

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21ST DAY OF MARCH 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 Vice Chairperson, Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. A motion was made and seconded (*Wolgamood/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of February 2013 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/Wolgamood*) that the legal advertisements, having been published on the 9th day of March 2013 in the Goshen News and on the 10th day of March 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/Campanello*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

5. There were no postponements of business items.

6. The application of ***R & B Sherck Land Inc.*** for a 3 to 1 depth to width ratio Developmental Variance for proposed lot ‘A’ and for a 3 to 1 depth to width ratio Developmental Variance for proposed lot ‘B’ on property located on the East side of CR 31, 1,758 ft. South of CR 10, in Washington Township, zoned A-1, came on to be heard.

Mr. Mabry said there is a request to table this item [*attached to file as Staff Exhibit #1*] as the property is in litigation. He reported that the plat was tabled earlier this month at the Plat Commission meeting until the April 2013 meeting. He indicated the letter does not specify as to the length of time for tabling, but he stated Mr. Greg Shock verbally stated he is hoping to table until next month.

Mrs. Wolgamood asked if there was anyone in the audience present with any interest in this petition. No one appeared to be present. She also suggested if this petition is tabled, neighboring property owners should be renotified.

The public hearing was closed at this time.

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

Motion: Action: Tabled **Moved by** Doug Miller, **Seconded by** Tony Campanello, that this request for a 3 to 1 depth to width ratio Developmental Variance for proposed lot ‘A’, and for a 3

to 1 depth to width ratio Developmental Variance for proposed lot 'B', be tabled until the April 18, 2013 meeting of the Elkhart County Advisory Board of Zoning Appeals with neighboring property owners to be renotified.

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

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

7. The application of *Sam Burns and Avery Aragona (buyers) and Andrew Odebrecht and Larry D. Smith(sellers)* 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 South side of CR 20, 402 ft. West of CR 31, in Jefferson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #OCR 20-130225-1*.

There were five neighboring property owners notified of this request.

Mel Boyce, Choose The Right Construction, 58843 CR 115, Goshen, was present on behalf of Sam Burns and Avery Aragona. He said they are building a house for the petitioners, and the proposed garage is larger than house which is the reason for the variance. When Mr. Miller asked, Mr. Boyce confirmed that the buildings will be built concurrently. Mr. Boyce added that the garage will be attached to the house.

Mrs. Wolgamood expressed some confusion about the actual size of the structure. Mr. Boyce stated it is 60'x75'. She noted #11 of the questionnaire indicates there is 2,300 square feet of living space, but it is unclear how this amount is determined. Mr. Boyce reported the residence is two stories with the second story being approximately 700 sq. ft. With the garage being approximately 3,700 sq. ft. and 2,300 sq. ft. of living space, she concluded the requested variance is approximately 1,400 sq. ft. Mr. Homan pointed out that the elevation does not appear to match the floor plan making the site drawing look off. Mr. Boyce reported there were some minor changes made, and he did not wish to confuse the issue by resubmitting the changes. He stated they did move the entry door on the other side of the living room.

There were no remonstrators present.

Mrs. Wolgamood inquired about the height of the accessory structure which Mr. Boyce stated is a single story building with 16 ft. to bottom of the trusses and 20 ft. to the peak.

The public hearing was closed at this time.

Mr. Homan inquired and Mr. Mabry confirmed that staff would obtain a complete set of drawings for the zoning clearance.

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 Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the

grant and construction work completed within one year from the date of the issuance of the building permit (where required).

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

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. The accessory building may only be used for personal storage.

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

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

8. The application of *Laverne C. & Elnora Mast* for a Special Use for a home workshop/business for a farrier service and buggy wheel repair business (Specifications F - #45) on property located on the West side of CR 37, 460 ft. North of CR 28, common address of 59915 CR 37 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 #59915CR 37-130225-1*.

There were nine neighboring property owners notified of this request.

Laverne Mast, 59915 CR 37, Middlebury, was present on behalf of this request. In the process of getting a building permit for a barn addition, it was discovered he needed to get a Special Use for a home workshop/business. When Mrs. Wolgamood asked how long he has been in business at this location, he said he has been full time for approximately a year which was a gradual transition from part-time which was approximately five years. He stated he is the only employee. In response to Mrs. Wolgamood's question about hours of operation, Mr. Mast said he is in the workshop from 8 a.m. to 3 p.m. on Mondays and Fridays. He added that the rest of the week he operates at the different sites out of his trailer he takes on the road. He also noted his schedule varies.

In reference to the large size of the building, Mrs. Wolgamood asked if entire operation is moving to the new building and vacating the current building. Mr. Mast indicated his long term plan is to move into the new building which he anticipates using mostly for supplies and storage as his business increases. He said he cannot increase the business with what he has right now, and he wants room for future expansion 10-15 years down the road when kids are older, will learn the business, and work with him.

Presently, he indicated the front door of the barn is approximately 30 feet from the house, and he would like to be located farther away for added safety. He added that he also plans to have another drive way that is also farther away from the house. Mr. Miller confirmed that the new building is tied to the existing building by an overhang roof which Mrs. Wolgamood confirmed is entirely open except for the roof. Regarding #15 of the questionnaire stating the size of 15'x20' will be utilized for the workshop, Mrs. Wolgamood asked about the possibility of using more of the building than the stated amount. Mr. Mast said he does not anticipate using more space for the workshop as the 50'x20' will be a permanent wall. He added he might use additional space for storage only as he can purchase supplies in larger quantities. The remainder

of the building will be used for personal storage such as his trailer and buggy according to Mr. Mast.

When Mrs. Wolgamood asked if he makes the horse shoes, Mr. Mast said he buys them but then modifies them to fit each horse. Mr. Homan pointed out that the home workshop/business has specific definitions and asked if he is familiar with those limitations. Mr. Mast stated he understands those regulations and has no problem with abiding by them. Regarding the small 2'x2' sign that is on the existing building at this time, Mrs. Wolgamood asked Mr. Mast if he will be relocating that sign to the new building, and he indicated yes.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Robert Homan, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a farrier service and buggy wheel repair business (Specifications F - #45) be approved with the following condition imposed:

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

The following commitments were also imposed:

1. Approved in accordance with the site plan submitted, the petitioner's testimony, and as represented in the petitioner's application.
2. Approved for a period of five years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

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

9. Staff Item for Dave Gunn(20031344) – see Item #20 on Page 17.

10. The application of *Board of Commissioners of the County of Elkhart Indiana* for a Special Use for a county or governmental building to allow for truck and salt storage in an A-1 district (Specifications F - #52) on property located on the Southeast corner of CR 38 and CR 17, common address of 21968 CR 38 in Elkhart Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #21968CR 38-130225-1*.

There were five neighboring property owners notified of this request.

Brad Mosness of Abonmarche Consultants, 750 Lincoln Way East, South Bend, was present representing the Board of Commissioners of Elkhart County on the proposed request for a Special Use for a truck storage barn for the highway trucks and a future salt shed. He explained the site includes two properties owned by the Elkhart County Board of Commissioners. He said the property closest to CR 17 has two existing structures. He reported one is a former residence that is presently being used as a small office and the one more to the south is just a small storage shed or barn. He added that ultimately both of those will be

removed. On the second property to the east, there is an existing residence that is currently being used as a rental. If the Special Use is granted, he said the next step would be preparation of a subdivision plat to create two separate lots with one to possibly sell in the future and one for the truck storage barn and salt shed.

Mr. Mosness noted there are two access points for the project with an existing right in and right out on CR 17 and a new access would be installed off of CR 38 to accommodate the highway trucks. He said the purpose of this request is to allow the county to better service this area of the county for snow removal and road maintenance. He reported the Commissioners agree with the staff's comments. He noted the addition of landscape buffer adjacent to the proposed lot where the residence is located between proposed location of garage and residence.

When Mrs. Wolgamood inquired about a possible time frame for the salt shed, Mr. Mosness said it is unknown. He said the storage barn for the trucks will be designed and bids will be obtained if approval of this request is received. He added that the building may be constructed in phases depending on bids and funding. Mrs. Wolgamood asked if the 48'x288' building will be built in phases or if the separate buildings may be constructed in phases, Mr. Mosness said the 48'x288' facility may be constructed in phases depending on the bids.

Regarding landscaping, Mrs. Wolgamood noted the proposed landscape buffer screening around proposed Lot 2 and inquired about anticipated completion. Mr. Mosness reported it was previously stated during meetings that it will be completed when they construct the storage barn which is anticipated to be completed this fall. When Mr. Campanello asked about proposed Lot 2 being large enough for adequate septic, Mr. Mosness said there is the current septic and a reserve area. Mr. Campanello inquired about the location of the well head distance to the potential septic area. Mr. Mosness said the existing well for the residence is in front of the home by CR 38, and they kept the mandatory separation radius as required by the Health Department.

