed there is no room for parking for the stand, the animals keep getting into his yard, and Mr. Garcia's animals have broken his fence down. He went on to say that Mr. Garcia keeps puppies year round, and the puppies bark all day and night long. Further, he stated the personal adult dog has broken into his yard and attacked his dog. He went on to say there is also a sheep that gets out and into his yard as well as the chickens. He stressed that Mr. Garcia is running multiple businesses off of his property, landscaping and selling cars, which causes people to be coming and going at all hours of the day and night. He continued to say he has no problem with his neighbor, but the property is a mess with trash piles all over, as well as burning fiberglass and tires. Mrs. Cramer asked if he said there is a sheep on the property as well. Mr. Roberts responded yes.

Donna Bachota, 23276 State Line Rd., Elkhart, was present in remonstrance. She stated she has never complained and doesn't want issues with her neighbors, though enough is enough. She stressed she has seen a lot of trash all over the place, the sheep, dogs, and chickens are in her yard all the time. She continued saying the constant burning is causing her issues, as she doesn't have air conditioning, therefore her windows are open all the time. Further, she stressed something really needs to be done, and he shouldn't be allowed to have the RVs parked there either.

Jose Garcia-Hernandez came back on to respond. He stated all he can say is that he does landscaping, and he only burns in the way back to make sure the poison ivy doesn't get into the air. He stressed he is trying to keep everything in a good order, and he has never met the one neighbor that spoke. He continued to say he has never seen his animals as far as 2 houses down. Mr. Hesser asked how many sheep he has. Mr. Garcia responded just one. Mr. Hesser asked what other kinds of animals he has. Mr. Garcia responded just a dog. Mr. Norman asked why the RVs are parked on the property. Mr. Garcia responded his friend asked to rent the RV, but he told him he couldn't do that. Mr. Norman reiterated there are only the 2 RVs on the property. Mr. Garcia responded yes, it is just the 2 RVs, and the really bad one is going to be taken apart. He added the other one is just for camping. He stressed he is a nice guy and isn't doing anything bad.

The public hearing was closed at this time.

Mr. Hesser stated the Staff report didn't have any other animals other than chickens. Mrs. Gilbert responded the petition just asked for chickens. Mr. Hesser asked if the recommendation was just for the chickens. Mr. Auvil responded that Staff was unaware of the other farm animals. Mr. Miller stated the requirement for a kennel is several dogs, though he is only going to have one dog. Mr. Hesser explained someone else is bringing the puppies to the subject property a few times a year. Mrs. Cramer stated since the gate is being left open then the chickens aren't being kept in a fenced in area. Mr. Miller explained even if the Board denies the kennel it doesn't take care of the issues of the sheep and trash. Mr. Norman stated he could request a Special Use for animals on less than 3 acres for the sheep. Mrs. Cramer stated that is correct, but he didn't request that and he still isn't containing the animals. Mr. Hesser explained normally, the Board only allows 12 chickens, but 30 chickens could easily be contained on this size of a lot. However, he isn't

confident that containment will be done in this case. He continued to say that he doesn't have a concern with the roadside stand, though he has a concern with the kennel and the chickens not being contained. He stressed that there are no dimensions or setbacks on any of the buildings, and the new site plan should address these issues as well as the containment area for the chickens. Mrs. Cramer asked if the fence goes to the road, where will people pull off the road to park for the roadside stand. Mr. Miller stated he was concerned with that as well. Mrs. Cramer stressed the petitioner stated he could contain the chickens, though it would have to be commitment. Mr. Miller stressed the Board could add a condition that there would be no other animals. Mr. Hesser asked Mr. Garcia, if the chickens are all laying chickens. Mr. Garcia responded they are all laying chickens. Mr. Warner asked Attorney Kolbus how to address the other issues that have been brought up. Attorney Kolbus responded the Board will address the request, and then code enforcement will go in to address the complaints. Mr. Hesser explained he doesn't have a problem with the 30 chickens, as long as they can be contained, due to the petitioner selling the eggs at his roadside stand. He continued to say he isn't comfortable with approving the kennel. Further, he stressed a new site plan must show parking for the roadside stand and the area where the chickens will be contained. Mr. Norman asked as far as the sheep goes, how long does code enforcement give to remove the sheep. Mr. Auvil responded 30 days. There was discussion on whether or not a sign was on the property currently. Mr. Dean clarified there is a sign on the property, and there is no size limit due to it is allowed as shown on the site plan. Mr. Miller stressed he doesn't have an issue with allowing the 30 chickens, but they must be contained in a coop.

