

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF OCTOBER 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: Deb Cramer, Steve Warner, Randy Hesser, Ron Norman, Roger Miller.

Absent: David Miller.

2. A motion was made and seconded (*Norman/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of September 2023 be approved as read. The motion was carried with a unanimous roll call vote.

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

4. Meeting conduct review: Mrs. Kratzer explained that when a motion is made for an approval of one item and denial for another item, then 2 motions are needed as it cannot be done within the same motion. She went on to say that if Staff recommends approval and the Board votes for denial, or vice versa, then the findings must be changed within the motion. She continued to explain that the minutes aren't a guide that can be enforced. Therefore, she continued if a petitioner mentions doing a certain action while at the podium and the Board would like to see that happen then it must be put in as a commitment. Mr. Miller asked if that is a change. Mrs. Kratzer responded that has always been the case. Mr. Miller clarified that if the petitioner states "I may build a fence" and the Board approves and wants the fence, then it must be a commitment. Mrs. Kratzer responded yes, it can't just be stated in the minutes that the petitioner will do an action, and it must be made a commitment for Staff to be able to hold the petitioner to that action.

5. The application of *Miguel A. Ponce Martinez* for a Special Use for a home workshop/business for bouncy houses on property located on the Southwest corner of CR 18 & Westleaf Manor Blvd., 790 ft. East of CR 1, common address of 29850 CR 18 in Baugo 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-0576-2023*.

There were 15 neighboring property owners notified of this request.

Miguel Ponce Martinez, 29850 CR 18, Elkhart, was present for the petition, and Louis Hernandez was present as the translator. Mr. Hernandez stated they want to start a family bouncy house business. Mr. Hesser asked where the bouncy houses are stored. Mr. Hernandez responded in the garage. Mr. Miller asked if the bouncy houses are set up on site for people to use. Mr. Hernandez responded no, they take them to the customers' houses to be set up and used. Mr. Hesser

asked how many bouncy houses they have. Mr. Hernandez responded they have 7. Mr. Hesser asked how long it takes to clean the bouncy houses after they have been used. Mr. Hernandez responded it takes about half an hour. Mr. Miller asked what kind of vehicle is used to transport the bouncy houses to and from customer sites. Mr. Hernandez responded a truck and trailer. Mr. Miller asked if the trailer is parked inside when it is at their house. Mr. Hernandez responded it is parked inside the garage. Mr. Hesser asked if they understand what Staff is asking for on the revised site plan of either not having a sign or the sign being out of the right-of-way. Mr. Hernandez responded the sign they have can be easily put up and taken down, and it has been taken down. Mr. Miller asked if they are planning on putting up a sign again. Mr. Hernandez responded no they won't have a sign. Mr. Norman asked if the trailer in the photo is the trailer that is used to transport the bouncy houses. Mr. Hernandez responded yes. Mr. Warner asked the noise level of the fan used for the bouncy houses. Mr. Hernandez responded it is not loud at all, if you aren't right next to the bouncy house. Mr. Miller clarified they blow up the bouncy house, clean it, let it air out, and then deflate it. Mr. Hernandez stressed they do 2 bouncy houses at a time, and it takes about 30 minutes to clean them.

Mr. Auvil read an email from Tina Curtis, 29897 CR 18, Elkhart, in remonstrance. He noted she stated her concern is the bouncy house is in the front of the house, and it blocks the view of traffic. He stressed she went on to say there are a lot of cars on the property, and this business will bring more traffic to the area, as this is a very dangerous intersection.

Mr. Auvil read another email from Angela Davis, 29906 CR 18, Elkhart, in remonstrance. He noted she stated concern about vehicles on site, site distance being blocked, and traffic in the area.

Mr. Auvil read another email from Krystal Toth, 58051 Westleaf Manor Blvd., Elkhart, in remonstrance. He noted she stated her concerns are noise, traffic, and the bouncy houses being inflated all the time in the yard. He added she stressed neighbor's yards have been driven through due to the traffic issues. Mr. Auvil submitted photos from Mrs. Toth and the remonstrator emails

[Attached to file as Staff Exhibit #1-6].

Mr. Auvil explained the Planning Staff looks at these petitions from a 50-thousand-foot level, and a lot of times they don't always have all the information to see what negative effects are potentially out there. He stressed had Staff known the impact of the large structures to the safety of the road and traffic, then he isn't sure they would have had a recommendation for approval.

Tonya Lundgren, 29800 CR 18, Elkhart, was present in remonstrance. She stated that her husband and herself purchased their property 25 years ago, and after their children grew up they decided to start selling off some of their land. She continued to say there wasn't land for sale for housing in this area which is one of the reasons they decided to sell off their land, but it was all meant to stay residential. She stressed they never thought they would have someone trying to run a business in the area. Further, she stated they are not only blowing up the bouncy houses for half an hour at a time, and sometimes it is 9:30-10:00 p.m. when they are setting the bouncy houses up. She went on to say that there have been conflicts with the police being called, because Mr. Martinez doesn't keep on his own property, even though she has shown him proof of where the property lines are located. She explained that some of Mr. Martinez's sprinklers are on the other property, but that is only due to the previous owners being kind to the subdivision by setting up some of the sprinklers over there for that vacant land to be watered. She continued to say that they have been told to have the sprinklers removed back to their property, and the Toth's will take care

of that area. She reiterated that they are parking on the street where people can't see to pull out onto the road, and there are 2 or 5 bouncy houses blown up at a time. Mr. Miller asked if this property used to be the entrance of the subdivision and that is why the sprinklers are there. Mrs. Lundgren responded no. Mr. Norman clarified from County Road 18 where you turn onto Westleaf Manor Blvd., that is the entrance to the subdivision. Mrs. Lundgren responded right, and her house is side by side to the subject property. She showed on the aerial where her house is located. She continued to say that this business has been going on since last year, and it has grown to where semi-trucks are coming for deliveries. She stressed they had a website up and running, but they shut it down on Monday. She submitted rental agreements that blew into her yard and a plot map [Attached to file as Remonstrator Exhibit #1 & 2]. There was clarification on the aerial as to where the entrance is to the neighborhood. She stated there is a de-acceleration lane that goes in front of the subject property, and she has been dealing with issues for 2 years.

Debra Nowak, 58375 Westleaf Manor Blvd., Elkhart, was present in remonstrance. She stated her and her husband were standing outside one day, and they watched as the Martinez's tried to drive through another neighbor's yard. She went on to say they don't hear a lot of the noise, but the bouncy houses are always up in the yard. She stressed they can't even cross the road riding their bikes safely because the bouncy houses block the view. She stressed someone is going to get hit at this intersection due to the bouncy houses.

Mr. Martinez and Mr. Hernandez came back to respond. Mr. Hernandez stated they didn't know about the property lines until a couple of months ago, and they made sure to move their items onto their property. He went on to say the vehicles parked on the road were only there once or twice. Mr. Miller stated it doesn't look like there is a way for them to access the rear of the property without going onto the neighboring property. Mr. Hernandez responded there is a gate for them to get to the backyard without going onto the neighbor's property. Mr. Miller stressed the major complaint is they are blocking the road with vehicles, and the bouncy houses are up with children playing on them. Mr. Hernandez stressed the children playing on them are his siblings. Mr. Norman asked if it is normal for 6 vehicles to be parked on the driveway at a time. Mr. Hernandez responded yes, typically there are 4 to 5 there. Mr. Warner asked how often a semi-trailer will deliver to their house. Mr. Hernandez responded they haven't had one for a couple of months now. Mr. Norman asked if it was a tractor-trailer or a box truck. Mr. Hernandez responded they have had a semi and a box truck delivered before. Mr. Hesser asked if the deliveries are ongoing. Mr. Hernandez responded now that they have what they need, they won't need any more. Mr. Miller stated on their application it only states there hours are 2 days a week 45 minutes a day and that doesn't seem correct, since they have them up more often for cleaning. Mr. Hernandez explained they rent only on Saturdays, they pick them up on Sundays, then clean them throughout the week. Mrs. Cramer asked if these are just bouncy houses or do they have water slides also. Mr. Hernandez responded they have both. Mrs. Cramer asked if the water slide bouncy houses need several hours to dry. Mr. Hernandez responded yes, that is correct. He went on to say on the contracts don't throw contracts away, because they need to keep them for taxes.

The public hearing was closed at this time.

Mr. Warner stated the business is most likely seasonal. Mrs. Cramer stated if they have several going at one time then they can be very loud for the neighbors, and the water slide ones have to be up for a day. Mr. Miller stated the fans aren't violating any noise ordinances. Mr. Norman stressed if a complaint was filed, the police would come out and if it isn't above 85

decibels then they won't do anything. Mr. Hesser asked what is at the northeast corner of the aerial. It was confirmed it is an airstrip. Mr. Hesser stated he is concerned about some of the discrepancies from owner and the neighbors, and the use is more intense than initially represented. He went on to say the visual concerns could be addressed by having operations only be in the backyard. He stressed if this were to get approved, he would like to see a time limit put on the petition, and the property line disputes are not for the Board to get involved with as that is a civil matter. Mr. Miller stated he understood something different from previous petitions, if the Board looks at the general upkeep of the past, that can be used as the finding against approval. Attorney Kolbus explained there was one case in Indiana where previous complaints were used as findings against approval of the request. Mr. Miller stated if they were just coming to ask for this as a business to begin with, he would be prone to approve, but there have been issues. Mr. Warner stated they are at the stage where they are continuing to grow, and they need to look further into the future. Mr. Hesser stressed this is zoned A-1, and it isn't more intense than the residential usage. Further, he stated there is intense criticism, but there are also easy compliances that can be made.

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 bouncy houses 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 (1) no sign and (2) the bouncy house inside storage location.

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. Approved for a period of one (1) year; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.
3. All outside storage and cleaning of bouncy houses will be done in the backyard.

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

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

No: Steve Warner.

6. The application of *Progressive Broadcasting System, Inc.* for an Amendment to an existing Special Use for a radio station to add property and update the site plan and for a Special Use for outdoor recreation (outdoor concerts) on property located on the South side of CR 26, 985 ft. East of CR 9, common address of 25802 CR 26 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-0631-2023*.

There were 12 neighboring property owners notified of this request.

Katie Yoder, Mid-States Construction, 53697 CR 9, Elkhart, was present representing the petitioner. She stated they want to make a small playground and put in a patio for small concerts. Mr. Hesser stated he doesn't see any of that on the site plan. Mrs. Yoder stated the playground is a new idea, but the canopy is what they want to do right now. She submitted a photo layout of the canopy area *[Attached to file as Petitioner Exhibit #1]*. Mr. Hesser asked where seating and parking will be located. Mrs. Yoder responded parking will stay the same, and seating will be just around the canopy. Mr. Hesser stated that if there is a concert then he doesn't understand where people will park. Mr. Miller stated there is only room for 22 parking spaces and that is very limited. Mr. Norman asked if they are going to have a concert at this venue and will they have overflow parking in the fields surrounding the parking area. Mrs. Yoder responded yes, as this will just be a one-day event on a Saturday or Friday night. Mr. Hesser asked if people will bring their own chairs to sit on the lawn for seating. Mrs. Yoder responded correct. Mr. Miller stated the days of operation are listed as Monday through Friday. Mr. Hesser responded that is for the current radio station. Mr. Norman asked of the 18 acres, would approximately 8 acres of that open area be used for the concert overflow parking. Mrs. Yoder responded correct. Mr. Hesser asked if the radio station operates all the time and if the concerts will be on the weekend. Mrs. Yoder responded she could speculate yes. Mr. Miller stressed he is not against this, but they are missing a lot of details. Mr. Hesser asked if she could submit a revised site plan and additional information that focuses on the concert activity only. Mrs. Yoder responded yes; she can do that. Mr. Auvil explained Staff, in regard to the site plan, it is appropriate, though the operations are for the Board to weigh in on. Mr. Miller asked if this should be tabled.

Krystal Barden, 25696 CR 26, Elkhart, was present in remonstrance. She showed on the aerial where her house is located to the east. She stated her house has a circle drive, and her biggest concern is traffic. She went on to say she already has problems with a property to the north where people have parties. She stressed she has 5 children, and everyone uses her circle driveway to turn around in when they miss their turn. She reiterated the extra traffic will cause more safety concerns for her children playing in their front yard. Further, she went on to say noise will also be an issue when they have a concert outside without anything blocking the noise from coming through her house. She stressed her youngest is 18 months old, and she will not be able to put her child to bed on Saturday nights when these concerts are happening. She continued to say she didn't move here to be in a loud area; she moved here to be in a quiet neighborhood.

Aaron Barden, 59135 CR 11, Elkhart, was present in remonstrance. He stated he owns the farmland behind the subject property. He explained his concern is that people will overflow park in his fields that surround the subject property. He stressed he can put up no trespassing signs but that doesn't stop people from destroying his crops, if they are out there partying. He reiterated the cops have been called out to the property to the north due to shootings and partying, and he feels as though this will fuel more issues.

Kaite Yoder came back on. Mr. Hesser asked if she has any comments. Mrs. Yoder responded they have a possible solution for parking to be off the street and away from the farmland. Mr. Hesser stated a revised site plan is needed, and it doesn't sound like there will be giant concerts at this location. He went on to say the Board needs more information on the scope of the use, the parking, seating, how often concerts will be held, times, and so on for when they come back after this is tabled. Attorney Kolbus stated a representative from the radio station should come to the next meeting as well to help answer questions and concerns of the public. Mr. Norman asked if

temporary toilets will be brought in for concerts. Mrs. Yoder responded yes. Mr. Norman asked if the proposed canopy will be open sided. Mrs. Yoder responded yes it will be open.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Steve Warner that this request for an Amendment to an existing Special Use for a radio station to add property and update the site plan and for a Special Use for outdoor recreation (outdoor concerts) be tabled until the November 16, 2023, Elkhart County Advisory Board of Zoning Appeals meeting, to give the petitioner time to gather additional information to be presented at the next meeting.

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 *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 neighboring property owners notified of this request.

Evan Giles, 52933 Glenmoor St., Elkhart, was present for this petition. He explained he wants to make the building bigger to keep outside storage from happening, and there are multiple outbuildings within his neighborhood. He stated he feels that he is within the scope and scale of what is allowed in an A-1 zone and the surrounding neighborhood. Mr. Hesser asked if he is expanding or rebuilding the existing building. Mr. Giles responded it depends on what the building inspector will allow, but he plans to go 8 ft. larger to the east and 10 ft. to the north. Mr. Miller asked if the past complaints have been taken care of. Mr. Giles responded that the initial complaint was filed prior to him having ownership of the residence, and it has been resolved. He stressed he is not a logging company and 99% of activity is happening off-site. Attorney Kolbus asked for him to address items number 4 and 11 from the questionnaire where he is stating he is cutting logs and storing overflow logs outside of the building. Mr. Giles responded his mill has been inside his building for 3 years and is on stands that don't allow it to be moved. Mr. Hesser asked if he has outside storage or not. Mr. Giles responded he is requesting outside storage, because he can't make logs instantly disappear when they come to his property. Mr. Hesser asked him to describe what is outside right now and how long it has been there. Mr. Giles responded he has firewood and helps with the neighbors who need wood that he can easily move it with his equipment. He continued to say he will get logs from tree companies every 8 weeks or so for him to cut up and that is unrelated to the sawmill. Mr. Hesser asked if the building were expanded would it eliminate the outside storage. Mr. Giles responded yes, and everything in the picture on the PowerPoint was gone within a day or two from when the photo was taken. Mr. Hesser asked if it is permissible to store chopped up lumber outside. Mr. Auvil responded it is scope and scale and if someone is to order a half a quart or quart of wood and it is placed in a designated area then yes, it is allowed. Mr. Norman stated from looking at the aerial, what he sees as outside storage right now, should fit into the

larger building. Mr. Giles responded that is the goal, and the only logs outside right now are destined to be firewood or are already firewood. Mr. Norman asked if the cherry wood will be made into something with his mill. Mr. Giles responded that is correct as these are not small logs that come in. He noted the main focus and use of the property and building are for a closed workshop to be able to work 12 months out of the year.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the existing use is set to expire next June. He asked if this is amended then will it still be up for expiration next June. Attorney Kolbus stated that is correct. Mr. Hesser stated he noticed this is a larger lot for this area. Mr. Miller stated that he would move for denial by looking at the size of the building, but he doesn't see how this will be injurious to the neighborhood. He went on to say he is clearly taking care of issues that the neighbor's had with noise and outside storage. Mr. Warner stated if he remembers correctly there were neighbors in support of Mr. Giles at prior meetings. Mr. Miller stated the proposed fence on the site plan is a good idea and should be a commitment.

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 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 be approved based on the following findings and conclusions of the Board:

1. The Special Use Amendment will be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. The Special Use Amendment will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use Amendment will substantially serve the public convenience and welfare.

The following conditions were 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 7/14/2023) and as represented in the Special Use Amendment application.
2. A six (6) foot privacy fence must be put in place in accordance with the site plan submitted.

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

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

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Ron Norman for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right 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. 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 7/14/2023) 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.

8. As a Staff Item, Mr. Auvil presented the requested rescission for a Special Use for a home workshop/business for an auto repair business (SUP-0285-2022) at the request of the petitioner. He stated the business has stopped and they plan to convert the business building into a duplex.

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

Motion: Action: Rescind, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Special Use be rescinded 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.

9. The meeting was adjourned at 10:23 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Ron Norman, Secretary