Regarding the salt shed, Mrs. Wolgamood asked about potential for salt melting, leaching out into the soils, and possibly contaminating wells. Mr. Mosness said they have not really addressed those issues yet as it is a future project. Under normal circumstances, he said he knows there has been discussion of a concrete foundation, concrete floor, a concrete encasement area for protection of the material and potential wash away. He noted the proper permits will be secured in the process.

When Mr. Campanello asked how tall it will be, Mr. Mosness indicated he is unsure of the salt shed but the truck storage barn will be roughly 25 feet to the peak with a hip roof. Mr. Hesser inquired about the fingerprint on the site plan at the south part of the storage barn where there is a swirl. Mr. Mosness stated those lines are existing elevation contours, and it is showing a small pile of soil that will be removed.

Mr. Homan inquired about the process to remove the Special Use from the new plotted Lot 2 parcel. Mr. Mabry suggested bringing it back before the Board as a minor change if there are no legal objections. Attorney Kolbus added that once the minor change is approved, the commitment will need to be rescinded as it pertains to that particular lot as an extra recorded document.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood pointed out there are actually no neighboring property owners other than the Commissioners.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a county or governmental building to allow for truck and salt storage in an A-1 district (Specifications F - #52) be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The secondary plat for this property must not be approved until the Board of Zoning Appeals removes the Special Use Permit from proposed lot 2.

The following commitment was also 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, and Randy Hesser

11. The application of **James Mullins, Jr. & Stephanie L. Mullins** for a Special Use for a home workshop/business for a welding business to include wholesale/retail sales (Specifications F - #45) on property located on the East side of CR 23 (Division Street), 230 ft. South of 3rd Street, being Lots 3 & 4 of Cowan's Add., common address of 68260 CR 23 in Jackson Township, zoned R-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68260County Road 23-130222-1*.

There were 43 neighboring property owners notified of this request.

Stephanie Mullins, 68260 CR 23, New Paris, was present on behalf of this request. For clarification, she said this is not a welding shop but a canopy business. She explained that her husband manufactures a few parts for the canopies, and they would like to be able to do that in their garage. She said they were located four or five blocks down the road across from Romotech in a building. As they currently both work full-time jobs, she explained this is a side business in the evenings and on weekends. She said they purchased the canopy business in 2011, and their goal is for her husband to continue to work his full-time employment until the canopy business loan is paid off. Their long term goal is for her husband to eventually be self-employed full-time and have a weld shop.

The previous location had welding capabilities but they were paying more than \$2,000 per month in overhead for the part-time business. As they were not making a profit, they would like to move the business to their garage. She explained that her husband does weld the parts which she showed to the Board *[photo taken of parts to be placed in file]*. She reported he welded a batch of parts six times last year which totaled approximately 60 hours of welding time for the year. She reported he uses a mig welder with a little jig that sits on a workbench. After he welds a batch of parts, they are placed in bins until they are sold along with the tarps and bungees that they purchase. She stated they also make another part that is a "tie down" but welding is not involved. She reiterated that this is not a welding service and/or repair shop.

Although they just recently purchased the business, she said it has been in existence for 35 years. She noted they ship to 95% of their customers throughout the nation, and the remaining 5% of their business is local. Mrs. Mullins said they order in the tarps from California and Michigan, and their inventory is stored on shelves in the garage. She said they do not have business hours as it is not a store or shop. She noted if a phone order is taken, a customer might then stop by to pick up their order.

Mr. Campanello asked about tubing that goes in between the welded parts. Mrs. Mullins stated it is one inch conduit for the legs and framing. She said they do not sell it as they do not ship it because of the expense. She indicated they recommend customers purchase the conduit themselves at their local hardware store. In some cases, her husband does cut the conduit for customers on a small band saw. She noted they sell everything but the piping.

At this time, she submitted letters from neighbors in support of their business *[attached to file at Petitioner Exhibit #1]*. When Mrs. Wolgamood asked if customers come to their house, Mrs. Mullins stated approximately once a month. Regarding Mrs. Wolgamood's question concerning outside storage, Mrs. Mullins stated all of their supplies and inventory are stored in their garage. Concerning deliveries to their location, Mrs. Mullins stated they get UPS deliveries. Once a year, she stated the welding gas is delivered by a flat-bed truck. She stated they do not have any semi-truck deliveries.

When Mrs. Wolgamood questioned the number of employees, Mrs. Mullins said she does bookkeeping, her husband does the welding, and their son helps box up the orders. Mrs. Wolgamood mentioned she wished this request was not listed as a welding shop. Attorney Kolbus suggested this is possibly a home workshop/business for a canopy business. Mr. Homan noted staff was concerned about the welding aspect of the business. From a public safety standpoint, he asked if they store any gases such as acetylene for use in the manufacturing process. Mrs. Mullins said they have one tank that comes from Pro Air, which is where they get the weld gas, but she does not know what is inside the tank. Mr. Campanello pointed out probably every garage on that street has a tank of propane that is just as volatile. Mrs. Mullins mentioned there is actually someone doing welding repair and service approximately one block away from them. She submitted a list of parts they sell to customers *[attached to file as Petitioner Exhibit #2]*.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he feels this is very low-key and any gases sound like normal things that would be stored in other garages on a regular basis. Although Mrs. Wolgamood said she does not disagree, Mr. Miller pointed out the representation is much different than what the application indicates. Based on Mrs. Mullins' representation, Mrs. Wolgamood expressed feeling the welding is secondary to what they are doing in the canopy business. Mr. Homan asked if the Board can change the petition from a welding business to a canopy business on the fly without re-advertising. Attorney Kolbus suggested leaving it as a welding business for the manufacturing or production of canopies. Mr. Homan said he would like to restrict it because if it is a welding business, it can be any kind of welding. Mr. Hesser said he has no problem approving this based on what has been represented but whenever the Board deviates from the staff analysis that recommends denial, the members are left to come up with the conditions and commitments on the fly or by stating "as represented". With the public hearing having been closed, he suggested this application be tabled to have staff prepare conditions and commitments.

From his perspective, Mr. Mabry stated the reason it was advertised as a welding business is that of the activities taking place on the property, the welding aspect was the most intense issue. As far as what has been presented, he indicated he believes staff would be open to an approval at this point. Regarding commitments or conditions on the fly, he noted they would be pretty standard with possibly the only unusual commitment being that any welding must be related to the manufacturing of canopies and keeping the standard conditions and commitments that would normally go along with any other Special Use permit. Attorney Kolbus asked if this request was complaint based which Mr. Mabry indicated it was not. Mr. Kolbus stated if this request were tabled with the direction to the staff to prepare findings in favor and conditions and commitments, no one will take enforcement action. In the meantime, he said they can continue to operate until next month when it can be brought back and acted upon.

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

Motion: Action: Tabled, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood, that this request for a Special Use for a home workshop/business for a welding business to include wholesale/retail sales (Specifications F - #45) be tabled until the April 18, 2013 Board of Zoning Appeals meeting to allow the staff to prepare Conditions, Commitments and positive Findings for this Special Use Permit.

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

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

12. The application of *Enos R. & Carolyn M. Yoder (owner) and Kenneth Bontrager (buyer)* for a Special Use for an agricultural use for the keeping of two horses on a tract of land containing less than three acres (Specifications F - #1) on property located on the West side of East County Line Road, 530 ft. South of CR 26, common address of 60099 East County Line Road 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 #60099ECountryLineRd-130220-1*.

There were four neighboring property owners notified of this request.

Harley D. Bontrager, 57342 CR 116, Middlebury, was present on behalf of the petitioners as he is the contractor for the barn. He indicated there is a good chance the petitioners will have only one horse, but he listed two just in case. He said the horses will just be used for transportation. He added that the size of the barn is not confirmed, but it will not be any larger than what is proposed and may actually be smaller. Mrs. Wolgamood inquired about the length of time this parcel has been just one acre. He said he does not know for sure, but he is assuming it has been a fair amount of time because he built the property next door to the south which is off the farm farther south. Mrs. Wolgamood pointed out the property to the south showing the adjacent barn. The proposal for the barn and horses for this property are to be located on the northwest side of the property, closest to the single family residence. She asked if there is any reason the barn and horses cannot be located on the south side and away from that neighboring residence. Mr. Bontrager reported the septic system is on the south side of the house. He indicated the owner would rather be on the south side.

Mrs. Wolgamood asked if there has been any conversation with the neighbors to the north. Mr. Bontrager stated he is not aware of any conversation but stated the property to the

north is owned by relatives of the neighbors to the south. Mr. Homan asked how close those buildings will be and suggested the site plan is not drawn to scale. Mr. Bontrager indicated he did not have the exact measurement and noted the garage is on the end of the residence closest to the proposed barn. When Mr. Homan asked about building codes restrictions for how close buildings can be to a residence, Mr. Mabry indicated the building code is 5 ft. Mr. Hesser inquired about the distance from the north property line which Mr. Campanello and Mrs. Wolgamood said is 28 ft. Mr. Campanello suggested possibly turning the barn. Mr. Bontrager said he was sure the homeowner would consider that if they need to keep the barn further away. He also noted the house to the north is owned by an Amish family so he is sure they have a horse.

There were no remonstrators present.

Concerning Mrs. Wolgamood's earlier question regarding when the parcel was created, Attorney Kolbus said the staff files shows the year of the deed for the one parcel was 1987. When Mrs. Wolgamood asked if he knew if there were ever horses on the property before, Mr. Bontrager said he did not know.

The public hearing was closed at this time.

Mr. Campanello said he feels the property owners to the north and south are probably in conversation. Mr. Hesser pointed out they would have been notified, and they are not present to object. He did note that he would like a corrected site plan that is drawn to scale but expressed no concern with two horses. With the site plan not being drawn to scale, Mr. Homan expressed concern that the building might be as large as the house. When Mrs. Wolgamood asked Mr. Homan if he would be more comfortable reviewing the revised site plan, he said as long as an accurate site plan is submitted for the Building Department to review before the building permit is issued, he said it probably would not change his mind. Mr. Hesser pointed out that the measurements are on the site plan. Mr. Campanello asked staff if it is redundant to ask for a site plan because the Building Department will be getting one during the permit application process. Mr. Mabry said the Building Department would be getting one for the Improvement Location Permit for the barn, but it would be nice to have an accurate site plan that goes along with this approval to compare it to.

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 an agricultural use for the keeping of two horses 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 Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A corrected site plan drawn to scale showing the location of the pasture, the new building, fencing, etc., to be submitted for placement in the Special Use file prior to the issuance of an Improvement Location Permit.

The following commitment was also 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, and Randy Hesser

13. The application of *D. Conrad & Lynette Showalter* for a Special Use for solar panels (Specification F - #31.50) on property located on the West side of CR 33, ½ mile South of CR 34, in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #00CR 33-130220-1*.

There were 10 neighboring property owners notified of this request.

Conrad Showalter, 63469 CR 33, was present on behalf of this petition. He said he has been interested in alternate energy for a long time, and he became aware of the program with NIPSCO. When Mrs. Wolgamood asked if this will service anything other than selling it back to NIPSCO, Mr. Showalter said not at this point. He said they have dreamed about possibly putting a home in the back portion of this parcel at some point but that would be a totally separate possibility. At present, he said it would simply service the solar panels. Mrs. Wolgamood inquired about the height of the panels when they are in place. Mr. Showalter stated he believes they are approximately 15 ft.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan stated his only question is if this property is buildable which Mrs. Wolgamood said it is not. Mr. Homan pointed this out because he wanted Mr. Showalter to be aware of that fact if Mr. Showalter had any inclination of this ever servicing a house on the lot.

When Mr. Campanello asked if Mr. Showalter is able to put more there than he is requesting, Mrs. Wolgamood indicated this request is for only one panel. Mr. Hesser pointed out he could come back to the Board and ask for more. Mr. Hesser asked for clarification on the wording of solar panels and solar panel array. Mr. Mabry indicated he believed an array is the whole set of panels and a panel is one of the squares. Mr. Mabry pointed out it would be an amendment to the Special Use if the petitioner came back to the Board requesting additional arrays.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for solar panels (Specification F - #31.50) be approved with the following condition imposed:

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

The following commitments were also imposed:

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

2. The solar panels must be removed from the property when no longer providing a source of electricity.

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

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

14. The application of *D. Conrad & Lynette Showalter* for a Special Use to allow for the placement of solar panels (Specifications F - #31.50) on property located on the West side of CR 33, 2,500 ft. South of CR 34, common address of 63469 CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #63469 CR 33-130129-1*.

There were eight neighboring property owners notified of this request.

Austin Williams of Home Energy LLC, 56225 Cedar Road, Mishawaka, was present on behalf of the contractor. He explained this request is the same as the previous one with the same size array. He noted 44 panels make up the array. This array would be on the land in a similar location but each array will be on their own parcel. When Mrs. Wolgamood asked if this solar panel array will be used for the residents in the bed & breakfast, Mr. Williams said it will be sold to NIPSCO. He stated it will all go through the meter and will be used in the neighborhood. When asked if the petitioner is doing this to heat or put electricity to his house, Mr. Williams indicated it is not the primary purpose. He reported NIPSCO's contracts are 15 years with the warranty life of the panels being 25 years. He added that after the 15 year mark, the meter will be repurposed and changed to service the house. To satisfy the requirements of the program that NIPSCO has now, he explained that is how the energy will be counted. Mrs. Wolgamood inquired if this array is also 15 feet in height which Mr. Williams indicated that was correct. When Mr. Campanello asked about possible hail damage, Mr. Williams said they have a warrantee for up to one inch hail.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Doug Miller, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use to allow for the placement of solar panels (Specifications F - #31.50) be approved with the following condition imposed:

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

The following commitments were also imposed:

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

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

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

15. The application of *DMZ Properties, LLC* for an amendment to a site plan to allow for the placement of a digital sign, a 10 ft. Developmental Variance to allow for the said sign 45 ft. from centerline of the right-of-way of SR 13 (Ordinance requires 55 ft.) and a 140 ft. Developmental Variance to allow said sign 160 ft. from an existing residence (Ordinance standard requires 300 ft.) on property located on the East side of SR 13, 2,215 ft. North of US 20, common address of 57600 SR 13 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 #57600SR 13-130225-1*. When Mrs. Wolgamood asked the use of the property on the Northwest corner of Orpha Drive and SR 13, Mr. Hesser noted it is Ritchie's Auto Sales.

There were 46 neighboring property owners notified of this request.

Randy Whiteman of US Signcrafters, 618 Leland Avenue, South Bend, was present on behalf of this request. He indicated they would like to install a sign centered on the front of the clubhouse. When Mr. Hesser inquired, Mr. Whiteman pointed out the old sign locations on the aerial photo. Color photo of proposed sign submitted [*Petitioner Exhibit #1 attached to file*].

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser confirmed that the Special Use is because they are amending the site plan. In the photo with the sign, Mr. Homan asked about the three foot marking which Mr. Whiteman explained is 3 ft. from parking lot pavement to edge of sign.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that the request for an amendment to a site plan to allow for the placement of a digital sign be approved with the following conditions imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Prior to the issuance of a building permit, the petitioner must remove the existing northernmost unused sign along SR 13 on the subject property.

The motion further reflects that in accordance with the Staff Analysis, the requests for a 10 ft. Developmental Variance to allow for the said sign 45 ft. from centerline of the right-of-way of SR 13 (Ordinance requires 55 ft.) and a 140 ft. Developmental Variance to allow said sign 160 ft. from an existing residence (Ordinance standard requires 300 ft.) be approved with the following condition imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).

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

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

16. The application of *Benton Mennonite Church, Inc.* for a Special Use for a church (Specification F - #48) and for a 15 ft. Developmental Variance to allow for parking 0 ft. from

the North property line of lots 39 & 40 and from the requirement of screening of the proposed parking area on property located on the Northwest corner of CR 44 and Courtland Street, and the Southeast corner of Clymer Street and Jackson Street, being Lots 27, 28, 37, 38, 39, and 40 of Clymer's 2nd Add., common address of 15350 CR 44 in Benton Township, zoned R-3, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #15350CR 44-130218-1*.

There were 31 neighboring property owners notified of this request.

Enos Yoder of D. J. Construction, 57594 Heritage Way, Goshen, was present representing the church. He reiterated that this request is two-fold to establish a Special Use for the church to allow some future expansion and site improvements and to request a Developmental Variance for both setback and screening exemptions. As background, he explained the church which was established in about 1880 on this site has not had prior BZA action. He said it became Benton Mennonite Church in approximately 1950. He added that they acquired the parcel to the south and combined it with the main church parcel some time ago. The parcel to the west has also been acquired, and they are in the process of having it combined into one large parcel. Mr. Yoder indicated the L shaped property represents all the contiguous property holdings that the church has.

Presently, he said the church has their fellowship area, kitchen, and restrooms in the basement. He pointed out that this area suffers from water at times which is not very environmentally suitable. The main goal that the church has been working towards is getting the basement facilities up on the main floor to make them much more useable and suitable. He mentioned this will require expanding the building which requires making some changes to the parking lot. He noted in this process, they would like to make some improvements. He said they cannot accomplish the desired improvements on the property if this variance is not approved.

When Mr. Hesser asked about parking presently, Mr. Yoder pointed out parking areas on the aerial photo. Mr. Yoder indicated the parking area is limestone when Mr. Hesser inquired about the surface. Mr. Hesser confirmed that if the parking was at the property line, the parking would still be approximately 15 ½ feet from the edge of the road. Mr. Yoder said this would make some great improvements for the church and make it much more useable. He added that this is not meant to be a growth component but just intended to improve their ministry.

As 90 days is a little quick for them to get a permit pulled, Mr. Yoder requested 180 days. Staff noted no objection to that. When Mr. Campanello asked about the storm water retention in the parking lot to the south, Mr. Yoder said they are designing it with catch basins and want to grab it to the south. He added they could possibly use some storm water retention in the green space, but he needs to have approval from the Highway Department first. Mrs. Wolgamood inquired about the little strip of parking along Courtland Street being turned into green space. Mr. Yoder indicated they would still request it to be off-street parking for overflow. He noted it will be parallel parking.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **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 the request for a Special Use for a church (Specification F - #48) be approved with the following condition imposed:

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

The following commitment was also imposed:

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

The motion further reflects that in accordance with the Staff Analysis, the request for a 15 ft. Developmental Variance to allow for parking 0 ft. from the North property line of lots 39 & 40 and from the requirement of screening of the proposed parking area be approved with the following condition imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).

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

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

17. Zoning Ordinance Update – see Item #21 on Page 17.

It should be noted the meeting was turned over to Robert Homan, Secretary, as Randy Hesser and Doug Miller stepped down at this time due to conflict and Alternate Board member, Lori Snyder, stepped in. For the record, Ms. Snyder's Certificate of Residency is now submitted [attached to minutes as Staff Exhibit].

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

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #54257CR 7-130118-1*. He noted this petition was tabled last month due to the lack of a quorum.

Mrs. Wolgamood asked about the staff notes from last month making reference to the Highway Department which is removed from the Staff Notes on the Revised Staff Report. Since the previous hearing, Mr. Mabry said he talked to Deb Johnson of County Highway, and stated he misunderstood them or they changed their position related to improvements at the end of Shady Lane at CR 7. He stated she clarified the issue for him.

There were nine neighboring property owners notified of this request.

Blake Doriot, B. Doriot & Associates, P.O. Box 465, New Paris, was present with the petitioner, Mark Corpe, on behalf of this petition. It is noted Mr. Doriot submitted a packet

containing a letter from Elkhart County Highway, a letter from Osolo Township Fire Department, and four aerial photos at the beginning of this hearing *[attached to file as Petitioner Exhibit #1]*. He noted they disagree with the first item in the Staff Report as the neighbors are all family members, and the land has no other use. He submitted a signed petition *[attached to file as Petitioner Exhibit #2]* and pointed out those residences on the aerial photo. Regarding the question upon the Highway Department, Mr. Doriot noted the letter from County Highway included in Exhibit #1, and he also indicated he spoke to Jeff Taylor, Highway Department Administrator on the telephone this morning. Mr. Doriot reported the Highway Department has no desire or funds to provide additional maintenance to Shady Lane and would prefer it not become their responsibility. Mr. Doriot noted Mark Corpe went to the Jerrold Miller, Chief of the Osolo Township Fire Department, who also prepared a letter which was included in Exhibit #1 and was read by Mr. Doriot. In talking with the Fire Department, Mr. Corpe has agreed to better mark the entrance of the private road, and some grading of the roadway will be done to improve the surface.

When Mrs. Wolgamood inquired about the addresses being CR 7 and not Shady Lane, Mr. Corpe said Shady Lane was dropped in the 1970's and noted Shady Lane is in Sturdy Oaks on the north side of Elkhart. Mr. Doriot reported this private drive has been there for 50 years. Referring to the aerial photos in Exhibit #1, Mr. Doriot gave history on the past and existing residences located on the private drive to show the continual improvements being made there. He said the proposed \$300,000 home will increase the neighboring property values. He pointed out the larger parcel of land owned by the petitioners is not suitable for building, has a county regulated drain, and is marshland. He stated he felt emergency vehicle access was a major issue of concern for staff. He reiterated comments from the Fire Department and reported Mr. Corpe is going to put in either a circle driveway or gravel turn-around to aid emergency vehicles should the need arise.

Mark Corpe, 50893 Cottage Avenue, Elkhart, said he has lived in the Elkhart area most of his life and would really like to build a house there surrounded by family. He stated they would like to build this residence as their retirement home and reside there the rest of their lives with half of the home being handicap accessible. He reported his son will continue to reside behind them so he can help as they get older. As far as maintaining the private road, he noted growing up there that was one of their chores. He said he purchased the property after his parents passed away. Mr. Corpe noted his brother, who resides to the north of their property, has lived there since approximately 1991 and does most of the grading of the road which is approximately three times a year. He mentioned possibly getting 20-30 tons of reconstituted concrete from the Bayer building demolition to layer the road and then grate which he said seemed to hold up the longest from the last time they maintained the road.

When Mrs. Wolgamood inquired about the location for a septic system, Mr. Doriot indicated the builder has been working on that but pointed out a building permit will not be issued if the builder does not get an approved septic system. He also said he believes there is adequate area for the septic. She asked if this has to go through subdivision regulations which he said does not with these variances. He added if it went through subdivision, it would be forced to pave a road. She inquired about the larger tract of land which Mr. Doriot stated is Mr. Corpe's but most of that area is pretty wet and has the regulated drain. She also asked about the property being lower than the elevation of CR 7. Mr. Corpe said he believes CR 7 is the same elevation

as where they are planning on building his proposed house and where the existing homes are located. Mr. Homan inquired about why the larger parcel to the east is even part of this petition. Mr. Doriot indicated they are both described on the same deed. Mr. Corpe stated the parcel to the east is owned by his sister. Since both parcels are on the same deed, Mr. Campanello asked if a septic could possibly be put over there if there is a problem with the Health Department, which Mr. Corpe indicated is correct. Mr. Doriot pointed out the possible location of a septic on the larger parcel.

Mr. Homan asked about another roadway off of Shady Lane on the aerial. Mr. Doriot said there is a 25 ft. easement for Shady Lane and he has found different configurations on different surveys that were done from 1940 to present and it has been there for at least 70 years.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan mentioned this is one of the most peculiar roadways he has seen since on this board. He said he does not see where it is a problem as it is only injurious to family members if the road not maintained. Mrs. Wolgamood said situations like this can become nightmares down the road. In looking at the land use aspect, she said she thinks they submitted the two best reasons for approval, being positive letters from the Highway Department saying they do not want the private road and the Fire Department saying they can get emergency vehicles back there. When Mr. Homan asked how soon they will be building, Mr. Corpe said they were supposed to begin construction in January with the house to be finished in June. For the sake of procedure, Mr. Homan asked if the Board moved for approval with the condition that the Improvement Location Permit be taken out within 90 calendar days from this date with construction within one year would work with their plan, Mr. Corpe said he believed it would as they would like to have the home built this summer.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood, that this request for a Developmental Variance to allow for the construction of a residence on property served by a non-maintained, unimproved county road be approved by the Board 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 based on the petition and supporting documentation.
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.

The following condition was imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).

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

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

Absent: Randy Hesser, Doug Miller.

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

20. Staff item for Dave Gunn (20031344) – major/minor amendment to a Use Variance site plan for a sign was presented by Brian Mabry. He stated Mr. Gunn submitted a letter requesting to erect a freestanding sign for his lawn care business located at 29281 County Road 12 in Elkhart which was approved for a Use Variance in 1998 with re-approval in 2003 with the addition of having snowplows. He indicated the size of the six square feet, four feet high, and 20 feet from the edge of the payment. He further added that would also be a measurement of 35 feet from the centerline of CR 12 and 10 feet back from the property line. Mr. Mabry stated it is a slightly larger sign than is allowed for a home workshop/business. He reported advising Mr. Gunn that if he wanted to request this as a minor change, he should propose something that was in line with a home workshop/business. In the minutes from the previous hearing, he pointed out there was one main remonstrator, Mr. Kreider, who had various objections to the original Use Variance request.

When Mr. Miller asked if there have been any complaints received against the business or against any signage there presently, Mr. Mabry indicated he did not believe there is any signage at this time, and he did not research Code Enforcement complaints. Mrs. Wolgamood pointed out there were several other remonstrators along with Mr. Kreider in 2003 who indicated there had been some violation.

Mrs. Wolgamood asked if the proposed sign is lighted or digital. Mr. Mabry said it is not digital and believes Mr. Gunn verbally reported that it is not lighted. When Mr. Campanello asked if they can approve it as a minor change for an unlighted and non-digital sign, Attorney Kolbus indicated yes. Mr. Campanello stated Mr. Gunn has a good reputation. Mrs. Wolgamood noted Mr. Gunn would have customer traffic because it is a wholesale nursery. She expressed she would not have an issue with it if there had been no remonstrators. Based on what she read in the minutes, she feels it is a major change. She added if he has been a good neighbor, he will get his sign. Mr. Campanello expressed agreement and stated that was fair.

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 considers this request a major change.

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

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

21. Staff item regarding the Zoning Ordinance update was provided by Chris Godlewski. He noted that the Staff Technical Committee is going through the second module which then will be passed on to the Policy Committee followed by the Plan Commission. He said all of module one has been completed. He further explained at that point the next time any group will see that is when the consolidated draft is going to be done. Mr. Campanello said the Technical Committee met and had some suggestions. He asked if those suggestions will be brought to the Policy Committee and shown which Mr. Godlewski said is correct.

22. The meeting was adjourned at 10:57 a.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Robert Homan, Secretary