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 roadside stand and for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A revised site plan must be submitted for staff approval meeting all site plan requirements. These include but are not limited to sign dimensions, location, and setbacks; roadside stand dimensions, setbacks, and removal from the right-of-way; chicken containment area and fence; parking area dimensions and setbacks.

The following commitments were 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 application.
2. The agricultural use is limited to a maximum of thirty (30) chickens at any one time, no roosters and no other farm animals.

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

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

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

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Ron Norman further moved that this request for a Special Use to allow for a kennel be denied.

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 *Manuel M. Martin & Lynette Martin, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for a cabinet shop to allow for an addition on property located on the North side of CR 36, 1,000 ft. East of CR 15, common address of 22772 CR 36 in Harrison 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-0012-2023*.

There were 16 neighboring property owners notified of this request.

Manuel Martin, 22772 CR 36, Goshen, was present for this petition. He stated he is the owner of the custom woodworking shop that makes cabinets, and he is looking to add 32 ft. to the west end of the existing building for more space. Mr. Hesser asked if he was going to increase the number of employees. Mr. Martin responded no. Mr. Hesser stated in the questionnaire he stated he gets a few box trucks for deliveries, then asked if he would he have any semi deliveries. Mr. Martin responded occasionally, but they come in off the road and can turn around in the driveway.

Daina Heflin, 22889 CR 36, Goshen, was present in support of this request. She stated she is in support of this as they have purchased products from the Martin's in the past as well as recommended to their friends and family to purchase from him.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he would like a revised site plan for Staff approval showing the semi turn around area and the dimensions of the shop.

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 an Amendment to an existing Special Use for a home workshop/business for a cabinet shop to allow for an addition 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. A revised site plan must be submitted for staff approval meeting all site plan requirements. These include but are not limited to dimensions of all structures and the semi turn around location.
2. The request is approved in accordance with the revised 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.

8. The application of *Roselawn Mennonite Church* for an Amendment to an existing Special Use for a place of worship to allow for an electronic message board and for a Developmental Variance to allow for an electronic message board within 300 ft. of a residence on property located on the Southwest corner of Independence St. & Sunset Ave., common address of 54365 Independence St. in Osolo 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-0020-2023*.

There were 34 neighboring property owners notified of this request.

Mr. Hesser asked what Staff is looking for in the revised site plan. Mr. Dean responded the petitioner was uncertain of the new message board size, and the site plan can't show the sign in the right-of-way. Mr. Hesser asked if Staff was concerned the buildings not being on the site plan. Mr. Dean responded no.

Conrad Hochstetler, 2506 Ada Dr., Elkhart, was present representing the petition. He stated the new sign will be 7 ft. by 9 ft., and the current sign is 4 ft. by 8 ft.. Mr. Hesser asked if the signage itself, will be bigger. Mr. Conrad responded no, it won't be any bigger, though the change is making it an electronic message board. He continued to say that they didn't realize the sign was in the road right-of-way for the past 70 years, though they can move the sign back to where it needs to be in order to be in compliance.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated this is in a heavy residential area, and the sign will have to comply with state regulations.

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 a place of worship to allow for an electronic message board be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A revised site plan must be submitted for staff approval showing final dimensions for the electronic message board and showing the message board out of the 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 Amendment application.

Further, the motion also included that for a Developmental Variance to allow for an electronic message board within 300 ft. of a residence 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 revised site plan to be submitted for staff approval 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.

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

9. The application of *Austin Heflin & Daina Heflin, Husband & Wife* for a Special Use renewal and Amendment for an indoor/outdoor recreation facility (wedding venue) to add an office and for a Developmental Variance to allow for 6 outside employees (Ordinance allows 2) on property located on the North side of CR 36, 290 ft. East of CR 15, common address of 22889 CR 36 in Harrison 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-0025-2023*.

There were 16 neighboring property owners notified of this request.

Jim Byron, 228 W. High St., Elkhart, was present representing the petitioner. He stated this is a wedding venue, and it is very popular with the public. He continued to say they are asking for renewal of the Special Use and for the expansion of the office building. He explained there have been 4 renewals since the initial Special Use was granted, and the business is very successful. He stressed if the procedures would allow, they are asking the Board to allow for a more permanent Special Use, or a longer period between renewals.

Daina and Austin Heflin, Country Strong, 22889 CR 36, Goshen, were present for this petition. Mrs. Heflin stated the barn is an event venue. Mr. Heflin explained Mrs. Heflin is a stay at home mother, and he is a traveling nurse. Mrs. Heflin presented a PowerPoint presentation for the Board with a video. Mr. Heflin explained they use the video for advertising, though they felt it helps show exactly what they offer to the public. Mrs. Heflin explained they have a bride suite, a groom's den, tractors and trucks for pictures to be taken next to, fences, ceremony area, and golf cart shuttles for the guest to get around the property easier. She went on to say they have on site decorations and dishes. She explained they added handicap ramps, heat and fire detectors, and emergency exits in 2014 in order to comply with state codes. She stressed the Board gave them grace and time to add in noise canceling insulation after having a noise complaint, which they did the work themselves due to the cost of the installation. She continued to say they are here today asking for a permanent Special Use. She stressed they provide police presence when an event will have alcohol, and they offer their guest the opportunity to leave their cars parked overnight to prevent drinking and driving. She reiterated they added extra paned windows and doors to help keep the noise in the barn, as well as a decibel reader. She went on to say the decibel readers are for the DJ to keep an eye on the sound level. Further, she explained their contracts require all music and alcohol to be done by 11pm on Fridays and Saturdays and by 9 pm Sundays. Mr. Norman clarified that with everything they have installed on the property they are staying under 85 decibels. He continued to say that law enforcement officers carry decibel readers and as long as, from the road, the readers are under 85 decibels they will allow the noise to continue. Mr. Heflin explained that the Goshen Police Department came out and did a decibel reading starting from the road to the neighbor's fence to make sure they weren't causing noise issues. Mrs. Heflin showed a photo of positive reviews from guest and neighbors. She submitted a packet of the PowerPoint that was

presented, a letter from a previous intern, a letter from the current intern, signed petition from supporting neighbors, and a copy of their various licenses *[Attached to file as Petitioner Exhibit #1]*.

Haley Heflin, 22889 CR 36, was present in support of the petition. She stated she is the daughter of Austin and Daina Heflin. She read a letter of support from a past intern.

Sienna Heflin, 22889 CR 36, Goshen, was present in support of the petition. She stated she is also Austin and Daina Heflin's daughter. She read a letter of support from a current intern.

Mr. Heflin explained they had an office get delivered from offsite, and they were under the understanding they didn't need a permit for a building that is pre-built. He continued to say the office is now inside their house and in order to give the family more privacy away from the business they needed the new building. Mr. Miller asked what happens when the event hits 11pm and the guest don't start to leave. Mr. Heflin responded they have an officer on site, and if the guest don't want to stop, they will cut the power, though that hasn't been a problem. Mr. Miller stated one of the reason for these issues, in the beginning, was that there were a lot of people who didn't want to see this happen, and they have done a good job in keeping the noise to a minimum. He continue to say his concern is they put up an office without a permit. Mr. Norman asked if they brought the office in two sections. Mrs. Heflin responded no, it came in one section. Mr. Norman asked if a portable building requires a permit. Mr. Auvil explained yes, any structure over 120 sq. ft. needs a permit and any structure over 200 sq. ft. requires a permanent foundation.

Scott Heflin, Smiley's Golf Carts, 54135 CR 7, Elkhart, was present in support of the petition. He explained he is the one who rents the golf carts for shuttling at the events. He stressed that he and the officer on site drives around the property throughout the entire event to ensure that drinks are staying inside and smokers are staying in their smoking area. He continued to say that no one can make everyone happy, but they have done their best to be a good neighbor.

Weston Yoder, 22926 CR 36, Goshen, was present in support of the petition. He stated the Heflin's have done very well, and he enjoys seeing the family work together to keep this business going. He continued to say some neighbors have complained about noise, though he doesn't hear anything in his house and outside there might be as much noise as a car driving by.

Manuel Martin, 22772 CR 36, Goshen, was present in support of the petition. He stated he lives right beside the Heflin's, and he is glad to have them as neighbors.

