

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 21<sup>ST</sup> DAY OF FEBRUARY 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, Doug Miller, Meg Wolgamood, Randy Hesser.

**Absent:** Tony Campanello.

2. A motion was made and seconded (*Wolgamood/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17<sup>th</sup> day of January 2013 be approved as read. The motion was carried with a roll call vote with Robert Homan abstaining.

3. A motion was made and seconded (*Homan/Miller*) that the legal advertisements, having been published on the 9<sup>th</sup> day of February 2013 in the Goshen News and on the 10<sup>th</sup> day of February 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 (*Wolgamood/Homan*) 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. There were no postponements of business items.

6. The application of *Harold & Pam Hymer (owner) and Paul J. Comino (contract holder)* for a 3 to 1 depth to width ratio Developmental Variance (proposed Parcel A) and for a 3 to 1 depth to width ratio Developmental Variance (proposed Parcel B) on property located on the East side of CR 25, 1,750 ft. South of CR 46, in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry submitted letters of withdrawal from both parties *[attached to file as Staff Exhibit #1]*.

**Motion: Action:** Withdrawn **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood, that the Board accept the petitioners' request to withdraw this application for a 3 to 1 depth to width ratio Developmental Variance (proposed Parcel A) and for a 3 to 1 depth to width ratio Developmental Variance (proposed Parcel B).

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

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

7. The application of *Lucille Smeltzer Trustee Smeltzer Revocable Trust (life estate)* for a Developmental Variance to allow for an existing residence on property served by an access easement on property located on the 190 ft. West of Spring Street, 350 ft. North of Waterford

Street (CR 40), being proposed Lot 1 of proposed Spring Street Addition to Wakarusa, common address of 107 N. Spring Street in Olive Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #107NSpringSt-130114-1*. He also noted on 02/14/13, the Plat Committee approved the primary plat for this property subject to approval of this variance request. He added the next step would be a second plat that could be administratively approved if this variance is approved.

There were 13 neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the Smeltzer Trust. He expressed agreement with staff's recommendation in this case. Mr. Doriot indicated these structures have been in existence since 1977 or before. He mentioned they met with the Town Board who submitted a letter. Mr. Mabry said the letter which stated if approved, they request a condition that the mobile home will be removed, was not included in the packets. He further reported Attorney Kolbus did not believe it was within the purview of this board to make that decision. Mr. Kolbus further explained that it is not reasonably related to what is presented today. Mr. Mabry suggested a voluntary initiative to remove the mobile home on the applicant's behalf but did not believe the Board could require it as a condition.

Mr. Doriot stated what he presented to the Board of Works work session was that this would be divided into three tracts. He reported the owner has said when proposed lot 3 with the mobile home is sold, the mobile home will be removed. He explained Sycamore Street is an unplatted, untaxed right of way that is being treated as a private easement which is being determined with Loren Sloat, the town attorney. Mr. Doriot said they are requesting to build on the frontage as they are providing a cross access easement for a circular flow of traffic if necessary. Mr. Doriot submitted a plat of proposed three lots *[attached to file at Petitioner Exhibit #1]*.

When Mrs. Wolgamood asked if the house on proposed Lot 1 has always used the unplatted right-of-way, Mr. Doriot indicated yes and stated it is also mentioned in their deed on the plat. He said currently it is not passable, but they are going add gravel to it.

When Mr. Homan inquired as to how this came up, Mr. Doriot said Ms. Smeltzer is getting quite elderly and wants to dispose of things and get her business affairs in order. When Mr. Hesser asked for clarification regarding road usage, Mr. Doriot said the owner of proposed Lot 1 uses what is marked as Sycamore St, the mobile home on Lot 3 uses Spring Street, and Lot 2 uses the easement occasionally. He added that he wanted to make a cross-access easement for the safety of Lot 1 for emergency personnel if needed.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said it is the way it has been for years. Although Mr. Hesser expressed some confusion in the beginning, he stated he understands what they are trying to accomplish.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **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 Developmental Variance to allow for an existing residence on property served by an access easement be approved with the following condition 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 = 4).

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

8. The application of *George A. Reed Jr. or Carolyn S. Reed Trustees (life estate)* for a 3 to 1 depth to width ratio Developmental Variance for the creation of a parcel on property located on the North side of CR 48, 1,050 ft. East of SR 19, common address of 27615 CR 48 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #27615CR 48-130118-1*.

There were six neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present with petitioner, George Reed. Using a large aerial printout, Mr. Doriot indicated Brent Reed wants to tear down the old farm house and build a new one behind his father's residence to raise his family near his father. He pointed out they can do 250 ft. of frontage laid out legally. He explained they would rather not do that because they want to keep as much land as possible for farming and agricultural production. He added that the property is extremely well tiled and valuable farm land. Going along with the Comprehensive Plan, he said they want to preserve rural character and keep as much farm ground as possible.

George Reed, 27681 CR 48, Nappanee, was present on behalf of this request. He reported the old house is 122 years old and in bad shape underneath the vinyl siding and new windows. He pointed out they also have a 41 year old handicapped daughter who will be looked after by Brent Reed in the future. If approved, when the time comes, Mr. Reed suggested his son can hire a caretaker to live in the house with his sister, and he will reside right next door.

Mrs. Wolgamood asked about the size of the entire parcel shown, not just the one Mr. Doriot has drawn out. Mr. Reed stated it is 108 ½ acres. He went on to say it was originally 120, but the front property is now a separate deed. He explained it became a separate deed when he bought his property from his father, and the property has been in the family since 1888. He said they actually have half of a section all together. Mr. Doriot pointed out that the Reeds are farmers not developers. When Mrs. Wolgamood asked about the possibility of putting the land in both his name and his son's name, Mr. Reed explained his son would like to obtain a mortgage from the bank, and the parents want the property to be their responsibility.

There were no remonstrators present.

Mrs. Wolgamood pointed out if they go 250 ft. east from the west property line and take it all the way back without the jog they are suggesting, they can still farm the land. Mr. Doriot said they understand that but with the future being unknown, they do not want a separate parcel to get away. He also suggested if for some reason Brent Reed and his father split up, George Reed wants to keep as much property as possible in the deed of the farm. Mr. Doriot pointed out what they are doing is a hardship, but they are trying to take an old piece of ground that has been a house for 122 years and leave it the same. The only thing they are asking is to be allowed to do it with 100 ft. instead of 250 ft. While he appreciates that they want to build a new house, Mr. Hesser said the request is asking to keep the option to create something that the Board would not normally approve.

The public hearing was closed at this time.

Mr. Miller mentioned that one of the big topics of discussion right now in the county is about keeping and preserving farm ground which this request does. He indicated he does not struggle with the request.

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

**Motion: Action:** Denied, **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 a 3 to 1 depth to width ratio Developmental Variance for the creation of a parcel be denied.

**Vote:** Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

**Yes** Robert Homan, Meg Wolgamood, Randy Hesser.

**No:** Doug Miller.

9. Staff Item for April Randolph – see Item # 20 on Page 17.

10. The application of **Mark A. & Rosemary Corpe** for a Developmental Variance to allow for the construction of a residence on property served by a non-maintained, unimproved county road on property located on the 650 ft. West off of CR 7, 1,300 ft. North of CR 10, common address of 54257 CR 7 in Osolo Township, zoned R-1, came on to be heard.

As both Mr. Hesser and Mr. Miller have conflicts with this item, it will need to be postponed.

**Motion: Action:** Tabled **Moved by** Randy Hesser, **Seconded by** Robert Homan, that this request for a Developmental Variance to allow for the construction of a residence on property served by a non-maintained, unimproved county road be tabled until the March 21, 2013 meeting due to the lack of a quorum.

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

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

11. The application of **Edward S. & Donna K. Tazelaar** for a Special Use for a home workshop/business for gunsmithing and sales of firearms (Specifications F - #45) on property located on the North side of Joan Kay Lane, 220 ft. West of Jenny Lane, West of Jemian Drive, North of CR 18, being Lot 11 of Jemian Trace Phase II, common address of 18975 Joan Kay Lane in Jefferson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #18975JoanKayLn-121228-1*.

There were 15 neighboring property owners notified of this request.

Ed Tazelaar, 18975 Joan Kay Lane, was present on behalf of this request. He said the purpose is to have a home business to do gunsmithing and hand loading of firearms. He explained over the years, he has had difficulty locating a local gunsmith so he learned the trade himself. Now, he said he would like the opportunity to serve the community because no others are available.

Mr. Miller mentioned deliveries by UPS and FedEx and inquired about other foot traffic which Mr. Tazelaar said will be by appointment only. He went on to say that he has other full

time employment, and some of his customers are friends from church. He mentioned he will have less traffic than the teenagers across the street.

When Mrs. Wolgamood asked about gun sales, Mr. Tazelaar said it will only be accessories for firearms and not actual weapons. She further asked if he makes guns from scratch. Mr. Tazelaar reported no and explained he may have a barrel and would be putting pieces together of what is mostly there. Regarding #10 on the questionnaire, Mrs. Wolgamood inquired if hand loading supplies were what he just described. He indicated yes and mentioned he had photos on a flash drive if anyone was interested in seeing them *[not shown]*. When Mrs. Wolgamood asked about hand loading essentials listed in #24 on the questionnaire, he also mentioned bullets, cases, and case prep cleaning items such as tumblers as supplies. She further inquired if any customers' guns are kept overnight. Mr. Tazelaar said after he obtains his federal firearms license if this request is approved, he would keep customers' guns overnight in his gun safe.

Mr. Hesser asked if the neighborhood has any restrictive covenants which Mr. Tazelaar indicated no. Mr. Homan mentioned a very unfortunate incident years ago when there was a residential explosion where someone happened to be a gun collector. He questioned Mr. Tazelaar about how much loading he is doing, how much powder he is keeping, and how he is assuring safety of neighbors since he resides in a subdivision. Mr. Tazelaar pointed out there are federal, state, and local laws about the containment of gun powder. He explained he has powder in a wooden box stored separately in a different area. He said the wooden box can withstand fire for a certain amount of time. He also explained by federal law, the powder, which is smokeless now, has to be in a container with room for expansion. As it is a propellant and burns slow, with room for expansion, he said it just fizzles out. In his opinion, he stated, as long as it is stored correctly, gun powder is not as dangerous as keeping a can of gasoline in a garage. When Mrs. Wolgamood asked if federal regulations tell him how to store it and how much he can store, Mr. Tazelaar reported federal regulations do tell him how to store it and the local fire department tells him how much he can store. He indicated it is typically 20 lbs. or less. He added if a person has special containers with separations, the fire department may allow that person to store more than 20 lbs. He also mentioned the fire department is only one mile from his house.

Presuming this request is approved, Mr. Homan asked if he would be inspected once he applies for his license. Mr. Tazelaar said the Bureau of Alcohol, Tobacco, Firearms, and Explosives will complete periodic inspections and make unannounced visits. When Mrs. Wolgamood asked if he sold firearms, Mr. Tazelaar explained part of the reason to obtain his license is to resell or part out a weapon that is too expensive for an owner to repair to recoup some of his costs. He did report he does not intend to stockpile guns for sale. He stated the only stockpile he would have would be his own personal firearms and ones that he is repairing.

Dan Zimmer, 18909 Joan Kay Lane, was present regarding this petition. He questioned if this was going to result in a change of zoning in the neighborhood or for his property. Attorney Kolbus said this request will not change the underlying A-1 zoning and reported it is giving Mr. Tazelaar a special exception for this one use. He also expressed concern about foot traffic but stated it sounds like it will be minimal.

There were no remonstrators present.

The public hearing was closed at this time.

If granting this petition, Attorney Kolbus recommended taking the staff note, “no firing or testing of firearms on this property,” as a commitment. Mr. Tazelaar said there will be no discharge of firearms on the property which Mr. Kolbus suggested was the correct language.

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

**Motion: Action:** Approve, **Moved by** Doug Miller, **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 for a home workshop/business for gunsmithing and sales of firearms (Specifications F - #45) 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 also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner’s application.
2. No discharge of firearms on the property.

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

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

12. Staff item of board education – see Item # 21 on Page 17

13. The application of **Andrew G. & Susie Martin** for a renewal of an existing Special Use for an agri-business in an A-1 district to include fabrication of trusses for construction of structures for crops and animal husbandry farming operation (Specifications F - #56) on property located on the East side of CR 1, 1,800 ft. South of CR 30, common address of 62332 CR 1 in Olive Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #62332CR 1-130114-1*. Mrs. Wolgamood asked about the conditions being imposed being the same as all 12 commitments that were previously imposed in February 2012. Mr. Mabry received confirmation from Mrs. Wilson that it is the same list of commitments which Attorney Kolbus pointed out is a recorded document.

There were eight neighboring property owners notified of this request.

Andrew Martin, 62332 CR 1, Elkhart, was present on behalf of this request. In reference to the 12 commitments previously imposed, when Mr. Homan asked if he is familiar with them, understands them, and is able to operate within those conditions, Mr. Martin indicated yes. Mr. Homan inquired about any significant changes to the operation. Mr. Martin said he is happy just keeping it the same right now. Mr. Homan pointed out there has been much discussion over the years about his business so he feels the Board has a good understanding of it. Regarding the renewal, Mr. Hesser asked if the trusses are still primarily for agricultural projects. Mr. Martin said that remains correct, and added that they do very few houses. Mr. Hesser pointed out in 2007, it was represented that 76% was for agricultural projects on a quantity basis and approximately 82% based on sales. Mr. Martin said he would say it is more like 95% agricultural at this time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan stated he does not have any other comments. Based on the staff analysis, the fact that there were no problems, and there are good conditions, he said in his opinion the operation is the same as when the Special Use was previously granted.

Attorney Kolbus pointed out that staff is recommending commitment #11 for renewal be taken out and informed the Board they have to decide if they want to amend that or if they are willing to go unlimited. Mr. Hesser mentioned that Mr. Martin would come back to the Board if there are any complaints. Mr. Miller reiterated that staff seems to be comfortable with the request. Mrs. Wolgamood said she would like to add that if staff receives a complaint, the case will come back to the Board for review.

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

**Motion: Action:** Approve, **Moved by** Robert Homan, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a renewal of an existing Special Use for an agri-business in an A-1 district to include fabrication of trusses for construction of structures for crops and animal husbandry farming operation (Specifications F - #56) be approved with the following condition imposed:

1. The previously imposed commitments (Instrument #2012005290) to remain in effect with no future renewals being required.

The following commitments were imposed:

1. Pick-up truck with trailer used for primary delivery of trusses. Semi-tractor with trailer used as needed for longer trusses, no more than one or two times per month.
2. No more than two deliveries or pick-ups per day.
3. Truss business will not be expanded without BZA approval.
4. Hours of operation are Monday through Friday from 7:00 a.m. through 6:00 p.m. with no Saturday or Sunday hours.
5. Construction of roof trusses shall be secondary to the use of the property as a residence and as farmland.
6. Agri-business manufacturing assembly operations will be carried on wholly within accessory building per site plan.
7. Agri-business will be operated by Andrew Martin as resident of the property, no more than two persons who do not occupy the residence will be employed.
8. No signs.
9. No retail sales.
10. Agri-business shall not produce noise, vibration, smoke, dust, odors, heat or glare which can be detected beyond the premises.
11. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
12. Approved for an indefinite period of time with referral back to the Elkhart County Advisory Board of Zoning Appeals if valid complaints regarding violations of these commitments are received and verified by the Zoning Administrator.

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

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser

14. The application of **Marion P. Wenger** for a Special Use for a bed and breakfast homestay in an A-1 district (Specifications F - #4.50) and for a Special Use for a privately owned recreation business for wedding venues, birthday parties and similar special events (Specifications F - #20) on property located on the North side of CR 42, 2,500 ft. West of CR 7, common address of 27473 CR 42 in Harrison Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #27473CR 42-130118-1*.

There were eight neighboring property owners notified of this request.

Marion Wenger, 27473 CR 42, Wakarusa, was present on behalf of this request. She said she has operated a bed & breakfast since she has lived at this property for almost 20 years. She said she also ran a bed & breakfast on different property for 10-15 years prior to being at this address.

Nancy Wenger, 27473 CR 42, was also present. She is Marion Wenger's daughter. She explained her mother is the land owner, but she will be operating the business. She said in the 20 years that they have been operating the bed & breakfast, they have had opportunities for wedding venues and birthday parties which they held. She noted someone filed a complaint which is why they are before the Board.

When Mr. Homan mentioned the 4x6 double sided sign, she said the sign is right at the end of lane on CR 42 and has been there for three years. Mrs. Marion Wenger said they had a small sign for years prior to that, but they replaced it with a nicer sign. Mr. Homan asked about the amount of activity they have at their business. Marion Wenger said they had a lot more business in the beginning, but now it is very sparse. She also noted she had stopped advertising so their business has been mostly from referrals and repeat customers. Nancy Wenger indicated she has begun advertising again. She said the business has declined in the past 5-10 years, but she wants to increase the business again. As she is taking over the business, Nancy Wenger stated she is envisioning more business. She explained business slacks in the winter months, and May through September is when the bed & breakfast is busier and when most of the outdoor parties will be held. She noted they are not a huge business and it is sporadic. She further explained they call it a homestay so oftentimes neighbors have a wedding or funeral and use their services. Nancy Wenger mentioned they accommodated family members who were in town for a funeral last weekend. Marion Wenger explained she began as a hospitality business providing a service to residents of the city so they would have access to a farm. When Mr. Homan inquired about the cabin, Marion Wenger said it is available to customers, but it is used mostly by her grandchildren. In response to Mr. Homan's question about the maximum number of overnight guests, Nancy Wenger indicated they could accommodate 10.

Mrs. Wolgamood asked the largest number of people they anticipate for an event. Nancy Wenger said they will not be doing any catering, and guests will provide the tent. They are simply providing the location. When Mr. Hesser inquired about restroom facilities or the customer providing portable facilities, Nancy Wenger indicated there is a bath house which has restroom facilities for use by outdoor parties. When Mrs. Wolgamood asked about accommodating a wedding with 200 guests or what they anticipate their cut-off would be, Nancy indicated the problem would not be with a tent large enough for 200 people, but said parking for the vehicles would be the problem. She indicated 50 vehicles would be a problem so they are going to have to limit the number of people. When Mrs. Wolgamood asked if the sign is lighted,



Marion indicated it is not. Looking at the site plan, Mrs. Wolgamood said there are only 12-13 parking spaces. Nancy did mention that there is a long lane, and people have parked parallel along the lane previously which is fine if people do not mind walking.

Mrs. Wolgamood questioned the days and hours of operation being 24 hours a day, seven days a week sporadically. Nancy said they take people almost any time for the bed & breakfast.

Doug Wenger, 27601 CR 42, Wakarusa, was also present in favor of this request. He stated he is Marion Wenger's son and lives next door to the property on the family farm where the bed & breakfast business first began. He said he does not have any complaints and wants to encourage them to continue on with it.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said it appears to be fairly low impact and mentioned there is no one here in remonstrance to this request or to voice a complaint.

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

**Motion: Action:** Approve, **Moved by** Robert Homan, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a bed and breakfast homestay in an A-1 district (Specifications F - #4.50) and for a Special Use for a privately owned recreation business for wedding venues, birthday parties and similar special events (Specifications F - #20) be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.

The following commitment was imposed:

1. 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 = 4).

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

15. The application of *James P. & Jennifer N. Kumm* for a Special Use for a home workshop/business for gunsmithing and sales of firearms (Specifications F - #45) on property located on the East side of Old Orchard Lane, 745 ft. Southwest side of CR 16, common address of 56676 Old Orchard Lane 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 #56676OldOrchardLn-130118-1*. He also added a recommendation for a commitment that no discharge of firearms to take place on the property.

There were 13 neighboring property owners notified of this request.

James Kumm, 56676 Old Orchard Lane, was present on behalf of this request. He said he is hoping to start a small gunsmithing business. He is hoping to add clientele to build up the business. He did point out if the business gets large enough, he would like to potentially move into a commercial space in Elkhart. He added if the business does not grow, it will be more of a small, low-key shop business similar to how things are set up currently. When Mr. Homan asked if Mr. Kumm had his federal license at this time, Mr. Kumm stated he does not as he first has to obtain approval for this request.

When Mr. Homan asked about the possibility of reloading ammunition, Mr. Kumm stated he will not have any ammunition on site for customers. He further explained he will just be working on guns and does not do any reloading or manufacturing of ammunition. Mr. Hesser asked if Mr. Kumm had looked into the neighborhood covenants for any possible restrictions. Mr. Kumm stated to his knowledge there are no restrictions. He also said he has talked with neighbors and has a signed petition which he submitted at this time *[attached to file as Petitioner Exhibit #1]*.

In reference to #24 on the questionnaire, Mrs. Wolgamood asked about testing of safety functions of the firearms. Mr. Kumm said that involves testing the various safeties of the firearm. He explained when they talk about testing, it is the manual functions of the physical devices and components of the firearm and how they operate in line with each other. That does not mean discharging of firearms. He added that his plan for actual discharging of a firearm is to go to a local gun range. Mr. Kolbus reiterated that the condition on the previous gunsmithing hearing was “no discharge of firearms on the property”. Mr. Homan asked if Mr. Kumm was a federal license holder, if he would also be able to transfer registration of firearms which he replied was correct. Mr. Kumm also said he intends to apply for a manufacturer’s license but indicated part of the reasoning for that is to be able to engrave firearms for special orders.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan said the request seems clear cut and low impact.

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

**Motion:**, **Action:** Approve, **Moved by** Robert Homan, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for gunsmithing and sales of firearms (Specifications F - #45) 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 also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner’s application.
2. No discharge of firearms on the property.

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

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

16. The application of *Marvin Miller and Lloyd Hochstetler (buyers) and Mervin R. & Ruth Hershberger (sellers)* for a Special Use for a school (Specifications F - #38) and a 252 sq. ft. ground floor area Developmental Variance to allow for the construction of a residence (Ordinance requires 900 sq. ft.) on property located on the East side of CR 35, 1,350 ft. South of CR 50, common address of 71174 CR 35 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 #71174CR 35-130117-1*.

There were eight neighboring property owners notified of this request.

David Bontrager, Jr., 59723 CR 33, Middlebury, was present representing the school. He said the area down there is populating thicker with Amish, and they would like to add a school house. Regarding the recommendation for denial of the developmental variance, Mr. Bontrager gave some history of what they have been going through for the last five years. He said originally the Amish schools had break rooms with the teacher sleeping there a couple nights a week. He said then they changed that to living quarters inside the school, but that has caused some issues with the state. For that reason, he said the last school they built, which happened to be in LaGrange County, separated them with just small living quarters for teachers. He also said some schools are going without teacher quarters. He explained that is what this little house is about.

He does not believe it will be a huge hardship to go 900 sq. ft., however, it is not necessary for what they need. He said they need one bedroom and possibly a five foot counter with a sink. He pointed out that if they go 900 sq. ft., they can make use of it. He mentioned sometimes if they have special education students, they end up in the living quarters if there is extra room. Mr. Bontrager asked that the developmental variance be approved so they can build a residence the size that they need for the schools.

He suggested the Board decide the direction they want the school houses to go as far as some accommodation for living quarters. He mentioned if they go to a second story, they need sprinkler systems which they obtain variances for through the state. However, he said it is quite convenient to work with county if that is feasible. Mrs. Wolgamood questioned Mr. Bontrager further on the issue with the State which he explained has to do with a second story, how many cubic feet are in the building, and number of pupils in the building. He described it is a chain-link deal where it continues to create more problems. He suggested the state's preference is that they separate the school and living quarters. Mr. Bontrager further said it seems the County would rather see a house than a shack-like building for housing.

Mrs. Wolgamood commented that Mr. Bontrager is not giving the Board any reason having to do with the property itself for the reduction of the house. He explained as far as the property is concerned, there is plenty of room for a big house. He pointed out if the petitioner did not want to be honest, they would put it in the basement of the existing house and begin having school until such time as they needed to build a new school. He also expressed concern that if they have a 900 sq. ft. building and only need 300-400 ft. of space for the living quarters, they are not going to ask him if they can put their special needs children in the living quarters and teach them in there. Mr. Bontrager expressed that he is trying to represent the Amish community and the schools, but he cannot patrol the schools to make sure the children stay out of the living quarters. He reiterated that the property can accommodate a larger residence, but the school does not need it, it will cost more, and they will likely utilize the extra space if needed in the future.

When Mrs. Wolgamood asked if all of the teachers are single people or if any of the teachers have children, Mr. Bontrager said he has never seen a married couple stay at a school, and the living quarters are for single people. He added that they are not always able to get a teacher within walking/biking distance which is reason for living quarters. Mrs. Wolgamood commented that the Board has never seen a request like this before. Mr. Bontrager pointed out 99% of the school houses the Board has seen have living quarters in them although not exactly the way this one is proposed. As far as the property, he indicated they can switch to 900 sq. ft.

but he reiterated his concern about how the extra space will be used if they are required to build it to the standards.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus recommended taking each request separately when voting on them.

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

**Motion: Action:** Approve, **Moved by** Meg Wolgamood, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a school (Specifications F - #38) be approved with the following condition imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.

The following commitment was imposed:

1. 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 = 4).

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

Regarding the Developmental Variance which has a staff recommendation for denial, Mrs. Wolgamood said Mr. Bontrager indicated there is room for a 900 square foot house. She stated she understands the issue from their standpoint, and indicated she was never really aware that there were living quarters in most of the schools. She further noted she does not have an issue with that if the State says it is allowed. She noted that even mobile homes are larger than 600-700 sq. ft. which she compared to the size of a small apartment.

Mr. Hesser expressed agreement with staff's findings on #1 and #2. As far as meeting the criteria for #3, he said he understands Mr. Bontrager's concerns, but they have nothing to do with the land. He pointed out that Mr. Bontrager acknowledged there is plenty of room for a 900 square foot residence. Mr. Hesser stated if the ordinance wanted to allow smaller living quarters for churches or schools, it could do that, but that is not the case. Mrs. Wolgamood expressed agreement with Mr. Bontrager that there will be more requests like this one in the future. She suggested now is a good time to be discussing this as they are in the process of changing the zoning ordinance, and maybe the zoning ordinance could include something to accommodate something similar to this request.

Mr. Miller said the issue that he has is that the Board knows from past history that there are living quarters in the school buildings, and he completely understands the land use. He mentioned the issue he struggles with is the fact that the ordinance says 900 square feet is required. He acknowledged that the petitioners are being honest about the project and forthright about the need for the community. Regarding the Amish community and #2, he questioned how you can say that particular structure is going to have any other adverse affect on any other piece of property there. He said, along with dawdy houses, he looks at this as part of their culture. He mentioned he struggles with that aspect of it, but he also said he understands it is a complete land use. However, he said he can get past that.

Mrs. Wolgamood said she believes everyone has sympathy for certain situations in the Amish community, and she thinks the Board has been very forgiving with that. She also

mentioned that Mr. Bontrager has already informed them that this seems to be the pattern for this type of requests, and this will be setting precedence for upcoming hearings. She suggested that possibly the ordinance will be changed to accommodate the Amish community.

Mr. Homan asked Mr. Bontrager to come forward for some questions for clarification. Judging from Mr. Bontrager's previous comments, Mr. Homan said the main reason for having living quarters is transportation for teachers. He then asked what a normal routine for a teacher might be and questioned if he was right in assuming that a teacher might have a home elsewhere but stay the week at school, and go back home on the weekend. Mr. Bontrager stated his wife has an aunt who transports Amish. He said she has runs that she makes Monday mornings, Wednesday nights, Thursday mornings, and Friday nights. He added that most of the time, these living quarters have one or two people in them through the night only. He noted the living quarters are empty through the school hours. Mr. Bontrager reported most teachers are single girls or single boys who go home Tuesday or Wednesday night and go back the next morning to reduce the cost of the school for transportation. He said the living quarters are rarely occupied seven nights a week. When Mr. Homan inquired, Mr. Bontrager said he has never seen a case where a teacher resides there full-time and takes up a mailing address there. He added that he does not believe it is ever even consistently five nights a week. He said they have always had teacher accommodations as long as he can remember although it was probably more of a necessity years ago than it is today. He noted he is not here to preach about the Amish but wants what is best and will work for the county and the community and is not asking the Board to bend to the Amish needs.

Mr. Homan said he feels staff item #2 can be argued either way. He stated the actual use for the building, even though it is built to residential standards that is not the way it is going to be used. He stated it is really an accessory building that happens to have plumbing. He noted there is no provision in the ordinance to accommodate this request. As the ordinance says 900 sq. ft. is the minimum, he does not know that the Board can come up with a solution in terms of accommodations for living quarters in this circumstance. In his mind, he said this is not the same as someone building a 600 sq. ft. house as their permanent residence to live in full-time as this is a unique use and not full-time. He said he does not know how the Board can wedge it into today's ordinance.

**Motion: Action: Denied, Moved by Meg Wolgamood, Seconded by Randy Hesser, that 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. A reduction in size of the proposed residence would have little impact on the general public;
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 not result in an unnecessary hardship in the use of the property as there is adequate area for the construction of a 900 sq. ft. residence, and approval of this request could set a precedent for this Board;

the request for a 252 sq. ft. ground floor area Developmental Variance to allow for the construction of a residence (Ordinance requires 900 sq. ft.) be denied in accordance with the Staff Analysis (as amended by the Board).

**Vote:** Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

**Yes:** Robert Homan, Meg Wolgamood, Randy Hesser.

**No:** Doug Miller.

17. The application of *Calvin J. & Joann Mullet* for an amendment to an existing Use Variance for a woodworking shop with three employees to allow for additional employees on property located on the Southeast side of CR 28, 1,800 ft. Southwest of CR 37, common address of 13320 CR 28 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #13320CR 28-130118-1*.

There were nine neighboring property owners notified of this request.

Calvin Mullet, 13320 CR 28, Middlebury, was present on behalf of this request. In 2005, he said the Special Use was approved with three employees outside of the family. He said since that time, they had stayed even. In 2008-09 when recession hit, he said he actually went down to one outside employee and stayed that way in 2010. He stated they rebounded and came back in 2011 and 2012 and is back up to three outside employees. He reported a new business opportunity that came up for them, and said they could use more employees. He said it would not create more traffic or generate more customers coming in as it is working with another business to do some of his work.

Mr. Mullet stated he started his business in LaGrange County in 1999, and he did not know all rules about having or running a home workshop/business. So when he came to Elkhart County in 2005, he wanted to make things as legal as possible when he started his business here. He noted he is registered with the state as far as air control. He reported no complaints from neighbors about noise, and mentioned he also talked to a couple of them before this hearing. He indicated he has a residential muffler on his motor to reduce noise. He also noted he has no signage at his location.

Mr. Mullet reported the original farm property was approximately 39 acres which he believes was sold off into lots by his father-in-law approximately 15-18 years ago. He added that some of this property was across the road where two houses have been built. He said his lot is roughly four acres, and he has a pasture field across the road. Although it is an agriculture zone, he said no farming can be done on a parcel that small. Therefore, he feels a home business is more fitting for that property. He reiterated his request to add more employees in the future to help with the business.

When Mrs. Wolgamood asked if the new business is still making cabinets, Mr. Mullet indicated it is and stated he is not changing the use. She noted a change in some of the production and asked if the increase of employees will require a different set-up. Mr. Mullet reported they have plenty of space as the existing facility is 7,000 sq. ft. He noted he could probably add 10 employees with the space he has. He said he will probably move some things around.

When Mr. Hesser inquired about the possibility of new equipment, Mr. Mullet said he is not adding any. Mr. Homan asked about the dust issue and how raw materials are stored and

handled. Mr. Mullet reported they have a dust collector, and he uses the shavings for bedding in his barn. He said he has a trash dumpster for finishing products and empty containers. If this request for the additional employees is approved and with the additional expansion, Mr. Homan asked if there will be any issues with storage, dust collection, outside storage, and deliveries from an operational standpoint. Mr. Mullet said he does not generate enough saw dust for his barn at this time and actually purchases additional saw dust for his personal use. Additionally, he said he currently attempts to buy supplies in large quantities so traffic will not be affected and is no different than it was seven years ago. Mr. Mullet said it is more of a labor issue than product issue.

When Mrs. Wolgamood asked about the new business being temporary or permanent, Mr. Mullet explained the business is beds for children with special needs. He said as the business seems to be growing and the owner has signed contracts for 100 beds, he is helping out. He added that from expanded advertising, sometimes in his own business he is to the point where he is maxed out with cabinets and could use more employees for his own orders. When asked by Mrs. Wolgamood, Mr. Mullet indicated all materials are stored inside with no outside storage. He also mentioned the dust collector is on the back of the building.

David Bontrager, Jr., 59723 CR 33, Middlebury, was present in favor of this request. From listening to the discussion, he noted most Board members have probably not been past this property very often. He reported it is a very clean facility with OSHA signs and following IDEM regulations. He said the Board would struggle to find a business that is more regulated and up to code than this one. He stated the three additional employees will likely arrive by bicycles and that is probably the most visible impact. Mr. Bontrager noted the business is not cluttered outside. He added that he realizes this is going beyond standards a bit, but he hopes the standards will change somewhat. He mentioned there has been talk of eliminating the Use Variances, but he does not think that can happen as there are too many existing Use Variances. Lastly, he said he would appreciate serious consideration of this case, and warned there will be many more of this type of petition in the future.

There were no remonstrators present.

Mr. Mullet added the trailer shown in the photo belongs to a customer who occasionally parks it there.

The public hearing was closed at this time.

Mr. Hesser mentioned the five findings that are necessary. He said he might have a problem getting through all of those criteria if this was an initial request, but this has already been approved. He stated this is just an issue of intensity, and Mr. Mullet is simply expanding what has already been approved. When he asked if the same standards still apply, Attorney Kolbus said technically they do. But he noted the fact that it is existing may aid the Board in making their findings.

Mr. Hesser noted if approved, the findings should be modified from Mr. Mullet's specific name to "owner/occupant". To him, he said it is a question of intensity and with doubling the work force, his initial reaction is that is it a large increase. On the other hand, he noted it has been there for many years with no complaints.

Mr. Homan commented that he does not know how the original request got approved, but the fact is that it did. With a 7,500 sq. foot building, he said he does not know that adding three

people will increase square footage or outside storage. He is not sure this request is a serious intensity issue, and Mrs. Wolgamood expressed agreement.

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

**Motion: Action:** Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan, that the Board approve this request for an amendment to an existing Use Variance for a woodworking shop with three employees to allow for additional employees based on the following Finding and Conclusion of the Board:

1. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property as a Use Variance was granted in 2005 by the Board.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application, including, but not limited to:
  - a. Use Variance includes only the 4.63 acres (south side of road) included in the application.
  - b. Approved for a total of six employees outside of family members.
  - c. Signage limited to four sq. ft. per side and unlighted.
  - d. Any required IDEM permits to be obtained.
  - e. Use Variance exclusive to the owner/occupant of the residence on site.

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

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

18. The application of *Samuel D. Yoder (landowner) and Alvin J. Heims (appellant)* for an Appeal from the issuance of an Improvement Location Permit (ZN-121029) for a sawmill with attached lean-to on property located on the East side of CR 43, 2,800 ft. North of CR 10, common address of 54014 CR 43 in York Township, zoned A-1, came on to be heard.

Mr. Hesser noted the public hearing was previously closed, and there was no one present in the boardroom for this petition. He reviewed by saying this case was heard at last month's meeting, and the Board was unable to reach a decision with a split vote of 2-2. Immediately following that hearing, a second hearing was held where a renewal of the Special Use with a revised site plan was approved. He said this appeal is still on the agenda because if the second hearing had been appealed, the petitioner would have wanted to fall back on trying to seek this original petition.

For the record, Attorney Kolbus said he checked the Elkhart County court records through the Odyssey system at approximately 4:30 p.m. on 02/20/13, and there was nothing that showed up for an appeal in this matter under the name of Alvin Heims or Samuel D. Yoder who are the landowner and applicant in this case. He also noted there were recorded filings of various types on February 20, 2013 on the computer system, and this deadline would have been February 19, 2013.

When asked, Mr. Mabry confirmed an Improvement Location Permit has been obtained, and Mr. Yoder is free to build at this point. In his opinion, Mr. Kolbus stated based on his knowledge of Court filings as of yesterday afternoon, this would be a moot point, and it would be appropriate to make a motion to dismiss this petition.

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



**Motion: Action:** Dismiss **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood, that the Board dismiss this request for an Appeal from the issuance of an Improvement Location Permit (ZN-121029) for a sawmill with attached lean-to as the matter is moot.

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

**Yes:** Robert Homan, Doug Miller, Meg Wolgamood, Randy Hesser.

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

20. The first staff item for April Randolph – 972319 – major/minor change in ownership of a mobile home which was presented by Brian Mabry. He indicated Ms. Randolph owns a mobile home at 25673 Homewood Drive in Elkhart. She reported the occupant, Carol Hamilton, listed in Condition #5 from the original approval no longer lives there. Mr. Mabry said Ms. Randolph now owns the property and wishes to rent out the mobile home. She is requesting this be considered a minor change to the approval.

Attorney Kolbus noted a couple years ago the Board of Zoning Appeals stopped distinguishing between rentals and owner occupied mobile homes. Mr. Hesser questioned that the only change with the approval is the ownership which Mr. Mabry confirmed. Mr. Kolbus recommended from a legal standpoint that Condition #5 be eliminated as a minor change to be consistent with the procedure that has been followed in recent years.

It was noted the packet regarding this item containing a memo from Mr. Mabry, an e-mail from Ms. Randolph stating her request, the previous staff report from 1997, a site plan, aerial photo, and result letter was placed on tables prior to today's meeting. As Hearing Officer, Mrs. Wolgamood stated that has been the procedure for possibly two years, and she does not even look at who occupies the mobile home as the concern is the land use. She further added that as long as they are in compliance with Condition A, she would say it is ok as minor change.

**Motion: Action:** Approve., **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that the Board consider this request a minor change.

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

**Yes:** Doug Miller, Meg Wolgamood, Robert Homan, Randy Hesser.

21. Board education was presented by Mark Kanney. He distributed a Board of Zoning Appeals handout written by Attorney Kolbus years ago which is a good overview of the purpose of the BZA *[attached to minutes as Staff Exhibit]*. He indicated every year or so staff likes to re-acquaint itself with the purpose, goal, and perspective of the BZA and what it does. He pointed out it is an especially good idea now with so much talk about changing the Zoning Ordinance and Plan Ordinance. He noted the primary functions of the BZA are appellate functions dealing with appeals and non-appellant functions dealing with special uses. Attorney Kolbus also pointed out this was written before the change in the law two years ago and has not been edited since. Mr. Kanney mentioned Mr. Kolbus also did an equally informative paper on the Plan Commission which is available if anyone is interested.

22. The meeting was adjourned at 10:53 am.

Respectfully submitted,

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Deborah Britton, Recording Secretary

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Randy Hesser, Chairman

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Robert Homan, Secretary