

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF SEPTEMBER 2024 AT 9:00 A.M.
MEETING ROOMS 104, 106, & 108 – ADMINISTRATION BUILDING
117 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; Danielle Richards, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: David Miller, John Gardner.

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 15th day of August 2024 be approved as read. The motion was carried with a unanimous roll call vote.

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

4. The application of *Nathan D. Petersheim & Susan M. Petersheim, Huband & Wife (Land Contract Holder) & Hidden Creek School (Land Contract Purchaser)* for a Special Use for a school on property located on the Southeast corner of CR 143 & CR 48, common address of 00000 CR 143 in Benton Township, zoned A-1, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0556-2024*.

There were six neighboring property owners notified of this request.

Enos Miller, 70409 CR 143, Ligonier was present for this request. Nathan Petersheim, 70216 CR 143, Ligonier, was also present for this request. Mr. Enos Miller stated that they want to build an Amish Parochial School on this property. He stated that it would be able to serve 42 students. He continued to say that it will have living quarters for the teachers to stay as needed. He also stated that they would have parking for 10 buggies.

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** Steve Warner, **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 new recorded deed in the new owner's name is required.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/6/2024) 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 *Alexander Manford Alber & Amber Irene Alber, 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 on property located on the South side of State Line Rd., 800 ft. West of CR 17, common address of 21462 State Line Rd. in Washington Township, zoned A-1, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0570-2024*.

There were seven neighboring property owners notified of this request.

Amber Alber, 17390 Kirkland Dr., Bristol, was present for this request. Mrs. Alber stated that they would like to use the existing structure for their goats. She continued to say that they have 500 feet of pasture for their three goats. She also stated that they will have a garden and the waste from the goats will be used as compost for the garden. Mrs. Alber also stated that they do not intend to have more than three goats. She explained that the two male goats are fixed, and the female cannot reproduce. Mrs. Cramer asked if there is currently a home on the property. Mrs. Alber stated that they are building a house, and it should be done by the middle of November. Mr. Warner asked if the goats would have pasture. Mrs. Abler stated they currently have a fenced in pasture in addition to the existing building for shelter.

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** Steve Warner, **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 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 8/12/2024) and as represented in the Special Use application.
2. The request is limited to a maximum of three (3) adult goats 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.

6. The application of **Bonnie J. Whitaker** 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 34, 1,265 ft. East of CR 43, common address of 10504 CR 34 in Clinton Township, zoned A-1, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0572-2024*.

There were eight neighboring property owners notified of this request.

Bonnie J. Whitaker, 10504 CR 34, Goshen, was present for this request. Ms. Whitaker stated that they are selling this property to an Amish family that wants to have horses. Mr. Hesser asked if the horses were to be used for transportation. Ms. Whitaker said yes. Mr. Hesser also asked if the subdivision had been done yet. Ms. Whitaker responded yes, but Mrs. Richards stated that the subdivision still needed to be completed and that it does not need to be part of the conditions imposed. Mr. Warner ask if there was a plan for waste disposal. Ms. Whitaker responded that she does not know. Mr. Hesser wanted clarification about the buildings present on the property. Mrs. Richards stated they are non-conforming.

Suzie Weirick, Elkhart County Commissioner, came on and spoke to the waste concern. She agreed that there needs to be some type of waste disposal plan.

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** Steve Warner, **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 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 distances from all structures to property lines.
3. Owner must provide a plan describing how the waste will be disposed of.

The following commitments were imposed:

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

7. The application of **Kelvin Amaya Alvarado** for a Special Use for a home workshop/business for a barber shop on property located on the West side of CR 7, 750 ft. South of West Mishawaka Rd., common address of 58071 CR 7 in Concord Township, zoned R-1, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0560-2024*.

There were 18 neighboring property owners notified of this request.

Kelvin Amaya Alvarado, 58071 CR 7, Elkhart was present for this request. Jessica Hernandez, 58071 CR 7, Elkhart was also present as an interpreter for Mr. Alvarado. She stated that they want to put a barber shop in the garage. Mr. Hesser asked how many employees they would have. Ms. Hernandez said four full-time employees. Mr. Hesser then asked how many customers they anticipate having per day. Ms. Hernandez stated 20-30 by appointment only. Mr. Miller asked if they would be selling hair products and drinks. Ms. Hernandez responded yes. Mr. Hesser asked if the owner of the house would also be cutting hair. Ms. Hernandez responded no, only outside employees. Mr. Miller asked if the parking area was going to be grass or gravel. Ms. Hernandez replied gravel.

Mr. Martin, Store Safe Self Storage, 58013 CR 7, Elkhart spoke in favor of the petitioner. He stated that they have cleaned up the property, and what they are proposing would be good for the neighborhood.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Kolbus, Elkhart County Attorney asked the Board and staff if they were sure this qualified for a home workshop because the petitioner was not going to cutting hair. The Board had Mr. Hernandez and Ms. Hernandez to come back to the podium to address their concerns. Ms. Cramer asked if they were going to rent out the chairs for the business. Ms. Hernandez replied yes. She also reiterated they live in the home, but neither one of them would be cutting hair. The Board continued discussion as to whether this request would qualify for a homework shop/business. Mrs. Richards stated when the application was taken in the owner indicated he would not be cutting hair but would still own the business. Mr. Hesser suggested that the matter be tabled until the next meeting of the Board because of the confusion.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for a home workshop/business for a barber shop be tabled until the October 17, 2024 Advisory Board of Zoning Appeals meeting to allow the petitioner to confirm that they are operating the business not renting the space for the business.

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 **Mark L. Raber & Sharon R. Raber, Husband & Wife** for a Special Use for a home workshop/business for a trailer building business, for a 20 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing residence 100 ft. from the centerline of the right-of-way, for a 17 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing detached accessory structure 103 ft. from the centerline of the right-of-way, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the South side of SR 4, 120 ft. West of CR 133, common address of 14504 SR 4 in Clinton Township, zoned A-1, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0562-2024*.

There were 10 neighboring property owners notified of this request.

Mark Raber, 10504 SR 4, Goshen, was present for this request. Mr. Raber stated that he wants to build specialty motorcycle trailers in his existing garage/shop. He also stated that he does not anticipate having much customer traffic. He continued saying that he would build them as a side business. Mr. Miller asked if he would have any employees, and Mr. Raber said no, just himself. Mr. Hesser asked Mr. Raber how long the buildings have been on the property. Mr. Raber stated that the house was built in 1955, and the shop was built in 2020. Ms. Cramer asked Mr. Raber if he intended to store any of the trailers outside. Mr. Raber responded no that is not his intention. He continued to say that he has arrangements with a friend to store completed trailers in his building.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Steve Warner that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a trailer building 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 8/9/2024) and as represented in the Special Use application.

Further, the motion also included that a 20 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing residence 100 ft. from the centerline of the right-of-way, for a 17 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing accessory structure 103 ft. from the centerline of the right-of-way, and for 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. 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 8/9/2024) 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.

9. The application of *The Schwartz Family Revocable Living Trust* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres, for a 49 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for an existing residence 26 ft. from the centerline of the right-of-way, for a 12 ft. Developmental Variance (Ordinance requires 75 ft.) to allow an existing accessory structure 63 ft. from the centerline of the right-of-way, 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 CR 31, 685 ft. South of CR 34, common address of 63115 CR 31 in Clinton Township, zoned A-1, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0573-2024.

There were nine neighboring property owners notified of this request.

Paul Hostetler, Freedom Builders, 54824 CR 34, Middlebury was present for this request. Mr. Hostetler stated that the goal is to get everything on the property in compliance with current zoning regulations. He continued saying that he went out and measured all the buildings and confirmed their uses because it disagrees slightly with the GIS information. Mr. Hesser asked if he was representing the current owner or the buyers. Mr. Hostetler stated that he is representing the current owner. He continued to say that there is no buyer at this time, but it is advertised for sale.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for 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. Building permits must be obtained for the 12'x12' storage shed and the rear of the center storage building.

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/27/2024) 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.

Further the motion also included that a 49 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for an existing residence 26 ft. from the centerline of the right-of-way, for a 12 ft. Developmental Variance (Ordinance requires 75 ft.) to allow an existing accessory structure 63 ft. from the centerline of the right-of-way, and for 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. 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 8/27/2024) 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.

10. The application of *Aaron J. Scholl & Jessica L. Scholl* for a Use Variance to allow for an existing accessory structure without a residence on property located on the West side of CR 133, 955 ft. South of CR 28, common address of 60943 CR 133 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0541-2024*.

There were seven neighboring property owners notified of this request.

Mrs. Richards stated that the petitioners sent a letter asking to withdraw the petition. Mr. Hesser stated that they should move to accept the petitioners withdraw.

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: Withdraw, **Moved by** Randy Hesser, **Seconded by** Steve Warner that this request for a use variance to allow for an existing accessory structure without a residence be withdrawn at the request of the petitioner.

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

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

11. The application of *Kevin Sarber* for a 25 ft. Developmental Variance (Ordinance requires 55 ft.) to allow for the construction of a commercial accessory building 30 ft. from the centerline of the right-of-way of 27th St., and for a 62 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for the construction of a commercial accessory building 58 ft. from the centerline of the right-of-way of Old US 33 on property located on the Northeast corner of 27th St. & Old US 33, common address of 00000 Old US 33 in Baugo Township, zoned B-3, came on to be heard.

Mrs. Richards presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0547-2024*.

There were eight neighboring property owners notified of this request.

Kevin Sarber, 912 Ren St., Elkhart was present for this request. Mr. Sarber stated that he wants to build a structure with a bathroom and an office to sell cars on this property. Mr. Hesser then asked if the property is currently vacant. Mr. Sarber answered yes. He continued to say that the Highway Department gave him permission to use the alley, and it would give him more room to run the business. Mr. Norman asked what he would use the alley for, and Mr. Sarber stated that he would use it for parking. Mr. Sarber continued to say that he already has septic approved by the County. Mr. Sarber stated that he was not sure why the County felt that the use would be detrimental to the neighborhood, especially since it is zoned B-3. Mr. Hesser then asked how many cars would be on his lot, and Mr. Sarber stated that he would need to have a minimum of 10 to have a car sales business. Mrs. Richards stated that the alley could not be used for parking unless it is vacated. She continued to say that one of the reasons staff recommended denial was because the required setbacks for this property would not leave enough room for parking the cars for the business.

Kevin Koon, 28132 Larue St., Elkhart, was present in remonstrance to this request. Mr. Koon stated that his main concern was the traffic on Old US 33 and the possibility of accidents from cars pulling out into the heavy traffic.

The public hearing was closed at this time.

Mr. Hesser stated that he has concerns about the size of the parcel, and that the site plan does not satisfy the setback requirements. He continued to suggest that they table this petition and give the petitioner time to submit a revised site plan in compliance with the required setbacks. Mr. Miller stated that he has real concerns about the location of the property, and the possibility of accidents occurring on the curve of Old US 33. Mr. Norman stated that if Mr. Sarber can revise an acceptable site plan, that he would be in favor of approving the petition.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Ron Norman that this request for a Developmental Variance be tabled until the October 17, 2024 Advisory Board of Zoning Appeals meeting to allow the petitioner to submit a revised site plan satisfying setback requirements.

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

Yes: Steve Warner, Ron Norman, Randy Hesser.

No: Roger Miller.

13. The meeting was adjourned at 10:19 A.M.

Respectfully submitted,

Jean Boyer, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary