

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF AUGUST 2013 AT 8:30 A.M.
MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, 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: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Tony Campanello, Meg Wolgamood, Randy Hesser, Lori Snyder.

Absent: Doug Miller.

2. A motion was made and seconded (*Wolgamood/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of July 2013 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Wolgamood/Homan*) that the legal advertisements, having been published on the 3rd day of August 2013 in the Goshen News and on the 4th day of August 2013 in The Elkhart Truth, be approved as read. A roll call vote was taken, and with a unanimous vote, the motion was carried.

4. A motion was made and seconded (*Homan/Wolgamood*) 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.

5. The application of ***Carl Raymond and Joan Margaret Wright*** for a Developmental Variance to allow for an existing residence on property served by an access easement located on the West side of CR 133, 1,800 ft. North of CR 4, common address of 51551 County Road 133 in York Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #51551County Road 133-130719-1*.

There were five neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. 9th, Goshen, was present representing the petitioners who were also present today. He indicated that in 2001, the BZA approved two residences on a single tract with all permits and inspections required, and no future development could occur without use of the Elkhart County Subdivision Ordinance. A month later in June 2001, Condition #2 requiring all permits and inspections to be obtained for the accessory building which had been converted into a residence was waived by the Board. In 2013, they are attempting to comply with Condition #3 which is to subdivide the parcel. He noted this is a 50 acre, heavily wooded tract with a large private pond. He pointed out on the aerial the only County Road frontage which is approximately 280 feet. Along the south, there is a railroad and farther south is M-1 industrial, west is another large wooded tract, and north is a single residential parcel. He said the two residences utilize a single 1,790 ft. driveway. Mr. Pharis stated Carl's daughter and son-in-law have been purchasing one residence on land

contract based on a sketch and contract agreed upon in 2001. Now, they want to create a buildable, legal tract so this couple can obtain either a mortgage or in the future transfer their property to another buyer. In order to subdivide this parcel, several variances are needed. As there is no true frontage for this second lot, they are requesting a variance for no frontage, a 3 to 1 depth to width variance, and that they be able to access by an easement. He noted there is a 50 ft. easement that has been written up by the attorney and there will be a cross-easement, cross-maintenance agreement. He feels this is a pretty straight forward address to the requirements of 2001. He said they are in the process of filing for a one lot minor subdivision so that Mr. & Mrs. Wright will own the balance and their daughter and son-in-law would own their one acre tract. Mr. Hesser asked about the one acre tract as he cannot quite make it out on the site plan. With Mr. Pharis showing the parcel on his large aerial photo, Mr. Hesser highlighted his copy which was submitted for clarification *[attached to file as Board Exhibit #1]*.

Regarding staff's claim that this request will be injurious to public health, safety, morals, and general welfare, he pointed out that in 2001, the BZA granted the situation that they have. He said they are not altering any condition that exists as they have the two residences with the same driveway, the same 50 acres, and the same pond. Regarding the substantial adverse affect on the neighboring properties, Mr. Pharis reported from CR 133, this property is all heavily wooded and neither residence can be seen from the county road. The area is incredibly wooded. He also noted there is no visual line of sight from any residence that could be impacted with regards to this request, and the railroad runs all along the south property line that is adjacent to the access easement. He further stated the only way you would know that there are residences back here is by the elegant gated entrance at the road. Mr. Hesser questioned why the other parcel does not also need a variance for access by an easement. Mr. Pharis said the attorneys have created a cross-easement, cross-maintenance agreement which would also be recorded with the plat that says that both parties, the owners of the 50 acres have access to that driveway and use of that driveway, and it specifies their maintenance responsibilities. It will also say that the one lot minor subdivision that is being created would have access and then have the same maintenance requirements that are established. Mr. Hesser questioned that even though it is accessed by an easement, it does not need the variance. Mrs. Wolgamood clarified by saying that because the house to the west actually has road frontage, and so it is no concern to the Board.

Mr. Pharis explained through the Highway Department and the Subdivision Ordinance, they have already received approval for this entrance on CR 133. They have said it is there and the line of sight drawings are adequate, and this driveway is an adequate driveway to serve these properties. If denied, he believes it would create an unnecessary hardship on the petitioners. For the Highway Department, it would require some other curb cut in this 230 ft. right-of-way which they do not want as they are happy with one curb cut in this 300 ft. It would also create a situation for the petitioners as they would have to dedicate a 100 ft. strip, clear cut all the way back through the forest to create a second driveway. For the buyer, he noted it is 1,770 ft. from there to the house so this will create a 100 ft. wide, 1,770 ft. strip or 3.8 acres of land that is just dedicated for a driveway. When Mr. Hesser asked if anything on this property has changed since 2001, Mr. Pharis said not that he is aware of. Mr. Hesser further questioned if anything is planned to be changed, and Mr. Pharis stated the petitioners just want to make it legal, make it so the children can obtain a mortgage if necessary, and have everything organized from this point

forward for both parties. Lastly, he added that denial of this request would be a significant hardship.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood commented that she does not have a problem with this request because she feels that back in 2001, when the Board approved two residences there, they pretty much said okay to what they are asking for here.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that this request for a Developmental Variance to allow for an existing residence on property served by an access easement 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 in light of the fact that the Board granted the requested relief essentially in 2001.
2. Approval of the request will not cause substantial adverse affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Lori Snyder, Randy Hesser.

6. The application of *Aaron Matthew Sawatsky Kingsley and Natasha Rose Sawatsky Kingsley* for a 100 ft. lot width Developmental Variance to allow for an existing residence (Ordinance requires 100 ft.), a Developmental Variance to allow for said residence on property served by an access easement on Lot 2A, and a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on Lot 2B on property located on the East side of CR 21, 2,500 ft. North of CR 19, being Lot 2 of Sawatsky Kingsley Minor, common address of 61090 CR 21 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #61090CR 21-130722-1*.

There were eight neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering, 1009 S. 9th, Goshen, was present on behalf of the petitioners. In September of 2010, he said his firm represented Aaron and his wife and Nathan and his wife in the two lot minor subdivision. Aaron and Natasha owned this 8+ acre parcel, and their residence was located in the back (as he indicated on the aerial photo). His brother, Nathan, and his wife were relocating from South America and wanted to build a residence on the property. He noted the area is heavily wooded, and Aaron is a forester for the City of Goshen. They wanted two houses and no other buildings out there so Brads-Ko came in with a two lot minor subdivision. He also noted they obtained the necessary 3 to 1's and the necessary access point for one driveway on this county highway for both residences. Now, a few years later, they have discovered two problems with the first one being with their tax bills. As they are not broken down correctly, they have to try to figure out what each party owes. Also, the question came up regarding what would happen if Aaron would sell his parcel, and Nathan were to stay

there. If that happened, they further questioned if the new buyer could clear-cut the forest or request additional variances for another residence. The brothers agreed that neither of them ever wanted another house out there, and they just wanted these two houses. So, regardless of what happened, if either one leaves, the way it is now is what would remain. Because if Nathan left, what if the new buyer did not want to participate in the cross-easement/cross-maintenance agreement for the entrance and the driveway which covers repairs, replacement, maintenance, or snowplowing. The petitioners posed this situation to Mr. Pharis, and he bluntly said the solution is a three lot minor subdivision with one lot for each house and the third lot as an unbuildable lot. He noted they would each own their house and pay taxes on those, and they could split the taxes on the third lot's separate bill. Brads-Ko looked at it and thought it would be a simple deal, but it required BZA approval to get there. When Mr. Shock from Brads-Ko came to file the replat, Mr. Burrow told him that you cannot plat an unbuildable lot in Elkhart County. So, they created on the site this situation of Tract 2A and Tract 2B trying to manipulate so they could get in front of the Board and continue. Upon further study, Mr. Pharis decided they should simply plat this as common area which they plat all the time, and in this case the deeds would say each owner owns ½ of the common area. He further noted Lot 1 would be Nathan's, Lot 2 would be Aaron's, and the common area would be the balance. He indicated when Mr. Shock sat down with Mr. Burrow, Mr. Burrow suggested two alternatives: 1) do a condominium which they are not about to do in this economy because you cannot get financing on a condominium; and 2) have an attorney draw up a contract that says this is what you are going to do, but it did not solve the problem forever. This solution solves the problem forever. They create a replat of two lots and a common area. They are not asking for any change to the county right-of-way and they already have their approvals for that. They are not asking for any change from the Health Department as the houses are built. They are not asking for anything with Soil & Water. Everything stays the same, but they just create a mechanism for clear cut taxes and for a common area to remain unbuildable as a conservation area. He further added that the only way that would ever change is if the two owners came back and got Plan Commission approval to do a third lot. Clearly, where they are stating upfront that this is unbuildable, the Plan Commission would have every right to say no which is exactly what Aaron and Nathan want.

Mr. Hesser said he does not think that is what is represented in the questionnaire when they are talking about it being a conservation area not a common area. Mr. Pharis indicated they have to call it something if they can't plat an unbuildable lot. They are not going to go to the government and ask for a conservation area. He reiterated that Aaron is a forester. He continued by apologizing to staff and the petitioners that he just shot off the hip and suggested a three lot, but he had no idea that you could not plat an unbuildable lot in Elkhart County. They want to call it an unbuildable common area, and the petitioners want to treat it as a conservation area so they do not have foresting done. They do not want the trees down, and if there is any cutting of trees, Aaron is going to pick them out because they need to be removed for health reasons. Mr. Pharis hopes he has made clear what they are trying to do with this request. He noted they need the variances to go forward because now Aaron's property has no frontage whereas before that parcel had frontage. Mr. Hesser said it is the opposite as right now both have frontage. Mr. Pharis clarified that if treated as common area which includes the driveway and the cross-access, cross-easement agreement that serves both residences, Aaron loses his frontage. The way the property sits, they still have frontage but it is called common area. The common area would

include driveway and back behind Aaron's property (which would be "L" shaped common area). In thinking about the scenarios that have been talked about, Mr. Homan inquired why they would not pick up some frontage for the driveway by coming up possibly 50 ft. and pick up the driveway as part of Aaron's parcel rather than not. First, Mr. Pharis said if they did that then the acreage would be off between the two brothers which is a minor situation. Further, he stated they would be creating frontage that could create another curb cut which the Highway Department would not like that. If there was frontage there and these parcels were to be sold to two different owners, the second owner of Aaron's property could not be denied a curb cut if he had his frontage so there would be two problems instead of one. By keeping the driveways exactly where they are and the cross-easement/cross-maintenance agreement exactly as it is, it serves both residences and makes sure that the balance of this property is never built upon and remains a forested area.

There were no remonstrators present.

The public hearing was closed at this time.

Noting that he does not know if the staff's perception is the same as his, Mr. Hesser said what he has heard is a little different from what he thought was in the questionnaire. He asked staff if that is their understanding and if that changes their recommendation at all. In the staff meeting, Mr. Mabry recalls the conservation issue coming up but that does not necessarily change the recommendation. Mr. Hesser further inquired about the issue of switching it to a common area as opposed to the conservation area. Mr. Mabry suggested there might be a difference in meaning that he is not picking between those two things. Mr. Hesser indicated when he first looked through the petition, he assumed by making it into a conversation area, they were just trying to pay less taxes on the parcel that they did not plan on using and now what they are talking about is a little different. Mr. Mabry reiterated that he does not have a change in recommendation. Mr. Homan noted the petition description in the staff report says that basically Lot 2B will be a buildable lot because it says to allow for construction of a residence on Lot 2B which is not what the petitioner represented. Apparently, he said staff's understanding when they wrote the report was for 2B to be a buildable lot. He noted he is not hearing common vs. conservation area, he is hearing buildable lot versus non-buildable lot.

Asking if he could speak, Mr. Pharis indicated the Board should keep in mind that they came in with a three lot subdivision: Lot 1 - Nathan, Lot 2 - Aaron, Lot 3 - unbuildable, and they could not plat Lot 3 so in the Building Department, it was changed to 2A and 2B so that 2A became the residence and 2B became the common area. It was when Mr. Shock got back to the office, and Mr. Pharis talked to Aaron and spoke with Mr. Shock that Mr. Pharis understands clearly that the error was his. He should have said two lots with a common area. The conservation issue is not an attempt to lower the taxes, and Aaron is not going to the State to declare this a forest. The petitioners just want to make sure that no matter what happens in the future, if Aaron sells, Nathan isn't taken advantage of by another house being built, and if Nathan sells, Aaron is not taken advantage of by a new buyer who won't honor the agreement for the common drive and the 50/50 split of the taxes. So, they believe that calling it a common area and clarifying in their own statements that it is unbuildable because the petitioners never intended a third house out there from the beginning. Regarding the buildable and unbuildable in the staff report, Mr. Pharis said he does not know how that got into there. Mrs. Wolgamood questioned Mr. Pharis if the staff has told him that the common area or unbuildable area needs to

have a lot number. Mr. Pharis said staff told Brads-Ko that they cannot plat an unbuildable lot. She further questioned that what he is saying is that Lot 2B goes away, which he said is correct and it becomes common area. He added that on the replat of this subdivision, there will be Lot 1, Lot 2, and common area. Attorney Kolbus indicated it can be designated on the plat what the common area will be used for if they want to put conservation or however they want to describe it. Mr. Pharis said they will call it an unbuildable forested area. As a result of that, Mr. Hesser questioned the last part of the Developmental Variance seeking a 3 to 1 depth to width ratio variance to allow for construction of a residence on Lot 2B. Mr. Pharis said it is not needed as they have a house on what they called Lot 2A. When Mr. Hesser asked if the legal advertisement of this petition is consistent with what they are requesting, Attorney Kolbus said their request is reduced from what they originally asked for so he believes it is okay as they are not going beyond it. In fact, he said they are asking for one less buildable lot at the presentation today and one less variance. Mrs. Wolgamood clarified that the 3 to 1 and Developmental Variance is not needed for what is labeled Lot 2B on the site plan. Mr. Pharis indicated he thought they needed the 3 to 1 because there is no frontage so he included that. Mr. Kolbus said it is common area so the amount of frontage does not matter.

Mr. Homan inquired how common area is handled and if there is a requirement for an access easement on common area also. Mr. Hesser said he did not think so as they both have access to the common area. Mr. Kolbus said that often occurs in platted subdivisions where common area could be park area or a walkway, and there is no public road access to it as it is just however the lots meet up to it. Mr. Homan noted he does not completely understand the concept of common area. If the two brothers leave or pass away, he questioned if common area is common area forever and can never be changed. Mr. Kolbus said they would have to come in to get a replat and probably a variance. In which case, Mr. Homan said he presumed this driveway is going to be on the replat as an easement. He questioned if that would be a problem in the future. Mr. Hesser attempted to further explain by saying the common area is tied to the lots so if he buys Lot 2A, he is automatically an owner of an undivided 50% of the common area.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the request for a 100 ft. lot width Developmental Variance to allow for an existing residence (Ordinance requires 100 ft.), and a Developmental Variance to allow for said residence on property served by an access easement on Lot 2A be approved as presented at this hearing and 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 affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

and further the motion included that the request for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on Lot 2B be withdrawn.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Lori Snyder, Randy Hesser.

7. The application of *Jeremy Schlabach (Buyer of Parcel A) and Dennis Schlabach (Buyer of Parcel B) and Phillip G. Eddy (Seller)* for a 3 to 1 depth to width ratio Variance to allow for the construction of a residence on Parcel A and for a 3 to 1 depth to width ratio Variance to allow for an existing residence and accessory building for Parcel B on property located on the South side of CR 18, 3,000 ft. East of CR 29, common address of 16160 CR 18 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Mabry reported staff just received a telephone call and a fax *[attached to file as Staff Exhibit #1]* from Jeremy Slabaugh and Dennis stating they are withdrawing this petition as they are no longer purchasing the property.

Brad Hooley, 14385 CR 22, Goshen, was present presenting the sellers, Phil & Fran Eddy. He indicated the sellers also agree to withdraw this petition.

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

Motion: Action: withdraw, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that the Board accept the request from the petitioners (buyers and seller) to withdraw this request.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Lori Snyder, Randy Hesser.

8. The application of *Ines Ambriz* for a Special Use for an agricultural use for the keeping of 10 hens and 3 peacocks on a tract of land containing three acres or less and in an R-2 zoning district (Specifications F - #1) located on the East side of Woodrow Street, 149 ft. North of Carl Street, North of CR 20, being Lot 100 of Revised Locust Grove Subdivision, common address of 57588 Woodrow St. in Baugo Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #57588WoodrowSt-130628-1*.

There were 36 neighboring property owners notified of this request.

Mary Ambriz, 57588 Woodrow Street, Elkhart, was present on behalf of this request. She said she would like to keep all of her peacocks and chickens and feels they are not harming anyone. She stated she was not aware that she needed a permit because it is their house. Because she talked to the neighbors who indicated the animals were not a problem, she said she does not understand why they cannot keep them. When Mrs. Wolgamood asked which neighbors, Miss Ambriz indicated the neighbors on both sides. Mrs. Wolgamood further inquired about the number of birds. Miss Ambriz reported approximately six chickens, one rooster, and three peacocks with the big tail fans. In Fig. 3 and Fig. 4 of the staff photos, Mrs. Wolgamood asked about the fencing that appears to be new which Miss Ambriz said was just recently put up. When Mrs. Wolgamood asked if the fence goes all the way around the house, Miss Ambriz said it is on both sides but does not go across the back because the other neighbor's fence is across the back. Regarding the fence, Mrs. Wolgamood asked if it is just a privacy fence or if it is a fence to contain chickens and peacocks, which Miss Ambriz indicated yes to contain the birds. Referring to the application when Miss Ambriz indicated 10 hens, Mrs. Wolgamood asked if those are chickens. Miss Ambriz indicated yes.

Present in opposition to this request was Kimberly Kelley, 57570 Woodrow Street, Elkhart. She stated she also owns and is presently renovating the property at 57558 Gano which

is the street behind Woodrow. She pointed out the two locations on the aerial photo. When asked to state her objections to this request, Ms. Kelley said she objects to the fence not going completely around the house and noted it stops at the end of the driveway which she showed on the aerial. When Mrs. Wolgamood asked if there was any other kind of fencing, she indicated no and reported the fencing in the front ends unless they just recently put up privacy because it was chain link. She said the peacocks have gotten out at least once that she is aware of. She also noted they honk like horns throughout the day, and the rooster crows morning and night. She did note she has not had much interaction with the chickens. She reported a lot of small children in that area, and it is residential. She said she is aware that the neighbor, who is her daughter's cousin, to the south has complained about the birds but was unable to be present today due to work. Ms. Kelley noted that the noise is the biggest issue, and the peacocks getting out as she does not know if they will go after kids or attack other animals in the neighborhood.

Lynne Kelley, 58776 CR 3, Elkhart, was present in remonstrance. She reported she owns the property at 57570 Woodrow Street where Kimberly Kelley resides, property north of 57570 Woodrow, and property on Gano Street. She noted she does not live in the neighborhood anymore. She pointed out her brother's nearby residence on the aerial and stated he could not be present today. She noted he keeps finding the peacocks in his back yard and is worried about them going after his small children. She said she has heard all kinds of complaints from people just talking to them saying they are having so many problems with the peacocks and the rooster. She added that she does not know much about the chickens and is concerned about the property value. She noted the area containing the birds is very small and is creating problems with the neighbors.

In response, Ms. Ambriz said she does not understand why they are saying that as all the neighbors have chickens in that neighborhood. She reported their front neighbors have chickens and roosters so they are not the only ones. When Mrs. Wolgamood inquired about which neighbors have chickens and asked Ms. Ambriz to show the locations on the aerial, Ms. Ambriz indicated 57623 Carl Street has chickens, and she doesn't know who else. When Mrs. Wolgamood confirmed that she only knows of the one neighbor with chickens who is adjacent to the east, Ms. Ambriz indicated yes. Mrs. Wolgamood questioned Ms. Ambriz about the noise. She said they do make noise and she understands that. When Mrs. Wolgamood inquired about the noise from the peacocks, Ms. Ambriz stated she does not really think they make noise and added that she believes the noise is more from the rooster. Mrs. Wolgamood pointed out there was testimony that said they have not been contained on their property. Ms. Ambriz said that is true but they have gotten out once. Mr. Hesser asked if they are kept inside the building or if they are let out. Ms. Ambriz said they are kept inside, and they do not let the birds out. She added that one time when her sister opened the gate, the birds accidentally got loose. Mrs. Wolgamood clarified that the noise from the birds is coming from inside the building which Ms. Ambriz indicated is correct. When Mr. Homan asked if the chickens are egg producing and used for food or if they are just pets, Ms. Ambriz indicated they are hers and she just likes them as pets.

The public hearing was closed at this time.

Mrs. Wolgamood pointed out that the lot size is 50' x 135'. Mr. Hesser said he does not object to the hens, but he thinks the peacocks and roosters have to go. He added that he would not even object to up to 10 hens and he would give the petitioner a time period to get rid of the

other birds. When Attorney Kolbus pointed out the request is for 10 hens, Ms. Ambriz currently has six, and staff recommended three, Mr. Hesser reiterated that he does not have an objection to 10. But if someone wants a lower number, that is fine. Mrs. Wolgamood mentioned that the Board did not inquire about how Ms. Ambriz disposes of the droppings. Mr. Campanello pointed out that the application says they are used in the garden.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello 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 10 hens and 3 peacocks on a tract of land containing three acres or less and in an R-2 zoning district (Specifications F - #1) be approved with the following conditions:

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. The rooster and peacocks are to be removed from the property within 30 days.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. A maximum of five chickens are allowed with no roosters or peacocks permitted.
3. All chickens must be penned or housed at all times.

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

Yes: Robert Homan, Lori Snyder, Tony Campanello, Meg Wolgamood, Randy Hesser.

9. The application of **Alexander B. & Rebecca M. Cartwright** for a Special Use for a solar panel (Specifications F - #31.50) on property located on the East side of CR 21, 375 Ft. South of CR 44 West, common address of 68060 CR 21 in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68060CR 21 – 130723-1*.

There were six neighboring property owners notified of this request.

Brooks Cartwright, 68060 CR 21, New Paris, was present on behalf of this request. He showed the location of the 40' x 12' array on the aerial and indicated it will be approximately 4-6 ft. off the ground. It will be directly south-facing and will catch maximum sun for electrical generation somewhere between 9:30 a.m. and 2:30-3:00 p.m. He said it is a structure that will have a black surface so it will pretty much blend in with the trees and also noted the trees will help shield it from any inclement weather. With the NIPSCO agreement, they will be coming across with the power line up to the pole. He noted all of the power generated from it will go directly into NIPSCO's line. Mr. Cartwright indicated one shut off at the array itself and a second one will be located at the pole. He also reported they are on the end of a line coming off of CR 142. When Mr. Hesser asked about the size of the footprint, Mr. Cartwright reported it will be roughly 12' x 40' and between 4-6 feet tall. He further explained it will be a tubular

structure with the rack mounting system on top of it. When Mrs. Wolgamood asked if they already have their agreement with NIPSCO, Mr. Cartwright indicated yes.

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** Tony Campanello, **Seconded by** Robert Homan 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 solar panel (Specifications F - #31.50) be approved with the following condition:

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. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The solar panels must be removed from the property when no longer providing a source of electricity.

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

Yes: Robert Homan, Lori Snyder, Tony Campanello, Meg Wolgamood, Randy Hesser.

10. The application of *Jack E. Warner (lessor) and BIMI, LLC (lessee)* for a Special Use renewal for an existing landfill on property located on the Northeast side of CR 45, 1,100 ft. Northwest of Florence Avenue, Southeast of US 20 By-Pass, in Concord Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 45-130722-1*.

There were 49 neighboring property owners notified of this request.

Attorney Richard Nussbaum, 210 South Michigan, South Bend, was present representing the petitioner. Regarding this application and as staff has indicated, he said the landfill has been around for a long time. He said about half way through the last permit cycle which he believes was granted in 2003, Mr. Warner decided to retire and he ground-leased the property to BIMI, LLC, which is owned by Bill and Michelle Loudin. He noted Bill Loudin and his brother, Bobby, are present today to answer any operational questions the Board might have. Bobby Loudin helps run the business. Mr. Nussbaum said the landfill is mainly utilized for construction materials, and the Loudin family is in the construction business. They do a lot of road and excavation work. He noted materials generated from their business are taken to this landfill. It is more or less a private landfill so the traffic you might see at a normal landfill is far more than what you would see at this particular landfill. Although, he indicated during the construction season there could be more traffic than normal. Mr. Nussbaum feels this is a very responsible company, and noted if there are complaints, they would certainly be willing to address those as best they can. As the staff has indicated, he reported there have not been a lot over the past 50 years and they do not anticipate that there will be complaints going forward. Based upon their

track record and the permitted use under the ordinance, they ask for renewal of permit. Mr. Hesser inquired about the area that is being filled in.

Bill Loudin, 2430 Autumn Trails, Mishawaka, was present on behalf of this request. To answer Mr. Hesser's question, he stated they currently have an expansion permit from the state for the northern 10 acres which he pointed out on the aerial and indicated is being filled now. Pointing to the middle section of the landfill, he indicated it will be closed and capped this year. When Mr. Hesser asked about access to the portion being filled now, Mr. Loudin said they go through the property from the south to the northern part. Mr. Campanello asked what kind of materials are going into the landfill, and Mr. Loudin said it is construction debris from building and demolition of houses. Mrs. Wolgamood asked if it was anything different than what Mr. Warner did, which Mr. Loudin indicated no. He further stated that it is the same permit as it has been since the 1950's with the only difference being that it is now a lined facility. In the past, he said there was no liner. He went on to explain that the last 10 acres is under the 2012 guidelines. When Mrs. Wolgamood asked how long Mr. Loudin has had this company, he said they lease purchased from Mr. Warner in 2008. Mr. Loudin indicated Mr. Warner is no longer in business when Mrs. Wolgamood asked, but Mr. Loudin indicated Mr. Warner still owns the land. Out of the deal to purchase, Mr. Loudin said they committed to the closure of the last cell. Attorney Kolbus clarified that there is IDEM regulation of the landfill, and Mr. Loudin indicated yes. He added that it was about a two year process to get the approval which they got in the spring. When Mrs. Wolgamood asked about any plans to go east of the cell that is being closed, Mr. Loudin said no and reiterated that the middle area will be capped and closed this year.

Mr. Hesser noted this request must have slipped through the cracks as no one caught that it was not renewed. For staff, he asked if there is any issue with making it permanent and not having a renewal increment. Mr. Mabry said he would not have a problem with it especially since the landfill is getting smaller. When Mr. Hesser pointed out there is no time period in the staff recommendation, Mr. Mabry acknowledged there is not and said he could support a longer period for approval. Attorney Kolbus pointed out if the Board is adopting the prior conditions as commitments, a prior condition was a five year renewal so the previous commitment would need to be modified. Mr. Nussbaum added that the last permit that was issued in 2003 was approved for a 10 year period. When Mrs. Wolgamood asked if the BZA granted that 10 years, Mr. Nussbaum reported it did. He indicated this information was in his file, although he did not personally do it but that is what was in the records that he reviewed. Regarding counsel's comment about being regulated by IDEM, Mr. Nussbaum added that there are very strict regulations. As recently as June 2013, there was an inspection of the premises and it passed without any issues needing to be addressed. Mrs. Wolgamood asked Mr. Mabry or Mr. Nussbaum about previous conditions being reiterated as commitments as she does not know that the Board has a copy of what those are. Mr. Nussbaum supplied a copy from the 2003 approval which was submitted at this time *[attached to file as Petitioner Exhibit #1]*.

Fran Wise, 23970 Byrd Avenue, Elkhart, was present regarding this request. She noted she is not really opposing, she would just like to know exactly what they are putting in there. She said, of course, it is loud and there is tons of dust, and she is willing to live with that. But she reiterated that she wants to know what is going in there. Because people know that it is a landfill, she said all kinds of trash gets dumped at the corner of her adjacent property such as toilets, truck bed liners, mattresses. When Mr. Campanello inquired if there was a fence or

anything bordering the landfill property, Ms. Wise said no. When asked, she indicated they built their home, and it was completed in June 2004.

Donna Graber, 57998 Santa Anita, Elkhart, was present in opposition to this request. She indicated her property on the aerial photo. She said the front of their house faces the landfill and noted they are just concerned about what is being dumped there and if they were extending or expanding it. She reported that she is also concerned about the dust and the possibility of more dust if it were to be expanded into the cornfield across from her house. Mrs. Wolgamood clarified that the cornfield is not part of this petition. She noted there is noise but they also have train noise. When Ms. Snyder inquired how long she had resided there, Ms. Graber indicated one year.

Mrs. Wise came back up to ask about the meaning of the words “closed and capped off”. Mr. Hesser indicated her question would be addressed as well.

Attorney Kolbus commented that the original permit in 1965 was for a time period of one year with renewal before the Board and subject to adequate control and supervision which now would occur through IDEM. He noted the only other commitment the staff could find was in 1993, which had hours of operation from 7:00 a.m. to 6:30 p.m., five days a week and 7:00 a.m. to 12:00 noon on Saturday, and other than that, it was just renewals. When Mr. Hesser asked if they were still within those hours, Mr. Loudin indicated yes. Mr. Campanello noted they have gone above and beyond by lining that as well.

In response, in regard to the question about the meaning, Mr. Nussbaum said “cap” means they are no longer using it anymore, and it will basically be an empty lot. Mr. Hesser added that it is covered with dirt, and it is done. Mrs. Wolgamood inquired about possible seeding, Mr. Nussbaum said it will be an empty field of vegetation. Mr. Campanello asked if they have to put a liner over it first before it is capped, and Mr. Loudin indicated they do. He further explained the southern portion was capped according to the 2000 regulations which were two feet of topsoil with grass. He noted the cap that will happen over the middle section of eight acres is two foot of clay, a foot of topsoil, and then turned into a grass field. At the present time, he said to do anything else on top of this landfill is way too much paperwork so it will become a hayfield. He further indicated the northeast corner will become retention area when it is all completed which will be awhile. Mr. Loudin said if someone is dumping trash on the border of their property, they will take care of it. He said nobody from the public is allowed to dump in the landfill other than their company because regulations would require additional paperwork. Warner & Sons kept it so it was always their trucks that brought the material in so they know what is going into the landfill. He said it is strictly “c & d landfill” with nothing hazardous, no contaminates, and no human waste. He indicated the construction debris is anything that comes out of a demolition of a construction and is allowed to go into this landfill, and anything other than that is not allowed. He acknowledged and understands there is a problem with people trying to get into the property at the northeast corner, and they have blocked it off and have tried to make it impassible. As a good neighbor, they will send someone over to clean it up if someone is dumping trash. He noted they cannot fix what they don’t know about. He suggested reporting any trash to the worker in scale house, and the owner will take care of it. In the nearly 50 years this landfill has been in operation, there have been very few complaints and IDEM is every five years. Regarding dust, Mr. Loudin said they are working on taking care of the problem as IDEM also wants the dust controlled. He said if he was a neighbor, he would be the

same way. Mr. Campanello inquired about the future retention area and how deep it will get. Mr. Loudin said it will not go any deeper but it is where the run-off water is to go. But it will stay at the depth that it is now. When Mr. Homan asked about IDEM ground water monitoring, Mr. Loudin said there were ground monitoring wells that were installed in the past. He said those have been closed because in the time period there was never a hit. He reported in the new cell that they are permitted for, there are none because it is a lined cell. He added that they basically have the exact same liner system as a sanitation landfill, it is just that they are a "c & d". The requirements in today's day and age are basically the same restrictions as a sanitary landfill.

The public hearing was closed at this time.

Mr. Campanello inquired about adding something about the 10 years as a commitment or if the Board just uses the conditions and commitments that staff recommended. Mr. Kolbus said it is up to the Board if they want to modify them. Mr. Hesser said right now to do that would incorporate a 10 year renewal. Mrs. Wolgamood said if the Board is going to approve 10 years, she would like to be more specific instead of trying to refer back to the previous approvals. For example, she noted Attorney Kolbus read the previous hours of operation, but she feels it needs to be reiterated.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood 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 renewal for an existing landfill 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.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. All previously imposed conditions are reiterated as commitments:
 - a. The present site of operation of the Lessee shall be cleared of all debris and foreign material by removal, to the new landfill site, and burying as hereinafter prescribed.
 - b. The present site shall then be graded to drain by the application of clean fill dirt. The area shall then be seeded with an approved "pasture mix" of perennial grasses in a manner to secure an adequate ground cover. Thereafter, the Lessee shall conduct no operations at the present site.
 - c. The new site of landfill operations, as permitted hereby, shall be limited to a rectangular area not to exceed 20 acres. No operations shall take place nearer than 500 feet from the bank of Yellow Creek or 800 feet from the centerline of County Road 45.
 - d. The new site, as above described, shall be fenced in a manner to exclude ingress to or use by anyone but the Lessee. This ingress shall be through a substantial

gate which shall be kept locked at all times whenever the Lessee's representative is not present. The area to be fenced shall be staked out and the fence location or alignment be approved by the County Building Department before fence construction begins.

- e. A Lessee's representative shall be present to supervise or conduct the landfill operation at all times when the ingress gate is locked.
 - f. Landfill trench excavation shall be limited to a depth above the water table. The covering of deposited material shall progress systematically in accord with good "landfill" practice as determined by the Building Department.
 - g. Material to be deposited shall include no garbage or other organic substances whatsoever except wood and wool products. No burning is allowed. Costs involved in extinguishing accidental fires, if such should occur, by area Fire Departments, shall be borne by the Lessee.
 - h. Regardless of full compliance with stated terms and conditions of this permit, no pollution of Yellow Creek, determined by responsible authorities as resulting from the Lessee's operations, is permitted.
 - i. The entrance drive off County Road 45 shall be maintained in a dust free condition for a sufficient distance such that no hazard or nuisance to traffic on said County Road occurs.
 - j. Violation of any of the terms of this permit invalidates the authorization hereby conveyed and the Owner's and Lessee's rights hereunder cease. Any or all further landfill operations subsequent to a breach of the prescribed terms will be in violation of the Elkhart County Zoning Ordinance and may not ensue without a re-application for and issuance of a new permit.
3. Hours of operation are from 7:00 a.m. to 6:30 p.m. on Monday through Friday and 7:00 a.m. to 12:00 p.m. on Saturdays.
 4. Approved for a period of ten (10) years with renewal before the Board of Zoning Appeals.

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

Yes: Robert Homan, Lori Snyder, Tony Campanello, Meg Wolgamood, Randy Hesser.

11. The application of **Wesley A. Mappin** for a Special Use for an agricultural use for the keeping of a teacup pig in an R-2 zone on less than three acres (Specifications F - #1) located on the East side of Main Street (SR 13), 103 ft. North of Lawrence St., S 25 ft. of N ½; N 25 ft. of S ½ - Lots 11, 12, 13, 14, common address of 208 S. Main in Middlebury Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #208SMainSt-130702-1*. He submitted an email from Diane Kauffman, an adjacent property owner, in remonstrance [attached to file as Staff Exhibit #1] and a spiral binder of information from the petitioner [attached to file as Staff Exhibit #2]. Also submitted was a 3-ring binder of photographs [attached to file as Staff Exhibit #3]. To clarify for the record, Mr. Hesser inquired if any input or comment from the Town of Middlebury was received. Mr. Mabry indicated no.

There were 35 neighboring property owners notified of this request.

Wes Mappin, 208 S. Main Street, Middlebury, was present on behalf of this request. As it is very unusual for a petitioner to come before the Board with this volume of information to cover, Mr. Homan limited Mr. Mappin's comments to 15 minutes. Addressing the new email that he just received, Mr. Mappin submitted a copy of current documentation from the veterinarian stating the weight of the pig is 100 pounds *[attached to file as Petitioner Exhibit #1]*. He feels this invalidates the argument that this is a large farm hog. He reported this is a mini pig breed.

Using a power point, he indicated Exhibit #2 shows pictures of their mini pig, Dante. He noted documentation from a Zoning Consultant who has worked all over the United States recommending that these pigs be added to existing dog laws. For all practical purposes, they are about the size of a large dog, and their behavior is extremely similar as far as their indoor living, potty training, and friendliness. He added that pigs don't bark or bite so in a way they are a step up from some of the problems associated with dogs which are allowed on town lots of any size. He also noted photos of their property to deter any concern about what their property might look like. He said Dante is not some sort of threat and clearly not a 600 pound farm swine as teacup pigs are not bred to be so. He indicated they have lots of letters from the USDA, from livestock boards, from experts, one from the Bronx Zoo, that repeatedly state that these are pets and not livestock in any way. He said they are not used for meat, for production, or anything like a farm swine. He indicated as seen in the aerial photos that they can lay with the pig, and he is very cuddly. If this were a dog or cat in place of the pig, he thinks it would seem completely normal.

He noted he does not know if someone imagines that someone who owns a pig might have a dirty farm in town. He pointed out in the aerial photos that they have a very nice house with a landscaped yard as he and his wife are both landscape enthusiasts, and he would put up his yard against any yard in Middlebury. He indicated he has three pages of signatures from neighbors who live within a block or two of their property in support of his request. He said repeatedly everyone was sympathetic with the exception of one neighbor. He noted two are owners of businesses in their home. Additionally, he commented that one of these individuals had a familiarity with pigs because he had a circus friend who trained them so he is well aware that they do not harm, they can learn tricks, and they are appropriate for indoor living. On the third page of signatures, he indicated this is the person who sent the new email submitted today. He noted her stipulation was that she would prefer to have new fencing, and he noted they are very willing to put that up but didn't want to invest the money if this was not approved. He reported they put up new fencing on the other side property line for that adjacent neighbor who complained. He indicated it is a six foot privacy fence so you cannot see into their yard. Mr. Mappin noted many of the neighbors they spoke with did not even know they had a pig. He said Diane Kauffman stated it was months before she understood that they had the pig, and the tenants on the other adjacent side were completely unaware that they had a mini pig which speaks volumes about how quiet and non-destructive the pig is.

Requesting to go back to a map overview aerial photo, Mr. Hesser inquired about the locations of people who are mentioned in paperwork as objecting, Nikki being one. Mr. Mappin showed Nikki Zimmerman's property as the complainant and Diane Kauffman's property. When Mr. Homan asked where the fencing improvement would take place, Mr. Mappin indicated they put up a brand new fencing along their north property line in June after the complaint was received hoping that would take care of the issue. He reported they are willing to put up new fencing along their south property line which is adjacent to Ms. Kauffman's property.

He added that there is currently fencing there but it is older. Other than being classified as livestock, Mr. Campanello asked Mr. Mappin if he thought he would be here or would have received complaints from the neighbors if he had a Labrador or a Doberman weighing 100 pounds running along the fence and everything. Mr. Mappin responded by saying that this is not livestock but a loved pet. He noted they would be heartbroken, distraught, and probably move if this were denied, and this is a horrible thing to put a family through. He added that he does not think there would be any problem with a Labrador or even a St. Bernard or a Mastiff.

Referring to Exhibit 5 of the power point, Mr. Mappin pointed out that pot belly pigs are loving, make great pets, and are kept for pleasure rather than utility which is the very definition of a pet. He noted livestock is for utility and cannot be housebroken. He said many pigs are prey and not predators. Unlike dogs, pigs do not get off their leash and bite a child. They live indoors, and during the winter, the Mappins have a litter box for him. He noted during the summer, they let him outside like they would a dog and pick up and dispose of waste. He added that pigs are pretty weighty and similar to a basset hound in stature, short and have a barrel chest. He reiterated the letter from the vet stating that Dante does not weigh 200 pounds. When Mr. Hesser inquired about Dante's age, Mr. Mappin indicated he is a year and a couple of months so he is pretty much full grown. He went on to say that some of the diseases, dander, and allergies that cats and dogs create, pigs don't as they do not have sweat glands and dander. It is a fundamentally different animal which is a good thing. While people are fine with cats and dogs, he noted they have an allergy to fleas in their house which has been documented by their doctor. He reported an outside dog is not a great option for their family, but a pig does not draw fleas. He mentioned that a pig is not going to bark at night, and they are lazy and sleep most of the time like cats. Pigs cannot climb or jump a fence because they are not built for it. Although people think of a farm hog that is rolling around in its own mud and is not clean, he noted that pigs are clean by nature when not given that sort of environment. He indicated they have a kiddie pool for Dante if he does get a little dirty. As he roots around with his nose, Mr. Mappin said they wipe it off to keep it clean. He said he would say pigs are cleaner than dogs he has owned.

He stated that a number of cities have already taken into consideration the lax language of livestock versus pet and have gotten with the times. As these are pretty new animals, it makes sense that a lot of codes have not thought of them. Two counties in Indiana, Madison County, where Anderson is located, and Brown County, allow mini pigs and recognize them as a pet breed and not a farm animal like a horse, cow, or giant hog. He noted he feels the Brown County decision says a lot because when people think of cultural and nice meccas in Indiana, that is one that comes to mind. Referring to power point Exhibit 7, he pointed out the case from 1994, where this was addressed in Anderson, IN. Much like the Mappins' initial telling about their pig, Anderson, Indiana, deemed it livestock because they did not know what to do with it. But the Appellate Court looked at this and said a mini pig breed is not consistent with livestock in any way, shape, or form and overturned that ruling. The second page of Exhibit 8 shows where Madison County considers pot bellies with cats, dogs, ferrets, mice, rats, and rabbits to be house pets, and there is no stipulation that you have to have three acres because they are not a farm animal. Three acres makes sense for something that weighs 1,000 pounds, but it doesn't for something that is no bigger than a large basset hound or a German shepherd. Referring to Exhibits 9-16, he indicated state taxation rules in Indiana, Iowa, Minnesota, Illinois, California, and Virginia, do not give an exemption for their feed because Dante is not livestock, and he

cannot be livestock because they are not bred for poultry or meat. He stated the language in the code is wrong because they are just not livestock and trying to apply them as such is a misfit through and through. He skimmed over the exhibits saying that basically if you are buying feed, you can't get an exemption state by state. Touching on Exhibits 17-19, Mr. Mappin noted the USDA opinion on mini pigs as only being considered livestock when they are being brought in to the country for the purposes of disease, but otherwise they are recognized as pets by the USDA. They recognize them as a breed that is too small to do anything with. There is no desire, no market, and no viability whatsoever to use them for meat. Exhibits 20-23 are opinions from the Livestock Association and the Pork Industry that pretty much say what the USDA says which is that they do not breed them, market them, and they are not viable because it is a pet and not a farm animal. He noted Exhibits 24-31 are Ordinances in states that have recognized the pot belly pig as "not really livestock" and have moved to treat them as they really are which is pets. He reported various quotes, "based on numerous Court cases, the Department of Planning and Coding recognizes that other pigs would be considered farm animals but not the pot belly pig because of its domestic animal status" from Maryland. From Pennsylvania, Mr. Mappin read their definition of a pig which specifically excludes the Vietnamese pot belly mini breeds as a pig for livestock purposes. He noted that California specifically mentions a pot belly as a house pet, suitable for a yard and household. He noted the photo of a pig from Newtown Township illustrating that this Board is not the first to deal with this issue and noted the highlight below showing the 5-0 vote of the Town Board permitting an exception to the Township Ordinance which requires a three acre plot to keep livestock because, again, they recognized the pot belly pig is not livestock or a farm animal. He noted three Proclamations from governors from conservative states and non-conservative recognizing pot belly pigs as something different than a farm animal. Mr. Mapping said Exhibits 32-35, are opinions of veterinarians and experts on the pot belly saying these are proper pets.

When they let their pig out, Mr. Hesser asked if they go out with it or if the yard is entirely enclosed. Mr. Mappin stated the yard is entirely enclosed with a good sized backyard and plenty big for him to run his laps when he wants to like a dog would. He went on to say that their treatment with the outdoors and Dante is consistent with a dog. He said most of the time Dante is inside, cuddling, and begging for food. But sometimes Dante is outside to run off some energy and dig his nose around in an occasional plant. Mr. Mappin added these are short bursts of time as Dante is not an outside animal, and he certainly doesn't sleep outside. When Zoning asked them to define how Dante is a benefit to the community, he indicated he did not know how to answer that at the time because he doesn't know how he would answer how a dog or cat is a benefit to the community. He noted they are not saving lives, etc. But he now understands what Zoning was going for and knows how to answer. Just like cats and dogs, a mini pig is loving, loved, clean, safe, manageable, a pal, not noisy, won't bite, and they are entertaining. He noted people who see them harness walk Dante seem to always be smiling and have a sparkle in their eye because it is unique. He thinks it boosts moral for Middlebury and Elkhart County which is how Mr. Mappin feels Dante is a benefit. In return, Mr. Mappin asked the Board to consider how Dante would not be a benefit or what Dante does that would be inconsistent with a dog because he is puzzled to think of anything except that maybe somebody thinks that a pig is strange. He further said that he supposed that somebody could think that a Sheba, an Alaskan malamute, or an Eskimo dog is strange because they look a lot like a wolf, but they are dogs. He

noted he hopes the Board rules in their favor and believes he has illustrated that there is a lot of precedent for this and that their place is very clean, immaculate, and Dante doesn't do any harm. He said it would be a shame for them to either have the awful choice of getting rid of the pet or selling their family home. Neither seems like a good option for something that doesn't really bother anybody which is evident by the number of signatures they got and people indicating they did not even know the Mappins had a pig. He said it would be a terrible blow to their family if this request were denied.

When Ms. Snyder asked how long they have lived there, which Mr. Mappin indicated was a year and a few months. He added that they had Dante for eight months before there was a call which he thinks says a lot about whether or not he is really a nuisance. Mr. Homan inquired about how they obtained the pig or if they were able to see the parents of Dante to get a feel for the size of an adult pig.

Andrea Mappin, 208 S. Main Street, was also present on behalf of this request. In response to Mr. Homan's question, she said she did a lot of research as she has always wanted one. She stated she spent approximately a year researching, through breeder after breeder, to get the right one. They did not want to be like many other people who get into trouble, don't have time for them, and just throw them away. She reported they are in the top four of the most intelligent animals. Mr. Homan clarified his question by asking if they saw the parents of Dante when they bought him so they could know how big to expect him to get. Mrs. Mappin reported the father was averaging a little over 30 lbs. and the mother was 55 lbs. She further indicated there is no such thing as a mini pot belly pig that stays under 25 lbs. but farm pigs are approximately 800-900 pounds.

Mr. Homan asked them to reiterate how they deal with waste. Mr. Mappin said they pick it up just like they would for a dog. He further indicated most of it goes in the trash but some is used on plants. Mr. Campanello pointed out that he could not put his beagle's waste in his garden, but he could put pig waste in his garden. Mr. Mappin explained the scientific reason for that is partially is because they do not feed him meat as meat tends to make waste odorous which is why dog and cat waste is more potent. He agreed that they could use the pig waste as fertilizer for their garden.

The owner of the property at 206 S. Main Street is Nikki Zimmerman who was present in remonstrance to this request. She indicated she has a hair salon at the back of the property, and the three bedroom residence on the front of the parcel is a rental. She said she believes her property is zoned business, and they are considered part of the downtown area of Middlebury. She commented that this spring when she was getting ready for new renters, she had gone out to clean the patio area and landscaping and it was then that she figured out the Mappins had the pig next door. She reported they have a fenced-in straw area between their house and her property which is right next to the patio area for her renters with a permanent grill that has an in-ground gas line. She said one thing that really has not been addressed is the smell which is how she knew the pig was there. Although she indicated she is aware that the Mappins put up a new fence, she said you could see through the old fence because many of the planks were missing. As she could see through the fence, she reported the pig was outside when she was out there. She is concerned that her renters are going to smell the pig if they are sitting on the patio. She indicated the rental is probably going to be a yearly lease, and she doesn't feel she should have to address this issue every time she has a renter coming in. She submitted a photo of the pig that

was taken in May 2013 to show the size of the pig *[attached to file as Remonstrator Exhibit #1]*. She stated when you hear “miniature tea-cup,” you think of a baby piglet, and this is not a piglet but a full grown pig. She also pointed out the straw area in the photo and with pigs liking to root, it is rooting up around the house. As she grew up on pig farm, she does not have anything against pigs, but she knows what goes along with pigs and what they do. She also submitted a letter from her employees of the salon stating they are opposed to this request *[attached to file as Remonstrator Exhibit #2]* and a letter from another neighbor in objection *[attached to file as Remonstrator Exhibit #3]*. When Mrs. Mappin came over to tell Mrs. Zimmerman that they were applying for the Special Use permit, Mrs. Zimmerman approached the Town Manager to inquire about the policy regarding having a pig in town or if it is even allowed. In the course of her conversation with Mrs. Mappin, Mrs. Zimmerman said she told her that she did not appreciate the fact that the pen area was right next to their patio because of the smell. Mrs. Zimmerman said at that time, Mrs. Mappin indicated that they were burying all of the waste in the back yard. She also spoke with the Town Manager about that, and since they are on city water and sewer, the Town Manager made it sound like burying the waste would not be approved. With the size of the pig, she would assume there would be a large amount of waste.

In response to Mrs. Zimmerman’s concerns, Mr. Mappin clarified that since the complaint was received, they no longer have the straw area. He indicated the old fence has been replaced with a new six foot privacy fence and noted this was completed within a week or two of the complaint which he feels shows good faith. Regarding the smell, he said he is always puzzled by that as he has been in the area of Dante’s waste, and it does not smell like dog waste. He further indicated he does not understand the comparison as an unkempt yard with dog waste smells much worse because they do not feed their pig meat. He further indicated if that is a concern to Mrs. Zimmerman, they will make sure to keep it picked up as they have. He said he has already addressed the size issue by demonstrating that the pig weighs 100 pounds. While that may feel strange to someone, he said a fat German shepherd or a fat Basset hound or St. Bernard is certainly a big animal, and a St. Bernard is twice as big as their pig. He noted he does not feel it is a concern especially when it is on their property with a privacy fence. Regarding the rooting area which was the pen area with the straw, he said they have been using it a lot less and does not know how sightlines would be a concern with the privacy fence. He reiterated that Dante has been in the back yard far more than the former straw area to try to focus on not just that one area being an issue of complaint which he thinks helps a lot. He expressed that they are certainly willing to do everything they can to make everybody happy. Again, he said he does not know that there would be an issue if there would not have been holes in the planks to begin with because it took eight months for anybody to even realize that they had Dante because he is a pretty low impact animal just like a dog.

The public hearing was closed at this time.

Mr. Campanello pointed out that it could be a dog on that property barking at renters constantly. He also said it could be a snake or it could be anything. He feels this is a low impact kind of animal. Mr. Homan noted this is not the first pot belly pig request before the Board, and the County has treated them as swine. He said there is a great case that this is a domesticated household, but it is also an exotic. In Elkhart County, he said there is really not a provision for a lot of different animals and noted they’ve had Chinese pheasants, peacocks, monkeys, pot belly pigs, and other non-traditional pets. He noted pot belly pigs are becoming more popular, but the

Board does not really have a tool to handle exotics well so they are left with a situation of their best guess of what they should do. It feels very subjective to him, and he is not very comfortable with it. When Mrs. Wolgamood mentioned they've had requests for chickens, rabbits, and lots of farm animals, Mr. Homan noted those are agricultural and food producing animals. Using Chinese pheasants as an example, he noted you can eat a pheasant, but it was obvious they were the petitioner's pets, and the same with the peacock. In his opinions, Mr. Homan feels the pot belly pig is the same way. He questioned the impact on the property when talking about land use, and noted they have one neighbor's word against another. He questioned if size is a determining factor or the condition of property, or the amount of care one person will take versus another. He asked if they approve a pot belly pig in a residential zone inside town limits if they are setting precedent, and he is prepared to deal with that. He found it interesting that no one was present from the Town of Middlebury and suggested it did not hit their radar or did not raise enough of a concern for them to make comment. Mr. Campanello said it did hit their radar because the remonstrator indicated that she had talked with the town and the town has knowledge of the pig. Mr. Hesser noted in the past when they have had a strong preference one way or another, they frequently send a letter stating that. Mr. Mabry reported the Town Manager had requested a copy of the staff report when it was completed, but indicated Mr. Salee has remained neutral. Although it does not help them today, Mr. Homan indicated Elkhart County has a little work to do on exotics including pot belly pigs.

Mrs. Wolgamood commented that she feels the petitioner has submitted to the Board an enormous amount of positive information which makes her feel as though Elkhart County is behind the eight ball by not addressing this, and she agrees with Mr. Homan that it needs to be addressed. She thinks that the petitioners have given her every indication that they know how to take care of their pig and have done so for a year and a half. They submitted the vet's printout that indicates Dante is a 100 pound pig and is current on immunizations that pot bellies require. She feels the Mappins are being good pet owners, and she calls a pot belly pig a pet even though at one point she said she called them a pig and thought all pigs were alike. Even though she admitted saying that on more than one occasion, she noted education is a huge thing. As long as the Mappins take care of the waste, she noted three dogs in a yard adjacent to her back yard that she would trade for that pot belly pig today. Mr. Campanello expressed agreement.

Mr. Hesser commented that if the Board is going to approve this request, he would consider a time limit. Even though he is not crazy about having to re-hear it, he said the facts are this pig has reached maturity fairly recently so how it has been dealt with up to this point versus how it is dealt with as a mature full-size adult may be different and something they ought to look at again down the road rather than approving this request forever. Mr. Campanello expressed disagreement. Mr. Homan said he has done some research on pot belly pigs, and he does not want to offer testimony but indicated he wanted to question the petitioners further. When he asked about the life expectancy of a pot belly pig, Mr. Mappin said it is about the same as a dog but a little on the long end so 15-18 years. He said he had even heard 20 years. Mr. Homan inquired about the time period to full-size adult which Mr. Mappin indicated most of the growth is done within the first year or so, but they can put on a few more pounds in the second and third year similar to a cat or dog. Mr. Homan noted he feels the Board is on a bit of shaky ground with this request in that there isn't an ordinance specifically about exotics, and he thinks this qualifies as an exotic. He also pointed out that some of the petitioner's information qualifies pot

belly pigs as exotics as well. He said from one pot belly pig owner to another, there is a great variation, and he thinks this particular owner is probably the prime example of a great owner as the property is fenced, they know how to take care of the animal, and they are taking care of the animal as evidenced by the veterinarian records, and the presentation today. If this were to be approved, he said he would not tend to feel that it would be a precedent for every instance that there is a pot belly pig or any other exotic animal, and it would be peculiar only to this petitioner's request. Attorney Kolbus added that each one would have to come in as a Special Use based individually on their own merits.

Mr. Homan asked Mr. Hesser about his mention of some type of review or time limit if there was a motion for approval, if that would be a staff item, or if it would come before the Board. Mr. Hesser stated he would think it would come back for Board for approval because if approved, they are not just approving for these owners and this property forever and coupled with the fact that the pig has just reached maturity. From everything that has been presented, the petitioners have done a very nice job of taking care of it and containing it up to this point. If through the pig's early adult years, it is the same way and there is still no problem, then maybe the time limit could be withdrawn after that. But he would like to look at it again, and also because of the fact that there is somewhat of a hole in the Ordinance. The County really has not decided how to deal with these and that may change, and it might be something the Board ought to approach slowly. Mr. Homan noted typically when they have a time limit for review, it says unless a valid complaint is received. As there is already a remonstrator with a valid complaint, he questioned how the Board handles that. He noted the remonstrator's concern is that this will impact her ability to rent and produce income from the adjacent property which possibly impacts a neighboring property owner. He further inquired what the Board should do about that. Mr. Hesser noted it is a valid complaint right now because a Special Use has not been granted to allow this, but if one has been allowed and her only complaint is that they have a pig, the complaint is then invalid if this request is approved. Regarding valid versus invalid complaints, preliminarily the staff makes that decision. For example, Mr. Homan said the petitioner has testified that his pot belly pig has no more odor than a dog. If, in fact, six months down the road, the remonstrator says the smell is bad, he questioned if that is a valid complaint. Mr. Hesser said if the Board places a condition that the pig cannot smell bad, then it would be a valid complaint as a valid complaint is a violation of the terms and conditions that are placed on an approval. So, if the terms and conditions include waste disposal and the neighbor says they are not disposing of the waster, the staff would go out to investigate. If they believed it was accurate, they would bring it before the Board.

Ms. Snyder noted that it seems the owners are very sensitive to their surroundings, especially since they have put up fences, and they have moved the straw area, and she believes the petitioners are very pro-active in trying to make this work. Mr. Hesser stated his concern has nothing to do with these owners but it is because this is a deviation and it is in the middle of town. He thinks if the Board were to approve it, they ought to make a point of taking a second look at it later to make sure it was the right thing to do and that it is working out and not a problem.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Randy Hesser that based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance in that the petitioner made a credible case that this is not a livestock animal but is, in fact, an exotic pet;
 2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property;
 3. The Special Use will substantially serve the public convenience and welfare;
- and based on these, further moved that this request for a Special Use for an agricultural use for the keeping of a teacup pig in an R-2 zone on less than three acres (Specifications F - #1) 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. Petitioners to dispose of waste from their pet in a responsible manner as to minimize or eliminate odor.
2. A six foot privacy fence be maintained on the north and south property line of the parcel.
3. Approved for a period of one year with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Lori Snyder, Randy Hesser.

12. The application of **Della R. Routson** for a Use Variance to allow a residential use in an M-1 district on property located on the South side of St. Joseph Street, 196 ft. West of Washington Street, common address of 305 E. Saint Joseph Street in Washington Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #305ESaintJosephSt-130717-1*. Amend #4 in staff analysis, change "ability" to "inability".

There were 17 neighboring property owners notified of this request.

Della Routson, 305 E. St. Joseph Street, Bristol, was present on behalf of this request. She indicated that all of her paperwork from her purchase of the house two years ago says it is zoned residential. She said she was unaware of anything about the property being zoned M-1 and never received anything about it so it was news to her. When Mr. Homan inquired how this petition comes before the Board, Ms. Routson said she has a buyer for the property and in the process of the sale is when it was discovered. Mr. Hesser inquired if Ms. Routson had purchased the property with cash or land contract instead of through a bank, but she said it was through a bank and it wasn't caught at that time.

Maria Pendley of Susie Tucker Realty, 3763 E. Jackson, Suite D, Elkhart, was also present on behalf of this petition. She stated that Ms. Routson purchased her home in 2011 and the appraisal that Ms. Pendley has says the property is zoned R-1 so they were unaware until they went to sell it. When Mr. Davis, the current purchaser, got a new appraisal, it came back as M-1 which is when the issue was discovered. She indicated the Assessor's records also show it

is residential. She said Mr. Davis plans to use the property as residential but the bank will not finance unless a variance is granted for residential use. Mr. Homan noted the Board has dealt with this issue before along the railroad tracks in that area previously.

Kathy Ellsworth of Coldwell Banker Roth Wehrly Graber, 1813 Belmont Avenue, Elkhart, was present representing the buyer, Basil Davis. Regarding other property along the tracks, she noted Mr. Davis tried to buy the property at 407 Depot as well, and the loan would not go through without a variance because no insurance company will issue an insurance policy on a house that cannot be rebuilt in case of fire or any other damage. She said a bank will not loan money as well. She did report a variance was granted on that house to rebuild although other issues stopped the progress of the purchase agreement. They are now on the second house and she did some research through Beacon and 39 Degrees both showed it was zoned R-1 as well as the County Assessor's Office. She said they did their homework on this second home and she also noted Ms. Routson's insurance policy for the property is also rated as R-1 through Western Reserve Mutual Casualty. All along the research and tax records on the property all pointed to R-1 so they entered into a purchase agreement again for this second house. She stated Mr. Davis went to the bank to get a mortgage loan, and the appraisal said the property is zoned M-1 which halted everything. She said it halted any insurance policies, any loans, and the purchase agreement has halted. It negatively impacted economy-wise the area because it halted Mr. Davis from moving from an adjacent trailer park and moving up to purchasing a house, it halted Ms. Routson from moving on with her life into another residence so her money is tied up as well as far as deposit. Additionally, she said it halted herself as a buying agent and Ms. Pendley as listing agent. This affected approximately six people because of the zoning being changed to M-1 and no one was notified. They request a variance at least if the zoning cannot be changed. She said Mr. Davis wants to make this his home and this affects his family because he takes care of an elderly father and a disabled brother. This home would provide more of a substantial foundation for taking care of those two family members more than his trailer does which has created another hardship. She also requested if there are any fences or garages he might want to be putting up in the future that they would be included as well.

There were no remonstrators present.

The public hearing was closed at this time.

Ms. Snyder inquired about how the appraiser discovered the error and what his source was because all of those sources are what everyone uses. She questioned if that information was in the report. Mrs. Ellsworth said she has the appraisal completed for Mr. Davis which says M-1. Although she does not feel it is pertinent for today's hearing, she noted she does feel it is important. Mr. Godlewski suggested there is some confusion because zoning has never been on-line. He noted it should eventually get to that when the update of the zoning ordinance because it is a necessary tool that zoning needs to be on-line for realtors. He said that the assessor's card refers to use of property but has nothing to do with zoning. He believes there is sometimes confusion between "use" and "zoning" and they get used interchangeably. He reported the only way a realtor or anyone else can get zoning is either to physically come to the Planning office or by telephone, and he noted Planning Assistants get approximately 200 calls per month on zoning.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood that the Board adopt the amended Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow a residential use in an M-1 district be approved with the following condition:

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. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Lori Snyder, Randy Hesser.

13. The application of *Clinton Christian School Association, Inc.* for an amendment to an existing Special Use for a private school to allow for the placement of an electronic messaging sign (Specifications F-#28) and for a Developmental variance to allow said sign to be within 300 ft. of existing residences (ordinance requires 300 ft. minimum separation between electronic message boards and existing residences) on property located on the West side of CR 35, 1,000 ft. South of SR 4, common address of 61763 CR 35 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #61763CR 35-130624-1*. On the Revised Staff Report under the heading of Petition, he noted it does not include the variance portion of it, but that has been advertised as such as needing a 300 ft. variance. When Mrs. Wolgamood asked how many houses are involved within the 300 feet, Mr. Mabry indicated four.

There were 19 neighboring property owners notified of this request.

Tom Lehman of Signtech Sign Services, 1508 Bashor Road, Goshen, was present representing the petitioners as they were contacted about doing a new structure. He said the school has been blessed with a financial opportunity to upgrade their sign, and they would like to do it with an electronic message center as stated to promote events and activities at the school. He said he was informed that the placement is due to future expansion possibilities of the school. On the aerial, he pointed out the existing sign and indicated the new placement with landscaping created around it. He said it is his understanding there is a possible expansion of building so they are trying to keep traffic flow. With the guardrail that goes along the road, the guardrail ends and then that would be where the sign would be placed. In communicating with school officials, they have said all of the neighboring property owners have been contacted and one of those neighbors actually sits on the school board. He noted they are all in favor of the project. To look at the structure, the way it was created, they will use the same type of brick as the school, and it is 6'3" wide and a little over 8 feet tall so it is not that large. When Mr. Hesser asked how it compares to the current sign, Mr. Lehman said the current sign is six feet wide and approximately six feet tall. But with the sign in the current location, it gets rocks and things thrown at it and right now it is even broken. Mr. Campanello inquired if they would still be able to put the new sign in the location of the existing sign if this petition were denied.

Allen Eash, 13381 CR 28, Middlebury, was present on behalf of this request. In response to Mr. Campanello's question, he said it is his understanding that the current sign is too close to the road which is why they are wanting to set it in farther and in a different location. When Mr. Hesser asked what would be the hardship of moving it so it is 300 ft. away from the nearest residence, Mr. Eash said farther back is all parking area which they could do if they need to but they were trying to stay at the end of the parking area so traffic did not have to drive around the sign and away from the drop off area. Placing the sign at the proposed location, Mrs. Wolgamood asked if they can set it back far enough that they do not need any kind of variances which Mr. Eash indicated is correct. When she asked if they had talked to all four neighbors to the south, he said they did and those neighbors have no objections to the request. Mrs. Wolgamood further asked if those neighbors are aware that the sign is going to be lighted and digital. Mr. Eash said yes. She inquired if they had plans to turn the sign off at night, and Mr. Eash indicated that was not their plan. When she suggested it might possibly be turned off at midnight, Mr. Eash stated he did not know what was appropriate. Mr. Homan noted that some signs auto dim at a certain time. Mr. Lehman reported this sign has that feature but normally the sign is full powered and communicates 24 hours a day. Mr. Eash stated the existing sign is lit as well, but it is not digital. Mr. Hesser inquired about the policy requiring lower brightness at night that he thought the Commissioners had adopted. Mrs. Wolgamood indicated she believes that is in the Ordinance. Mr. Mabry indicated more than likely it is in the Ordinance which he was attempting to locate. Mr. Eash said he doesn't see any issues with dimming it at night if required. Mr. Campanello confirmed that the existing sign is lit 24 hours a day which Mr. Eash agreed. Mr. Hesser noted it is a significantly lesser brightness than a digitized one. Mr. Eash also noted this sign is just amber so it wouldn't be all of the different colors displayed. Mr. Hesser said they would have to comply with the Ordinance regardless.

Mr. Mabry reported that the Ordinance has a specific adopted regulation that says the intensive of illumination shall not change until night when it must be reduced to a maximum of 500 NIT. He explained night is from one half before sunset to one half hour after sunrise. Mr. Lehman said the manufacturers automatically make them light sensitive.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated if any neighbors would have showed up and objected, he would have not given any consideration to waiving the 300 ft. which Mrs. Wolgamood noted the same. But apparently all of the neighbors have been contacted. He feels this request borders between inconvenience versus hardship. Regarding the hardship issue, Mrs. Wolgamood noted they would lose parking area if they had to move the sign to the north, and it might interfere with the existing traffic pattern. Ms. Snyder mentioned that the sign could be an issue with possible future new home owners. Mr. Campanello said once the Board approves the request, it is done. Mr. Homan said he understands that today the neighbors are good with the location of the sign but noted future land owners. Regarding the road damage to the existing sign, he mentioned that he would presume that when this was originally approved that the sign location was part of the original site plan and the setbacks for the sign were okay. He noted it seems to be awfully close to the highway. Mr. Hesser noted that it is outside of the guardrail but then confirmed that the guardrail is theirs. He indicated then that the school could remove part of it or alter it however they might want to. Mrs. Wolgamood stated she would guess that the sign was just put there as

the school has been there forever. She further said that they probably decided they needed a sign and put one up, and they were probably unaware that they needed anything else other than that. She also suggested that the rule for signs used to be just behind the right of way, although she does not know if this particular sign is in or out of the right-of-way. Mr. Homan reiterated that there were no remonstrators.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello, that this request for a Developmental variance to allow said sign to be within 300 ft. of existing residences (ordinance requires 300 ft. minimum separation between electronic message boards and existing residences) be approved based on the representations that have been made and 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 affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result an unnecessary hardship in the use of the property.

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

Yes: Tony Campanello, Meg Wolgamood, Lori Snyder, Randy Hesser.

No: Robert Homan.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood 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 private school to allow for the placement of an electronic messaging sign (Specifications F-#28) be approved with the following condition:

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. Approved in accordance with the site plan submitted.
2. Approved as represented in the petitioner's application.

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

Yes: Robert Homan, Tony Campanello, Meg Wolgamood, Lori Snyder, Randy Hesser.

14. The application of **Matthew L. Miller** for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure and for a Special Use for a home workshop/business for construction business (Specifications F - #45) on property located on the East side of CR 33, 1,150 ft. South of US 33, common address of 68548 CR 33 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68548CR 33-130624-1*.

There were six neighboring property owners notified of this request.

Matt Miller, 68548 CR 33, was present representing this request. He said basically he just needs a place for storage as he has a small construction business, and he wants to get the stuff inside as part of cleaning up the property. He wants to begin rehabilitation of the property that he bought four years ago as a foreclosure. He reported it had been sitting empty so it was kind of distressed when he purchased it. As he was low in funds at that time, he is now ready to start remodeling the whole place. Referring to the questionnaire, Mr. Hesser asked which building will be removed. When Mr. Miller pointed it out, he indicated that building does him very little good because it is very narrow and only has about seven feet of clearance. He said he has parked his truck inside but broke off one of his clearance lights so he can barely get a vehicle inside. He also stated he cannot put any equipment in side by side because of it being so narrow. Additionally, he reported it is not in very good shape.

Mr. Hesser noted the new building would be 3,600 sq. ft. and questioned the size of the existing garage. Mr. Miller said he was not sure on the square footage but he believed the building is 20' x 50' or something like that. Looking at the site plan, Mr. Hesser noted the house is 2,215 sq. ft. Mr. Miller said he thought his house was more like 3,100 or 3,200 sq. ft. Mrs. Wolgamood indicated on the front of the petition down at the bottom, it talks about how large each one of the buildings is, and it does give a total difference. He noted the total difference would be 1,749 sq. ft. When Mr. Hesser inquired about why that much additional space is needed, Mr. Miller said he has a few trailers, a forklift, two trucks, and he would just like to have an insulated place to work in the winter and be able to get his stuff in out of the weather.

He stated he has talked to the four property owners who border his property, and he does not believe anyone had a problem with it. He reported he felt they were actually glad to see him do something. He said he is not planning on having any physical business at this location as he does construction so he is away from the property during the day. It is basically for storage. He said he also has some toys, and it would be nice to have a place to tinker around on stuff inside. The existing buildings are not heated, and he really does not want to put any money into the existing building because of the shape it's in. He also indicated the existing building does not do the job he wants.

Referring to the questionnaire, Mrs. Wolgamood noted that Mr. Miller indicated that only 50% of the building will be used for business and 50% for personal domestic storage. She asked him if all of the equipment related to the business that he indicated on the questionnaire will be inside the proposed building. He indicated the tele-handler will, and he will try to get two of the trailers in. But he cannot guarantee that all of the trailers will always be inside because he is in and out a lot, and sometimes when he comes home he will not be able to. Right now, he said he has another trailer that he is getting rid of so at this time there are more than three trailers there. He stated he bought another one recently, and he just hasn't gotten around to getting rid of it. But he has no problem getting rid of that one.

Allen Mawhorter, 13019 N. Eastshore Drive, Syracuse, was present in remonstrance to this request. He stated he owns the storage building on the adjacent property to the south and property to the east. When Mrs. Wolgamood asked, he confirmed his storage building on the aerial. He expressed that his biggest problem is the trash issues and the overall look of the property. He noted he has previously sent pictures. Regarding the Special Use and Variance, he does not see how Mr. Miller can do one without the other as far as the size of the building, having a business there, and keep it clean. He reiterated that his biggest issue is keeping it clean

because he has spent a lot of time taking care of his place. Mr. Hesser asked if there were a larger building, wouldn't it be more likely that the stuff would be put inside. Mr. Mawhorter said he does not see how Mr. Miller could get it all inside even if he is granted the size building he is requesting including all of the metal materials and keeping everything cleaned up. He again made note of photos he brought in which Mr. Mabry submitted at this time *[attached to file as Remonstrator Exhibit #1]*. Mr. Hesser inquired if Mr. Mawhorter is opposed to the building, the Special Use, or both which he responded he almost has to say both because one without the other is going to be a problem.

Pointing out the area on the aerial photo, he reported he is going to put up a fence all the way along the east property line to keep trash out of the field. He said Glen Showalter farms the field for him, and Mr. Showalter is upset with the trash going into the field during planting and harvesting. Mr. Mawhorter said the only way he is going to be able to keep it out is by putting up a fence. He indicated Mr. Miller has a pretty large burn pile which kind of encroaches on his field which he pointed out on the aerial. He said those things need to go away. He really wants Mr. Miller to clean up the property. He also expressed fear that if Mr. Miller is granted a Special Use to have a business there, it will grow in the future, and he will want signage and different things which could lead to traffic and safety issues on the highly traveled county road. In the future, Mr. Mawhorter also suggested if he wants to sell his property to someone who wants to build a residence next to Mr. Miller's building, he does not think any possible future property owners would like the situation that is there now.

Additionally, Terry Mawhorter, also of 13019 N. Eastshore Drive, Syracuse, was present in opposition to this request. She stated she is co-owner of the adjacent property to the south. From a woman's point of view, she expressed that if they decided to build a mini-farm next door or if they sell to someone who would like to have a mini-farm, she would not like her kids running around with a big business running next door. She said it would detract her from buying a little mini-farm next to a business with all kinds of metal, equipment, and things right next to where she would be trying to raise a family.

Mr. Hesser asked Mr. Miller if he had a chance to see the pictures. When he indicated he had not, they were presented to him for his review. He said he understands the trash concerns. Regarding the burn pile, he noted a complaint and a call from the Health Department and further explained that he hasn't cleaned up the burn pile yet because he wants to wait for the demo of the building if this is approved. With the amount of debris to get rid of, he thought he would do it all at one time, and he is planning on getting a dumpster instead of a burn pile. As far as the metal debris, he said he believed some of the photos taken by the neighbor might have been right after a wind storm. He explained he would like to build some racks inside the existing building for supplies for his steel roofing jobs. He does not want it piled behind his building where he is putting it now because if it lays back there it gets scratched up and is unusable. He stated he is a little limited on what he can do as far as cleaning the place up because he needs to have room to put the stuff inside. Then he can start improving the rest. As far as putting up a privacy fence, Mr. Miller indicated he is not opposed to that, and said he would even consider putting one up himself if Mr. Mawhorter did not want to invest in it. He said the building Mr. Mawhorter has is virtually the same size as Mr. Miller wants to build, and he believes they are using their barn similarly to how he wants to use his proposed barn. He also pointed out that the Mawhorters do not actually live at the property but store toys and equipment so Mr. Miller figured if any of the

neighbors would understand his request, Mr. Mawhorter would. He added that he talked to all of the rest of the neighbors, and he doesn't believe that any of them had any issues with it. He also noted he thought they would be present now if they had objections. He indicated the new building will be attractive and feels the new building will be an asset to the neighborhood. He mentioned plans to re-side the existing building so it will match.

When Mr. Hesser asked how long he has lived there, Mr. Miller indicated four years. Regarding the proposed building, Mr. Homan questioned the eave height which Mr. Miller said would be 16 foot. Mr. Homan further inquired if the building will be metal or a wood frame building. Mr. Miller reported it will be a post-frame building. Mr. Homan pointed out that guidelines for a "home workshop/business" specifically say that everything is contained in a building out of sight, and there is no outside storage. He inquired if Mr. Miller understood as part of his request that no trusses, metal on the ground, trailers, or equipment would be allowed outside. Mr. Miller said originally when he purchased the property, times were pretty rough in construction so as a hobby or to make a little money, he redid some equipment and things like that. He reported he no longer does that as he is staying pretty busy in the construction field, and he has no intention of getting back into doing that. Regarding the trusses, he came in to see what he needed to do to get approved for this building two years ago. He said he actually figured he would have to get a variance, and he thought he made it clear what he wanted to build. He said the Building Department basically approved him when he was there for a permit without a variance which surprised him. Then when he started to build and already had the trusses ordered is when the complaint was filed. At that time, the Building Department said there was a mix up, and there should have been a variance. He does not believe it was his mistake as he had drawn out what he wanted to build. He was told at that time, which he thought was getting into November, that in order to proceed he would have to get the variance. He was running out of time to get it built before winter because it would have been the last part of December before this would have gone through if it had been approved. With post-frame, in order to set posts, you have to do that before the ground freezes, and he was pretty busy at that point so he just dropped it. He said he has been busy ever since, but he is tired of the way the place looks himself and would like to start improving it. He said the trusses have been laying there since then, and he just hasn't come in to apply for the variance. He said it is still the same plan as two years ago.

Regarding the previous building permit, Mr. Hesser asked if staff had any information to add. Mr. Mabry said he does not have personal experience with the background as far as being issued a permit to build and then discovering a need for a variance. He stated there are pretty extensive code enforcement notes about the property so he just briefly summarized for the staff report. He does not recall if the intricacies of the permit were mentioned.

Mr. Miller added that if trash is a big concern, he assured the Board that he is planning on taking care of it.

Mr. Hesser stated that his hesitation to closing public hearing is that if the Board were going to approve this request as recommended by the staff, he would need more information. He said he is not comfortable approving it as presented with the site plan and information provided. He thinks he would need to see a better rendering of the building, its specifications, and location on the site plan. He reported he does not know how he would ultimately vote but he looked at this and saw that it is a big variance of 1,700 ft. But at the same time, based on the equipment that he has and the fact that they do want everything stored inside, he may very well need all of

that space. If that were the route they were leaning to consider, then the Board would have to accept the new site plan and keep the public hearing open or reopen it. If they are not interested in doing that at all, then the public hearing can be closed and vote on the others.

If approved, Ms. Snyder asked how soon he was planning on starting the project. Mr. Miller responded that originally he wanted to start as soon as possible, but because of some recent injuries he received, he cannot do a lot on his own. As fall is busy time of the year, he would like to start as soon as possible. For staff to evaluate a revised site plan and drawings to be considered at next month's meeting, Mr. Hesser asked the deadline for submission. Mr. Mabry indicated he would need it by September 9th. Mr. Campanello agreed that a better site plan is needed. In the past, he said petitioners have presented a site plan and drawings of what the buildings will look like. He stated he would also like Mr. Miller to include how the equipment is going to get stored and make sure all of the equipment is going to fit inside the building. Mrs. Wolgamood suggested some type of time frame for getting these things completed. Mr. Hesser indicated that is why he asked Mr. Mabry for the date. In light of the remonstrators' comments, he said he wants to see what is going to be done not generalizations. Mr. Homan said it is somewhat of a catch 22 as far as the petitioner is concerned because he has too much stuff to put in a building that is the right size to not need a Developmental Variance but he does not know that is a problem as he can have a home workshop/business if he can contain it within a building. He can build a building about half the size of what he wants. Mr. Homan pointed out in the petition that Mr. Miller stated the building he would like to build would be 50% for business and 50% for personal storage. Mr. Homan said it seems in his mind that Mr. Miller could get his business in a smaller building. Attorney Kolbus said he believes that Mr. Miller testified that the equipment would not be in there at all times. Mr. Homan stated that concerned him because in a home workshop/business, there is not time when storage is to be left out. It is all put in the building all the time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure and for a Special Use for a home workshop/business for construction business (Specifications F - #45) be tabled until the September 19, 2013, Advisory Board of Zoning Appeals meeting, with the public hearing left open, to give the petitioner the opportunity to submit a revised site plan showing more detail with respect to the building size, location, specifications, etc., and clarification as to whether or not all materials used would be stored in the building and to allow additional staff input.

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

Yes: Tony Campanello, Lori Snyder, Randy Hesser.

No: Robert Homan, Meg Wolgamood.

15. There were no items transferred from the Hearing Officer.

*****It should be noted that Meg Wolgamood steps down.*****

16. The first staff item for Trinity Lutheran Church of Elkhart (991568) – for a major/minor change for amendment to an existing Special Use was presented by Brian Mabry. He said staff received a packet of information on August 6, 2013, from Meg Wolgamood, who is representing the church that is located on the southeast corner of County Line Road (a.k.a. Ash Road) and CR 6. He noted Exhibit A is the original approval, Exhibit D is a staff approved amended drawing from 2001, and Exhibits E and F are revisions of what they hope to be the new guiding plan for the Special Use permit.

He explained they are pushing the new sanctuary up to the existing building rather than having it separated. He also indicated they are doing something a little different with the driveway and there are some allowances for future parking, future fellowship, and youth/childhood ministry buildings. He said the request is to have this as a minor change to the approved Special Use permit.

Mr. Hesser asked how many signs are presently at this location presently or were there before the current road construction and if they want to move the signs to the entrance and exits. Mr. Mabry indicated signs at each entrance and exit as well appropriate entry and exit signage. As far as what is on the ground, he said he couldn't say. Mr. Campanello indicated he has only seen one sign when he drives past which is at the corner. Mr. Hesser noted that the application says at every driveway and questioned that there will be four entrance areas. Mr. Campanello does not think they need that many. Mr. Hesser questioned that maybe they are intending one sign on CR 6 and one on Ash Road but stated he does not see them located on the site plan. Mr. Mabry agreed that he also did not see signs noted on the site plan. Mr. Homan said his understanding was that St. Joe County and Elkhart County were determining the entrance locations and the two western-most curb cuts on CR 6 were to be closed, although they do not seem to look like that on the drawing. Mr. Homan said he was thinking that there would be one main entrance on CR 6 and that would be it. Reading from the application, he said, "The entrance to the west on CR 6 has been closed and because of the dynamics of the round-about, have been given an entrance/exit on CR 6 at the east end of the property by Elkhart County Highway Engineering. Also, one entrance/exit on Ash Road." He noted he read that to mean there would only be one entrance on CR 6 with two being closed. He mentioned possibly asking Mrs. Wolgamood to clarify as he presumes that means closing the other two entrances/exits on CR 6. Mr. Campanello indicated he thinks this request is a major change and should be explained by Marbach. Mr. Homan said if his question was cleared up, he would be okay with the request as a minor change. Mr. Mabry indicated he could ask her for clarification on the entrances/exits if it is appropriate for a staff item for him to step out and ask her. Mr. Hesser noted he does not have a problem with that. He questioned what is around that area, and Mr. Homan noted Cobus Creek is to the east. Mr. Campanello also reported residential neighborhoods east of the property off of CR 6, but noted he feels the proposed curb cut is in the proper place.

After clarification from Mrs. Wolgamood, Mr. Mabry indicated looking along CR 6, the farthest west access point is already closed off and the next one going east would remain and be exit only. He also noted the third one on CR 6 to the east is the proposed new entrance/exit. Mr. Hesser also clarified with Mr. Mabry that is where they want to put the sign. Mr. Mabry also noted the second sign would be at the entrance on Ash Road. When Mr. Hesser asked if staff was comfortable with the details not being shown on the site plan, Mr. Mabry suggested having

the site plan annotated to reflect that. When Mr. Hesser further questioned Mr. Mabry if dimensions and locations of signs is standard for site plans, Mr. Mabry reported for a Special Use, staff tells the applicant that they should show the signs to have it sealed in when the site plan is approved. When Ms. Snyder suggested this request be tabled to correct the site plan, Mr. Hesser indicated he felt the request is major. However, upon further consideration, he stated the Board could say that staff can approve the site plan when the sign details are added.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board consider the request to change the site plan as necessitated by the road construction for Trinity Lutheran Church of Elkhart to be considered a minor change provided they amend the site plan to show details regarding the locations of the new signs.

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

Yes: Robert Homan, Tony Campanello, Lori Snyder, Randy Hesser.

*****It should be noted that Mrs. Wolgamood returns.*****

17. The next staff item regarding Accessory Exceeding Primary for Special Use Permits was presented by Brian Mabry. He indicated after last month's meeting, he spoke with Attorney Kolbus and Mrs. Wolgamood about this. He said staff's practice, when there is a Special Use permit that is a stand-alone use like bus parking in residential, agricultural, or business; a commercial greenhouse; or warehousing for contractor storage that is often found along with a residential structure on a property, has been to not require additional Developmental Variance if that Special Use floor area exceeds the residential floor area. He said this doesn't apply to home workshop/businesses so they would still need the Developmental Variance for the accessory to exceed the primary because a home workshop/business is understood to be accessory to a residential as a given. He used Matthew Miller's request from today's meeting as an example. The subject has come up and he has had a few questions previously asking about the stand-alone Special Uses where they happen to be in combination with a residential structure. Again, he said staff hasn't required a Developmental Variance. He wanted to bring it up as a staff item for the Board's input on whether the policy should be changed and require a Developmental Variance along with the Special Use in those cases where it is along with a residential structure.

Ms. Snyder asked if that provides an additional step and variance request that they have to go through. Mr. Mabry said it would be a two step process like with Matthew Miller or Clinton School for the sign earlier today with the Special Use approval and also the Variance approval as part of that. Mr. Homan asked if that would give past approval to the Special Use to expand the buildings to any size they would like. Mr. Mabry said on one hand, you are stuck in time with what the site plan showed. But they could incrementally extend and expand, and people might say that is just a little expansion and approve it then eventually you've got something large. Using the sign petition as an example, Mr. Hesser asked if Mr. Mabry is proposing that since they are amending the site plan on the Special Use for the church and showing where the sign is going to be, they would not need a separate Developmental Variance. Mr. Mabry thought the sign petition is harder to use as an example. Mr. Mabry suggested the best example recently is probably Manolo Dosal's petition from two months ago. They had a

nice house and wanted to do the accessory structure. There was a complaint filed, but Mr. Dosal wanted and ended up submitting a Special Use for contractor storage or warehousing. The building he was wanting to build was larger than house. Mr. Mabry said staff determined Mr. Dosal didn't need a Developmental Variance because of the existing practice of staff that theoretically if he got the approval from the Board, he could get rid of the house completely if he amended the Special Use and only have that as a contractor storage area. He noted right now there is only one step but it could be two steps with both the Special Use and the Variance if they want to go that direction. Mrs. Wolgamood stated her question was really simple. She had asked why the Ordinance does not say that you need to have a Developmental Variance for this because in her opinion, it is really an accessory to the residence even though it is for a construction storage building and not a home workshop/business. She said when Mr. Mabry gave the explanation; she said she wasn't really sure that she agreed with that. Mr. Homan noted it was a construction business that happened to have a residence on it. Mr. Hesser said if an agricultural property does not have a residence on it (which Mrs. Wolgamood pointed out is permitted by Ordinance) and if you put a residence on it, then you can't build non-agricultural accessory structures bigger than the house. Mr. Mabry agreed that non-agricultural is limited. Regarding Mrs. Wolgamood's previous questions, Mr. Kanney tried to further explain by saying that he doesn't believe that Special Use is to be an accessory to a residential use as a contractor's yard doesn't require a house to be there. Therefore, it has nothing to do with it whether a house is there or not any more than a church has anything to do with the rectory. If it is there, it is a separate issue. If it is a contractor's yard where outside storage is permitted, it is not a home workshop/business, and he thinks sometimes there is confusion between a home workshop/business being "an accessory to" but everything else is not "an accessory to". Mr. Hesser suggested the every time they see a Special Use, they are thinking that home workshop rules have to apply. Mrs. Wolgamood said a construction storage yard to her means they are going to store things outside and doesn't necessarily mean to her that they are going to be constructing a building. But if they are constructing a building and there is a house on the site, her question was why. Mr. Kanney said there is not a house requirement like there would be in a home workshop/business. If there is a house, this is still stand-alone. Mr. Hesser noted it is helpful for the Board to understand what staff's reasoning.

18. Another staff item was discussion of Planning & Zoning fees presented by Chris Godlewski. He said Steve Warner from Plan Commission brought up the idea of looking at fees once a year. Related to this, he said in the past Building Department fees were reviewed on a county-wide basis with all of the other jurisdictions to get some level consistency. From that discussion with Mr. Warner just recently, he indicated they will do the same thing with the Planning & Zoning fees. Next month they will meet with the other jurisdictions to review the fees and have some sort of consistency which he believes there is because the fees are not off from each other. He noted in the Building Fees years ago, there was a great disparity between cities and county. They are just going to find some common ground. He said there wasn't much discussion at the Plan Commission about it so they are just at the first step and hopefully something will be completed by the first of the year.

19. The last staff item was regarding minutes. Mr. Godlewski reported he sent an email out about BZA minutes. Mrs. Wolgamood requested when something is tabled, she would want a copy of that portion of the minutes with the packet. He further explained one of the issues staff was having with the full set of minutes is that the timing element was not working with sending them out in the packets on Thursday and a couple of extra days are needed. He said case by case, that might be appropriate to do because there might be some months when there are no tabled items.

20. Regarding the pot belly pig case, Mr. Kolbus pointed out that the Elkhart County Ordinance has a difference definition which just says livestock and includes a list of animals. If you look at the definition of livestock, it says “kept or raised for use or pleasure or farm animals kept for profit”. He explained the definition in that case where the Court of Appeals overruled it, said livestock “kept for farm purposes including breeding and raised for commercial” so their definition was different from ours. He thinks ours allows petitioners to keep bringing them in as a Special Use because generic livestock is used for pleasure and that is what this one was. Regarding the new ordinance, he said staff has made a note to look into exotic animals to see if it can be addressed another way.

21. The meeting was adjourned at 12:27 p.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary