

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF JULY 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; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

2. A motion was made and seconded (*Miller/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of June 2013 be approved with the following amendment: Page 17 under Item #12 for Richard F. & Sandra F. Spencer (buyer) and Luella J. Freeby (seller-deceased) incorrectly states “no remonstrators were present”. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Miller*) that the legal advertisements, having been published on the 9th day of July 2013 in the Goshen News and on the 7th day of July 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/Miller*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record, and the motion was carried with a unanimous roll call vote.

5. The application of **Robert W. Revoir & Amber R. Revoir** for a 28 ft. Developmental Variance to allow for the construction of a detached garage 47 ft. from centerline of the right-of-way of CR 27 and a 27 ft. Developmental Variance to allow for said garage 48 ft. from centerline of the right-of-way of CR 40 (Ordinance requires 75 ft.) on property located on the Northeast corner of CR 40 and CR 27, common address of 17701 CR 40 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 #17701CR 40-130624-1*.

There were six neighboring property owners notified of this request.

Amber Revoir, 17701 CR 40, was present with her husband on behalf of this request. She said they want to put a garage in the location where the storage shed is currently and in the turn-around area. She indicated they have had various thefts and vandalism at their property over the last several years. She reported in 2007, they had a van stolen out of the driveway which was recovered but burned up. In addition, she said they have had tires slashed, valve stems stolen off of tires, and three bikes stolen from the shed. They feel the need to secure their property so the issues do not continue. Mrs. Revoir said they converted their garage into living

space several years back. With a family of five in the home, she said they needed more space for their growing boys. Regarding the staff report that says they have ample space for storage, she reported they do not feel that they do. Since the theft of the bikes from their shed, she indicated they cannot close the doors completely to lock it so it is not secure. She also noted their intention to tear down the pool house which is not really storage space, and she pointed out they really do not have any kind of storage area for bikes and vehicles.

Since the City of Goshen put the mountain of dirt across from them in the northwest corner, which they heard will remain for at least five years, the Revoirs have a lot of dirt coming onto their property. She noted they frequently vacuum their pool which was previously not the case. She said their vehicles are filthy all the time from that, and they need to be able to protect their property.

Robert Revoir, 17701 CR 40, was also present on behalf of this request. He pointed out that CR 40 didn't used to be a truck route, but it has become one in the last five years. There are a lot of tractor trailers that come down the road and turn onto CR 27. He estimated that a couple hundred trucks travel the road daily. He feels the garage would also help to be a buffer through the day from the road noise. Regarding the thefts, he believes this occurs because they are on the corner and an easy target. This would be an added measure of security for the house. He feels the garage would be a very nice, attractive addition to the house and neighborhood. He said they plan to demolish the other barns and sheds on the property. He said they just want to store bikes, a lawn mower, and possibly some Christmas items in the garage. He added they want to clean up the property and raise the property value as much as possible. He believes a house on the corner is the gateway to the neighborhood.

When Mr. Hesser asked if they are part of the subdivision, Mr. Revoir indicated they are not, but there is one behind them and one across from them. He noted some nice homes on CR 40, and property owners have been doing a lot to clean up the homes on that road as they were previously foreclosed homes. He submitted several photos of their property *[attached to file as Petitioner Exhibit #1]*.

Mrs. Revoir indicated she took several pictures of the area mapped out with stakes showing where the garage would be located. She noted they also marked where the fence would be located if this request is not approved. In order to secure their property, they will be forced to put up an 8 ft. wood privacy fence with an electric gate at the end of their drive. She noted there would be no vision through the fence which would be located near their property line. Personally, she said they would rather not have to put up a fence but they have to be able to protect their property if the garage is not approved. She stated they cannot continue to have the vandalism and damages that they have been incurring. She noted she has copies of police reports of the various incidences of vandalism and theft that she can provide if needed. She said the fencing would be a much larger obstruction of view because it would be closer to the roadway. She knows the neighbors would not like it, and they would rather not have a fence, but they do have to find a way to protect their property. She pointed out they do not get reimbursed when things are damaged. She said their home owner's and auto insurance company may drop them if they continue to have claims.

Mrs. Wolgamood asked if there has been consideration given to building a garage on the east side of their driveway. Mrs. Revoir indicated she feels it would be visually unpleasing. She pointed out the location of their front door and a bay window which would be blocked by the

garage in that location. When Mrs. Wolgamood questioned putting a garage at the back of the property, Mrs. Revoir noted it would need an additional access, would have to be behind the pool, and would not be very convenient.

When traveling west on CR 40, Mr. Hesser asked if there is a stop sign. Mrs. Revoir said it is a four-way stop and always has been. While she knows people are concerned about the possibility of a garage blocking the view of the traffic, she believes a garage would block less view than a fence would. She said the pictures show clearly that if vehicles are stopping at the stop bars as they are supposed to, a garage would not block their view in any way at that point. To be honest, she indicated the garage would not come out as far as the turn-around does now. Pointing to the aerial photo, Mr. Revoir said that the garage would only come out as far as the left turn lane white painted line on the northern portion of CR 27 at the intersection. He reiterated that vehicles at the turn lane have full vision at the intersection. He also noted neighbors were concerned that they would not be able to see when they are coming out. He stated they may be able to possibly consider a little bit smaller garage and added that they are just asking for a simple garage. Mrs. Revoir indicated it would actually be between the two vehicles on the aerial photo where the garage would be going. She indicated picture #1 shows how the property normally looks with their vehicles. She noted the photo was taken from the neighbor's driveway point and shows the traffic blockage they already have. She said a garage would be less blockage because the vehicles would not be in the driveway and it would be back approximately eight feet from where the vehicles are parked now. She added that they often even have a vehicle double parked in the driveway bringing it out to approximately the right of way in the driveway so the kids can play in half of the driveway. Mrs. Revoir noted it is a busy road so they also have to consider their children's safety which is the reason for double parking in the drive.

When Mr. Miller asked if the east side of the garage lines up with the west side of the house, Mrs. Revoir said it would actually line up with the concrete driveway and the corner of the house. She pointed out there are windows in the front of the house, and if they were to bring it in, she does not think they would have ample room to pull into the driveway and make the "L" turn into the garage. She reported she brought copies from when they have had tire work done. She noted dates of the different vandalisms that have occurred in March 2012 (flat tire), June 2012 (flat tire), August 2012 (flat tire). She also noted on some of those occasions, tires were also slashed. Their bikes were stolen on September 15, 2012, and on September 28, 2012, they had vandalism where all of the vehicles had scratches all over in the paint and a flat tire.

When Mr. Hesser asked when their house was built, Mrs. Revoir said she believes it was approximately 1989. She reiterated that she knows there are neighbors present who are concerned, as she would be, but they believe this is the best solution to protect and secure their property. After much thought, she said she believes this is the least expensive, the most synthetically eye-pleasing, and best solution to not interfere with the traffic.

Steve Alwine, 50738 Teal Road, Bristol, was present in opposition to this request. He stated his mother lives across the street from the Revoirs. He suggested alternative placement for the garage by pointing to the aerial photo at the northwest corner of the house next to the pool. Mrs. Revoir indicated after they received the recommendation for denial, they went around the property considering all options for placement of the garage. She noted they have already removed a deck but there is a door with access to the basement. She said she would be

concerned with people stepping into the hole for the basement door. Mr. Alwine expressed that he would be concerned about visual impact and visibility at the corner. He feels there might be a better location on the property for the building and also feels that the corner should remain a little more open.

Mr. Mabry clarified that although the county has no fencing ordinance, there would still be a sight triangle needed for fencing at the corner.

Harvey Borntrager, 17683 CR 40, was also present in remonstrance to this request. He stated he lives next door on the east side. He said they were concerned about the vision around the corner. He stated it appears to him that the fence would make it worse than the garage would. He expressed he would rather see the garage than the fence. He would rather not have it, but if it is the best solution, they will deal with it the best they can.

In response, Mrs. Revoir asked about the fencing at the corner. Mr. Mabry explained that there is no ordinance regarding fence. Although they would only be able to enforce it after it is built, the zoning ordinance says there must be a diagonal line at 25 ft. from the property line across the corner. He noted this as they could have a code enforcement issue later if the fence was built to the property line all the way to the corner. She also noted if they are forced to do the fence, they would probably still put a garage at the rear for storage. But they would probably still park their vehicles in front of the residence so they would still install the fence for security.

Mr. Miller said he was struggling with the plot plan. He indicated the property line says it is 110 ft. east to west. The house is setting 16 ft. off the east property line with a designated width on the drawing at 48 ft. which would leave 46 ft. to the adjacent property line. He noted the petitioner said that the concrete on the driveway lines up with the west side of the house. That being said, that 47 ft. dimension in his mind's eye should be 46 ft.

Mr. Revoir added that he sincerely hopes the board will approve this request. He noted this is an older aerial photo, as he has been doing a lot to improve their property. He reiterated that they are attempting to do something that is cosmetically appealing to his house. He said he certainly would not want to do anything damaging to the neighborhood.

The public hearing was closed at this time.

Mr. Campanello pointed out the septic system and reserve area in back yard on the aerial. Mr. Homan asked about construction of the garage as indicated on the site plan interfering with the 25 ft. sight triangle. Mr. Mabry indicated it would be difficult to tell, and staff did have concern about the visual triangle with garage construction. When Mr. Hesser asked if that would be a separate variance, Mr. Mabry indicated on one hand if a setback variance was approved for three feet or so from both of the property lines, you would implicitly be approving the encroachment. Mr. Hesser noted concern that if you look at the other houses down the road, this would be considerably closer to the road than the others although this is a smaller house. He mentioned covenants, but they are not part of a subdivision so they do not need to be concerned with that. He expressed that visibility from the roadway is the biggest issue. Although he noted it is a four-way stop at that intersection. He feels you could probably see around the garage. He pointed out if there is concern about the sight triangle, the Board could request an improved site plan. Mrs. Wolgamood believes the dynamics of this particular lot have been drastically changed because of what the City of Goshen did to the intersection, and the Revoirs have more of a hardship than any of the other houses in that area. She also noted she feels they addressed that there is no other location to place the garage and the concerns. She does not know that she

has a major concern with approving this request. She also pointed out that they are removing the shed. Mr. Campanello said he does not even see a problem with the sight triangle. The proposed location for the garage is out of the way of the intersection. When Mr. Hesser inquired about the dimensions of the proposed garage, Mrs. Revoir reported the size is 24'x30', which gives them enough room for the vehicles, bikes, and mower. If approved, Mr. Hesser asked about possible appropriate conditions and commitments. Mr. Miller suggested holding them to their testimony that all outside storage will go away as it will be contained in the garage. When asked, Mr. Kolbus indicated that would be a commitment.

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 approve this request 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 based upon these, further moved that this request for a 28 ft. Developmental Variance to allow for the construction of a detached garage 47 ft. from centerline of the right-of-way of CR 27 and a 27 ft. Developmental Variance to allow for said garage 48 ft. from centerline of the right-of-way of CR 40 (Ordinance requires 75 ft.) be approved.

The following condition was 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, the petitioner's testimony, and as otherwise represented in the petitioner's application.

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

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

6. The application of *Paul W. and Alyson N. Fortin* for a Special Use for an agricultural use for the keeping of 10 chickens on a tract of land containing three acres or less (Specifications F - #1) on property located on the East end of Oak Hills Dr. at "Bottom" of cul de sac, 497 ft. North of SR 120, being Lot 21 of Oak Hills 3rd, common address of 11521 Oak Hills Dr. 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 #11521Oak HillsDr-130624-1*.

There were eight neighboring property owners notified of this request.

Paul Fortin, 11521 Oak Hills Drive, was present on behalf of this request. He said they have had the chickens for a year without any problems. He was not aware of there was an issue until they got a complaint early in June. He pointed to the location of the chicken coop on the aerial photo. He said the chickens are all hens and do not make any noise. He noted the chicken coop is only visible from his back yard so he does not believe it is a visual problem. When Mr.

Hesser asked if they were okay with the staff recommendation of five chickens, Mr. Fortin said they have 10 now and would like to keep that number. He mentioned while their children are not old enough to participate in 4-H yet, they do eat the eggs. He added that the 10 chickens produce an average of approximately 5-6 eggs per day. Regarding the staff recommendation for five chickens, he noted when his children are involved in 4-H, due to different breed types, there might not be enough eggs produced for his family's consumption. When Mr. Hesser inquired about neighborhood covenants or restrictions regarding livestock, Mr. Fortin indicated he is not aware of any. He submitted a signed petition *[attached to file as Petitioner Exhibit #1]* which covers everyone within 300 ft. When Mrs. Wolgamood inquired about an outdoor pen for the chickens outside of the coop itself, Mr. Fortin said it is all enclosed so they cannot get out.

Peter Hersey, 11539 Oak Hills Drive, was present in support of this request. He indicated he lives on the adjoining property to the north of the Fortins. He stated he and his wife have no objection to the hens and do not see any problem with keeping the chickens. Mrs. Wolgamood asked if they would have any objection to 10 chickens versus 5 which he said they would not. Relative to the location of the hen house, he said that unless he looks for it, he cannot see it as it is in a mildly to moderately wooded area. He added that even in the warmer weather, there have been no offensive odors, and the hens make almost no noise.

Byron Brown, 11594 Oak Hills Drive, was present in favor of this petition. He pointed to his property on the aerial photo. He said he and his wife have no objections to the chickens. He indicated there is no noise or smell. He noted that their daughters go down and help gather eggs. He reported the chickens have never been out, and they support this request.

Ken Murr, 11530 Oak Hills Drive, was present in opposition to this petition. He stated he lives in the house on the adjoining property to the south of the Fortins. He indicated he is actually the developer of this subdivision and owns the largest lot and home there. He mentioned that for 20 years, he lived in the older part of the subdivision and purchased this property to develop it. He expressed that there are covenants on record with the county that say you cannot maintain a nuisance although it doesn't specifically spell out farm animals. He explained that his issue is not with the fact that the Fortins have had those chickens there which he indicated he has known about for close to a year. Because the Fortins had chickens, Mr. Murr said that recently at 11572 Oak Hills Drive on the other side of him, they put in a large lean-to hut with chickens and roosters that are free to roam in a fenced yard which he why he filed two complaints. Part of the problem he had in the old subdivision was that there were no covenants, and his next door neighbors had a very trashy home with a lean-to on the side of it. He went on to say that he wrote the covenants for this subdivision to protect everyone's investment there including his own home. Regarding the Fortins' chickens, he said he does not hear or smell them but fears if this request is approved, the one on the other side of his property will also be approved leaving him surrounded by chickens. He also expressed concern about possible health issues and disease from handling chickens as he has done some research in that area through Center for Disease Control. As these diseases particularly affect children and the elderly, he noted this residential neighborhood has a lot of young children. He reiterated his fear that if requests such as this are allowed, it will turn into the other end of the subdivision which has no control, no restrictions, and has become an eyesore. Lastly, he expressed concern about feces which will build up over time and questioned who would monitor the cleaning of the coop area.

Addressing issues and concerns raised, Mr. Fortin said he does not believe requesting 10 chickens is asking too much. He noted he spoke with the neighbors at 11572, and they said they are currently looking to purchase another house so he does not see them keeping the chickens at the Oak Hills location for an extended period of time. He noted his case is different than theirs as they have a bunch running around. Mr. Fortin reiterated he has 10 chickens in an enclosure. When Mr. Hesser asked about waste in that area, he explained he cleaned out the coop approximately a month ago by scooping out approximately 5-6 inches of a mixture of feces, dirt, and straw. He indicated that was the first time he had cleaned it out in approximately a year, and he spreads it on their garden and tills it under. He feels it is a fine fertilizer and does not accumulate faster than he can dispose of it. He said it is no different than hauling in old cow manure to put on the garden as he did prior to having the chickens. Regarding odor, he noted the prevailing wind would be from the west which is all wooded area.

The public hearing was closed at this time.

Mr. Hesser commented that he doesn't have a problem with increasing the approval to 10 chickens based on the representations that have been made. To clarify, Mr. Hesser noted that this approval does not automatically mean other requests will be approved in the future under different circumstances as decisions are made based on representations. In this case, the petitioner is taking care of these in a responsible manner, and it is a very limited operation.

The Board examined said request, and after due consideration and deliberation: **Motion:** **Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis (as amended by the Board) 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 chickens on a tract of land containing three acres or less (Specifications F - #1) be approved.

The following condition was 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. A maximum of 10 chickens are allowed with no roosters permitted.
3. All chickens must be are penned or housed at all times.

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

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

No: Tony Campanello.

**** It should be noted that Randy Hesser steps down and Lori Snyder steps in.****

7. The application of *Innovative Modular Solutions, Inc. (buyer) and First State Bank of Middlebury (seller)* for a Special Use for warehousing and storing of mobile and modular buildings including for office and classroom use in a B-1 district (Specifications F - #44) on

property located on the North side of US 33, 1,120 ft. East of Ash Road, common address of 30803 US 33 in Baugo Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #30803US 33-130624-1*. When Mrs. Wolgamood asked the zoning district this request would normally be a permitted use in, he said it is permitted by right in B-3.

There were 26 neighboring property owners notified of this request.

Lindsey Brazys of Sanders Pianowski, 300 Riverwalk Drive, Elkhart, was present representing Innovative Modular Solutions, and First State Bank of Middlebury has given their consent as well. She noted Duane Miller of First State Bank could not be present, but Pat Carmody and Kevin Maiden of Innovative Modular Solutions were present. She noted the real estate is zoned as B-1 and within the Specifications F - #44, it allows for warehousing and storing within the property. She said Innovative plans to store and maintain commercial, mobile, and modular buildings on the property. They plan to have less than one customer per day on average coming to the site which is less than the previous landscaping business. It will not substantially or permanently injure the appropriate use of the neighboring properties because the storage will be well maintained and noise will be limited in scope and duration. The inventory will be maintained in an organized manner because they will eventually be moving it off the property, and there are only two areas surrounding the property that are developed.

Innovative will eventually own the block of property above that is currently zoned residential so they won't be using it at all. It will provide a good buffer between the storage and the residential area. The property to the southwest in the Green Belt already contains trees for buffer. She submitted photos *[attached to file as Petitioner Exhibit #1]*. She noted her client is agreeable to placing buffering near the maintenance area. Regarding items recommended by staff such as keeping residential property mowed below eight inches in height, she noted they will maintain it, mow it down, get rid of critters possibly living there, and add screening near the maintenance building. She said it seems as though the Green Belt already has the buffering that was requested. Lastly, she noted the property has sat empty since 2008 so it will be nice to get somebody in there to make use of the property.

Referring to #2 in the questionnaire, Mrs. Wolgamood questioned the number of buildings that will remain and the number to be demolished.

Pat Carmody, 297 E. South Frontage Road, Bolingbrook, IL, was present. In response to Mrs. Wolgamood's question, he stated at least one structure will be demolished and possibly a second structure. He noted their intention with the remaining structures would be to refurbish them. Initially, the office building which is the main building on the aerial photo, will be returned to useable condition, and they will work their way through the other buildings as they need them. Regarding the refurbishing of some of the units being stored there, Mrs. Wolgamood asked if that work will be done inside one of the buildings or if it will be completed outside. Mr. Carmody said it will be a combination of both. He noted the two larger structures on site are certainly wide enough and tall enough to get the units inside the building which means much of the refurbishment could be completed there. However, he does not believe they are tall enough to be able to do any roof work on the units while inside. She noted #3 lists 17 full-time employees total in the company. She asked if they were planning to move the entire operation to this location and eliminate the one in Illinois. Mr. Carmody said the 17 employees are actually spread out from North Dakota to Tennessee. He said they currently have a group of about four

people in Illinois, and at this point, he said the intention is to maintain that office as he has a home there and children in school. He also reported an office in downtown Elkhart with six employees, and those six employees will move out to this site. He noted it is a change in operation for them so they are going to have to do warehousing and maintenance which will involve some additional staff at the site. Although, at this time, they are uncertain of the number of additional employees that will be needed.

Kevin Maiden, 242 Waterfall Drive, Elkhart, was also present on behalf of this request. He added that with the units, they sub-contract work out so workers come on-site to work and then leave. He stated that his point is that they will hire companies here locally to do more of that.

When Mrs. Wolgamood asked about the existing sign, Mr. Carmody said it will be refurbished so it will remain at the same location and be the same size but will have new panels. When Mrs. Wolgamood asked how long the satellite office has been at the Elkhart location, Mr. Carmody stated that Mr. Maiden has been an employee since 2000 but he originally worked out of his home in Goshen. They moved into the Elkhart office approximately three years ago. When Ms. Snyder asked about the possibility of future construction plans on the site, Mr. Carmody stated there are none at this time as he believes there are enough existing structures to work with that they would not construct anything new at this point.

Regarding the commitment involving the buffering with plantings and a berm, Mr. Campanello asked staff if that is a requirement or a wish. Mr. Mabry said it is not a requirement and is not in the zoning ordinance so it is a recommendation from staff as part of the Special Use permit. He further added that if it is not made part of the approval, the petitioner would not have to comply. When Mr. Campanello asked Mr. Carmody if that recommendation would be an extra burden at this time, he said if it involves the entire property, it would be. But if it is limited to the two specific areas, being the maintenance area which they have not even decided how they want to accomplish it whether it is fencing that area or installing evergreens around it and the Green Belt area, which he noted about half of it is already screened and has plantings on the adjacent property, so to add additional plantings for the remainder is not overly burdensome. Regarding maintenance of the north side, Mrs. Wolgamood asked if they had any issue with that, and Mr. Carmody indicated they would not. She further inquired and he clarified that they have no objection to staff's recommendation other than they request to not have to plant additional screening where screening already exists.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood expressed her pleasure with this request as this is a huge gateway into Elkhart County, and it has been nasty since the greenhouses went away. She noted when she first looked at the petition, she felt they needed to rezone this property. However, the Board has more control over it by approving a Special Use than they do if the Plan Commission and the County Commissioners were to approve a B-3 zoning classification where a multitude of things could go in. Mr. Homan pointed out there is B-3 zoning all around it. Mr. Homan indicated he believes this is a great use of the property.

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 warehousing and storing of mobile and modular buildings including for office and classroom use in a B-1 district (Specifications F - #44) be approved.

The following conditions were imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. Prior to the issuance of any permits, an engineered site plan that reflects all approved commitments must be submitted for approval by the staff.

The following commitments were imposed:

1. Approved in accordance with the revised site plan submitted and dated 07/01/13 and approved by the staff, and as represented in the petitioner's application.
2. The maintenance area shown on the site plan must be screened from view from the public right-of-way with a combination of evergreen plantings, a berm, a wood fence or a masonry wall a minimum of six feet in height at planting or installation.
3. The green belt proposed on the west side of the property must consist of a combination of evergreen plantings, a berm, a wood fence or a masonry wall a minimum of six feet in height at planting or installation.
4. The north 206 ft. must be maintained by appropriate and timely mowing of the vegetation, which is not to exceed eight inches in height, excepting trees or shrubs.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Lori Snyder.

8. The application of *Michael S. & Shelli L. Stutz (buyers), Wayne L. & Barbara J. Schalliol (sellers – Lot 1) and Almac, Inc. (seller – Lot A)* for a Special Use for a child care center in a R-4 district (Specifications F - #23) on property located on the East side of CR 15, 678 ft. South of CR 6, being Lots A and 1 of Streeter's Addition, in Osolo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #00CR 15-130603-1*. The Plan Commission made a positive recommendation to the Board of Commissioners for a decision on 08/19/13.

There were eight neighboring property owners notified of this request.

Barry Pharis of Brads-Ko Engineering & Surveying, 1009 S. Ninth, Goshen, was present representing Michael & Shelli Stutz who are the owners and directors of Angel Central Academy. Using large aerial photo on easel with pointer, he pointed out the location on CR 15 with CR 6 to the north. He noted east and west of CR 15 the properties are zoned M-1 and M-2 and are currently in manufacturing uses. He indicated CR 8 (Bristol Street) is to the south. Along CR 15 on the east side is primarily residential, to the south is Timberstone which is a DPUD and to the west is Hunter's Run. Eastwood School is located nearby along with the Mor-Ryde property. He noted Angel Central Academy which was established by Mrs. Stutz some years ago, is a Christian preschool and daycare facility. He noted preschool enrollment is a requirement for the daycare service, and all staff are certified Indiana teachers. Originally

located in a church facility in Elkhart, they outgrew the space. They relocated to leased building space which would provide the amount of space to grow. However, the owner recently sold the building, and the new owner wants to use the building in another manner so they have been asked to vacate the current location. In a series of events, a nearby church is relocating and has offered the building at the cost of moving it from its present site. The Schalliols have offered their lot at a substantially discounted price. Almac has offered to donate their 60 ft. strip of property if all plans fall into place. To accomplish this project, the property needs to be rezoned and a Special Use permit is needed. After working with staff, the decision was made to request an R-4 zone because it is the least intrusive. Secondly, if approved and later sold, the property can either be a daycare business or it can be a professional office if the owner lives on site. So the Board is protected from the "what-if" question if things should change in the future because the Board still has the control because if it is anything other than those two scenarios, it will have to come back to the Board or be rezoned. Last week, the Plan Commission gave a unanimous approval for the rezoning to R-4. He said they are here today for the Special Use and a Special Use in an R-4 zone permits them to have a daycare center and a preschool. With both of these proposals, they will go to either the August 3rd or August 19th Commissioner's hearing to sign the approval. At this time, Mr. Pharis submitted a handout containing copies of emailed letters *[attached to file as Petitioner Exhibit #1]*. He indicated that Mrs. Stutz approached Eastwood School, especially after all of the newspaper articles about the Mor-Ryde situation, and asked the principal if he would have any concerns with what they wanted to do. In the documented submitted, he indicated that Douglas Hasler, Executive Director of Support Services for Elkhart Community Schools would not oppose the rezoning. On Page 2 at the top, Mr. Haworth, who is the Superintendent, stated he would not be opposed to the Academy. Finally, Kevin Beveridge indicated that he is not opposed to this request either. He noted this request is the effort of Mr. and Mrs. Stutz to finally find a permanent home for Angel Central Academy. He also noted staff's positive recommendation and positive support from the community. Lastly, he asked for approval subject to the rezoning being approved by the County Commissioners.

When Mrs. Wolgamood inquired about the request for child care, Mr. Pharis explained that it is a preschool and child care facility. It is a requirement to be enrolled in the preschool to use services of the daycare center. Regarding the questionnaire, Mrs. Wolgamood noted under the question about full-time employees, it says none. Mrs. Stutz indicated there are seven full-time employees at this time. Mrs. Wolgamood noted the correction. Referring to Mr. Hasler's letter to Rob Haworth that was submitted, she pointed out that Kevin's biggest concern is the traffic increase near Eastwood School. She asked about the discussion between Mr. Haworth and the Angel Central owner that satisfied his concern. Mr. Pharis explained that the 60 ft. strip being provided by Almac lines up with the northern-most entrance to Eastwood which allowed them to align the driveways so they could have the safest possible ingress/egress to both sites. Secondly, Mr. Beveridge learned that several teachers at the school use this preschool and daycare for their own children. Also, with the numbers and times of arrival and departure, Mr. Beveridge was convinced that this was not going to be an issue. Mr. Pharis said he believes the reason it came up is because originally the 60 ft. strip was attached to a piece behind that is manufacturing and at the hearing that approved it, it was requested that this strip never be an access point. Although it was not clarified, he stated what they meant was access to the manufacturing. By using this, Mr. Pharis believes Mr. Beveridge needed to understand that it is

not going back to the manufacturing but will only service the daycare. With those reasons or explanations, Mr. Beveridge was convinced to agree that this would be a good use of the property and not to oppose the use or rezoning. Regarding a sign, Mrs. Wolgamood noted they want a 4'x6' double-faced sign but whether it is lighted was undetermined. At this time, Mrs. Stutz and Mr. Pharis indicated it will not be lighted. When Mrs. Wolgamood inquired, Mr. Pharis indicated that city utility services will support the building.

There were no remonstrators present.

The public hearing was closed at this time.

Regarding the property on the southwest corner, where the existing building is located that will be relocated to this site, Mrs. Wolgamood pointed out that she believes it is no longer residential and has been rezoned to a manufacturing DPUD. Mr. Mabry confirmed that to be true and stated it was approximately six months ago. He added that K2 Holdings is moving to that location.

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 a child care center in a R-4 district (Specifications F - #23) be approved.

The following conditions were imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the requested rezoning to R-4 is approved by the Elkhart County Board of Commissioners.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted, and as represented in the petitioner's application, and as said application was amended in the presentation.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, and Lori Snyder.

*****It should be noted that Ms. Snyder steps down, and Mr. Hesser returns.*****

9. The application of ***Crystal Springs School*** for an amendment to an existing Special Use for a school in an A-1 district (Specifications F - #38) to allow for the relocation of a 28 ft. x32 ft. shed) on property located on the West side of CR 41, 500 feet South of CR 20, common address of 59079 CR 41 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 #59079CR 41-130624-1*.

There were seven neighboring property owners notified of this request.

Mr. Hesser clarifies this request is just to amend the site plan to move the barn.

Merv Stoltzfus, 60112 CR 41, Middlebury, was present on behalf of this request. He said the original plan was to put the barn close to the basketball court. Since it has been years since the original approval, now they are thinking that it would be better for the students and the

activities to move the barn closer to the corner with the minimum required setbacks from the property lines. He added that they do not want any special variances for setbacks, but they just want to get it into the corner as close as they can. When Mr. Homan inquired about the propane tank in the back corner of the property, Mr. Stoltzfus said they might have to move the tank to another location. Additionally, he said the building is a shelter to protect the children's ponies from the elements in the winter and in extreme weather. Mr. Homan confirmed that the use of the building has not changed, just the location of the building.

Mrs. Wolgamood inquired about the pine trees that were supposed to have been planted as part of the original approval. Mr. Stoltzfus said he believes they were planted as there are pine trees all along that side. He said he does not know if they were planted as per the approval but there is a buffer of trees along the house on the south side. When Mrs. Wolgamood asked Mr. Stoltzfus if he is affiliated with the school or the contractor, he said his children began attending the school about a year ago. When she asked, he said he completed the application. She confirmed that he had no conversation with any of the neighbors regarding the relocation.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted the only reason for the request is to change the site plan. Mr. Hesser recalled at the time of the original approval, there was an objection. Mrs. Wolgamood reported that she looked at the original file to confirm that the neighboring property owner to the south is still the same. As a neighboring property owner, a letter regarding this request should have been received.

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 an amendment to an existing Special Use for a school in an A-1 district (Specifications F - #38) to allow for the relocation of a 28 ft. x32 ft. shed) be approved. The following condition was 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 conditions were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No other conditions of the original Special Use Permit approval of April 15, 2004, are changed.

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

Yes: Robert Miller, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

10. The application of **Bradly L. McKibbin** for a Special Use for warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) on property located on the East side of CR 25, 250 ft. North of CR 123, common address of 71240 CR 25 in Jackson Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #71240CR 25-130624-1*.

There were seven neighboring property owners notified of this request.

Carl Graber of Pacemaker Buildings, 71786 CR 20, Syracuse, was present on behalf of Bradley McKibbin who is also present. Mr. Graber explained this is a large parcel purchased recently with plenty of room to accommodate what he has. He said this is strictly a place to be able to store equipment when not in use or to service something if the need arises. This would allow them to operate with fairly low overhead and still service the community. He reported no signage. Since the submission of the petition, Mr. McKibbin has talked to the neighbor to the north who indicated he has no objections to the building. Mr. Graber noted there is very good shrub buffering along that property line and also on the road side. The building will be set back and will be hidden. He also indicated the back side of the building will face the road, and there will be no need for equipment to ever sit outside. When Mr. Homan asked about a driveway, Mr. Graber said they have not yet submitted a plan but talked to Highway initially. He reported there will be very minimal traffic in and out, but they will definitely get approval from the Highway Department in terms of driveway location and their standards. Mr. Hesser reaffirmed that nothing will be stored outside which Mr. Graber reconfirmed. When Mrs. Wolgamood inquired if equipment was currently being parked on-site, Mr. Graber indicated he does not believe there is anything parked there at this time. He added that Mr. McKibbin is currently in business elsewhere and lives at the property now. Mrs. Wolgamood inquired about the number of pieces of equipment owned by Mr. McKibbin.

Bradly McKibbin, 71240 CR 25, New Paris, was present on behalf of this request. In response to Mrs. Wolgamood's previous question, he reported approximately eight pieces of equipment, being two excavators, a dozer, a small skid-steerer, two dump trucks, a back hoe, a compacting roller, and approximately three trailers. When Mrs. Wolgamood asked if all of this equipment could fit inside, Mr. McKibbin explained the equipment is not typically at the shop, and he would only bring it to the shop to repair it. But they want the building large enough to be able to keep the equipment inside while working on it. Mr. Hesser clarified that not all of the equipment will be stored there.

Mr. Homan asked staff why there is not a need for a developmental variance for accessory to exceed the size of the residence. Mr. Mabry explained that unlike a home workshop/business which is by definition an accessory use to the residential component, this is purely a Special Use for warehousing and storage and this could theoretically be its own stand-alone, self-contained, no residential element, warehouse and storage use. He said the house is part of the site plan so if they were going to remove the house, that could be an amendment that would be needed later on but this is its own principal use for the property so this new building is not accessory square footage. Mrs. Wolgamood noted that she had called and asked Mr. Mabry the same question.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted the Board is always looking for things to happen inside so this meets that criteria. It looks as if it is already well buffered from the county road or neighboring property owners. Mrs. Wolgamood indicated she had a major concern about the size of it, but she was thinking of developmental variance and why it was not required. She did say she is not

sure if she agrees with that. She pointed out if it were a home workshop/business, he would need a variance of 5,000-6,000 sq. ft. for this building.

Mr. Homan inquired if there is anything to address in terms of the curb cut and Highway specifically that will have to occur regardless when the permit is pulled. Mrs. Wolgamood noted the site plan is showing a proposed curb cut. Mr. Homan decided it is not really a usage issue.

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

Motion: Action: Approve, **Moved by** Robert Homan, **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 warehousing and storing of excavation equipment in an A-1 district (Specifications F - #44) be approved.

The following condition was 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 passed (**summary:** Yes = 4, No = 1, Abstain = 0).

Yes: Robert Homan, Doug Miller, Tony Campanello, Randy Hesser.

No: Meg Wolgamood.

11. The application of **Jay A. Krull** for a Special Use for an agricultural use for the keeping of five chickens on a tract of land containing less than three acres (Specifications F - #1) on property located on the South side of Country Lake Lane, 150 ft. west of CR 7, 1,600 ft. South of CR 4, being Lot 2 of Country Acres Estates, common address of 27136 Country Lake Lane in Osolo Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #27136Country Lake Lane-130614-1*.

There were 20 neighboring property owners notified of this request.

Lorri Krull, 27136 County Lake Lane, was present on behalf of this petition. She indicated she was speaking for her husband as he has Huntington's disease. She said he has already degenerated to the point that he is unemployable and can no longer drive so he stays at home. She explained that he does not always think clearly and it takes more time for him to do everything including just answering a simple question. She explained they had heard of keeping backyard chickens as therapy back in 2012, shortly after the loss of three family members and learning of Jay's diagnosis within five months of each other. They had studied the keeping of chickens which appealed to them for many reasons and in April of this year, they acquired six chickens. When they discovered one was a rooster in May, they got rid of it so they are down to five chickens. She said they have both experienced great therapeutic benefits from the chickens and watching chicken behavior can be very stress-relieving. She said Jay told her at one point that the chickens are more fun to watch than TV. They give him opportunities for solving problems which helps keep his brain going. In studying brain function, it is very helpful to

improve his chances of staying at home longer for him to have a hobby such as keeping chickens.

She expressed that they know they have gone astray in letting the chickens wander free in their yard, and they have wandered into the neighbor's yard and soiled it. She stated they have plans for a more permanent structure to keep them in a less ugly environment. She acknowledged their present coop area is not very attractive, but they did not want to go to the expense prior to this request. The Special Use permit will not cause substantial permanent injury to the appropriate use of the neighbors' properties as this is not a big chicken operation with the smells that accompany it. The property values are not going to decrease because of these five chickens. She noted their keeping of chickens do not injure property any more than having a dog or cat in their backyard would and even less than feeding back yard birds. She indicated that just about anything you could say against keeping backyard chickens could be said against feeding backyard birds. She used examples as spilled seed on the ground may attract unwanted creatures and birds have diseases and illnesses that can be brought into the yard. Their chickens are healthy, and they know how to keep them that way. She said they practice good animal husbandry, and they keep the coop clean so there is no smell or illnesses that come with that. She said they do have backyard birds, but they are just bigger and healthier.

She said the Special Use permit will substantially serve the public convenience and welfare in that it attributes to the mental health of her husband and herself. Keeping the chickens will help them keep Jay functioning more normally for a longer period of time and aid in him not needing an expensive government program. She said eventually her husband will lose important functions, and his balance will become so challenged that he will be unable to walk which comes from brain activity. It helps her to know that she is doing everything she can to help keep his brain more active. She indicated their appeal is that they be allowed to keep "their girls" as they are the best kind of pet they could have right now. They are quiet and draw them out into fresh air and sunshine. They do not require a great deal of money to keep which is important to them due to four years of very limited employment prior to her husband's diagnosis and accumulated debt. She also noted their constant supply of fresh eggs.

Roger Kreighbaum, 52269 CR 7, was present in support of this request. He said he resides on the property north of the Krulls, across County Lake Lane. He expressed that he has no complaints because he knows how much Mr. Krull gets from keeping the chickens.

Don Bradshaw, 51093 Beach Drive, Elkhart, was present in remonstrance to this request. He stated he owns the adjoining property on the east side which is 52315 and 52317 CR 7 and filed the complaint originally. Mr. Krull never talked to them about having the chickens, and Mr. Bradshaw knew of the three acre rule. He indicated that originally the chicken coop was at the back of Mr. Krull's property by shed but now it has been moved up closer to the house. He pointed out his tenants' patios on the aerial. Mr. Bradshaw said when he filed the complaint, he had counted up to eight chickens running loose quite often. He stated he does not live there but when he comes over the mow the yard, he has found chicken droppings on patio and sidewalks where his tenants would have to walk through it which is the reason he filed the complaint. He noted that it seems they are down to five chickens now. He indicated he showed one rental unit the other day, and the prospective tenant noted the blue tarp in the Krulls' yard which is approximately 40 ft. from the patio of the vacant duplex. He noted the chicken coop is not very desirable to look at.

Mr. Bradshaw expressed concern about Mr. Krull being able to keep the chickens confined if this request is granted. He reported Mrs. Krull did come over and talk to him and explain Mr. Krull's health issues and that he is not able to make rational decisions. With this in mind, Mr. Bradshaw does not know if Mr. Krull will be able to keep the chickens penned up if this petition is approved. Mr. Bradshaw said he would like to see three acre rule enforced just so he is not back over here complaining again when the chickens are out. He reported on Tuesday of this week when he came over to mow the yard, a couple of chickens were loose and on his property. He submitted photos at this time to show what his tenants view *[attached to file as Remonstrator Exhibit #1]*. He stated he and his wife have owned that property for over 20 years, and Mr. Krull's father previously owned the neighboring property. He noted a good relationship with the elder Mr. Krull and stated he even worked for him, and they got along great as neighbors. He pointed out Jay Krull has lived there less than a year, and they have the chickens.

He indicated they have a pretty healthy investment there and sometimes it is hard to get renters in and now the view from the patio doors is looking at the make-shift chicken coop with a blue tarp on it just 40 ft. away from his rental property. It is not very desirable especially if they are running loose. When Mr. Hesser inquired about any covenants dealing with keeping livestock, Mr. Bradshaw indicated he checked but could not find any covenants, but he is assuming that is why the County has a three acre rule to have livestock. If this request is granted, Mr. Bradshaw suggested consideration of moving the chicken coop back by the shed on the west side as he feels it would be more attractive than what is there now. He also suggested imposing a size restriction on the fenced area and that the chickens must be penned up. He added that he really does not want to see them at all, but he especially does not want to see blue tarp back there. If the coop needs shade of some type, he suggested that it conform to the existing shed, he feels that would be an improvement with the continuity of the houses surrounding it.

In response, Mr. Hesser asked Mrs. Krull specifically to tell them about the proposed building and fence they will put in place. As Mr. Bradshaw suggested, Mrs. Krull said they are considering moving the coop back to the existing shed. She said the coop they have now is nothing better than temporary and is not weather-proof. She said they would like to take the existing shed and add a more permanent fence on the left side with a sand base which makes it easier to clean up chicken droppings similar to cat litter. She noted they compost the chicken waste for their garden. They would outfit the shed to keep the chickens in which offers them better protection from the weather. When Mr. Hesser asked if the chickens would have an entrance into shed, she indicated they would cut an entrance into the side with a nest box inside, and everything would be contained there. Mr. Hesser asked and it was clarified that this would eliminate the need for the blue tarp.

When Mr. Campanello asked if the chickens were getting up and over the fence when they get out, Mrs. Krull indicated that Jay lets them out to roam around in the yard because of the free range. She indicated that a chicken does not need to range around a whole property as they only need a few feet of space. She noted commercial chickens only have approximately 27 sq. inches. She indicated the fencing they bought to contain them temporarily is a 40 ft. roll of fencing. She said they can move the fence back, set posts, and have them contained right around the shed area. She acknowledged that Jay has not really tried to keep the chickens contained because he is under the opinion that the chickens can be trained to stay in their own yard. She

stated she knows better than that, and that if he signs a commitment to say that he will keep them penned or housed at all times, he can and will do it as he is a man of integrity, and he will do what he says he is going to do. Mrs. Wolgamood clarified that when Mrs. Krull spoke of putting the fence on the left side of the shed that she meant the west side of the shed farther away from Mr. Bradshaw's property as shown on the site plan.

When Mr. Bradshaw asked about a size limit on the fenced area, Mr. Hesser noted the site plan indicates an 8'x8' area. When Mr. Bradshaw inquired about procedure if the chickens are roaming in the future, Attorney Kolbus instructed Mr. Bradshaw to contact the Planning Department and register a complaint as one of the proposed commitments will be that the chickens are to be penned or housed at all times. If a complaint is received, it will be investigated.

The public hearing was closed at this time.

Mrs. Wolgamood indicated she would like to put a time limit on how long the Krulls have to move the coop as shown on the site plan. When Attorney Kolbus pointed out that would be a condition, Mrs. Wolgamood suggested 30 days. When Mr. Hesser asked if she understood the suggestion, Mrs. Krull indicated she did and agreed they can do that.

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 for an agricultural use for the keeping of five chickens on a tract of land containing less than three acres (Specifications F - #1) be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeal 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 chicken coop to be relocated back by the existing shed (within the proposed 8' x 8' fence) within 30 days, which fencing is shown on the site plan.

The following commitments were imposed:

1. Approved in accordance with the site plan as amended by the Board's decision, and as represented in the petitioner's application.
2. A maximum of five chickens are allowed with no roosters 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, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

13. The application of *Middlebury Produce Inc.* for an amendment to an existing Special Use for a freight terminal, warehousing and storage in an A-1 zone (Specifications F - #33), to allow for an addition to the existing warehouse for an industrial washer on property located on the Southwest corner of CR 16 and CR 43, common address of 11096 CR 16 in Middlebury Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #11096CR 16-130617-1*.

There were 10 neighboring property owners notified of this request.

Brad Rodman of CDR Construction, 109 E. Clinton Street, Goshen, was present representing Middlebury Produce. He explained that the business has trucks that go out to local farms, catch these chickens, and then market them in Detroit, Chicago, and different ethnic areas. He reported they will be required by the FDA or Department of Agriculture that these cages or coops will have to be washed on a daily basis. So they are attempting to get a system in place before the requirement takes effect which is why they need to amend the Special Use they currently have. When Mr. Campanello asked what happens with the waste water from washing the cages, Mr. Rodman said they went through IDEM to figure that out. They said it could be land applied or pumped out, but it cannot enter a septic system or anything like that. He said in their plan, they are going to set two 1,000 gallon in-ground tanks with a pump to be pumped out to either "honey wagons" to be spread onto the fields or a septic service will pump them out. When Mr. Homan inquired if any kind of solvent is added to the water when washing the cages, Mr. Rodman indicated there is some sort of soap, but he does not know what that is. When Mr. Homan asked if that was part of the conversation with IDEM conversation, Mr. Rodman said it was, and there are no harsh chemicals. Although it was part of the discussion, Mr. Rodman indicated their bigger concern was the manure which is why it is not allowed in the septic.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she was curious about the original approval in 1979 and wanted to compare the site plan submitted against the previously approved site plan. She indicated she found the site plan rather interesting as the original site plan is the entire square. She noted when you look at the actual property that is being asked for today, it is what she has outlined in yellow [attached to file as Staff Exhibit #1]. In effect, they really have reduced the size of the property they are requesting. She felt good that there were not additional buildings there without any special permission from the Board. She believes they have done exactly what they were allowed to do from 1979. She noted they are also requesting a small break room for employees. She indicated she has no objections to this request.

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 an amendment to an existing Special Use for a freight terminal, warehousing and storage in an A-1 zone (Specifications F - #33), to allow for an addition to the existing warehouse for an industrial washer 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, Doug Miller, Tony Campanello, Meg Wolgamood, Randy Hesser.

14. 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 - #38) 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. Hesser noted the staff recommendation is to table this request. Mr. Mabry indicated the petitioner is aware of it, and they agree to it. He said this is for an electronic messaging sign which is a Special Use permit by itself, and then they would be located closer than 300 ft. to a house. Staff realized that during their meeting on this request that the additional variance was needed for the sign to be approved. He reported they have already submitted the variance application for the August meeting.

There were 19 neighboring property owners notified of this request.

There was no one present in the audience for this hearing.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Doug Miller that due to the need for the filing of a Developmental Variance to allow an electronic messaging sign to be within 300 ft. of an existing residence that this request be tabled until the August 15, 2013, Advisory Board of Zoning Appeals meeting.

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

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

15. The application of *Matthew L. Miller* for a Special Use for a home workshop/business for construction business (Specifications F - #45) and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure 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. Hesser noted that although the legal notice was correct, the neighboring property owner letters were mailed with an incorrect hearing date. As a result, Mr. Mabry said staff will renotify with the correct dates and is proposing to have the hearing on the August meeting of the Advisory Board of Zoning Appeals.

When Mr. Hesser inquired if anyone was present for the hearing, Mr. Mabry said the petitioner and one remonstrator were present and were informed of the situation.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Doug Miller, that due to notification with an incorrect hearing date, this request be tabled until the August 15, 2013, Advisory Board of Zoning Appeals meeting to correctly re-advertise the petition.

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

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

16. The application of *Grace Haven Biblical Renewal Ministries, Inc.* for an amendment to an existing Use Variance for a business and professional office for biblical counseling to allow for the construction of cabins, to include additional property, to change hours of operation, and to allow clients to be housed in the proposed cabins on property located on the West side of CR 43,

1,000 ft. South of CR 42, common address of 67163 CR 43 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 #67163CR 43-130515-1*. He noted the typographical error in finding #2 that should state that the use and value of the area adjacent to the property will *not* be affected in a substantially adverse manner. In the packet, Attorney Kolbus noted there was a proposed area for four cabins on one document and the other one shows a more detailed site plan with the date. He asked which one the staff is considering as the site plan. Mr. Mabry stated he would consider the site plan to be the dated document. He indicated the other paperwork has to do with the soil borings that were preliminarily completed to make sure that this plan was feasible from a septic point of view to have these four cabins out there. He further stated that the real site plan, if approved, to be part of the file is the one marked as received 07/05/13.

There were six neighboring property owners notified of this request.

Delbert Schrock, 5910 W 100 N, LaGrange, was present on behalf of this request as he serves on the Board at Grace Haven Biblical Renewal Ministries. As mentioned, he said one of the things that has taken place at their ministry is that many of the people coming to their facility are travelling quite a distance. The Amish folks that come have a choice to either stay with friends in the community or get a motel, but if they stay at a motel then a taxi is needed for several trips back and forth to Grace Haven. Through all of this, he said they have had some contributions pledged if they can put up some cabins. He reported they looked at some cabins at a facility in Ohio that is very similar. He said they are 16'x24' cabins with one bedroom, a small bathroom, and a small kitchen/dining room area. He also stated they will all be the same size with very similar layouts. They have proposed to put the cabins on the south side of the property, with possibly one along the west side and three along the southwest corner. He noted the soil borings were taken from the northeast corner just directly south of the church. In talking to the Health Department, because of the age of the existing building, they suggested the old septic system be tied into the new septic system for the four cabins. He said one of the objectives is to make these cabins very private because of the nature of what they do. Because people are working through some difficulties in their lives, they like privacy so they are proposing lots of landscaping put into place back around the driveway. He noted they are using the existing driveway coming into the facility and from there making access to the four cabins in the back. He expressed that they do not want to create an environment where it will be easy to get off the street to the cabins.

When Mrs. Wolgamood asked if each cabin would be individually heated and air conditioned, Mr. Schrock indicated that is correct. Mr. Miller inquired how many people use the facility on average throughout the year. Presently, Mr. Schrock said there are two couples per week. When Mrs. Wolgamood suggested that they will have more people if they have four cabins, Mr. Schrock said possibly but they are thinking at the present, they would like do to two cabins. He said they were advised to tie this thing together with up to four cabins. As the facility increases in use and demand, they will possibly add another two. At this time, he stated they have two counselors which is why there are two couples. Mr. Miller inquired when this ministry or counseling started, and Mr. Schrock reported it began in 2006. When Mr. Homan asked about any site supervision when guests are in the cabins, Mr. Schrock indicated there

would not be anyone present in the church past the regular hours that were previously stipulated in the original Use Variance.

Grace Green, 67491 CR 43, was present in opposition to the request. She stated her original deed said when the property was not a church or school anymore, the land was to revert back to the farm. When she bought the farm, she said they gave their word that if the school needed more property, they would sell two acres to the school. When the time came, they sold the two acres even though they did not want to because they had given their word. As it is not a school or church anymore but a counseling center, they wanted to buy the two acres back. She also said the church told them when it was going to be the counseling center that there would be no one living on that land.

Tracy Oberlin, 10879 CR 48, was also present in remonstrance. He said he and his wife own the 37 acres just north of the counseling center. He indicated they purchased it from the family last year, and it has been in his family for 49 years. He noted one concern is the septic system. He knows that there is a tile going from the counseling center across his property into the little woods because it is the old Stoney Creek bed. He explained that a few years back the middle house of the three houses (on aerial) did not have a proper septic and solids were coming into the woods. That issue was resolved with the Elkhart County Health Department. He noted another concern is the clients staying in the cabins being unsupervised after hours. He mentioned he has cattle in those pastures, and he is afraid they are going to get into his electric fence or get out there wandering around, chasing his cattle, and who knows what. He is curious about what kind of people the center will be counseling. He noted another concern is whether the cabins will be up to code and if they will make the community look better or worse.

In response, of the neighbors present, Mr. Schrock questioned if there have been any problems with any of the clients at the counseling center in the past seven years. Mrs. Green said there have not been any but noted the clients were not present overnight. Mr. Hesser asked Mr. Schrock to address the septic issue. Mr. Schrock said the present septic system is directly on the north side of the existing facility. He indicated the existing septic system will be completely closed off and tie into a new one and noted they have no idea what the present system is. Regarding the type of people who come to the facility, he noted clients are not on medication as they do not work with anyone on medication. He does not know why there would be a problem with any of the people who come. Regarding the appearance, he said they would be using the existing driveway and landscaping to make each cabin as private as possible. Mrs. Wolgamood asked if the counseling center works with people who have alcoholism or drug addictions or if it is people with marital relationship issues. As far as he is aware, Mr. Schrock said they have never worked with anyone with addictions. He believes most of the couples who come are dealing with dysfunctional marriage relationships. He added that individuals come who are dealing with instances of past abuses or anxiety issues.

Mr. Hesser addressed Mrs. Green about her comment in her objections that this request is different from what Grace Haven were told them was going to happen. He pointed out that this was seven or more years ago. He asked her if she can identify any harm that will come to her by virtue of putting these residences on the property. Mrs. Green expressed concern about the possibility of clients on drugs and alcohol as she has 15 grandchildren and 18 great-grandchildren that are at her home quite a bit.

The public hearing was closed at this time.

Mrs. Wolgamood pointed out that in the staff report for the approval in 2006, the very last item says that there shall be no clients housed in this building overnight without express permission from the Board of Zoning Appeals, and she understands that is why they are back here. She added that does not mean they have to approve the request. She reviewed the minutes from 2006 and noted the Greens had an attorney at that time that made the points that Mrs. Green is making. She added that in 2006, the petitioner did comment that they did not house anyone over night. Mrs. Wolgamood believes that is why the BZA added no housing of anyone on the property.

Mr. Hesser said what struck him was the second sentence on staff report/analysis #3 where it talks about the target clientele as being a condition peculiar to the property. He stated that is not a condition that is peculiar to the property. However, he noted a Use Variance was granted so now that use is peculiar to that property. That is a factor in there, and he understands the concerns. It has been done so the use is now peculiar to the property. Mr. Hesser said he understands the concerns expressed by the remonstrators today. He thinks that based on the representations that have been made, those concerns were addressed based on the clientele that the petitioner has represented are going to be there. He noted he absolutely appreciates the candor of the petitioner stating that the request is for four but they are only going to build two at this point. But having said that, he almost thinks the Board should just approve two cabins. If the business expands and it is a problem, it can be addressed before it gets any bigger. Looking at this from a security standpoint, Mr. Campanello noted counseling centers do have staff present for clients who stay overnight, and he has an issue with that. Professional counseling centers have staff for overnight visitors because there are reasons why clients are there in the first place for counseling. He noted he is also thinking of possible liability issues. Mr. Campanello said he is leaning against this request. Mrs. Wolgamood said one of the reasons she asked about addictions issues is because people with those issues being left alone could create problems for the neighbors. She noted she does not know how they could approve it and then monitor the type of counseling they do.

Mr. Homan said he is with Mr. Campanello with this one as they are going to a residential counseling center, and he thinks the entity has an obligation to provide for the safety of residents, and he feels that means full-time supervision with access to a telephone in case of emergency and more responsibility than what is reflected in this questionnaire which is a big concern for him. Mrs. Wolgamood expressed agreement.

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

Motion: Action: Deny, Moved by Doug Miller, Seconded by Meg Wolgamood that the Board deny this request based on the following Findings and Conclusion of the Board:

1. The request will be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner.
3. A need for the Use Variance does not arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the property.

5. The Use Variance does interfere substantially with the Elkhart County Comprehensive Plan.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood.

No: Randy Hesser.

****It should be noted that Mr. Hesser leaves, and Ms. Snyder steps in****

17. The application of *Robert G. Spaugh Sr. and Dorothy J. Spaugh (land contract holders) and Robert C. Rody (land contract purchaser)* for a Use Variance to allow a landscaping business in an R-2 district on property located on the West side of Lakeland Road, 292 ft. South of Lake Drive, being Lot 11 of Lakeland Gardens, common address of 51531 Lakeland Rd. in Osolo Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #51531LakelandRd-130325-2*. When Mrs. Wolgamood asked about a copy of the petition signed by neighbors, Mr. Mabry indicated it was previously submitted as evidence and part of the record, but it was passed to the board members for review.

Robert Rody, 51531 Lakeland Road, was present on behalf of this request and reiterated that they would just like to be able to run their business without any issues. He said whoever filed the complaint did not show up in April. When Mr. Miller asked if he is comfortable with the proposed conditions and commitments listed in the staff report if the request were to be approved, Mr. Rody said it shouldn't be an issue. When Mr. Homan inquired about the summer landscaping work, Mr. Rody stated he does anything outside but fertilizing and irrigation. Mr. Homan inquired about any tree removal or planting and further stated his real question is about stockpiling mulch, black dirt, or trees. Mr. Rody stated there is nothing there except items for their personal use. Mr. Homan pointed out that the recommendation would not include bringing in truck loads of mulch onto the property. Mr. Rody reported he picks those products up and takes them straight to the job to use them.

There were 35 neighboring property owners notified of this request.

Buford Skipper, 25980 Lake Drive, was present in favor of this request. He said he lives in the house up in the corner (of the aerial photo). He stated the main reason for his appearance today is to support the Rodys as they are hard-working folks, and he has never had any issues with them. He also noted he signed the petition that was previously submitted in favor of this request. He said that he does not see piles, just a little wood burning every once in awhile. Regarding the proposed commitment in the staff report stating that any outdoor repair of equipment parked on-site shall occur behind the existing building, Mrs. Wolgamood asked if that will interfere. Mr. Skipper stated it will not.

Tina Rody, 51531 Lakeland Road, was also present on behalf of this request. She stated their ten year old daughter is with them today. She noted her daughter has been in three different schools in two years, and she does not want to relocate her child again.

To speak in opposition to the request was Lorell Nihart of 25799 Lake Drive. He added that he also owns a piece of property on Johnson Street. He indicated he read the staff report, and he is not sure that staff is looking at the request properly. First, he reported that this lot is very long and goes from Johnson Street to Lakeland Road. He did point out that there was a

complaint filed which is why this is before the Board, and he advised that he was not the complainant. Regarding the commitment about doing all repairs to equipment behind the building, he was concerned about the view from Johnson Street and submitted photos of the property *[attached to file as Remonstrator Exhibit #1]* showing various views. He noted snowplows sitting there in July and does not feel they keep the property up very well. He said he expects the Board to approve with conditions but noted he will be back if appropriate conditions are not imposed. He pointed out Photo #4 is property from a request a couple years ago where the request was to build an outbuilding as they had a sewer and roto-rooter business and a street sealing business. He said the photo shows what happens when the Board approves a request, and nobody takes care.

When Mr. Nihart inquired about a parking area for vehicles, Mr. Campanello indicated the area on the aerial. In his opinion, Mr. Nihart believes if he needs to park business vehicles and repair equipment outdoors because the garage is not large enough, it ought to be on the end of the lot near Lakeland. He added that he believes you could have two more building lots on the Johnson Street side. He does not feel it is unreasonable to put up 6 ft. wooden screening. He said people continually come up and ask for different things, and it looks good. But his photos show what the lots are like today. He feels the Board ought to seriously consider that the Special Use only be on half of the lot from Lakeland Road back and not all the way back to Johnson Street.

Mr. Homan asked Mr. Nihart if he owns or lives adjacent to this property. When Mr. Nihart stated no, Mr. Homan further inquired about his interest in this petition. On the aerial, Mr. Nihart pointed to three houses/properties that he owns with one being south on Johnson Street and two north on the lake. He did state that he drives past this property multiple times a day seven days a week, and he does not want to see it. He also noted that the Rodys have a zero-turn mower sitting out by Johnson Street for sale which has been there approximately a week, although he stated he is not complaining about that. In the neighborhood though, he did report permanent garage sales on CR 4 and one on CR 109. He expressed that he is trying to protect the neighborhood. He indicated they just got rid of trailer with broken out windows on Johnson Street in the last few months, and he does not feel the Rodys have been very good keepers of their property with their equipment to this point. He reiterated that he would like to see the Special Use restricted to half of the lot and a wooden fence for screening sure helps to improve the neighborhood. He said on down Lakeland, up and down Johnson Street, and on CR 109, there have been a lot of property owners cleaning up their area in the last few years.

In response, Mr. Rody said the suggestion for half a lot is not an issue to him as everything is on the Lakeland side anyway. He did acknowledge that he has a mower sitting in the yard for sale, but there are other properties in the neighborhood with items out for sale. The repair behind the garage is up to the Board and staff's suggestion. He noted he does not have any cement back there or anything good to jack up something to work on. He said there is cement right in front of the garage and in the garage so that is probably where he would do repairs, and he would have the vehicle in the garage as much as possible to be repaired.

Regarding fencing, Mr. Rody noted they have called some fencing companies, and he is looking at almost \$10,000 for a fence with a gate that he can get in and out of easily. He said that option is not feasible at this point. He suggested if you drive down Lakeland Road, the property right across the road has five trailers. Further down the road, there is a guy that sells

golf carts with approximately six sitting out almost all the time. Further down the road, there is a semi-truck parked on a parcel. Mr. Homan asked the total number of cars, trucks, and trailers on their property, which Mr. Rody indicated nine with four broken right now. When Mr. Homan further inquired how many of those vehicles are for the business, Mr. Rody said two trucks and two trailers. When Mrs. Wolgamood asked about a wood chipper, Mr. Rody indicated that is a leaf vacuum which he listed as one of the trailers.

Ms. Snyder asked how long they have been at this property. Mr. Rody said they have been there since February 2011. He added that he has been in business since 2001 but not at this location. If this request is denied, Mr. Rody inquired how much time he will have to sell and move. Mrs. Wolgamood suggested that they would need to close the public hearing for discussion and make a motion for approval or denial. But she noted if the request is denied, they should put some type of deadline so Mr. Rody would know, and Mr. Miller agreed.

When Mrs. Rody asked to make one additional comment, she said their sign got stolen off the lawn mower that is sitting on Johnson Street. If they park their equipment back behind the garage, they are concerned about items getting broken into that far away from the house. They would like to keep their stuff close to the house and Lakeland Road.

The public hearing was closed at this time.

Mr. Homan noted staff worked really hard to make justification for a Use Variance for this business which is okay, and he somewhat understands that. As far as requiring them to place a fence to bisect their lot, he noted that it is their land, and he does not know what the fence is going to do for them or anyone else. He noted the row of evergreens or some vegetation along Johnson Street. However, he indicated there was a complaint, so if approved, he would like to see a time limit and review it in 2-3 years, in light of the complaint filed and a remonstrator being present. Whether it is staff or board review, he said he does not feel strongly either way. Attorney Kolbus said if a time limit is placed on the request, it would expire at the end of the time period so it would bring them back to the Board for a new petition for renewal. When Mr. Campanello suggested a three year time period, Mr. Homan suggested two years, and Mrs. Wolgamood said one year.

Mrs. Wolgamood agreed staff tried hard to give the Board reasons to approve the Use Variance. However, she stated this is a highly residential area. In her opinion, what the petitioner is talking about doing is not a light landscaping business as he has a number of pieces of equipment that he stores outside and cannot be put inside. She noted some of the commitments staff has recommended and agreed they can work with days and hours of operation. Also, they can work with the site plan that was submitted, but she said she is not sure what #2 means when it says property owner is exempt from these hours. Mr. Homan indicated that is for snowplowing. She said she could never support anything behind the building as it needs to be up front where he keeps his equipment or inside building. She pointed out that the parking area the petitioner is talking about is his entire front yard. She noted that the petitioner has indicated a number of those are his personal vehicles which she understands, but she questioned if there is something that prohibits parking that many vehicles in a front yard. She mentioned stockpiling and landscaping materials and noted she does not know what constitutes debris, but when she drove past this property a month ago and two days ago, she saw what she thought was a lot of debris. She noted she thinks the debris is affiliated with both the residence and the business. She believes she recalls Mr. or Mrs. Rody indicating at the last hearing that

they heat with wood, and she noted there is a lot of wood and tree stumps on the property with some of it being neatly stacked. She suggested that the Board needs to specifically say what debris is if the request is going to be approved. She recommends granting the request for one year if approved, and limiting the use to the east half of the property only and nothing on the west half.

When Mr. Homan asked Mr. Rody his intention for the vehicles that are broken right now, Mr. Rody said he plans to fix them. Mr. Homan inquired how long they have been out of service which Mr. Rody indicated is one to three weeks depending on which one. Mr. Homan asked Mr. Mabry about an ordinance or how the County handles vehicles that are not in service and questioned if there is a length of time for inoperable vehicles. Mr. Mabry said Code Enforcement takes complaints on perceived inoperable vehicles and a Code Enforcement officer will go out and check to see if the vehicle can start and move 10 ft. in either direction. He went on to say if the vehicle runs and moves, then it is not considered a junk or abandoned vehicle, and it can continue to remain. If the vehicle is not operable and does not start or move, the case gets turned over to the Sheriff's Department to be impounded. Mr. Homan further inquired what happens if enforcement makes an inspection and finds a vehicle that is in disrepair, wondering if time is allotted to repair the vehicle. Mr. Mabry stated he does not know if there is a hard and fast time limit. He noted usually the overall concept for Code Enforcement is to work as generously as possible with the property owner to achieve compliance, whatever the case may be. He added that it is rare that they deal with vehicles that eventually have to be impounded as they either get fixed or they are removed by the property owner. He indicated Dawn Nordman, Code Enforcement Officer, handles these cases, and he believes she can be as flexible as up to a month to give someone as many chances as possible to get the vehicle running or removed. Attorney Kolbus added that once a case gets turned over to the police department, it is pursuant to a state statute, and there is a time period after the vehicle is tagged, possibly 48 hours, to either remove or repair the vehicle. At that point, there is a definite time limit, and it comes from state statute. He indicated the Code Enforcement level has a flexible time limit. He also noted there is no front yard parking ordinance in the county, although the City of Goshen has one, and he is not sure about the City of Elkhart's policy regarding front yard parking. Mr. Homan noted he wanted to have the discussion about inoperable vehicles so the petitioner understands that if this request is approved and there are vehicles that are not up to par, there is an issue. Mr. Rody stated they are no inoperable as they will move the required 10 feet. They simply have issues that need to be repaired.

Based on Mrs. Wolgamood's comment, Mr. Miller said he is interested in how to define debris or if that is even without the Board's scope. Attorney Kolbus suggested adding landscaping materials or debris relating to the business.

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

Motion: Action: Approve, **Moved by** Doug Miller, **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 Use Variance to allow a landscaping business in an R-2 district 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. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Days and hours of on-site operation are Monday through Friday from 7:00 a.m. to 5:00 p.m. and Saturday and Sunday from 7:00 a.m. to 12:00 p.m. The property owner is exempt from these hours due to snow-plowing work.
3. All equipment repairs must be done inside the existing 24' x 48' garage unless unable to repair inside due to height and weight restrictions of said garage building; outdoor repair may only occur behind the existing 24' x 48' garage, subject to the further restriction in #6 below.
4. All equipment associated with this business must either be maintained inside the existing 24' x 48' garage, or in the area designated on the site plan as "parking area".
5. Stockpiling of landscaping materials or debris related to the business is prohibited on site.
6. All activities to take place on the east half of the lot.
7. Approved for a period of one year with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Lori Snyder.

No: Meg Wolgamood.

18. The application of *Smith Weber Realty 1/2 Unt & Attn Weber Marilyn* for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the 254 ft. South of Homer Avenue, 3/4 mile south of Hively Avenue, 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 #00Homer Avenue-130520-1*.

Lindsey Brazys of Sanders Pianowski, 300 Riverwalk Drive, was present representing Marilyn Weber who is also present. She said they are petitioning to allow for the construction of an accessory building without a residence, and they would like to store a motor home and boat in the structure on the property. Addressing some of the staff analysis, she said it seems as if staff is concerned with the safety issues. She noted that this property has an existing fence around the property with barbed wire as shown in photos submitted [attached to file as *Petitioner Exhibit #1*]. She noted the fence is six feet in height with an additional foot of barbed wire which surrounds the property with a gate that is locked at all times. She said they plan to construct this building if allowed, and they would put lighting on the building if required by the Board.

Regarding the variance arising from a condition that is peculiar to the property, she explained at one point in time, Homer Avenue was a thru-street but now the by-pass goes through there and caused the area where there is no frontage to a road. Because of this, a residence cannot be built on this parcel. At this point in time, she indicated the owners would like to use the property by constructing an additional accessory structure to store their "toys" in. She agreed with staff that this request would not interfere with the Elkhart County

Comprehensive Plan. She submitted a packet of letters from neighboring property owners in support of this request *[attached to file as Petitioner Exhibit #2]*. Mr. Homan asked about the characteristics of two properties north and south of the narrow portion of the parcel. Ms. Brazys indicated they are residences, and she also noted the neighbor from southeast property is present to speak on behalf as a proponent of this request. When Mrs. Wolgamood inquired if the owner of the property to the north signed the petition, Ms. Brazys indicated yes and added that all of the adjacent property owners have signed. Mrs. Wolgamood asked about the use of the existing building.

Marilyn Weber, 24053 Eagle Ridge Drive, was present on behalf of this request. She responded to Mrs. Wolgamood's question by saying that the existing building on the property is used for storage of trailers and tractors. When Mrs. Wolgamood inquired about the Himco dumpster, Mrs. Weber said it is used for trash as her son does a lot of hobbies such as woodworking and steel working on the property. When Mrs. Wolgamood asked how long the existing building has been there, Mrs. Weber stated since 1960. Mrs. Wolgamood further inquired if she originally lived nearby on Homer Avenue. Mrs. Weber indicated she has since sold off that property and moved which is why there is no longer a residence on site. Regarding the new building, Mrs. Wolgamood inquired what will be stored inside. Mrs. Weber indicated a motor home and boat.

Randall Weber, 58239 Homer Avenue, was present in favor of this petition. He stated he resides in the residence right in front of this property to the south. He stated he is Mrs. Weber's son and uses the existing building for his hobbies. He said the reason he is speaking in favor of this is because his brother has a motor home and a boat. Although he has the option of storing it outside with tarps on them, he feels doing so would look more offensive to the eye than a nice building. His second reason for supporting this request is that with this being a wooded area left to natural wild habitat that is abundant with raccoons, groundhogs, deer, etc., and from experiencing of parking his truck by the building, groundhogs come in a night and chew up the wiring. So, a small building is easier on the eyes plus there is no danger with the wildlife getting into things.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he believes it is a great use for the property as there is not much you can do with it. Mr. Homan agreed by saying that he cannot foresee a subdivision ever going in with that access. Mrs. Wolgamood also agreed as a road would have to be built along as well as BZA approval. Mr. Campanello noted the chain link fence around the parcel. Mrs. Wolgamood agreed but also pointed out that it is self-imposed because they kept this portion of the property and sold off the rest. Referring to #4 of the staff analysis, she explained she is not sure how a subdivision could occur because there is no dedicated right of way there. Mr. Miller stated he does not have a problem with it.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that this request for a Use Variance to allow for the construction of an accessory structure without a residence be approved as presented and based on the following Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was 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 = 5).

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Lori Snyder.

19. The application of *James E. & Renee L. Hansen* for a Special Use for warehousing and storing of cargo trailers in an A-1 district (Specifications F - #44) on property located on the North side of CR 12, 2,020 ft. West of SR 13, common address of 12121 CR 12 in York Township, came on to be heard.

Mr. Mabry presented the revised Staff Report/Staff Analysis, which is attached for review as *Case #12121CR 12-130517-1*. He noted this petition was before the Board last month and was tabled for staff and petitioner to coordinate revisions to the site plan and create a revised recommendation. He indicated staff did work with the petitioner and has revised the recommendation and the suggested condition and commitments.

Mrs. Wolgamood confirmed that they are talking about the site plan received on June 24, 2013.

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Robert Homan that the public hearing be reopened.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Lori Snyder.

Attorney Kolbus noted the basic public hearing was held so this is for the petitioner to make any comments about the revised site plan and the conditions and commitments and for the Board to delve into any questions or issues they have. He said there is no need to rehear everything.

Jordan Hansen, 12121 CR 12, was present on behalf of his father who is in the hospital and cannot be here. When Mrs. Wolgamood asked if he was familiar with the site plan, he stated he is. She confirmed with Mr. Hansen that they are proposing no more than 20 cargo trailers on

¾ of an acre. He also indicated they are fine with the ¾ acre size, and they are willing to work with that as the previous site plan was for approximately one acre. Mrs. Wolgamood noted they talked last time about buffer. Using the aerial photo, Mr. Hansen indicated the location of trees that have been planted. He said the neighbors (Mark & Carrie Martin and Rocky & Jen Miller) have no problem with the request. He reported trees have been transplanted at the start of the property line at the road, all the way back on west side. He said these trees are approximately 1 to 1 ½ feet tall. When Mrs. Wolgamood asked how long ago this was done, Mr. Hansen said some trees (starts) were planted approximately three years ago with more trees added about two months ago. When Mrs. Wolgamood asked what type of trees were planted, Mr. Hansen noted they are approximately 40 trees about 5-7 feet apart.

Mr. Homan asked about the vacant lot to the east and the driveway on that property which they were using. He noted that according to the site plan, that drive will no longer be used by the Hansens. Mr. Hansen stated that driveway is no longer in use and they have widened the east driveway which goes straight back to the storage area for the cargo trailers. Regarding the revised site plan, Mr. Homan noted that there are no dimensions shown for the ¾ acre storage area and asked the petitioner to provide those dimensions to staff. Mrs. Wolgamood explained that she calculated the dimension by taking the overall frontage dimension, subtracted the 25 ft on the west side and 10 ft. on the east side, and came up with the dimension. Mr. Homan said he would like it to be added to the site plan and submitted to the staff.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she compared the other questionnaire to the one that they got, and it is identical. She said she wondered about the trees, and Mr. Hansen answered those questions. It was a good point about adding the dimensions to the site plan.

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 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 warehousing and storing of cargo trailers in an A-1 district (Specifications F - #44) 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 stamped received June 24, 2013, and as represented in the petitioner's application.
2. Approved for a period of three years with renewal before the Board of Zoning Appeals.
3. A revised site plan to be submitted for staff approval showing exact dimensions of the storage area.

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

Yes: Robert Homan, Doug Miller, Tony Campanello, Meg Wolgamood, Lori Snyder.

*****It should be noted that Tony Campanello leaves at this time.*****

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

21. As a staff item, Chris Godlewski provided an update on the Zoning Ordinance. He noted they are at the mid-point with a review of the first half very shortly so progress is being made.

*****It should be noted Lori Snyder leaves at this time.*****

22. Attorney Kolbus spoke of last month's incident involving a petitioner's staff report being amended, inadvertently sent out, and not being sent out after the fact, etc., involving Brent Martin, and Loren Sloat was his attorney. He said he met with Kathy, Chris, and Brian and tried to find out the best they could of what occurred. He explained that the staff has a procedure when they do these staff reports that they meet as a group, and Kathy types them up in rough form as they go through and they make their staff recommendations. Then they go to another staff member who cleans them up and sends them to Brian as the Zoning Administrator. Brian makes any changes and then clears them. The same staff person who assists in cleaning up the reports gives them to Marc Watson to complete the page numbering because they include the maps. Lastly, a different staff member get them all printed out, with envelopes to the petitioners and their representatives, and mails them out. He indicated that is the general procedure of what occurs. In the case, when the Zoning Administrator told the staff member, the reports were "good to go" to allow for mapping and mailing, he did indicate that one staff report was going to be revised. The staff person involved did not pull the staff report at that time. She indicated after the fact when it was discussed that she should have pulled it from the printout materials. He noted the Zoning Administrator also did not verify that it had been pulled and was under the presumption that it had been. It continued in the process and got numbered. The individual who sends the notices out and does the mailing had been on vacation. When she came back, basically in a day's time had to do two or three days works to get everything completed and sent out. She was told by this other staff person that there was an amended staff report coming for one petition. In the rush to get everything out, either it wasn't communicated between them that it had to be pulled and it wasn't asked if the report was still in, and everything was just sent out. There was an error there that was a lack of communication and a lack of oversight of verification that staff report was pulled. So that went out to everybody.

He further explained that Brian was waiting on information from IDEM, and he got it late which is the why the staff report revisions were made late. When he made his revisions, it was then printed and given to the staff for mailing. As Brian had assumed or presumed that it was pulled, he made no further contact to the petitioner's representative because he thought all they were getting was the amended staff report. Had he known, he indicated that he would have at least e-mailed Mr. Sloat and probably called him to let him know he would be receiving an amended staff report. A miscommunication led him to not taking action that he would have otherwise taken when they revised the staff report. Then, it went out only to the petitioner, and that was the only issue that they couldn't determine, was why the revised staff report was only sent out to the petitioner and not also to the representative. Mr. Sloat would have received his revised copy on Tuesday so he still would have done his work over the weekend. The key there would have been that had Brian known what had happened, he would have gotten in contact with Mr. Sloat somehow. He noted there was no clear explanation, and they could not determine why

that happened with the second report not getting to the representative. All in all, he said nothing was done intentionally or to deceive anyone. He believes it was just a matter of the circumstances impacted highly by someone being on vacation and trying to get things done and a lack of communication and follow-up which allowed the event to occur. Mr. Godlewski added that he also felt that the complexity added time to the revised report.

Mr. Kolbus indicated he and staff have spoken and talked about some things staff can do in the future. The process will be reviewed with staff again. They need to authorize staff when there is a revision to pull it and he suggested that possibly there was a question of whether or not she should have pulled it but she wasn't directly told to so she didn't. There has got to be a more direct line of communication and follow-up by Brian to make sure these things get done. He said the circumstances led to an event that hopefully won't reoccur. Mr. Homan added that it was a complex request because no one knows really what a digester is or how it will impact the environment, IDEM, Elkhart County, BZA, Zoning, etc. Listening to this explanation, he questioned if staff was still waiting on discovery and educational information, why there ever was a staff report done in the first place or if staff has the latitude to table the petition to allow more time to finish the investigation. Mr. Mabry indicated that is a valid recommendation. He did explain that they try to have everything on the agenda as planned. He noted they have a staff meeting prior to the staff report being written, and they draft one as a result of that meeting using their knowledge and experience. They had not heard back yet from highway so they were thinking that was going to be an issue so it was written as if it were but having proactively contacted them to get some information. He suggested their rough draft staff report is a placeholder with their views as planners but not engineers of what type of traffic impacts this could have had. He thinks it is a valid concern that they would not just be so absolutely concentrated on moving something forward to the agenda if there is some uncertainty.

Mr. Godlewski noted the additional factor playing into this, which the Board may not feel as strongly as staff does, but the petitioner always has a time line. They were under the presumption at one point that the petitioner wanted to file for both a rezone and a BZA petition. Mr. Godlewski noted they did not file for the rezone in order to help their schedule of timing. He also suggested the possibility that if one got denied, maybe the other would get approved. He also noted that apparently, this needs to be built in October which is probably not a realistic time schedule on their part. Attorney Kolbus noted he thinks Mr. Homan brings up a good point saying there has to be some balance because usually the commitments take approximately a week to get done which then has to be signed and recorded prior to the zoning clearance and building permit being issued. He noted he believes in this case he was told that a representative was in the next day after the hearing asking for the commitment already. He feels there was really undue pressure to move it forward. But he agrees staff has to have some latitude to pull back. Mr. Homan noted that sometimes they get requests for things that are totally new, like wind turbines and solar farms. There is new technology that will impact land use in the county, and it is going to take time for staff to get up to speed and come up with a report. Mrs. Wolgamood said she was under the impression that the original staff report was for denial. With additional information that Brian obtained, the recommendation changed. She suggested maybe that's the point when the old report should have been deleted and the new one inserted instead of waiting for it to get all the way down the line. Mr. Mabry said as staff learns more, they sometimes change their recommendations. He also noted there is a watermark of "draft" across

the pages of the initial staff report. At some point when he believes everything looks good, then he consciously removes it which will prevent any unintentional drafts from being distributed. So, they are trying to keep an eye on that. Mrs. Wolgamood noted that is a good idea and appreciates what Mr. Kolbus and staff have done in the report back.

23. The meeting was adjourned at 12:50 pm.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary