

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF AUGUST 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: Mae Kratzer, Plan Director; Jason Auvil, Zoning Administrator; Adam Coleson, Planner; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Deb Cramer.

2. A motion was made and seconded (*Norman/Warner*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of July 2023 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Warner/Roger Miller*) 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.

****It should be noted that Mr. Hesser recused himself and stepped down****

4. The application of ***Bristol Fire Department Corporation (Buyer/Owner) & Town of Bristol (Seller)*** for a Special Use for a government facility (emergency services training building) on property located on the Southwest corner of E. Saint Joseph St. & Ponderosa Dr., common address of 411 E. Saint Joseph St. in Washington Township, zoned B-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0478-2023*.

There were 22 neighboring property owners notified of this request.

Nick Kants, Bristol Fire Department, 405 E. Elkhart St., Bristol, was present for this petition. He explained the subject property was donated by the Town of Bristol, and they would like to place a 12 ft. by 16 ft. used office trailer on the property for a training facility. He stressed this is a great opportunity for the Fire Department to enhance training closer to home.

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 government facility (emergency services training building) 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 7/14/2023) and as represented in the Special Use application.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4, Abstain = 1).

Yes: David Miller, Steve Warner, Ron Norman, Roger Miller.

Abstain: Randy Hesser.

*****It should be noted that Mr. Hesser returned to the Board at this time*****

5. The application of ***Ray Troyer & Betty Troyer, 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 West side of CR 31, 1,380 ft. South of US 20, common address of 00000 CR 31 in Jefferson 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-0491-2023*.

There were 12 neighboring property owners notified of this request.

Harley Bontrager, HD Bontrager, 57342 CR 116, Middlebury, was present representing the petitioner. He stated Ronnie Justice turned the application in, and the request is just for their horses that are used for transportation. Mr. Hesser asked if the horses will be maintained on the property. Mr. Bontrager responded that is corrected. He continued to say the horses will be on the back northwest corner of the property. Mr. Hesser asked if this is a vacant lot. Mr. Bontrager responded yes, and the house and barn need to be built. Mr. Hesser stated there is no fence on the site plan, and that will need to be shown on the revised site plan. Mr. Auvil responded generally Staff request to have pasture shown on the site 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** 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 revised site plan must be submitted for staff approval showing the pasture size.

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: David Miller, Steve Warner, Ron Norman, Roger Miller, Randy Hesser.

6. The application of *Michiana Home Rentals Inc.* for a Special Use for a marina on property located on the East side of SR 15, 900 ft. North of SR 120 (E. Vistula), common address of 402 Mottville Rd. in Washington 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-0440-2023*.

There were 22 neighboring property owners notified of this request.

Sabu Kurian, 3031 Twin Pines Point, Elkhart, was present representing his father for this petition. He explained the property was formally used by as Bristol Canoe and Kayak, and during COVID they had to shut down their business. He went on to say they are looking to restart this business, but adding more conveniences for the customers by providing bathrooms and a nicer office area. He continued to say they will sell water, mosquito repellent, possibly ice cream, and other items that will make their customer's experience a better one. Mr. Hesser asked if they will sell canoes and kayaks as well. Mr. Kurian responded not at the moment, but maybe in the future. Mr. Warner asked if there is just one existing building on the property. Mr. Kurian responded there are two existing buildings, one was for storage and one was for the office. He added they recently demolished the mobile home on the property and are looking to rebuild a storage barn in that area. Mr. Roger Miller asked what is the intent of having the marina and if they are going to be working on boats. Mr. Kurian responded to the rent canoes. He submitted a revised site plan [Attached to file as *Petitioner Exhibit #1 & 2*]. He noted he overlaid the revised site plan on a parcel map.

Wade Yoder, 702 E. Vistula, Bristol, was present in remonstrance. He asked how far east they are planning on developing. He explained his house is on the riverfront, and they have spent the past 8 years enjoying the ecosystem. He stressed they don't want to lose their view. He asked if kayaking will be frequent, and if they will have to remove trees.

Mr. Kurian came back on to respond. Mr. Hesser questioned if most of the rentals will be for the St. Joe River. Mr. Kurian responded they will mainly be renting for the St. Joe River. He went on to say as of now their development plans are what is shown on the site plan, and anything bigger will be resubmitted for the Board to approve. Mr. Roger Miller stated the concern for this property is that it is low land, and he has seen it flood many times in the past. He asked if they have permits to rebuild in this area. Mr. Kurian responded they are working with DNR and the building department to get building permits and what needs to be done in order to make the buildings not flood. Further, he explained there are methods to build in flood areas that have risers with holes in them to help water pass through without causing flooding or damage to the buildings. Mr. Norman asked if they are going to be building in the same locations as the older buildings. Mr. Kurian responded that is correct. Mr. Norman stated a portion of that property is in the floodplain. Mr. Auvil explained all building permits will require DNR approval, as they are building in the floodplain. Mr. Kurian stressed DNR will be involved to make sure they aren't damaging the ecosystem. Mr. Roger Miller asked if they will be utilizing the park on the west side of the river as opposed to the boat launch on the east side of the river. Mr. Kurian responded there is a public access site in Bristol that was used before, and they will use that access site. Mr. Norman stated that Hermance Park has a boat launch and public river access area. Mr. Roger Miller explained the Town of Bristol built a separate kayak and canoe access site on the west side of the river, and that is the one they should be using. Mr. Warner asked if they have access to the Little Elkhart River, that they will be using for the business. Mr. Kurian responded they have access, but that is something they haven't decided on yet as that river is not fully navigable.

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** 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 a Special Use for a marina 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 the entire 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 application.

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

Yes: David Miller, Steve Warner, Ron Norman, Randy Hesser.

No: Roger Miller.

7. The application of *Joseph L. Miller & Marilyn Miller, Husband & Wife* for a Special Use for a home workshop/business for a construction business and for a Developmental Variance to allow for 20 outside employees (Ordinance allows 2) on property located on the East side SR 13, 1,745 ft. North of CR 44, common address of 67608 SR 13 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-0418-2023*.

There were 18 neighboring property owners notified of this request.

Tony Glentz, 613 Colorado St., Goshen, was present for this petition. He submitted photos of what the building will look like once it is built and letters from neighbors that support the project [Attached to file as *Petitioner Exhibits #1-#13*]. He stated this is a construction business, therefore they are rarely on site and are always traveling, which is why they are asking for 20 employees. He went on to say the employees come on Monday morning to load up then they leave and don't come back until Friday afternoon, as they travel to set modular homes. He explained the idea is that this will help clean up the site and make it look nicer. He continued to say their plan was to put in a privacy fence as a buffer, though after speaking with some of the neighbors, there was a request to have trees planted instead. Mr. Warner asked what is at the site that will cause concern for the neighbors as far as noise, burning of or leftover construction materials. Mr. Glentz responded he doesn't feel there will be anything that will cause issues as the building will allow them to keep all material and work inside.

Steve Raber, 5980 N 1080 W, Shpshewana, was present in support of this request. He stated he is the one who went to all the neighbors to sign the petitions. He explained that the neighbor that is closest is the one who asked for the trees to be planted. Mr. Hesser clarified the neighbors are asking for screening. Mr. Raber stressed this building would help them park more equipment inside. Mr. Norman asked if this is the tree buffer he is referring to on the photo that was submitted by Mr. Glentz. Mr. Raber responded yes. He went on to say that they have a lot of

washouts going onto State Road 13, and they are going to set up structural manholes to take the storm water and run-off back to the retention area. He showed on the aerial that they will have dry wells to collect water to help keep water from running onto SR 13. He stated they are constantly having to clean up gravel off of SR 13, and it isn't safe for anyone to have gravel on the road. He stressed there were no complaints about noise from the neighbors.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the Board has approved something similar to this proposal, and in his view, there is no objection to the use on the property. However, he continued this is not a home workshop at this point. He stressed that having 20 employees is too big to be a home business. He went on to say if this were to be re-zoned that would be more appropriate. Mr. Warner stated his concern is the number of employees, though it was stated the employees may not all be there at the same time.

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

Motion: Action: Deny, 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 and for a Developmental Variance to allow for 20 outside employees (Ordinance allows 2) be denied.