Blake Eckelbarger, 57730 Hillside Dr., Goshen, was present in support of this request. He stated he is the DJ entertainment, and he is the one making most of the noise during events. He stressed he has worked at over a dozen venues over his 30 year career, and the Heflin's take the noise more seriously than anyone he has ever worked with. He continued to say that they keep the noise to the point that it is almost not even loud enough. Further, he stated they are always there and are a part of every aspect of the event. He went on to say they make sure everyone follows the rules, and those rules are read to the guest prior to the event starting. He reiterated that the cut off time is followed very strictly, and they are doing a great job.

Brandy Graves, 3110 E. Lake Dr., Elkhart, was present in support of the petition. She stated she is a photographer. She stressed the Heflin's are very clear and upfront with the brides and grooms about their rules. She continued to say the property is taken care of better than any other venue she has been at, and it doesn't distract from the roadside.

Amzie Miller, 11324 CR 10, Middlebury, was present in support of the request. He stated he is a handyman, and he has done a lot of work for the Heflin's. He stressed they are great people and he wishes them the best.

Jenna Davis, 5307 Lindon Ave., South Bend, was present in support of this request. She stated she works for the Heflin's, and they have taught her everything she knows about planning events. She stressed she truly enjoys working for them.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated they requested to have this be a permanent Special Use, as opposed to coming back for renewals. Mr. Auvil stated Staff has no objection. Attorney Kolbus explained this request, as written in the Staff report, is to be a permanent Special Use.

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 renewal and Amendment for an indoor/outdoor recreation facility (wedding venue) to add an office 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 obtain a building permit for the office and have final inspections done within 6 months of the date of the Special Use renewal.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 1/17/2023) and as represented in the Special Use Amendment application.

Further, the motion also included that for a Developmental Variance to allow for 6 outside employees (Ordinance allows 2) 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 (dated 1/17/2023) 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, Roger Miller.

Abstain: Randy Hesser.

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

10. The application of *Whistling Prairie School* for a Special Use for a school and for a 7:1 depth-to-width-ratio Developmental Variance and a 50 ft. lot-width Developmental Variance to allow for the construction of a school on property located on the East side of CR 131, 1,430 ft. South of CR 4, common address of 00000 CR 131 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-0026-2023*.

There were nine neighboring property owners notified of this request.

Jeremiah Hochstetler, Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners. He stated they would like to build a new school, because the current school is too small to accommodate the amount of students. He continued to say that the Developmental Variance is due to the shape of the parcel, as this was what the school was able to buy from the former land owner. Mr. Hesser asked where the old school is located. Mr. Hochstetler responded it is on CR 37 in between SR 120 and CR 10. He noted that school will stay, and this new school will be for the overflow of students. He explained this new school will hold up to 40 students before another school would have to be built. Mr. Hesser asked if the school owns the parcel of land that surrounds the subject property. Mr. Hochstetler responded yes, but they are selling that parcel as they don't have a need for 7 acres. He stressed they are only in need of a driveway back to the school, which is why they only have 50 ft. of road frontage. Mr. Hesser stated the need for the 7:1 Developmental Variance is self-created.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he doesn't have a problem with the school, though he has a problem with the 7:1 being self-created. Mrs. Cramer stated she doesn't feel the Board can say that strict application would result in an unnecessary hardship when they are the ones making the need for the variance. Mr. Miller stated this is in an area that is well taken care of, and approval will not cause any issues, even with it being self-inflicted. Mr. Hesser explained since this is self-created, the Commissioners don't want 7:1 because they have adopted a code against self-created variances. He stressed he doesn't see how this can be an unnecessary hardship when they created it themselves. Attorney Kolbus stated it may be self-created, but that isn't the end of the issue. Mrs. Cramer asked since this is not a subdivision, was there a reason why they couldn't do 100 ft. of road frontage to get rid of the 7 :1 in order to be in compliance. Mrs. Gilbert explained they would still need a 7:1 variance, even with 100 ft. of road frontage. Mr. Miller stated there isn't a lot of traffic through this area.

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. A subdivision is required.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 1/17/2023) 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.

Mr. Miller stated he doesn't have any problem with the way the Developmental Variance is being presented. Mr. Norman stated he doesn't have any issues with it either, because it doesn't make any difference if they have 50 ft. or 100 ft.; they will still need the 7:1 variance. Mr. Auvil stated that this will maximize land use, and at the end of the day they could submit a 2-lot minor subdivision with the rear lot having no frontage, only an access easement. Mr. Hesser asked couldn't that be argued for any flagpole style lot. Mr. Auvil responded yes, but this isn't not an unusual development pattern in Elkhart County. He added there are hundreds of these situations. Mr. Auvil stressed the best usage of land, adjacent to a road is residential use.

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

Motion: Action: Approve, **Moved by** Ron Norman, **Seconded by** Roger Miller for a 7:1 depth-to-width-ratio Developmental Variance and a 50 ft. lot-width Developmental Variance to allow for the construction of a school 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 (dated 1/17/2023) and as represented in the Developmental Variance application.

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

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

No: Randy Hesser.

11. The application of *Luta Enterprises Inc.* for a 68 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of an addition to an existing commercial building 52 ft. from the centerline of the right-of-way on property located on the East side of Main St. (SR 13), 2,760 ft. North of Orpha Dr., common address of 514 S. Main St. in Middlebury Township, zoned B-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0911-2022*.

There were six neighboring property owners notified of this request.

Natasha Jones, 11543 CR 24, Middlebury, was present for this petition. She stated they want to add an addition to the front of their property in order to add an upscale, classy, and beautiful look for the neighborhood. She explained they want to keep the parking in the back as it is easier to turn-around, and for patrons to not have to park on the road. She stressed they felt the best way to utilize the interior and exterior is to put in a 4-seasons room on the front of the building. She continued to say that they will be staying back from current trees and signage, that are closer to the road, and this will not cause any traffic sight issues. Mr. Hesser asked what their business is. Mrs. Jones responded she wants to open a whiskey and cigar lounge. Mr. Miller asked if Staff is concerned about the distance from the road. Mr. Auvil responded yes, and from a planning point of view this doesn't seem like a good idea. Mrs. Jones stressed they knew there are rules off of SR 13, but she felt if they stayed behind the current trees then they wouldn't be blocking traffic visibility. She explained that she has gotten permission from the neighboring business to take down one of the big trees that is between the two buildings to help create a more open view for customers

from both businesses pulling in and out of their driveways. She stressed visibly the front of the building is lacking, and that is causing other people to turn away from opening a business. Further, she stated that the inside of the building has a unique layout, but it does not accommodate enough room for customers. She stressed the patio will offer more seating. Mr. Norman asked if she is considering outdoor space in the future on the back of the building, which is why she is considering the patio on the front. Mrs. Jones responded they want to the 4-seasons off the front due to where the main entrance is located. She went on to say there is a back entrance as well, though it is upstairs and any patio would have to be raised to not go down a slope or take away room for deliveries and parking. Mr. Norman asked if the parking area is the 8 ft. by 12 ft. area on the site plan. Mrs. Jones responded on that side they want to wrap the patio around in order to have an open space for sitting in the sunshine, as well as the enclosed space. Mr. Miller asked if this is granted would it be for the property or the business. It was clarified approval would be for the property. Mr. Hesser asked if parking could be moved to the front. Mrs. Jones responded they did look at parking in the front, and it would restrict parking to a small amount. She added there were also concerns about causing traffic accidents due to having to back out onto SR 13. She went on to say she spoke to Mary Cripe from Town of Middlebury, and she is in favor of this request as well. She added Mary just doesn't want them impeding the neighboring property's views from the road. Mr. Norman asked as per her conversation with Mary Cripe; Mary wasn't concerned with future expansion of the road. Mrs. Jones responded no, there wasn't a concern. She added there are businesses that go closer the road. It was discussed that there are parking lots that are closer to the road, not structures. Mr. Hesser stated that from the aerial view, 3 properties to the south, the building protrudes out further than this proposed building would protrude out to the road. Mrs. Jones stressed that most of the business along this stretch of road, are very close, and it would be more than just her business that would be affected if the Town of Middlebury decided to widen the road for a buggy lane. Mr. Hesser stated the existing building is already closer than the 120 ft. that is allowed by right. Mr. Dean explained that most of the buildings along this road are legal non-conforming. Mr. Miller stated he would be for allowing this variance since Mary Cripe is okay with this petition. Mrs. Cramer stated the Board isn't talking to Mary, and there isn't an email or letter stating she is in support of this variance.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Norman stated he would be in favor of approving this, as there are a lot of properties that encroach along this road.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Steve Warner moved that this request for a 68 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of an addition to an existing commercial building 52 ft. from the centerline of the right-of-way be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals, or general welfare.
2. Approval of the request will not cause substantial adverse effect on neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Steve Warner, Ron Norman, Roger Miller.

No: Deb Cramer, Randy Hesser.

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

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary