

**MINUTES**  
**DEKALB COUNTY BOARD OF ZONING APPEALS**  
**Monday, September 11, 2023**

A Meeting of the DeKalb County Board of Zoning Appeals was called to order at 6:00 p.m. in the Commissioner's Court of the DeKalb County Courthouse by Chairperson, Frank Pulver.

Chairperson, Frank Pulver, determined that there were far more people who were present in the public audience for Petition #23-12, so he announced that the Board would hear Petition #23-13 first.

**ROLL CALL:**

Members present: Jason Carnahan, Frank Pulver, Rory Walker, Larry Williams, and Mary Diehl

Members absent: None.

Staff Present: BZA Attorney, Andrew Kruse, Director/Zoning Administrator, Chris Gaumer, and Secretary, Andrea Noll

Public in Attendance: Bill Hartman (County Commissioner), Randy & Shon Cook, Tony Warstler, Jason & Malinda Girod, Michael & Arlene Girod, Karl & Erin Reith, Will Fliehman, Brent Shull, Chris Krafft, Eldon Weaver, Ben & Kyla Krafft, Jim & Holly Cummings, Jake & Ashley Fliehman, David & Esther Schmucker, Judy Krafft, Todd Treesh, Hunter Treesh, and Andrew Provines

**APPROVAL OF MINUTES:**

Motion was made by Jason Carnahan and Seconded by Rory Walker to approve the Minutes of August 14, 2023 as submitted. None opposed. Motion carried.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

Petition #23-13 – Randy Cook requesting a Development Standards Variance to allow for a garage addition to be located closer to the front yard setback than allowed by ordinance. The proposed garage addition will be approximately 26 feet from the property line along County Road 9A. The required setback is 30 feet. The property is located at 66 Skyline Dr., Garrett, Indiana and is zoned R2, Medium Density Residential.

Chris Gaumer read the Staff Report, then asked if there were any questions.

Petitioner, Randy Cook approached the podium to explain his need to request a variance.

Mr. Pulver clarified the intended uses of the proposed garage and the existing garage with Mr. Cook.

Mr. Pulver asked if there were any further questions from board members or the public. There were none, so he closed the public portion of the hearing.

Andrew Kruse went through the Findings for this petition with the board.

**JURISDICTIONAL FINDINGS:**

1. Application completed and filed on **August 22, 2023**.
2. Legal notice published in The Star on **August 31, 2023** with the publisher's affidavit and receipt received.
3. Certificate of mailing notices sent, and receipts given to staff.
4. Letter from the County Board of Health, dated **August 30, 2023**.
5. Letter from the County Highway Department, dated **August 23, 2023**.
6. Letter from the Soil & Water Conservation District, dated **August 24, 2023**.
7. Letter from the County Surveyor or Drainage Board, dated **August 23, 2023**.

8. Letter from the DeKalb County Airport Authority, **not applicable.**

**FINDINGS OF FACT:**

1. Will the approval of the variance request be injurious to the public health, safety, morals, and general welfare of the community?

Yes ( )\* No ( X )

*The proposed reduction in the front yard setback will not be injurious to the public. Also see DeKalb County Board of Health letter & Highway Department letter.*

2. Will the use and value of the area adjacent to the property included in the variance request be affected in a substantially adverse manner?

Yes ( )\* No ( X )

*The proposed reduction in the front yard setback will not adversely affect the neighboring properties as the neighboring properties are single-family homes.*

3. Will the strict application of the terms of the Unified Development Ordinance result in practical difficulties in the use of the property?

Yes ( X ) No ( )\*

*The proposed reduction in the front yard setback is needed due to the existing home location and the location of the existing water line located at the southwest corner of the home.*

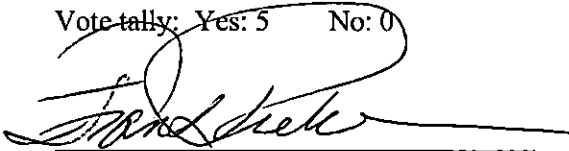
**Conditions of Approval:**

1. The Board retains continuing jurisdiction of this Development Standards Variance to assure compliance with all terms and conditions and/or impose additional conditions deemed necessary for health and safety.
2. A Variance to allow for the front yard setback of 46 feet is approved.
3. Comply with any applicable Environmental Standards as required in Article 5, 5.11; EN-01, in the Unified Development Ordinance.
4. No offsite drainage crossing over said real estate should be obstructed by any development on this site.
5. No Certificate of Occupancy or Certificate of Completion shall be issued until the applicant files written evidence of compliance with any conditions of the DeKalb County Board of Health, DeKalb County Highway Dept., DeKalb County Drainage Board or DeKalb County Surveyor, DeKalb County Airport, DeKalb County Soil & Water Conservation, or other agency as applicable. And further, where applicable, file written evidence of compliance with Federal or State agencies where identified in the findings or conditions. The Zoning Administrator to determine when conditions have been met.


IT IS, THEREFORE, THE DECISION OF THE BOARD OF ZONING APPEALS THAT THIS DEVELOPMENT STANDARDS VARIANCE, PETITION #23-13, IS HEREBY GRANTED APPROVAL ON THIS 11<sup>TH</sup> DAY OF SEPTEMBER, 2023.

Motion made by Mary Diehl, Seconded by Jason Carnahan.

Vote tally: Yes: 5 No: 0




Frank Pulver




Larry Williams



Jason Carnahan



Rory Walker



Mary Diehl

Petition #23-12 – Benjamin Krafft requesting a Use Variance to allow for the outdoor storage and staging of construction debris and materials. The property is located at the northeast corner of County Road 60 and County Road 55, St. Joe, Indiana and is zoned A2, Agricultural.

Chris Gaumer read the Staff Report and explained the proposed site plan and photos he took of the property.

Mary Diehl asked Mr. Gaumer who would be monitoring the site.

Mr. Gaumer stated that if his office were to receive complaints about the property, he would have to give Ben Krafft—the petitioner—up to 24 hours' notice to go out and view the site. Mr. Gaumer advised that anyone can make a formal complaint to Indiana Department of Environmental Management (IDEM) in South Bend as well.

Ms. Diehl confirmed with Mr. Gaumer that a resident would have a county contact, in addition to IDEM.

Mr. Gaumer stated that a resident could call in a complaint to his office and we would document that, but the formal complaint for any type of enforcement would have to go through IDEM—if they feel that there's contaminated material. He further explained that Mr. Krafft would be in violation of this approval if he would dump contaminated materials on the site. Also, if IDEM finds that there are contaminated materials on site, then the Board of Zoning Appeals could file a lawsuit against the petitioner for what he's dumping because it's in violation of the approval.

Larry Williams asked Mr. Gaumer if there was an inspection process.

Mr. Gaumer stated that the Board of Zoning Appeals could set up an inspection process. For example, the site could get inspected monthly, and he would be the person doing the inspections. He concluded that we don't have any inspection, per say, for any Board of Zoning Appeals cases; we rely on the petitioners abiding by what they agreed to. If we receive complaints, that's when we would investigate the site in question to verify if the petitioner is in violation of their approval. Then, a process would be initiated to inform the petitioner about the violation and what they would need to do in order to be in compliance. If they don't, that's when the Board of Zoning Appeals can file a lawsuit against any petitioner who is in violation of their approval.

Mr. Gaumer stated that, hypothetically, if Mr. Krafft is dumping solid waste on that property, IDEM would be the enforcement body. He added that the Board of Zoning Appeals could join the enforcement, as far as filing a lawsuit, if we would need to.

Mr. Williams verified with Mr. Gaumer that a complaint could be filed with the Board of Zoning Appeals.

Ms. Diehl inquired about the wetlands located on the property and if anything had ever come about after the inspection process regarding that area of the property.

Mr. Gaumer advised that the last he had heard, the plantings that were done to bring the wetland into compliance didn't take so they have to re-plant wetland plants in there. He concluded that the wetland issue is being handled through the Department of Natural Resources (DNR) and the Soil & Water Conservation District, which was why he didn't include that in this approval.

Mary Diehl verified with Mr. Gaumer that the property had been determined a wetland.

Rory Walker asked if they were mitigating the wetlands to a different location on the property.

Chris Gaumer stated that wasn't the case and they were remediated the wetlands that are on the southern portion of the "V" on that site. He added that Ben Krafft has obtained permits through the DNR to get that issue remediated.

Frank Pulver clarified the location of the wetlands that they were referring to.

Ms. Diehl advised that she was specifically referring to 2-E on the approval letter for petition #21-08, that was included in their packets.

Mr. Gaumer informed the board that Ms. Diehl was referring to the approval letter from the Board of Zoning Appeals Petition #21-08, dated October 11, 2021.

Larry Williams inquired about the objection letter from the DeKalb County Drainage Board that was also included in their packets.

Mr. Gaumer cited from letter, explaining that their objection was based, "...on the potential impact of any pollutants on the site affecting the water quality of the George Wade Open Regulated Drain No. 31-00-0." He stated that, to him, pollutants would be contaminated material that are being dumped on site, which is why he had gotten in touch with IDEM to see what they require as far as having open dumping like this on properties. IDEM told him (per Rule 3) that anybody is exempt from dumping rocks, bricks, concrete, road demolition waste materials, or dirt. Mr. Gaumer added that it doesn't mean that they don't need to follow zoning guidelines, but that they are exempt from any IDEM regulations.

Mr. Williams verified that there was a letter to that effect, included in their packets.

Mr. Pulver asked the Board if there were any more questions for Mr. Gaumer.

Jason Carnahan inquired about the railroad right-of-way, referring to the wetland map, located on the GIS system.

Mr. Gaumer advised that since that map has been delineated, that map would not be correct; it's just fly-over imagery of the state that's inaccurate.

Mr. Carnahan inquired about the rules for encroaching on the railroad right-of-way with any berms.

Mr. Gaumer had no knowledge of the railroad's rules, but that it should stay out of their right-of-way.

Mr. Pulver asked about the berms being near the railroad right-of-way.

Mr. Gaumer stated that there is nothing on the site plan where it shows that anything would be going into the railroad right-of-way.

Mr. Williams requested that Mr. Gaumer elaborate on the County Commissioners' involvement.

Mr. Gaumer responded by summarizing the timeline of events regarding this petitioner, to ultimately explain why the County Commissioners were involved.

- In May of 2021 Mr. Gaumer's office started sending multiple letters, including letters from the County Attorney to J & L Farms and Ben Krafft about what he was doing at the site regarding the dumping of materials. These letters were sent on behalf of the county, for violations from the planning department, Highway Department, and the Soil & Water Conservation District. The violations mentioned included the open dumping, the creation of the berms, no driveway access to the property, etc.
- Mr. Gaumer's office received a letter from Ben Krafft's attorney, stating that he wanted to meet with him to find out what Mr. Krafft needs to do to bring this property into compliance. Mr.

Gaumer added that the meeting never happened, that he was aware of, and the non-compliance from Mr. Krafft kept going on and on.

- A few months ago, the County Commissioners unanimously voted to file a lawsuit against Mr. Krafft because he wasn't bringing the property into compliance.
- A few days after that vote was taken, Commissioner Bill Hartman visited Mr. Gaumer at his office to discuss Mr. Krafft wanting to bring his property into compliance.

Rory Walker asked how long ago the driveway permit was issued and how long Mr. Krafft had to complete the berms.

Chris Gaumer responded that the driveway permit was just recently issued after the lawsuit letter was sent from Andrew Kruse to Ben Krafft. He added that the berms have been there for awhile now. Per the Stormwater Pollution Prevention Plan and IDEM, the berms have to be seeded with grass seed and 70% vegetated cover before filing the notice of termination. That was for the stabilization requirements of the current Construction Stormwater General Permit. Mr. Gaumer wasn't sure what all that entails but regarding the Soil & Water Conservational District, Mr. Krafft is not in compliance with that.

Mr. Walker stated that from driving by the property, it looks like Mr. Krafft has no intention of completing the berms. He added that he would like to hear from Mr. Krafft himself, regarding that issue.

Frank Pulver inquired about the location and required dimensions of the permitted/proposed driveway, via the photos provided in the meeting packets.

Mr. Gaumer replied that he wasn't sure of the exact driveway requirements, but from his understanding, it's a 10-foot-wide driveway with a 30-foot-wide culvert underneath.

Mr. Pulver wanted to ask Mr. Krafft about the larger vehicles that might need to pass through.

Mr. Pulver asked if the petitioner or a representative would approach the podium.

Ben and Kyla Krafft came to the podium to address the board's questions.

Mr. Gaumer directed Mr. and Mrs. Krafft to explain the berms, the driveway culvert and reference the wetland remediation he's currently doing on the site.

Mrs. Krafft initially wanted to address the neighbors' concerns about the contamination on the property. She explained that they have never dumped anything contaminated on the property. There is sewage being dumped on a regular basis from the neighboring property. She added that on July 23<sup>rd</sup>, 2017, an adjacent property owner ran his septic to the road ditch and now every time it rains, all that sewage washes across the road into the wetland that they are trying to restore. The DeKalb County Health Department was notified immediately after it happened, and they said they would be out to inspect the property and get the issue taken care of.

Kyla Krafft stated that nothing has been done since then.

Mr. Gaumer advised that this is a Health Department concern that the Plan Commission office can't control.

Andrew Kruse intervened by advising Mrs. Krafft that she was asked specific questions, and it will concern the Board of Zoning Appeals if she is deflecting and complaining primarily about other properties and agencies versus answering the questions she had been asked. He recommended that she initially address the questions that were asked, instead of starting off your communication by having a task on other government departments.

Mrs. Krafft thought the contamination was one of the board's concerns.

Mr. Gaumer clarified that it was a concern of what they were dumping on the property, but he had contacted IDEM about that concern and made it clear that what he had seen on the property was not

contaminated materials. He added that while her complaint is a grave concern to have, it's not something that the Board of Zoning Appeals can enforce. He again directed her to the Health Department, then to the County Commissioners, but it has nothing to do with this Board of Zoning Appeals Case.

Kyla Krafft stated that she knew the neighbors were concerned about sewage, so she wanted to address it.

Chris Gaumer maintained that he had never said that sewage is being dumped on her property but has in fact stated the opposite. He added that what he's seen on the property when he has been out there taking pictures over the last 2.5 years, to him, are uncontaminated materials (concrete, rocks, fill dirt, etc.). If contaminated materials are something that is on her site, the County Commissioners need to be informed of this. Then, he reiterated that she needs to contact the Health Department to get them to enforce this.

Ben Krafft explained the culvert size that was recommended by the Highway Department.

Mr. Gaumer asked Mr. Krafft if the culvert has been installed yet. Mr. Krafft says it had not.

Mr. Krafft then advised that the berm is initially in their restoration plan from Heartland. It was in there to basically block water from getting in.

Mr. Gaumer asked Mr. Krafft to clarify what the berms are made out of and if they are to remain there or is he planning to bring in better soil like he did on his own property.

Mr. Krafft responded that the berms on his own property are made of the same material and if he cleans it up, the grass will grow just fine. He added that they had met with other people who told them to hold off on the berms to wait to see what happens with his Board of Zoning Appeals case.

Ben Krafft addressed the comment Mr. Gaumer had made about the meeting with his attorney. He stated that the meeting actually did happen on May 9, 2022 with Commissioner Mike Watson and County Council member Bob Krafft. Ben Krafft gathered from the meeting that the berms were there to hide the "construction materials" that were stored on the property.

Mr. Gaumer advised that he wasn't aware of that meeting and that if this petition were to get approved even if it was a clean site, he probably would've recommended that Mr. Krafft construct berms anyway.

Mr. Krafft stated that it made sense to them, adding that he runs a pretty busy business with 8 employees. He didn't have a whole lot of time to go out to the site to work on the berms right away, but they had gotten it done. Mr. Krafft stated that he hadn't completely read the zoning ordinance because of its large size, but then apologized for doing things the wrong way.

Mr. Krafft referenced the pond variance he had in 2021, stating that as far as he knew, everyone at that variance meeting knew of his intentions of what he is currently doing on this property. He stated that it was never brought to his attention that he could get a Use Variance on this.

Since this has all come about, Ben Krafft stated that he had spent some time to delve into all of the paperwork regarding the property. He referenced previously mentioning to Chris Gaumer that he had wanted to screen the recycling material, stating that it was listed as a possible use in the A2 Zoning District by the Unified Development Ordinance.

Chris Gaumer clarified with Mr. Krafft if recycling the material was his original intent.

Mr. Krafft admitted that he doesn't know what he's not in compliance of.

Rory Walker interjected to ask Mr. Krafft to further define exactly what he means by recycling and which materials.

Mr. Krafft responded that it would be topsoil. He added that he initially wanted to be able to crush concrete to re-use it but was told at the meeting he attended that it was not a good idea. Mr. Krafft further explained the materials on his site, trench boxes, pipe, rip rap, and hay equipment for the nearby hayfield. He added that he wants to be able to secure all of it and was told to keep it out of sight via a locked gate.

Chris Gaumer inquired if Ben Krafft was referring to “gravel and sand processing” according to the Unified Development Ordinance.

Mr. Krafft implied that he wasn’t entirely sure of what he wanted to do on his site regarding the concrete/sand and gravel but thought that topsoil would be similar to sand and gravel.

Jason Carnahan verified that he would have to go to the Board of Zoning Appeals to request a Special Exception for sand/gravel processing.

Mr. Krafft reiterated that no one told him that he would need to go before the Board of Zoning Appeals to request a Special Exception to do what he wanted to do.

Mr. Gaumer replied that sand and gravel processing is not what Mr. Krafft would be doing on that site. In agreement with Mr. Krafft’s statement that he didn’t know what was in the Unified Development Ordinance, Mr. Gaumer explained that Mr. Krafft knows who he is and how to contact him, because he’s been back and forth via Postal Mail since 2021.

Andrew Kruse interjected by addressing the previous attorney’s, Jim McCanna, correspondence with Mr. Krafft, asking if he remembers receiving any letters regarding violations and so forth. Mr. Kruse added that he had sent a letter to Mr. Krafft which listed the violations, but now Mr. Krafft is stating that he’s unaware of the violations.

Kyla Krafft mentioned that they had received a letter from Mr. Gaumer regarding an open burn violation, adding that DeKalb County doesn’t have a burning ordinance.

Mr. Gaumer advised her that the state has an open burn law.

Mr. Kruse verified that Mrs. Krafft had received a letter from his office, threatening a lawsuit. He advised he had listed a number of issues regarding noncompliance and violations, then directly asked Mr. & Mrs. Krafft if they read his letter and if they know what the violations are.

Mr. Krafft responded that he did read the letter but doesn’t understand why the Plan Commission is trying to push a business out of the county. He also claims that he was misguided.

Mr. Gaumer stated that he is not in favor of pushing a business out of the county, instead he intends to make sure the businesses abide by the county’s laws and regulations. He also elaborated on the Use Variance process.

Mr. Kruse emphasized the biggest problem being that work and business was started on the site without getting proper approvals beforehand. Instead, Mr. Krafft started dumping things on the ground, which obviously concerns the public and elected officials.

Rory Walker clarified with Mr. Krafft explaining exactly what he wants to do moving forward, referencing the screening of topsoil.

Ben Krafft stated that he wants to store trench boxes, extra pipe from jobs, and various construction equipment.

Mr. Walker noted that Mr. Krafft had initially wanted to recycle and now it has changed to storage.

Mr. Krafft confirmed that was the initial intent, but he had changed his mind since.

Kyla Krafft stated that they would like to store the pipe they use for jobs, unused stone, trench boxes, hay equipment, etc.

Mr. Krafft added that there’s also leftover rip rap from jobs at the location and at the time that he bought the property, he wasn’t aware that he was violating any ordinances.

Agreeing with him that the stuff on the site is uncontaminated material, Chris Gaumer shared his concerns regarding the compliance of the conditions if this petition would get approved.

Kyla Krafft asked Mr. Gaumer to clarify the condition about the Certificate of Occupancy and shared with him that, as of May, they are in compliance with IDEM regarding the wetland. She gave Mr. Gaumer a copy of the IDEM inspection/completion report.

Chris Gaumer advised that it basically covers all the bases of all the permitting that they would need from his office; and that you're not going to get a certificate of completion unless you file written evidence, stating that you've complied with all of these rules and conditions.

Ben Krafft added that IDEM is coming back in the fall to reassess the wetlands on his property. He then clarified the height requirement for the gate and a chain link fence.

Mr. Gaumer explained that with this Use Variance, he was requesting exactly what kind of gate/fencing he wanted; if this petition was approved, it wouldn't matter if the gate met the requirements in the ordinance. Mr. Gaumer added that he would rather see the proposed gate and wall than a chain link fence, so that it blocks the view of the materials behind it.

Mr. Krafft clarified with Mr. Gaumer what exactly he would be storing and which materials would and/or would not be transported to a landfill.

Mr. Gaumer asked the board members if they understood that Mr. Krafft was not storing demolished materials, but it's more of his construction materials that he uses for projects.

Andrew Kruse stated that would be a positive.

Jason Carnahan commented on the need for a berm and once they commit to installing it, they need to properly maintain it for visual appeal.

Mr. Gaumer stated that wasn't in the Unified Development Ordinance, it was from IDEM.

Rory Walker clarified that the Kraffts were purchasing the property via land contract and added that he's purchased farms on land contract before but couldn't do any improvements on the farm without written permission from the property owner. Then Mr. Walker asked if the Kraffts had permission.

Mrs. Krafft stated that the property owner is aware.

Mr. Gaumer advised that we have a signed and notarized affidavit from J & L Farms in the computer file, stating that Mr. Krafft can go through the process for this approval.

Mr. Kruse added that he spoke with the gentleman's son, who is an attorney in another state. He added that the owner's basic concern is that it comes into compliance, so it sounds like they're supportive of this effort.

Mr. Carnahan inquired about the newly acquired information regarding Ben Krafft's exact intentions for the property being added into the final paperwork.

Mr. Walker mentioned that he was initially not in favor of this petition because of the Drainage Board's objection but added that he has changed his mind.

Chris Gaumer furthered that the Drainage Board was concerned about not knowing what was being dumped on the property. He added that as long as it's uncontaminated, IDEM has no regulations or rules on that.

Mary Diehl stated that dumping and storage are two different things to her.

Mr. Kruse suggested they add a condition of approval stating that it should be clean, as defined by IDEM. Mr. Gaumer advised that was already in there as Rule 3.

Larry Williams voiced his concerns about Ben Krafft complying with all of the conditions.

Mr. Gaumer stated that if the Board would vote to approve this, Mr. Krafft has to agree to these conditions. Then, he further explained, in detail, what the Conditions of Approval were.



Larry Williams clarified that compliance with these conditions was voluntary, and if anyone was opposed to them, they would have to contact IDEM.

Chris Gaumer stated that anyone opposed should call him as well, so that he could view the site.

Frank Pulver inquired about the height of the berm, being 8-10 feet.

Then, Mr. Gaumer explained the Commitments of Approval in detail as well, concluding that Ben Krafft is welcome to come to his office anytime to go over the Zoning Ordinance in further detail if he would like.

Mr. Pulver inquired about Mr. Krafft's current business, Krafft Water Solutions, being incorporated and if he has someone who advises him. Mr. Krafft stated that his business was an LLC and that his attorney never mentioned anything to him about the zoning of his property.

Mr. Pulver advised Mr. Krafft of his responsibility to his business and neighbors to be informed well enough to make smart business decisions. Then, he invited public comments for this petition.

Brent Shull, Town Manager for Hamilton spoke in favor of the petition.

Bill Hartman, County Commissioner, approached the podium to explain his involvement in the process of this petition. He stated that the ditch needs to be dipped by the County Highway Department before Mr. Krafft can finish the culvert for the driveway; basically, stating that there is no ditch there.

Mr. Gaumer quickly verified with Mr. Hartman if he knew when that would happen, but he wasn't sure.

Mr. Hartman stated that he was the one who advised Mr. Krafft to hold off on seeding the berm until after the Board of Zoning Appeals meeting, rather than spending the money to do it beforehand. He also said that the petitioner wasn't storing materials; more like he was staging/processing materials. If Mr. Krafft has anything that he thinks can be reused, he stages it. Mr. Hartman addressed the wetland, stating that there is a berm (about 15 feet wide at the base) between the wetland and this facility.

Finally, Commissioner Hartman addressed the objection from the Drainage Board, and if he hadn't been absent from that meeting, the vote would not have been unanimous. He explained the reason that they did not recommend this variance, is because of contaminated material being dumped on that site. He also stated that there has never been any proof that there is contaminated material ever dumped there; that there was a rumor that they were dumping sewage. Commissioner Hartman concluded that he recommends the approval of this petition.

Chris Gaumer clarified with Ben Krafft, that he is not dumping any construction debris anymore, it will only be staging of materials for future use.

Then, Frank Pulver invited public comments that were not in favor of this petition.

Tony Warstler approached the podium to speak against the petition. He also inquired about IDEM stating that there is no contaminated material on the site.

Mr. Gaumer clarified that when he had talked to IDEM, they asked him what he personally saw on site. He told them that it was rip rap, some concrete, what appeared to be street construction debris, some filter, etc. Mr. Gaumer reported that IDEM stated that this site would be exempt from IDEM's rules and regulations regarding contaminated materials.

Mr. Warstler shared that when he had talked to IDEM, they had tested the swamp area but they don't go above that to see if there is any.

Mr. Gaumer clarified that he did not speak with IDEM about soil.

Mr. Warstler inquired if they could 100% guarantee that there is no contaminated material in the mud and water. He also shared his concerns about contamination via wildlife, directly addressing Ben Krafft in the audience.

Frank Pulver requested that Tony Warstler direct his concerns to the Board of Zoning Appeals members. Mr. Warstler continued to voice his concerns about the scrap and debris that he currently sees on the site, offering photos he personally took.

Determining that there were no other comments or questions, Mr. Pulver closed the public hearing.

Chris Gaumer suggested an edit to the Conditions of Approval to clarify what will be on the site.

Rory Walker shared his concerns and that he had changed his mind to be in favor of this petition, adding that compliance, in this county, is tough to enforce because of lack of staff. Mr. Walker recommended that the County Commissioners need to be informed of problem areas within the county.

Larry Williams reiterated his concerns with Mr. Krafft's ability to be compliant.

Jason Carnahan inquired about the process of issuing a Certificate of Completion after Mr. Krafft has already constructed a gate and wall. Mr. Gaumer clarified the difference between a Certificate of Completion versus a Certificate of Occupancy.

Andrew Kruse clarified that if a Certificate of Occupancy or Completion is required, it shall not be issued until the applicant files. Also, if a house is not being built on the property, a Certificate of Occupancy will not be issued. Instead, they would issue a Certificate of Completion of the proposed project.

Mr. Carnahan shared his definition of a Certificate of Completion for a project.

Mr. Gaumer stated that if Mr. Krafft doesn't obtain a permit for the wall and gate, then he would not be in compliance with the Board of Zoning Appeals if his petition gets approved.

Mary Diehl commented on Larry Williams' compliance concerns. She stated that she would like to get Mr. Krafft in compliance and change the deadline of completing the berm from December 11<sup>th</sup> to November 11, 2023.

Mr. Gaumer requested that Mr. Krafft come to the podium to confirm if that date would be possible.

Mr. Krafft responded that he can get the berm seeded by November 11<sup>th</sup>, requesting that the culvert and dipping of the ditch all be completed at the same time.

Mr. Gaumer stated that he would have to revisit the site in one year to make sure the grass is growing, adding that he could talk to Bill Hartman and Ben Parker about the ditch. He and Mr. Kruse both spoke about the issue of compliance.

Andrew Kruse went through the Findings of Fact with the board.

#### **JURISDICTIONAL FINDINGS:**

1. Application completed and filed on **July 19, 2023**.
2. Legal notice published in The Star on **August 31, 2023** and affidavit given to staff and receipt received.
3. Certificate of mailing notices sent, and receipts given to staff.
4. Letter from the County Board of Health, dated **August 3, 2023**.
5. Letter from the County Highway Department, dated **July 19, 2023**.
6. Letter from the Soil & Water Conservation District, dated **August 7, 2023**.
7. Letter from the County Surveyor or Drainage Board, dated **July 20, 2023**.
8. Letter from the DeKalb County Airport Authority, **not applicable**.

**FINDINGS OF FACT:**

1. Will the approval be injurious to the public health, safety, morals, and general welfare of the community?  
Yes ( )\* No ( X )  
*The approval of the storage of construction debris and materials should not be injurious to the public. The site is required to hold uncontaminated materials as outlined in IDEM 329 IAC 11-3-1. See letters from the DeKalb County Board of Health and IDEM.*
2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?  
Yes ( )\* No ( X )  
*The property values adjacent to the property should not be affected negatively. The properties adjacent to the land for this use would sit adjacent to vacant farm ground and the mounds used for the buffer would block the views of the construction materials stored on site.*
3. Does the need arise from some condition peculiar to the property involved?  
Yes ( X ) No ( )\*  
*The petitioner states that there is a need for the outdoor storage and staging of the construction materials he takes from demotion of sites for his construction company. This land, while it was used for farm ground is located at the "V" which is difficult for farming practices. The petitioner states the rest of the property will be used for farming.*
4. Will the strict application of the Unified Development Ordinance result in unnecessary hardship if applied to the property for which the variance is sought?  
Yes ( X ) No ( )\*  
*The petitioner states that allowing for this use of staging and storing construction equipment and materials is necessary for his business and there is no other site in DeKalb County for this type of use.*
5. Will the approval interfere substantially with policies of the Comprehensive Plan?  
Yes ( X ) No ( )\*  
*The proposed use should not interfere with the Comprehensive Plan provided that the petitioner meets the rules and regulations of IDEM and DNR. The Comprehensive Plan promotes that federal and state laws and regulations for wetlands are upheld. DeKalb County does not have land that is zoned to allow this type of use. This use on A2, Agricultural, property will have to be approved by the BZA for a Use Variance to permit that use. With the type of use proposed and the limited sites in the County, the need arises by virtue of the limited sites in the county.*

**Conditions of Approval:**

1. The Board retains continuing jurisdiction of this Use Variance to assure compliance with all terms and conditions and/or impose additional conditions deemed necessary for health and safety.
2. The Use Variance is approved for the outdoor storage of construction equipment and materials at the northeast corner of County Road 55 and County Road 60, St. Joe (parcel number: 02-11-16-300-005). Only approximately 0.8 acres, the southern portion of the property, may be used. The remaining property must only have uses permitted in the A2 Zoning District.
3. The petitioner must acquire local permits for the concrete block wall and gate.
4. Indiana Department of Environmental Management Rule 3 of 329 IAC 11-3-1 be followed. Any complaints shall be directed to the IDEM contact.
5. The dirt mounds used as buffer/screening be completed and planted with grass and maintained per the Construction Stormwater General Permit on file with the DeKalb County Soil & Water

Conservation District. This plan shall be completed by November 11, 2023 and approved by the DeKalb County Soil & Water Conservation District.

- 6. No offsite drainage, existing surface water or existing tiled water drainage crossing over said real estate should be obstructed by any development on this site. The Board of Zoning Appeals may enforce these conditions by injunctive relief with attorney fees.
- 7. No Certificate of Occupancy or Certificate of Completion shall be issued until the applicant files written evidence of compliance with any conditions of the DeKalb County Board of Health, DeKalb County Highway Dept., DeKalb County Drainage Board or DeKalb County Surveyor, DeKalb County Airport, DeKalb County Soil & Water Conservation, or other agency as applicable. And further, where applicable, file written evidence of compliance with Federal or State agencies where identified in the findings or conditions. The Zoning Administrator to determine when conditions have been met.

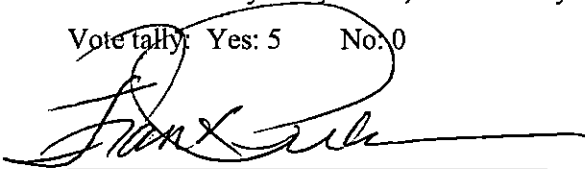
**Commitments of Approval:**

- 1. For as long as the land use of outdoor storage and staging of construction equipment and materials is at this site, the mounds shall be covered with natural vegetation (no rock, mulch, etc.) and maintained to be orderly and visually pleasing. The concrete walls shall remain. The gate shall remain and be maintained and locked when not in use to prevent trespassing. Should this use no longer be located on this site, the concrete walls, gate, and dirt mounds shall be removed, and the site restored to usable farm ground.
- 2. Staff has the ability to view the site for compliance at any time with a minimum of 24 hours' notice to Benjamin Krafft.

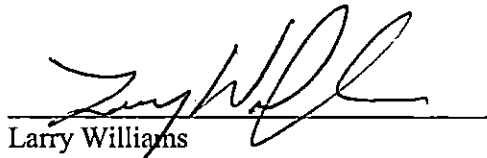
IT IS, THEREFORE, THE DECISION OF THE BOARD OF ZONING APPEALS THAT THIS USE VARIANCE, PETITION #23-12, IS HEREBY GRANTED APPROVAL ON THIS 11<sup>TH</sup> DAY OF SEPTEMBER, 2023.

Motion made by Mary Diehl, Seconded by Rory Walker.

Vote tally: Yes: 5 No:0



Frank Pulver



Larry Williams



Jason Carnahan

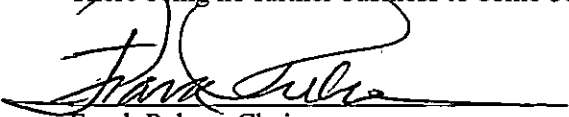


Rory Walker

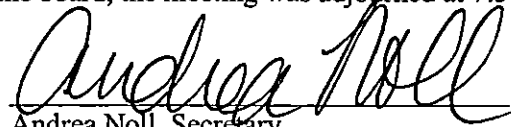


Mary Diehl

There being no further business to come before the board, the meeting was adjourned at 7:50 p.m.



Frank Pulver, Chairperson



Andrea Noll, Secretary