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

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

No: David Miller.

8. The application of *Roberto Barrera Zuniga & Isabel P. Arizpe Martinez, 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, for a 6 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing shed and chicken coops 4 ft. from the rear property line, for a 2 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing chicken coop 3 ft. from the north side property line, for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a 1 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing chicken coop 4 ft. from the south side property line 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.

The petitioner was not present at this time.

Linda Atkins, 66084 CR 27, was present in remonstrance. She stated that not only do the petitioners have several chickens and roosters, but they now have huge rabbits that run loose everywhere. She went on to say she asked them to trap the rabbits and it has been 3 weeks without a response about the rabbits. She stressed there are many more animals on the property than what is stated in the application. Further, she explained her cats try to climb her fence to try and get to the neighbor's chickens and roosters, and it is creating a mess. She continued to say they have been

dealing with this for 3 years, and they keep adding more and more chickens and roosters. She noted the rabbits will eventually get run over or cause issues, since they keep getting into her yard.

The public hearing was closed at this time.

Mr. Hesser explained it is not unusual for the Board to act without a petitioner present. He went on to say he would be inclined to deny the request, though he would like to give them an opportunity to show up and explain why they aren't here today. Mr. Roger Miller stated he isn't sure the Board can deny the petition, because they aren't responsible for showing up to the meeting. He continued to say it is not unusual for the Board to approve a limited number of animals. Mr. Hesser stressed that based on the testimony from one person; this is not a responsible property owner. He continued saying that is evidence enough to deny the petition. Attorney Kolbus stated the third condition of the Special Use is that it will substantially serve the public convenience and welfare. He continued to say there was a case for the State of Indiana that prior violations or non-compliance are sufficient to make a negative finding for #3. He went on to say the fact they have been violating the condition is all the Board needs to deny a petition. Mr. Hesser stated the Board would re-open the public hearing at the next meeting if the petitioners were to show up to speak.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Steve 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, for a 6 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing shed and chicken coops 4 ft. from the rear property line, for a 2 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing chicken coop 3 ft. from the north side property line, for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right, and for a 1 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing chicken coop 4 ft. from the south side property line be tabled until the September 21, 2023, Advisory Board of Zoning Appeals meeting due to the absence of the petitioner. If the petitioner fails to appear for the September 21, 2023, meeting, the Board will act on the petition in their absence.

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

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

9. The application of *Jay Risser & Amber Risser* for a Special Use for a home workshop/business for a dog grooming 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 Southeast corner of Kay Blvd. & Pleasant View Dr., 1,020 ft. North of CR 26, common address of 59808 Kay Blvd. 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-0480-2023*.

There were 27 neighboring property owners notified of this request.

Amber Risser, 59808 Kay Blvd., Elkhart, was present for the petition. She stated she wants to open a dog grooming business at her home doing 4-6 dogs a day from 8 a.m. to 3:30 p.m. Monday- Friday. Mr. Hesser asked if there would be any dog boarding. Mrs. Risser responded no there won't be any boarding. Mr. Roger Miller asked if it would just be herself working the business. Mrs. Risser responded yes.

Charles Wiederman, 24307 Pleasant View Dr., Elkhart, was present in support of this request. He stated he and his wife have no issues with what the Risser's want to do on their property and will support this request being approved. Attorney Kolbus asked if his property was directly east of the subject property. Mr. Wiederman responded he is across the street.

Mr. Auvil read a letter from Charley and Shelly Payne, 59864 Kay Blvd., Elkhart, in remonstrance. They stated this is a one-way-in and one-way-out neighborhood and have concerns about traffic. They continue to say the upkeep of the property is also a concern as it is not being kept up. He submitted the letter *[Attached to file as Staff Exhibit #1]*.

Mr. Auvil presented a packet from Bruce and Barbara Kniller, 24287 Pleasant View Dr., Elkhart, in remonstrance. He explained the packet contains pictures showing the property not being kept up, as well as signatures of other property owners against the petition. He stated they share the same concerns as the other remonstrator letter. Mr. Miller asked what concerns are being stated in the letters. Mr. Auvil responded the concerns are traffic, upkeep of the property, negative effect on home value, quality of life in the neighborhood, and they believe the business should be in a commercially zoned area. He submitted the packet of photos and signatures *[Attached to file as Staff Exhibit #2]*.

Barbara Kniller, 24287 Pleasant View Dr., Elkhart, was present in remonstrance. She stated she is the one who went door to door to get signatures. She went on to say the original building is unsightly, because it is huge on a corner lot that can't be missed from any other property. She continued to say they now want to add more to the building, when they already have a two-car attached garage that doesn't have a car in it. Further, she went on to say it is stated they have 1,000 sq. ft. of unfinished basement space that could be finished and used for the dog grooming business, she noted the existing barn is 1,200 sq. ft. She stressed they don't need that much space to groom dogs, and there is no need to put an addition on the building. She noted the front of the house is unsightly as the weeds are high, the grass isn't mowed, and it looks abandoned. She explained there is an ADEC bus that comes through the subdivision every day, and it has trouble making that turn already. She stressed adding a bigger addition would only create a bigger issue.

Jeff Josselyn, 24391 CR 26, Elkhart, was present in remonstrance. He stated he did a little bit of research for the grooming business in regard to traffic flow. He went on to say an average groomed does 6-8 dogs a day, therefore he went low and did his calculations based on if Mrs. Risser did 5 dogs a day. He continued to say with 5 dogs a day that is 1,300 vehicles coming into a one-way-in and out subdivision annually. He stressed there is only one bus stop in the subdivision, and the increased traffic will cause more safety concerns for the children getting on and off the bus. He continued to say they have a smaller lot, and if their septic system fails, they wouldn't have room for a mound system with another building put on their lot. He asked where the chemicals go from the leech field system from the dog grooming business and will it contaminate the neighboring wells.

Laura Shepard, 24264 Pleasant View Dr., was present in remonstrance. She stated they moved to this neighborhood a year ago, for the security of the small area this neighborhood offers. She stated she is disabled as well as her 22-year-old son who is disabled, and they need a safe and quiet area to live in for their well-being. She went on to say when they have had company over, they are asked if anyone lives at the house, because it looks abandoned. She stressed it is not being kept up properly. Mr. Norman asked if she had called the County to report rank vegetation. Mrs. Shepard responded she had not.

Amber Risser came back on to respond. She explained as far as concerns with traffic she intends to do one dog at a time, by appointment only, so there is only one vehicle coming and going at a time. She stressed she has children in school and starting at 8 a.m. will ensure there aren't any customers coming until after the bus comes to the bus stop to pick up the children in this subdivision. She went on to say that they were keeping up on the weeds, but when the rain comes for days at a time the weeds grow and they get bigger. Mr. Hesser asked if there is a rock garden on the property. Mrs. Risser responded that was correct, and she can't mow rocks. She continued saying they have to pull the weeds by hand, though they are going to be getting rid of the rocks, so it can be a mow area. Mr. Hesser asked if there was a reason why they couldn't use the current pole building for dog grooming. Mrs. Risser responded that is for her husband to work on restoring his 1951 Ford pick-up truck as well as all of his tools and storage. She stressed the building for the dog grooming is not an addition to the current building but a new building. She went on to say the new building is 30 ft. by 40 ft. Mr. Roger Miller asked if they reside at the residence. Mrs. Risser responded yes, they live in this house. She stressed she tried digging into the rocks to plant flowers and couldn't, because they are big chunks of rocks. Mr. Hesser asked if there is any Homeowners Association in this neighborhood. Mrs. Risser responded there is not.

The public hearing was closed at this time.

Mr. Roger Miller stated the issue he has with how many dogs they will do a day, is there is no way to regulate that. Mr. Hesser stated that what is represented in the application and during the hearing are part of the record, and they will be limited to what is being represented. He continued to say, if the County were to get a complaint stating they are doing 40 dogs a day, then that would be in violation of what is approved. Mr. Roger Miller stated he is not opposed to the grooming, though he added the storage space seems to be too much for this property. Mr. Hesser agreed he is not opposed to the dog grooming either, as 4-5 people a day in the neighborhood isn't an issue. He went on to say he is not concerned with the addition, he is more concerned with the bad neighbor aspect. There was a discussion about adding additional conditions for getting the property cleaned up. Mr. Warner stressed the addition shouldn't be allowed.

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 dog grooming 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 7/14/2023) and as represented in the Special Use application.

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

Yes: David Miller, Ron Norman, Randy Hesser.

No: Steve Warner, Roger Miller.

Motion: Action: Deny, **Moved by** Ron Norman, **Seconded by** David Miller that for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be denied based on the following findings and conclusions of the Board:

1. Approval of the request will cause substantial and permanent injury to the appropriate use of the neighboring property.

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

Yes: David Miller, Roger Miller, Ron Norman, Steve Warner.

No: Randy Hesser.

10. The application of *Cristina Giles & Evan Giles, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for a carpentry/home improvement business to allow for an addition to the existing building 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 Northwest side of Glenmoor St., 370 ft. Northeast of Doner Ct., common address of 52933 Glenmoor St. 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-0477-2023*.

There were 40 neighboring property owners notified of this request.

Evan Giles, 52933 Glenmoor St., Elkhart, was present for this petition. He stated he is mostly asking to make the building larger to maintain the restrictions that were approved in a previous Board approval. He explained the milling of lumber is a very minor part of what he does on the property. He continued to say he is a public contractor, therefore his work is done offsite. Mr. Hesser asked what type of work is done offsite. Mr. Giles responded he is a landscape contractor. Mr. Hesser asked as far as lumber milling, what kind of work is done onsite. Mr. Giles responded he has a sawmill and, as approved previously, all milling is done inside. He went on to say he takes logs that are dropped off and will make special requests like a table. Mr. Hesser asked what the dimensions of the proposed building are. Mr. Giles responded the current structure is 32 ft. by 64 ft. and his goal is to get to 72 ft. by 40 ft. or 42 ft. depending on how it fits in the budget. Further, he explained he would go 8-10 feet in both directions back and to the side, so visually from the road the building would only look slightly wider. Mr. Hesser explained that is not what is shown on the site plan. Mr. Giles explained due to budget restrictions he isn't sure which side he will be adding to. Mr. Roger Miller asked what the concrete pad is used for by the fence. Mr. Giles responded that is to ensure anything that will have to be loaded or unloaded will happen off the road and that gives an area for trucks to be parked. He went on to say the logs in the photo were from him helping a neighbor cut a tree down, because it was leaning towards their house. He stressed the logs were only there for a couple of days, before they were removed. He submitted signatures from neighbors in support *[Attached to file as Petitioner Exhibit #1]*. Mr. Hesser stated the current building is 32 ft. by 64 ft. He asked if the size of the addition to the building will be 48 ft. by 40 ft. Mr. Giles responded that is not realistic. Mr. Hesser explained the site plan is not to scale and is confusing to see what he is asking to add. Mr. Giles stressed he is asking for the maximum for going either to the north or to the east, but he will not be building both ways. He went on to say 95% of what goes on is offsite for his business; the building is for the storage of equipment. Mr. Roger Miller stated it seems he has complied with the Board's request of keeping everything stored inside and making sure the neighbors aren't complaining about the property. Mr. Giles stressed

the building is an older building and needs to be improved upon. Mr. Roger Miller reiterated no complaints have been made since the original approval of this request.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he sees a huge difference between what the petition is asking for and what the petitioner is stating he wants to do. He continued to say that based on that, he suggests this request be tabled to give the petitioner time to modify what he is asking for. He stressed the numbers in the request are completely out of scale with what is proposed on the site plan, though what is being stated by the petitioner sounds reasonable. Attorney Kolbus stated the petitioner needs to come back with an exact number of square footage that is going to be needed instead of having two choices.

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 an Amendment to an existing Special Use for a home workshop/business for a carpentry/home improvement business to allow for an addition to the existing building and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be tabled until the September 21, 2023, Advisory Board of Zoning Appeals, meeting to allow the petitioner time to decide the size and location of the addition.

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

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

11. The application of *Gerald L. Borkholder & Ida Jean Borkholder, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for a woodworking business to allow for an addition to the shop, 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 5 outside employees (Ordinance allows 2) on property located on the East side of CR 7, 1,700 ft. North of CR 52, common address of 71200 CR 7, 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-0487-2023*.

There were eight neighboring property owners notified of this request.

Gerald Borkholder, 71200 CR 7, Nappanee, was present for this request. He stated he wants to add 4,400 sq. ft. onto the back of his shop and add 5 employees. Mr. Roger Miller asked if he wanted up to 5 employees. Mr. Borkholder responded yes. Mr. Roger Miller asked if any employees were family members. Mr. Borkholder responded no. Mr. Hesser asked how many employees have they had up to this point. Mr. Borkholder responded he has 3, though Staff recommended he ask for a couple more for future use. Mr. Norman asked if he had any issues with not backing on or off the road. Mr. Borkholder responded he hasn't had any issues and submitted pictures showing trucks parked off of the road [*Attached to file as Petitioner Exhibit #1*]. Mr. Hesser asked if he owns the home and lives on the property. Mr. Borkholder responded yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated his only suggestion is with the Developmental Variance on finding number 3. He proposed to delete the second portion because that statement can be said on any request.

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 an Amendment to an existing Special Use for a home workshop/business for a woodworking business to allow for an addition to the 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 commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 7/17/2023) and as represented in the Special Use Amendment application.
2. Backing in or backing out of vehicles from/onto CR 7 is prohibited.

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

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

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 5 outside employees (Ordinance allows 2) be approved with the following findings and conclusions as amended by the Board:

1. Approval of the request will not be injurious to public health, safety, morals, or general welfare. The request is 5,496 sq. ft., or 92 percent, over what is allowed by right, and the added accessory area and outside employees will not increase the density of the area.
2. Approval of the request will not cause substantial adverse effect on neighboring property. This is a 3.5-acre parcel in a residential and agricultural area, and the parcel will remain residential and agricultural in character.
3. Strict application of the terms of the Zoning 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 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 7/17/2023) and as represented in the Developmental Variance application.

12. The application of *Isaac Mendoza Rodriguez* for a Use Variance for a mobile home and for a Developmental Variance to allow for the placement of a mobile home within 300 ft. of a residence on property located on the West side of CR 13 (Lewis Ave.), 1,630 ft. South of CR 18, common address of 57839 CR 13 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-0486-2023*.

There were 25 neighboring property owners notified of this request.

Mr. Hesser asked if this property has been vacant since 2020. Mr. Auvil responded that is correct. Mr. Hesser asked if the 3 year renewal by Staff with the 1 year review is standard for mobile home request. Mr. Auvil responded that is the standard practice. Attorney Kolbus noted Mr. Mendoza has a deed for the property dated January of 2023, so it appears he was not the owner when there was an unsafe building on the property.

Isaac Mendoza and Roxanna Perez, 57839 CR 13, Elkhart, were present for this petition. Mrs. Perez stated they were able to buy the property this year, and they want a better home for their kids. She went on to say they will start with a mobile home for now until they can build a home. She explained they will only have one house at a time, and they want to clean up the property to make it look nice for their family. Mr. Hesser clarified their plan is to build a home on the property in the future. Mrs. Perez responded that is correct, but first they need to get out of renting a home like they are doing now.

Debbie Mitchell, 57855 CR 13, was present in support. She stated she has been living in this area for 15 years and she was never told the house was being torn down or that the property was up for sale. She continued to say that when the grass was tall the city wouldn't come out to cut it. However, she continued when the neighbor called on her grass, she had to cut her grass. She stressed they should be allowed to have a mobile home on the property, as they are already trying to clean up the property. She went on to say apartments are expensive, and they seem to be a nice family.

Roy Clements, 57810 Ellis St., Elkhart, was present in remonstrance. He asked what size of mobile home will go on the lot. He explained there were never 2 houses on the property in the past, and the house did go into disrepair and was torn down. He went on to say there are some single-wide trailers in the area, but those were put in many years ago after the Palm Sunday tornados. He stressed he objects to a single-wide trailer home in the area, because of the curb appeal and the reduction in property values in the area. He continued to say a flatbed trailer has been parked on the property for the past 3 weeks. Mr. Hesser asked if he honestly thinks the Concord Township Assessor will reduce the value of the homes in the area. Mr. Clements stated no, what will happen is he will be petitioning for the reduction of property values, if this mobile home goes in. He stressed he has put in thousands of dollars to make his property nice. Further, he noted he is concerned a transportation company will be run off of this property, and he is against that as well. Mr. Hesser asked if he believes the petitioners will operate a business. Mr. Clements responded he isn't sure what they will do there is an LLC with the same name in the City of Elkhart. He stressed that just because they are saying they want to build a house on the property doesn't mean they will actually build it in the future. He stressed Elkhart County isn't in the habit of enforcing houses being built. He asked what year of mobile home they were going to be putting on the property. Mr. Norman responded it is a 1982. Mr. Hesser asked where his property is in connection with the subject property. It was shown on the aerial where he was located.

Mrs. Perez came back on to respond. Mr. Hesser asked if they will be operating a transportation company on the property. Mrs. Perez responded the business is not theirs. She went on to explain her husband works for the RV companies moving RV's from state to state. Further, she continued to say her husband was given permission to park the truck on the property for a short

time while they were waiting for permission to have a home on the property. She stressed the ramp for the truck is parked at his brother's home, and they will only park their personal cars on the property. Mr. Hesser asked what their time frame is to build a house. Mrs. Perez responded less than 10 years. She stressed they went around the block and saw mobile homes in the area. Mr. Norman asked if they had a plan for storing their personal lawn equipment, and if they are on city utilities. Mrs. Perez responded they already called to have the gas and electricity mapped out. She stated they are having a survey done, and someone is coming out to see if they are a well or city water and sewer.

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 Use Variance for a mobile home 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 subject to Staff renewal every three (3) years and with a one (1) year review to verify compliance with the following:
 - a. The mobile home shall be adequately stabilized and skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools, and vehicles, except licensed motor vehicles.
 - d. At all times, the premises shall be kept free of abandoned junk vehicles and parts thereof as described by Indiana State Law.
2. The request is approved in accordance with the site plan submitted (dated 7/17/2023) and as represented in the Use Variance application.

Further, the motion also included that a Developmental Variance to allow for the placement of a mobile home 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 site plan submitted (dated 7/17/2023) and as represented in the Developmental Variance application.

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

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

13. The application of *Peter J. Kareus & Melanie R. Mason, Husband & Wife* for a 25 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of an accessory

structure 25 ft. from the centerline of the right-of-way of Idlewild Ave. on property located on the Northwest corner of Newman St. & Idlewild Ave., common address of 57773 Newman St. in Concord 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-0479-2023*.

There were seven neighboring property owners notified of this request.

Peter Kareus and Melanie Mason, 57773 Newman St., Elkhart, were present for this petition. Mrs. Mason stated they want to put up a garage in order to have a place to park their lawnmowers, ladders, and cars, as well as have security of those items not being stolen. She went on to say they were outbid on 3 other houses that had garages, and this was the only house they won a bid on. Mr. Hesser asked if they couldn't have the garage behind or on the side. Mrs. Mason responded the leech field, septic, and well are all in the backyard and side yard. There was clarification of where the septic and well systems are located on the property. Mrs. Mason explained that where there is parking, the car sits halfway on the road. Mr. Hesser stated the site plan shows the garage will be 20 ft. from the property line, but the Staff Report says 0 ft. from the road. Mr. Kareus stressed the garage will be placed 25 ft. from the centerline of Idlewild Ave. and will encroach on the setback by 25 ft. He continued to say from the corner of the house to the center of the road is 64 ft. Mr. Coleson explained that based on the understanding of the site plan when Staff did the measurements, it looked like the remaining was the right-of-way of the road and not the actual property. He continued to say that is where they got the 0 ft. measurement from. Mr. Roger Miller clarified from the middle of the road to the garage will be 25 ft. It was clarified the garage will sit 5 ft. from the road right-of-way. Mr. Hesser stressed the only people who travel on Idlewild Ave. are those who live on the road. Mr. Kareus responded correct. Attorney Kolbus stated the platted right-of-way is wider than the pavement of the road. Mr. Hesser stated the traffic on this road is slower and lighter than on a county road or state road. Mrs. Mason stressed there is a clear sight line at that intersection, even with the new garage in place. Mr. Hesser asked if this were to get approved, what conditions and commitments the Staff wants. Attorney Kolbus responded just the standard conditions and commitments.

Jenny Avila, 24693 CR 45, was present in support of this petition. She stated she is blessed, because she has a 3-stall garage. She noted she is supporting them having a garage.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he understands Staff concerns with this request, though the isolation of this area isn't going to cause traffic safety issues. Mr. Roger Miller stated this is on a corner, but there isn't a lot of traffic on this road.

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 25 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of an accessory structure 25 ft. from the centerline of the right-of-way of Idlewild Ave. 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.

The following conditions were 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 7/17/2023) and as represented in the Developmental Variance application.

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

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

14. The application of *Maria Calderon (Buyer) and Larry Raines (Seller)* for a requested rescission of an auto salvage business for failure to comply with the condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the Northwest corner of Riley Ave and Morgan Street, common address of 58027 Riley Ave in Baugo Township, zoned M-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0231-2016*.

Kierstin Haarer, Elkhart County Code Enforcement Officer, 4230 Elkhart Rd., Goshen, was present for this request. Mr. Hesser asked when this request was originally approved. Ms. Haarer responded in May of 2016. It was noted the commitment was submitted 4 years after approval of the request. Ms. Haarer presented a PowerPoint that went over the history of the commitments imposed in the original Board approval of the Special Use. She stated a complaint was received in August of 2019 that they were not following the commitments of the Special Use, they were sent a violation letter, and they came into compliance in September 2019. She continued to say another complaint was received in January 2020, a ticket was sent in February of 2020, and a third ticket was sent in July 2020. Mr. Hesser asked if the tickets were paid. Attorney Kolbus stated they would have to find out through the court if the tickets were paid. Ms. Haarer went on to explain that they were still in violation as of September 2020, and the case was referred out to the attorney to take action. She noted they came into compliance in November 2020. She went on to say Staff received another complaint in March of 2021, as they were not following the commitments of the Special Use as the fence had fallen down, though they came into compliance in September 2022. She continued to say Staff received yet another complaint in May 2023 with vehicles parking outside of the fence with Morgan St. being used as an entrance. Further, she stressed they were sent a violation letter, and they were still in violation in July and August 2023. She reiterated since they are not abiding by the commitments that were imposed in 2016, Staff is asking the Board to rescind the Special Use. Mr. Hesser asked if this petition has come before the Board since the original meeting. Mrs. Kratzer explained the only time this has come before the Board was in 2016 when it was approved and the pictures that were shown date all the way from 2019 to 2023. Mr. Roger Miller asked what would happen if this is rescinded. Mrs. Kratzer responded if this gets rescinded, then it gives Staff the ability to have them stop all activities of the Special Use.

Neither the property owner nor a representative was present.

David Wilkey, 58130 Morgan St., Elkhart, was present in remonstrance. He stated he is not trying to put anyone out of work, but he wants them to be compliant. He submitted new pictures *[Attached to file as Remonstrator Exhibit #1]*. Mr. Norman asked if the pictures were from his backyard. Mr. Wilkey responded these are from his front yard. He went on to say he showed Mrs. Calderon the property markers and helped them to know where the fence should go. He stressed they are parking junk cars on his property now as well. Mr. Hesser asked if he could confirm he took the video that is a part of the presentation presented by Staff. Mr. Wilkey stated he is the person who took the video in the presentation.

The public hearing was closed at this time.

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

Motion: Action: Rescind, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a requested rescission of a Special Use permit of an auto salvage business for failure to comply with the condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be rescinded for violation of conditions and commitments imposed by the Board.

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

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

15. Mae Kratzer reminded the Board that on August 24, 2023 they have BZA training at the City of Elkhart building from 3-5 p.m.

16. The meeting was adjourned at 11:31 a.m.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary