

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15th DAY OF AUGUST 2024 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: Mae Kratzer, Plan Director; Jason Auvil, Zoning Administrator; Danielle Richards, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Deb Cramer, Ron Norman, Roger Miller, Randy Hesser,

Absent: Steve Warner, David Miller, John Gardner

2. A motion was made and seconded (*Norman/Cramer*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of July 2024 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Hesser*) 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 *Edwin & Miriam Miller Trust* for a Special Use for two (2) retail greenhouses on property located on the West side of CR 43, 3,075 ft. North of CR 14, common address of 55199 CR 43 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-0481-2024*.

There were 14 neighboring property owners notified of this request.

Edwin Miller Jr., 55237 CR 43, Middlebury was present for this request. Mr. Edwin Miller stated he wishes to move 2 greenhouses to 55199 CR 43. Ms. Cramer asked if there would be semi-trucks coming to the property for deliveries. Mr. Edwin Miller stated that there would be one or two deliveries a year. Mr. Hesser asked if there was a way the semi-trucks could turn around without having to back out onto CR 43. Mr. Edwin Miller stated that the semi-trucks would be able to turn around on the property.

Edwin Miller Sr., 55199 CR 43, Middlebury was present for this request. He stated that the greenhouses would be moved to 55199 CR 43 and wanted to be sure this was possible via this Special Use request before they moved them. He continued to say that his son (Edwin Miller, Jr.) will live at 55199 CR 43 and have the retail business here.

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** Deb Cramer, **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 two (2) retail greenhouses 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 (dated 7/09/2024) and as represented in the Special Use application.

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

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

5. The application of *Enrique Rodriguez* for a Special Use for a home workshop/business for an auto detailing and tinting business on property located on the North side of Forsythia Dr., 690 ft. East of Sommerset Place Blvd., West of Old CR 17, common address of 22281 Forsythia Dr. 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-0494-2024*.

There were 17 neighboring property owners notified of this request

Anthony Rodriguez, 22281 Forsythia Dr., Goshen and his business partner Moses Rizzo, 22432 Stillwater, Elkhart were present for this request. Mr. Rodriguez explained that the needs of the business have changed. He then continued to say that he would no longer be detailing cars, only tinting. He stressed that he and his business partner are now employed full-time, and the hours of business would be Monday through Friday, 3 to 8 p.m. and Saturdays from 7 a.m. to 4 p.m. He continued to say that they would only work on one car at a time, and it would be done in the garage. Mr. Hesser asked about the noise level involved in the tinting business and Mr. Rodriguez responded that there really is no noise involved in the process of tinting. He stated that there could possibly be some noise from vehicles that have modifications to them. Mr. Hesser asked how many cars they could do tinting on between 3-8 p.m. Mr. Rodriguez responded that 4 cars could be done.

Mr. Auvil stated he had several emails in remonstrance to read to the Board. Glen & Angela Stutsman, 22351 Forsythia Dr. Goshen were concerned that there should be no business in the neighborhood.

Mr. Auvil presented an email from Lyle Jackson 22310 Forsythia Dr., Goshen. He stated that they were concerned about increased traffic, noise, and strange people in the neighborhood and also did not want a business in the subdivision.

Jason Warren, 22311 Forsythia Dr., Goshen was present in remonstrance. He presented several exhibits to the Board. (*Attached to file as Remonstrator Exhibit #1*) A signed petition from 51 neighbors, restrictions and covenants of the neighborhood that shows that no parking is allowed in the streets, and pictures showing 5 vehicles in the cul-de-sac. He stressed that he is concerned about the increased traffic and about transactions that are taking place in the street. He continued to say he is concerned about property values possibly going down.

Corey Stewart, 22480 Blossom Ct, Goshen was present in remonstrance. Mr. Stewart stated he has owned a detailing business for 18 years in Elkhart County. He explained there is an inconsistency of the number of cars that would be coming and going at the tinting business of Mr. Rodriguez. He stressed there would be lots of picking up and dropping off cars during their

business hours. Mr. Hesser reminded Mr. Stewart that Mr. Roriguez stated that there would only be one tinting job done a day with the hours that they would be open during the week. Mr. Stewart stated his concern is the parking in the cul-de-sac and signs to advertise the business. Mr. Hesser explained that the covenants do not allow signs in the subdivision. Mr. Stewart reiterated that the noise level might be an issue with the modified cars that come through the neighborhood.

Terrie Forrest, 22364 Sommerset Pl, Goshen was present in remonstrance. Ms. Forrest stated her number one concern is the resale value of the properties in the neighborhood. She stressed she has been a realtor for over 30 years, and she considers herself knowledgeable in property values. She stated she has a concern about the young children in the neighborhood, as there are no sidewalks, and she stated that the children tend to play and ride their bikes in the streets.

Brent Robertson, 22369 Forsythia Dr., Goshen was present in remonstrance. Mr. Robertson stated his main concern is the traffic, as he lives on the bend of Forsythia Dr., on the way to Mr. Rodriguez's house. He continued to say that the garbage trucks and school buses use the cul-de-sac as a turn around.

Carla Warren, 22311 Forsythia Dr., Goshen, was present in remonstrance. Ms. Warren stated that it is an issue with cars parking in the cul-de-sac. She lives right next door to Mr. Rodriguez. Ms. Warren stressed her concern about the evening hours of Mr. Rodriguez business, because of the children playing in the cul-de-sac and neighborhood.

Mr. Rodriguez came back up to the podium to address the concerns of the remonstrators. He stated that he does park in the cul-de-sac at times, and that other neighbors park in the cul-de-sac. Mr. Rodriguez stressed that the pictures that were part of the evidence against him were taken on Mother's Day, and that it was all the family parked in the driveway and cul-de-sac. He stated that he always parks his car in the cul-de-sac and none of the neighbors has ever said anything to him directly. Mr. Rodriguez also stated that they would only need it until the end of September as he and his business partner are planning to move their business to another location. Mr. Miller asked if he is committed to ending the business at the home location by the end of September and Mr. Rodriguez responded yes, that is the plan. Mr. Miller asked Staff how they should proceed with this request. Mr. Auvil responded that the Board should deny the request, and then give the petitioners to the end of September to close out the business.

The public hearing was closed at this time.

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

Motion: Action: Deny, Moved by Deb Cramer, **Seconded by** Roger Miller based upon the following Findings and Conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance.

Included as part of the motion, Staff to delay enforcement through the last day of September 2024.

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

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

6. The application of *Loren Stutzman & Joann Stutzman, Husband & Wife* for a Special Use for a home workshop/business for a concrete border business, for a Developmental Variance

to allow for the total square footage of accessory structures to exceed that allowed by right, and for a Developmental Variance to allow for 7 outside employees (ordinance allows 4 employees) on property located on the East side of CR 35, 2,160 ft. South of US Highway 20, common address of 57404 CR 35 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-0446-2024*.

There were 22 neighboring property owners notified of this request.

Loren Stutzman, 57404 CR 35, Middlebury was present for this request. Mr. Stutzman stated that they built the 2,800 square foot building in 2016 and have been operating the business there since then. Mr. Hesser asked if the smaller building on the site plan is used for storage for the business. Mr. Stutzman said yes. Mr. Hesser asked if the product is made on site. Mr. Stutzman responded no. He stated that the product is loaded on site, then brought to the customer's property, and then work is done. Ms. Cramer asked what type of vehicles deliver the product for his business. Mr. Stutzman responded that a dump truck delivers material once a week. Mr. Hesser asked if there are employees that park on site. Mr. Stutzman responded that in the summer they have up to 7 employees, because they hire seasonal help. He continued to say that in September they go back to four employees. Ms. Cramer asked if any changes were taking place, or if the request was just to have the proper variances to operate the business. Mr. Stutzman responded that was correct. Mr. Hesser asked if there needed to be a concern about storage of materials outside. Mr. Auvil stated no, because the materials are natural.

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** Deb Cramer, **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 home workshop/business for a concrete border business 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 (dated 6/27/2024) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a Developmental Variance to allow for 7 outside employees (Ordinance allows 4 employees) on the Real Estate be approved with the following conditions imposed:

1. Variances from the developmental standards of the Development 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 6/27/2024) and as represented in the Developmental Variance application.

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

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

7. The application of *Jose Olais & Lourdes Agustin Flores* for a Special Use for a home workshop/business for a roofing business and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the West side of Conn Ave., 385 ft. North of Bristol St. (CR10), common address of 54431 Conn Ave. 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-0450-2024*.

There were 28 neighboring property owners notified of this request.

Jose Olais, 54431 Conn Ave., Elkhart was present for this request. Mr. Olais stated that he wants to build a pole barn to store his equipment for his business. Ms. Cramer clarified that Mr. Olais would just be storing his equipment for work in the pole barn.

Russell Tesser, 54397 Conn Ave., Elkhart was present in support of the petition. Mr. Tesser stated that Mr. Olais is a great neighbor and keeps up his property. He stressed he has done a lot to improve his property, and he supports him 100%.

There were no remonstrators present.

The public hearing was closed at this time.

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

Action: Approve, **Moved by** Deb Cramer, **Seconded by** Ron Norman that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a roofing business 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 (dated 6/28/2024) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on the Real Estate be approved with the following conditions imposed:

1. A variance from the developmental standards of the Development 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 6/28/2024) and as represented in the Developmental Variance application.

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

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

8. The application of *David D. Sommers & Anna M. Sommers, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the South side of CR 8, 1,300 ft. West of CR 27, common address of 17240 CR 8 in Washington Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0488-2024*.

There were 10 neighboring property owners notified of this request.

David Sommers, 17240 CR 8, Bristol was present for this request. Mr. Sommers stated that he wants to build a pole barn for storage and shelter for his horse and build a fence around the rest of his property. He went on to say that he currently has a chicken coop. Mr. Hesser asked if he currently has chickens. Mr. Sommers responded that he has 14 chickens at this time. He stated that he was told at the time of application that he did not need to include a request for additional animals or fowl. He continued that he would also like to have a cow or a goat. Mr. Hesser explained that it may require Mr. Sommers to come back and get an amendment to the Special Use. Mr. Auvil explained that the Board should keep in mind that the subject parcel is 2.99 acres. He stressed that the parcel barely misses the threshold. He continued so say that staff is ok with the 14 chickens and one goat or one cow in the future.

Angela Blasko, 53845 CR 27, Bristol, was present in support of the petitioner. Ms. Blasko stated that she has never had any issues with Mr. Sommers, and that he has done a lot to clean up the property.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 7/15/2024) and as represented in the Special Use application.
2. The request is limited to a maximum of one (1) adult horse, fourteen (14) chickens, and no roosters, at any one time.
3. The request is also approved for a maximum of one (1) additional adult goat or one (1) additional adult cow, at any one time in the future.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on the Real Estate, be approved with the following conditions imposed:

1. A variance from the developmental standards of the Development 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 issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 7/15/2024) and as represented in the Developmental Variance 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 *Verle J. Yoder & Malinda Yoder, Husband & Wife (Sellers) & Joas J. Miller & Freda Miller, Husband & Wife (Buyers)* for a Special Use for a home workshop/business for a retail store and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the Southeast corner of CR 43 & CR 10, common address of 54524 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-0489-2024*.

There were 13 neighboring property owners notified of this request.

Jeremiah Hochstetler, Freedom Builders, 54824 CR 33, Middlebury was present representing the petitioners. Mr. Hochstetler stated by that Mr. Joas Miller wants to finish the attic space for storage, and that it would not change the footprint of the building. He continued to say the attic space would have a finished area of 1,500 square feet. Mr. Auvil explained that since the footprint is not changing, then the staff does not have a problem with the change.

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 a home workshop/business for a retail store be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 7/15/2024) and as represented in the Special Use application.
2. Any expansions will require a DPUD.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be approved with the following conditions imposed:

1. A variance from the developmental standards of the Development 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 7/15/2024) and as represented in the Developmental Variance application.

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

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

10. The application of **Roberto Barrera Zuniga & Isabel P. Arizpe Martinez, Husband & Wife** for a requested rescission of an agricultural use for the keeping of animals on a tract of land containing less than 3 acres for failure to comply with the condition(s) and/or commitments imposed by the Board of Zoning Appeals on property located on the East side of CR 27, 550 ft. South of CR 40, common address of 66102 CR 27 in Elkhart 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-0473-2023*.

There were 22 neighboring property owners notified of this request.

Kierstin Dominguez, Elkhart County Planning and Development, Code Enforcement Officer was present for this rescission request. Mrs. Dominguez stated that Mr. Zuniga had a Special Use approved in September of 2023 for 12 chickens and no roosters. She went on to say that she has received complaints about Mr. Zuniga having roosters, and that she has sent violation letters, and has had no contact with Mr. Zuniga. She stressed that Mr. Zuniga had not followed through with any of the requirements that were part of the approval of the Special Use approval. She further stressed stated that the staff is asking for the Special Use to be rescinded.

The petitioners were not present for this rescission request.

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 approve the request for rescission.

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

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

11. The application of **Matthew Nelson & Loren M. Nelson, Husband & Wife** for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right and for a 7 ft. Developmental Variance (Ordinance allows 25 ft.) to allow for the construction of an accessory structure 32 ft. in height on property located on the Southeast corner of North Shore Dr. & Deer Run Trail, 1160 ft. South of Fawn, common address of 25290 North Shore Dr. 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 #DV-0397-2024*.

There were 5 neighboring property owners notified of this request.

Jeremiah Hochstetler, Freedom Builders, 54824 CR 33, Middlebury was present representing the petitioners. Mr. Hochstetler stated that Mr. Nelson wants to construct a building for storage and recreational use.

Matthew Nelson 25290 North Shore Dr., Elkhart was present for this request. Mr. Nelson stated that he wants the building for storing boats and jet skis and would also like to have part of the building used as a gymnasium for his children.

Charlotte Matthews, 25329 North Shore Dr, Elkhart was present in remonstrance. Ms. Matthews stated that she was speaking on behalf of the Hatches, who live at 50904 Deer Run Trail, Elkhart. It was noted that the Hatches live directly north of Mr. Nelson's property. Ms. Matthews brought photos on a tablet for the Board to view, showing that the Hatches would lose their view of the lake by the proposed building. She stressed that the proposed building would be better suited for a country location, and not this residential neighborhood. She went on to say that the proposed building could be located elsewhere on Mr. Nelson's property. She stressed that she hoped that Mr. Nelson did not intend to remove any more of the tree line along the Hatches property line.

Mr. Nelson came back on to respond. He stated that he does not intend to remove any more trees at this time, but if he did it would be his prerogative to do so. He stressed that regardless of the current tree line, in the winter there would be no leaves, no matter the number of trees present.

Mr. Auvil asked the Board to hold off on a decision as the Staff was confirming something of importance related to the petition.

The public hearing was closed at this time.

Mr. Hesser stated his concern about the location and size of the proposed building. Mr. Auvil stated that if the basement were finished and included in the total finished square footage, that the only Developmental Variance that would be required would be for the height of the proposed building. Mr. Hesser asked why they were locating the proposed building behind their home instead of in front of their home. He stated that he imagined that they did not want the proposed building to block their view of the lake.

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

Motion: Action: Approve, Moved by Ron Norman, 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 Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right and for a 7 ft. Developmental Variance (Ordinance allows 25 ft.) to allow for the construction of an accessory structure 32 ft. in height on the Real Estate be approved with the following conditions imposed:

1. Variances from the developmental standards of the Development 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 6/11/2024) and as represented in the Developmental Variance application.

The following commitment was imposed:

1. The proposed accessory structure cannot be used as an accessory dwelling unit.

Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

Yes: Deb Cramer, Ron Norman, Roger Miller

No: Randy Hesser.

12. The meeting was adjourned at 10:54 a.m.

Respectfully submitted,

Jean Boyer, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary