

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 16th DAY OF JANUARY 2025 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, John Gardner, Cory White, Roger Miller, Randy Hesser.

Absent: Steve Warner, 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 December 2024 be approved as read. The motion was carried with a unanimous roll call vote.

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

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

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

5. The application of ***Glenn A. Nunemaker & Jill E. Nunemaker, Trustees of the Glenn A. Nunemaker Living Trust*** for a Special Use for a retail green house on property located on the North side of CR 46, 760 ft. West of CR 9, common address of 26131 CR 46 in Union 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-0846-2024*.

There were four neighboring property owners notified of this request.

Sean Nunemaker, 317 Donmoyer Ave, South Bend was present for this request. He stated that the request is for a small plant nursery, specifically on the southeast corner of the property. He continued by saying he would like to raise native plants. He also stated he has no intention of building a greenhouse at this time. Mr. Nunemaker mentioned there will be four parking spaces available for customers. Mrs. Cramer asked if parking will be on cement or gravel. Mr. Nunemaker stated that the parking spaces would be gravel. Mr. Miller wanted clarification regarding the greenhouse. Mr. Nunemaker stated there will not be a permanent greenhouse, only a hoop type, moveable space to grow the plants.

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** John Gardner 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 retail green house 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 11/20/2024) and as represented in the Special Use application.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

6. The application of *Six Span LLC* for a Special Use for a truck, tractor, trailer, bus, or recreational vehicle storage yard on property located on the Southwest corner of SR 120 & Michael Dr., 600 ft. East of CR 17, common address of 21776 State Rd. 120 in Washington Township, zoned B-1 & R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0859-2024*.

There were 31 neighboring property owners notified of this request.

Mark Spriggle, 21533 SR 120, Elkhart was present for this request. He stated that the storage business has been on the property for awhile, and they mostly store boats. Mrs. Cramer asked about the buffer that is required for this request. Mr. Spriggle stated he has a privacy fence around the property and security with lighting. Mr. Hesser asked how the vehicles bringing in the boats for storage will be accessing the property. Mr. Spriggle said they will be using SR 120.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser suggested that a third condition be added requiring a rezoning to a B-1 zone.

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

Motion: Action: Approve, **Moved by** Deb Cramer, **Seconded by** 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 a Special Use for a truck, tractor, trailer, bus, or recreational vehicle storage yard 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 a class 1, type C, buffer label along the entire south boundary of the property.
3. Final change to B-1 zone required.

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 application.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

7. The application of *Douglas R. Rhude & Carolee J. Rhude, Husband & Wife* for a Special Use for a home workshop/business for a gun shop on property located on the Southeast side of SR 120, 2,450 ft. Southwest of CR 17, common address of 22382 SR 120 in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0883-2024*.

There were twenty-three neighboring property owners notified of this request.

Mr. Rhude, 22382 SR 120, Elkhart, was present for this request. He stated that he is requesting a Special Use to operate his gun shop on his property. Mr. Miller asked how long he has been operating his business. Mr. Rhude stated he has been operating the business for 34 years and he was unaware that he needed a Special Use for the business. He continued by saying that this request came about because he is looking to separate his homeowner's insurance from the insurance required for the business. He also stated he also requires a separate address for the gun shop business. Mr. Rhude went on to say that the business operates Monday through Friday.

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 gun shop 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 12/16/2024) and as represented in the Special Use application.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

8. The application of *Richard R. Miller & Anna Marie Miller, 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 East side of CR 35, 805 ft. South of CR 28, common address of 60704 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-0889-2024*.

There were six neighboring property owners notified of this request.

David Bontrager, Jr., 59811 CR 37, Middlebury was present for this request. Mr. Bontrager stated that he was present to help the petitioners get a permit to build a horse barn and to acquire the Special Use to keep the horses, since the parcel is less than 3 acres. He continued by saying there are two small horse shelters that will be removed when the new barn is built. Mr. Hesser inquired about waste disposal for the four horses. Mr. Bontrager stated the neighbors have a calf barn, and the waste from the petitioners horses would be disposed of with their waste.

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 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 recorded deed for Lot 2 is required. *(It was later determined that this should be Lot 1, not Lot 2)

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 12/16/2024) and as represented in the Special Use application.
2. The request is limited to a maximum of four (4) adult horses at any one time.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

9. The application of *Aurelio C. Barrera & Lucia Valle Montufar, Husband & Wife* for a Special Use for parking of a commercial vehicle on property located on the North side of CR 108, 3,335 ft. West of CR 3, common address of 29379 CR 108 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0891-2024*.

There were twenty-three neighboring property owners notified of this request.

Aurelio Barrera, 29379 CR 108, Elkhart, was present for this request. Mr. Barrera stated he wants to be able to park a semi tractor trailer on his property. Mr. Hesser asked if there is room for the semi to pull in and turn around, so there will be no backing onto CR 108.

Sue Morgan, 29472 CR 108, Elkhart, was present to remonstrate. She claimed that there are always multiple vehicles parked on Mr. Barrera's property. She also provided pictures as evidence. Ms. Morgan stated she is not sure how he can pull a semi onto the property and be able to turn around with all the other vehicles parked on the property. Ms. Morgan continued by saying that CR 108 is too narrow for a semi-truck to be driving on.

Mr. Auvil addressed the photos and stated that the semi parked on the property is in the back of the property between two trees (as shown on the site plan) and that all the other vehicles are irrelevant to this petition. Mr. Hesser stated that the Board is only being asked to approve the petitioner's request to park one semi on the property. Mr. White asked Mr. Auvil for clarification on the definition of a commercial vehicle. Mr. Auvil replied that there is weight and length that fall into the definition of a commercial vehicle.

Mr. Barrera came back to the podium to address the concerns of Ms. Morgan. He stated that other semi-trucks travel on CR 108, meaning that her statement is false.

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 parking of a commercial vehicle 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 12/16/2024) and as represented in the Special Use application.
2. The request is limited to a maximum of one (1) commercial vehicle at any one time
3. Backing in or back out of semi tractor trailers and flatbeds from/onto CR 108 is prohibited.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

10. The application of **Michael H. Bontrager & Kristen Diann Bontrager, Husband & Wife** for a Special Use for a home workshop/business for a construction business, for a Developmental Variance to allow for 11 outside employees (Ordinance allows 4), and for a 5 ft. Developmental Variance (Ordinance allows 25 ft.) to allow for an accessory structure 30 ft. in height on property located on the West side of CR 41, 850 ft. South of CR 20, common address of 59155 CR 41 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-0890-2024*.

There were 8 neighboring property owners notified of this request.

Harley Bontrager, 57342 CR 116, Middlebury was present for this request. Mr. Bontrager stated that the construction business is the main meeting place for the outside employees, they park their vehicles on the property and then go to the various construction sites.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a construction business be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning appeals 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 12/16/2024) and as represented in the Special Use application.
2. Backing in or backing out of semi tractor trailers and flatbeds from/onto CR 41 is prohibited.

Further the motion also included that a Developmental Variance to allow for 11 outside employees (Ordinance allows 4), and for a 5 ft. Developmental Variance (Ordinance allows 25 ft.) to allow for an accessory structure 30 ft. in height 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 12/16/2024) and as represented in the Developmental Variance application.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

11. The application of *Tri-County Land Trustee (Land Contract Holder) & John A. Miller & Sue Miller, Husband & Wife (Land Contract Buyers)* for an amendment to an existing Special Use for a home workshop/business for equine supplies (commercial sewing business) to allow for a new building, for a Developmental Variance to allow for 12 outside employees, (Ordinance allows 4), 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 18, 2,050 ft. West of East County Line Rd., common address of 10348 CR 18 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil did not present the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0888-2024*.

Mr. Auvil stated that the petitioners submitted a request to withdraw this petition, because any further expansion to the property will require a DPUD. He added the petitioners will be submitting the appropriate paperwork in the future.

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

Motion: Action: Withdraw **Moved by** Randy Hesser, **Seconded by** Deb Cramer that this request for an amendment to an existing Special Use for a home workshop/business for equine supplies (commercial sewing business) to allow for a new building, for a Developmental Variance to allow for 12 outside employees, (Ordinance allows 4), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be withdrawn at the request of the petitioner.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

12. The application of *Lonnie Bontrager (Buyer) & Octavio Ramos (Seller)* for a Use Variance to allow for 4 dwelling units and for a 46,496 sq. ft. lot-area Developmental Variance (Ordinance requires 30,000 sq. ft. per duplex) to allow for 2 existing duplexes on property located on the South side of Morgan St., 950 ft. Southeast of CR 20, common address of 28197 Morgan St. in Baugo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0843-2024*.

There were twenty-four neighboring property owners notified of this request.

Mr. Auvil stated the main issue remaining for the approval of the petition is the wastewater generated from the 2 duplexes. He explained at last month's meeting the request was made to get soil borings which were received, and the report shows that it is theoretically possible. Mr. Auvil continued to say that the report satisfies staff for approval of the Use Variance.

Mr. Hesser clarified that the Use Variance is all the Board can approve, and the permitting process is a separate issue.

Mr. Bollinger, 803 S. Calhoun St., Fort Wayne, Attorney at Law, was present via WebEx for the meeting. He stated a soil consulting report was provided to staff, and he respectfully requests that the Board approve the Use Variance request.

Jennifer Pazzo Hernandez, 945 E. Beardsley Ave., Elkhart was present representing the seller Mr. Ramos. She stated they would like this request approved, so they can finally get the property sold and closed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller asked if the Board needed to change the findings and conclusions, since staff recommended denial before the soil consulting report was received. Mr. Hesser read the standard conditions and commitments as part of the motion to approve.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Deb Cramer that this request for a Use Variance to allow for 4 dwelling units be approved based on the following findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community.

2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner. This is a 0.31-acre or 13,503.6 sq. ft. parcel in a dense residential area and the property will remain residential in character.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Development Ordinance would constitute unnecessary hardship if applied to the subject property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was 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 9/16/2024) and as represented in the Use Variance application.

Further, the motion also included that a 46,496 sq. ft. lot-area Developmental Variance (Ordinance requires 30,000 sq. ft. per duplex) to allow for 2 existing duplexes 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 effects on neighboring property. This is a 0.31-acre or 13,503.6 sq. ft. parcel in a dense residential area.
3. Strict application of the terms of the Development Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were 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 9/16/2024) and as represented in the Developmental Variance application.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

13. As a staff item for a minor change, Mr. Auvil presented a request to amend the site plan to add a 1,500 sq. ft. addition to an existing welding shop for Phares Martin (SUP-0825-2022).

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a minor change be approved.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

14. As a staff item, Mrs. Richards presented a request to rescind a Special Use for a mobile home for Eduvges Vargas Espino (SUP-0964-2020) that is no longer on the property.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the request to rescind the Special Use for a mobile home be approved.

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

Yes: Deb Cramer, John Gardner, Cory White, Roger Miller, Randy Hesser.

15. The meeting was adjourned at 9:59 A.M.

Respectfully submitted,

Jean Boyer, Recording Secretary

Randy Hesser, Chairman

Deb Cramer, Secretary