

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF FEBRUARY 2014 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; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

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 16th day of January 2014 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Homan/Campanello*) that the legal advertisements, having been published on the 8th day of February 2014 in the Goshen News and on the 10th day of February 2014 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/Hesser*) 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 *Burnell R. & Shanda L. Weaver and Murray D. & Abigail A. Weaver d/b/a Yellow Creek Gravel* for an amendment to an existing Special Use for the extraction of gravel, sand and other raw materials in an A-1 district (Specifications F - #10) to include an additional parcel on property located on the East side of CR 11, 1,400 ft. South of CR 36, common address of 64341 CR 11 in Harrison Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #64341CR 11-140117-1*. He noted a correction in 9B of the commitments to delete the words, "and south". Additionally, Mrs. Wolgamood noted there are two item #10's so there are actually 18 commitments.

There were 16 neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. He noted the operation, which dates back to the early 1950's and possibly even the 40's, sat idle for a period of time, but reopened in 1996. Using a power point (included with the application in file), he noted the additional parcel they are requesting to add to the Special Use. During the current period of operation, it has been well received in the community and provides a great service to area farmers, cities, and towns. He reported some of the municipalities get their sand at a very reasonable cost and convenience from this business. As they are getting close to the property lines, they want to add Parcel 2 to the site. Referring to Exhibit C in the power point, Mr. Sloat noted the setback lines. When Mr. Hesser inquired about retail operations from the site as well, Mr. Sloat reported yes. For clarification, Mr. Hesser asked if upon completion, it

will be fenced all around except for the southern border which has the wooded area. Mr. Sloat confirmed that was correct. Mr. Sloat reported the conditions and operations will all remain the same with no additional trucks, and the request is to extend the life span of the business for an additional 15-20 years. He submitted a photo *[attached to file as Petitioner Exhibit #1]* which shows the view of the business which is below grade from the county road.

Referring to the 1997 approval condition #7 which indicated roads to and from the site shall be dust controlled within 30 days and maintained with crushed stone to prevent mud from being carried onto the highway, Mrs. Wolgamood noted that item has been eliminated in the new conditions and questioned why. Mr. Mabry explained that he was thinking about it being 30 days from that prior approval in 1997 so it seemed irrelevant today. He did say it appears there could be parts of it that would still be relevant today such as mud. Mr. Sloat reported that the petitioner exercises dust control measures. Additionally, he reported he believes a portion of the drive is now paved from the road back so they have a clean-off area for the trucks.

Burnell Weaver, 64341 CR 11, Goshen, was present on behalf of this request. He confirmed that the main drive going into pit was asphalted back in 2005 off of the county road, approximately 100 feet. Most of the mud is collected there instead of on the road, and they do maintain dust control under MSHA federal guidelines which requires them to water the driveway on a daily basis when needed. When Mr. Hesser suggested placing this commitment on the new section, Mr. Weaver reported they will be using the same entrance and will not have a new entrance to the pit.

Jan Ramer, 64568 CR 11, was present in remonstrance to this request. Pointing to her residence on Exhibit C of the power point, she indicated she is directly west of Parcel 2. She noted that Mr. Sloat verbally indicated there is 200 ft. between the road and Parcel 2, and the printed photo of the setbacks indicates 150 ft. She asked which measurement is correct, and Mr. Sloat said 150 ft. is the correct setback. She reported her concern is the direction of traffic and would be in favor of removal of the sign that indicates all trucks should go south because her property has the greatest amount of noise interference from this business. She stated she already hears all trucks coming/going from property the north or south and all of the machinery on the property. Including Parcel 2 will bring all of the noise closer to her home and directly behind it, increasing the noise that she will be living with. To eliminate some of the noise, she would request trucks be allowed to travel north and south on CR 11 because she doesn't want all trucks driving past her house. When Mr. Campanello inquired the length of time she has resided there, Ms. Ramer indicated approximately 18 years. She additionally noted the beauty of the rolling property and wildlife and expressed sadness to see more and more of the farmland in Elkhart County disappearing.

In response, Mr. Sloat said he believes in the 1996 approval it was a condition that all trucks exit south to go to SR 119, and he believes in 2003 it was modified somewhat. Mr. Weaver said previously a neighbor to the north requested that all trucks go south so the original sign was posted. He said at the 2003 meeting, he had a signed petition from neighbors to the south stating they did not want all trucks going south and preferred to let trucks travel in their preferred direction. He feels the issue did not get resolved at that meeting as far as the actual purpose of the sign. Further, he stated they ended up removing the sign because nobody really wanted the sign to begin with. Mr. Sloat stated he believed the directive was for trucks to exit to the south when possible which they do. Mr. Weaver said they collected signatures of 20-30

neighbors to the south on that original petition who did not want the directional sign for the trucks. He expressed feeling it is an undue burden on the neighbors to the south to have the sign attempting to direct trucks to the south. When Mr. Hesser asked if there is a sign now, Mr. Weaver said there is not a sign now and hasn't been since 2003. Mr. Hesser noted in 2003, there was a requirement for the sign, and it is in the new conditions as well. Mr. Hesser suggested the commitment for the sign should be removed.

Regarding the noise, Mr. Sloat said it is his recollection that neighbor's land was part of original farm which Mr. Weaver confirmed. He went on to say that he met with Jan Ramer last night, and they are going to see what they can do to remedy the situation for her which will be difficult because her property sits up on a hill overlooking the pit. He suggested they may build a mound to deflect sound. He said he understands her concern. When Mr. Campanello asked how long it will take to get to that farthest point towards her property, Mr. Weaver said it depends on how fast they sell it and noted they have not sought out large contracts. He said they have been staying more with smaller contracts to conserve their resources and have turned away contracts for the new US 31 by-pass south and the Prairie Street over-pass because of the large amount of material which would use up their supply in a much shorter period of time. He noted the cities and farmers really depend on them as a sand source because they are the only gravel store in this part of the county. Given that Parcel #1 has been in operation for nine seasons, Mr. Weaver said he would anticipate the same amount of time for Parcel 2. For information purposes, Mr. Hesser asked Attorney Kolbus to address the right to mining in a non-urban area and that it can't be prohibited. Attorney Kolbus said if it meets the definition of an urban area, then it would require a Special Use permit which is a certain number of houses within a quarter mile area from the boundary of the property. Mr. Hesser stated and Mr. Kolbus confirmed that is not the case here. Mr. Hesser noted under the statute, they can put conditions on it but they cannot prohibit it. Regarding the possibility of a mound, Mrs. Wolgamood asked if they would have objections to doing the mound first. Mr. Weaver said part of the parcel is being farmed so they hate to disturb any more ground than they have to because of the agricultural use. He noted they do keep small mounds up for safety reasons, but if they were to build a large enough mound, it's going to take away land for farming at this point. Mr. Sloat said he is not sure how much good a mound will do. Mr. Weaver said they need to look at the elevation to see what kind of effect a mound would have.

The public hearing was closed at this time.

In her opinion, Mrs. Wolgamood noted the request is a continuation of the operation that is already there, and she feels it is better there than in a completely new location. She further noted ingress and egress is already there, and they are in compliance with 99% of the previously proposed conditions. Additionally, she said she does not have an issue with eliminating the sign. Regarding the noise, she stated she does not know that the addition of Parcel 2 is going to increase the noise that already exists. Mr. Hesser commented that gravel pits are allowed, and he feels the petitioners have been good neighbors.

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 an amendment to an existing Special Use for the

extraction of gravel, sand and other raw materials in an A-1 district (Specifications F - #10) to include an additional parcel 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 (designated as Exhibits A, B & C respectively to petitioner's application) and as represented in the petitioner's application.
2. Hours of operation are 6:00 a.m. to 6:00 p.m., six days per week (Monday through Saturday). All times to be prevailing local time and provided, further, that nothing shall require the use to remain open during those hours. All gravel loading or equipment-producing noise shall be ceased after 6:00 p.m.
3. The Special Use Permit shall be valid until March 2036 and business may be conducted on a 12-month basis.
4. Exterior lighting for the premises, if any, shall be restricted to security lighting from dusk to dawn.
5. No exterior loud speakers shall be allowed on the premises.
6. Permanent buildings constructed on the site shall be constructed in accordance with plans and specifications approved by appropriate governmental authority with building permits issued by the Elkhart County Building Department.
7. The mining operation shall be conducted in compliance with all federal laws, rules and regulations imposed from time to time and administered by the United States Bureau of Mines.
8. Excavation areas shall be graded in such a manner as to prevent the collection of stagnant water.
9. The Special Use Permit shall be confined to the original 65 acre parcel (Parcel 1) and the additional 19.714-acre parcel (Parcel 2) to the south of Parcel 1, as said Parcels are designated on the submitted site plan.
10. For Parcel 1, the following setback lines shall be applicable to the gravel mining operation for materials storage and stockpiling, storage of equipment, excavations and the construction of permanent buildings;
 - A. 200 feet from the centerline of CR 11; and
 - B. 50 feet from adjoining properties to the north.
11. For Parcel 2, the following setback lines shall be applicable to the gravel mining operation for materials storage and stockpiling, storage of equipment, excavations and the construction of permanent buildings;
 - A. 200 feet from the centerline of CR 11;
 - B. 150 feet from the property line on the west side of Parcel 2 that is co-existent with Parcel No. 20-10-22-301-009; and
 - C. 50 feet from adjoining properties to the east and south.
12. The operator of the mining business shall be responsible for security of the property, including maintaining the existing 48-inch tall farm fence and gate and extending the fence along the portion of Parcel 2 exposed to CR 11, the east property line of Parcel 2 and the South and West property lines of Parcel 2 that abut Parcel number 20-10-22-301-

009; a collector area be provided for off road parking to avoid parking on the county road before the opening of the business; and the access shall be limited to the site from the present CR 11 entrance.

13. No asphalt or concrete shall be manufactured on the site without the prior consent of the Elkhart County Board of Zoning Appeals after public hearing upon notice to interested parties as required by Ordinance.
14. Only one stockpile of concrete permitted for both gravel pits (Scott & Karrie Clark - 971909).
15. Upon closure of the mining operation, all ponds and/or lakes created by the operation shall be banked and sloped leading to the water's edge with a slope not greater than three to one, and seeded with perennial grasses at the time of grading.
16. Petitioner permitted to crush concrete on-site four weeks out of every calendar year between October 1 and April 1.

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

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

6. The application of *Josiah M. & Kathleen Ramer (buyers) and Rufus Martin (deceased) & Thelma Martin (seller)* for a Special Use for an agricultural use for the keeping of horses on a tract of land containing three acres or less (Specifications F - #1) on property located on the South side of CR 44, 646 ft. West of SR 19, being Lot 2 of Strawberry Junction, common address of 28090 CR 44 in Locke Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #28090CR 44-140113-1*.

There were four neighboring property owners notified of this request.

Lee Stone of Century 21 Abbey Realty, 1757 W. Bristol, Elkhart, was present representing both parties. Mrs. Stone reported the Ramers are Old Order Mennonite who require horse and buggy transportation, and this property is very conveniently located within approximately one mile from Mr. Ramer's employment. Although it is less than three acres, she indicated there is a small barn already there, and Mr. Ramer plans to fence a portion of the property for the horses. When Mrs. Wolgamood inquired about the use of the property to the east, Mrs. Stone indicated it is Mike's Fencing. She also reported that Mrs. Brubaker who is the west adjoining property owner is present today and has no opposition to the request. When Mrs. Wolgamood asked Mrs. Brubaker's acreage, Mrs. Stone stated it is 2.3 acres.

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** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of horses on a tract of land containing three acres or less (Specifications F - #1) be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Approved for a maximum of two horses.

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

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

7. The application of *Henry Schlabach, Jr. & Mary Schlabach* for a Special Use for an agricultural use for the keeping of two horses in an R-1 district (Specifications F - #1) and for a 10 ft. lot width Developmental Variance (Ordinance requires 60 ft.) and for a 3 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence on property located on the East end of Pointe Blvd., 400 ft. east of Rogers St., 375 ft South of Wayne St. (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 #0POINTE BLVD.-140117-1*.

There were 45 neighboring property owners notified of this request.

Paul Hochstetler of Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners who own a furniture store in downtown Middlebury. He said the Schlabachs recently purchased the property hoping to build a house closer to his business as they live toward Goshen on SR 4 presently. As they use horses for transportation, they are requesting the Special Use permit. He reported two parcels to the south off of Orpha Drive are approved for livestock and submitted copies of those approvals *[attached to file as Petitioner Exhibit #1]*. In 1996, a five acre tract was approved for three horses and one cow for Jerry Miller and next door to that parcel, there is a three acre tract that was approved for two horses with both parcels being zoned R-1. He noted the petitioners will be fencing an area for the horses at the bottom of the hill.

Mr. Hochstetler reported the end of Pointe Boulevard is approximately 70 ft. higher than this location and suggested the reason that this was never developed is because of the steep hill making it very difficult to bring a driveway in off of Pointe Boulevard. He stated he had a signed petition from some of the surrounding neighbors and a letter from the Town of Middlebury saying that they have no objection to the request which he submitted *[attached to file as Petitioner Exhibit #2]*. Pointing out the neighbors who signed the petition on the aerial, Mr. Hochstetler said Mr. Schlabach talked to all of the neighbors that he could get in contact with. Of those contacted, no one had any objection to the keeping of horses. Mr. Hochstetler went on to say the property lends itself to privacy and will not be encroaching on the neighbors' privacy. He reported the Pumpkin Vine Trail runs along the east side, and there is a buffer between the house location and the trail.

Regarding access to the property, Mr. Hochstetler said they are proposing an entrance off of Spring Street. He said both the seller and the owner of the north property thought there was an existing easement there. After checking with the Records Office who couldn't find any record of one and having Meridian Title do a title search that did not turn up anything that was recorded, Mr. Hochstetler said that Mr. Schlabach has hired Blake Doriot to conduct a survey

and record an easement across the M-1 property to the north and out to Spring Street which is in process but not yet completed. Mr. Hochstetler noted an existing driveway from some type of building that used to be in the middle of the parcel which is why the parties were under the impression that there was an existing easement. As the parcel is a leftover piece that wouldn't easily be developed as a part of finishing the subdivision plat, they are asking to not create the turn around because there is no plan to have a driveway there or make it the point of entrance. When Mr. Hesser asked if the parcel is all wooded currently, Mr. Hochstetler stated there is a clearing in the proposed building site area, but he noted 80% of the parcel is wooded.

Blake Doriot, P.O. Box 465, New Paris, was present on behalf of this request. He reiterated that he has been engaged by Henry Schlabach and Mr. Hawkins (property owner to the north) to do an easement. However, due to the weather, the field work has not been completed yet. He indicated that Mr. Hawkins thought there was an easement there. He reported they are just going to make what everyone thought was, into existence and get it recorded. He said the viability of developing this further as a subdivision is suspect. With the erosive conditions of the hills there, he said this is a good use for a residual piece of ground.

Mark Salee, Middlebury Town Manager, 418 Main Street, Middlebury was present in support of this petition. He made reference to the letter that the Town sent regarding the Special Use and reiterated that they have no objections or questions. He requested notification of any future requests for the property. When Mr. Campanello asked how many residents have horses within the town, Mr. Salee said he knows of two, but there is constant horse and buggy traffic.

Courtney Pohl, 1009 Claire Lane, Middlebury, was also present to support Mr. Schlabach as a member of the Chamber of Commerce. By explanation and understanding that there would be little disturbance to surrounding neighbors, he feels it would be a viable use of the available property.

Sheree Crist, 203 W. Spring Street, Middlebury, was present in remonstrance to this request. She stated that her father was born and raised on the property where she resides, and in the 84 years he lived there, always had horses. She went on to say there was a barn for the horses which remains. From the town, she said they were always told that when her father passed away, they could no longer have horses on the property. She indicated her property northeast of the subject property on the aerial photo. While she has nothing against the petitioners, she expressed confusion with how the petitioner would be allowed to bring horses in when they were told they could no longer have horses after her father's death. She also noted that she understands the drive cannot come in from Pointe Boulevard and the petitioners would want to use Spring Street. She reported that for approximately the last 20 years of her father's life with the horses, they picked up and hauled manure every day because they wanted to be able to stay in town and not have neighbors upset with them. She questioned if the Schlabachs will be having church at their home and where all of those horses will stay during the gathering. She reiterated her confusion that the Town of Middlebury has told them one thing and right across the Pumpkin Vine trail, the petitioner could bring horses in.

Mr. Hochstetler stated there will be times when church will be held there. He noted he feels the single biggest difference between the parcels is the size with the petitioner having a little over nine acres. There is plenty of space in this lower area to keep animals and to tie animals when they have the church gathering. He went on to say that most of the manure will be in the horse parking area, although he is aware there will be some on the street also as they travel

back and forth. Mr. Hesser indicated he is not too concerned with street droppings but questioned the management of manure on the premises day-to-day. Mr. Hochstetler said two horses will not generate more than can be used as fertilizer on the property. With his experience in choring horses, he indicated the droppings from two horses can be easily fertilized on a nine acre parcel. When Mr. Hesser inquired about the possibility of a manure pile, Mr. Hochstetler said there is no reason for it as there will not be enough manure to pile.

While looking for evidence to support this request, Mr. Hochstetler indicated a search was completed on the Crist property to see if a Special Use was granted because he had knowledge of the horses there previously, and they were looking for evidence to support this request. He said no record of a Special Use was located for that property and suggested it might be approved if requested.

When Mr. Hesser questioned access by an easement needing a separate approval or petition, Mr. Mabry noted the parcel has access to a right-of-way. Because there is road frontage, Mrs. Wolgamood stated the easement is a mute point to the Board.

The public hearing was closed at this time.

Mr. Hesser noted concern that the site plan is not to scale and doesn't show fencing and requested an amended site plan if approved.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the request for a Special Use for an agricultural use for the keeping of two horses in an R-1 district (Specifications F - #1) be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. The keeping of two horses should be allowed here.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare by providing a source of transportation for the petitioner.

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 a site plan to be revised to scale showing the areas including fencing to be submitted and approved by staff.
2. Approved for a maximum of two horses.

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

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

No: Meg Wolgamood.

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Meg Wolgamood that the request for a 10 ft. lot width Developmental Variance (Ordinance requires 60 ft.) and for a 3 to 1

depth to width ratio Developmental Variance to allow for the construction of a residence be approved based on the following Findings & Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. A single residence on this parcel should not negatively impact these elements.
2. Approval of the request will not cause substantial adverse affect on the neighboring property. The shape of the parcel does not violate the intent of the lot width and 3 to 1 standards, which is to discourage the proliferation of narrow lots creating multiple driveways along a road.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property by the property owner.

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

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

8. The application of *Harley S & Rheta Geraldine Yoder (deceased)* for a Use Variance to allow a residential use in a B-3 district on property located on the Northeast side of US 33, 180 ft. Southeast of CR 113, being Lots 3 & 4 of Weaver Sub., common address of 23451 US 33 in Concord Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #23451US 33-140114-1*.

There were 20 neighboring property owners notified of this request.

Robin Middleton, 58876 Crystal Court, Elkhart, was present representing this petition. She reported that the house belonged to her parents who have both passed away and noted the house was occupied until the end of August 2013. Regarding the request, she said they would like to sell it residential because it has always been lived in as residential. Additionally, she indicated she grew up there, and the two houses beside this one are also being used as residential. As a commercial property, it would be very restricted and not a good property for that use.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood said she knows that the B-3 zoning is the original zoning. She went on to say there were previously a few petitions before the Plan Commission for rezoning, and it was always suggested that all of the remaining residences there go for a Planned Unit Development to clump all of the houses together and sell or do a business of some sort. She said that a residential use there is perfect.

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 the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow a residential use in a B-3 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 commitment was imposed:

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

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

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

9. The application of *Lester D. & Mary Esther Miller Rev Trust (life estate)* for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the East side of Main Street (SR 13), 300 ft. South of Joan Drive, common address of 932 S. Main Street 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 #932SMMAIN (SR 13)-140115-1*.

There were 11 neighboring property owners notified of this request.

Dennis Miller, 57377 SR 15, Goshen, was present representing this petition. He said they want to add an apartment or dwelling onto the existing garage with the intent of taking care of their parents there. He went on to say his parents are in their late 70's and reside in Florida half of the year. He stated his sister will be purchasing the home, and his parents will move into the apartment to reside. When it gets to the point that they need care, they will be close for their children to provide care for them.

Mr. Homan inquired about any previous conversation with staff about returning the apartment back to a non-residential use after their parents are gone so it cannot become a rental later on. Mr. Miller said he did not have any such conversation with staff and indicated he would think his sister might move into the apartment at a later date. Mr. Homan noted previously in similar situations, staff has requested that the situation be changed in the future so it does not become permanently forever two residences on the same parcel. Mr. Miller reported that he spoke with neighbors and that was a concern of one neighbor. He did say it is definitely not being built to rent out while in their family. Mr. Burrow noted they would not be allowed to rent the apartment as a business later, and it was his position that it would be for family use only according to the questionnaire and site plan submitted.

There were no remonstrators present.

Mrs. Wolgamood asked staff about the side yard setback for a single family residence. After some discussion, Mr. Mabry said he would interpret it as 10 ft. Mrs. Wolgamood noted that the site plan shows a setback of 9 ft. and indicated with that correction, she could look at the request differently. Additionally, she questioned staff about how much lot area is required for a single family residence with city services, and Mr. Mabry reported 20,000 sq. ft. is required.

Regarding the city utilities, Mr. Miller reported the sewer has been hooked up, but his father has never hooked up to city water so there is still a well on the property.

If approved, Mr. Homan asked the petitioner if the site plan could be modified slightly to the side setback line of 10 ft. Mr. Miller indicated yes. Mr. Mabry suggested the possibility of an administrative adjustment for 10% if it cannot be changed from nine feet to meet the requirement.

The public hearing was closed at this time.

Mr. Homan suggested stating specifically that this is for family use and not to be rented. Attorney Kolbus indicated if the Board is adopting as represented in the petitioner's application, it says that in there so he does not believe it needs to be an additional condition. He further

added if the Board wants it to revert back to an accessory building when they no longer reside there, that would be more appropriate.

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

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood that the Board adopt the 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 for the construction of a second dwelling on a parcel be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

No: Randy Hesser.

10. The application of *Helmut H. & Rosemary G. McClure* for a Use Variance to allow for the construction of a second dwelling on a parcel and 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 4, 576 ft. East of CR 29, common address of 15860 CR 4 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 #15860CR 4-140117-2*. He noted a correction in the Staff Analysis for the Developmental Variance in #3 which should read "would" result in an unnecessary hardship.

There were five neighboring property owners notified of this request.

Helmut McClure, 133 S. Highland Avenue, Elkhart, was present on behalf of this petition. He said he needs a variance for the storage building and staff informed him that he also needed a variance for the house because of the existing mobile home on the property. Mr. Homan inquired if the petitioner understands upon completion of the house in the timeline laid out that the trailer will have to be removed. Mr. McClure confirmed that the mobile home will be removed. When Mr. Miller asked if the 30 day timeline to remove the trailer upon completion of the house is realistic, Mr. McClure indicated it is. Mrs. Wolgamood questioned which building will be constructed first. Mr. McClure indicated he needs the storage building first because of the need to move personal belongings out of their house in Elkhart so it can be sold to complete the proposed residence. When Mrs. Wolgamood inquired further about whether the McClures reside on-site, Mr. McClure reported they live there part-time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted seeing this type of request previously when someone wants to build a home, and it sounds like the petitioner has spoken at length with staff about the timeline and agrees with it. While he is leaning toward the approval, he stated the sometimes these do not get completed on time but indicated that issue could be dealt with if it occurs. When Mrs.

Wolgamood asked if the Developmental Variance is based on the new residence, Mr. Mabry indicated yes and in the end with taking away the existing and adding the proposed results in the overage of accessory storage square footage. When Mrs. Wolgamood suggested the possibility of the petitioner constructing the storage building and never completing the residence, Mr. Hesser reported that the petitioner would not be in compliance. Attorney Kolbus added that the Board would have enforcement because they would be in violation.

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, and the testimony of the petitioner, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel and 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 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. The existing residence must be removed from the property within 30 days of the issuance of the Certificate of Occupancy for the new residence.
3. The petitioner is required to return to the Board of Zoning Appeals if occupancy of the new residence and removal of the existing residence has not been accomplished by September 30, 2015.

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

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

11. The application of **Andrew & Bonita Martin (lessee) and Carlyle & Barbara Martin (lessor)** for an amendment to an existing Special Use for a home workshop/business for a wood working shop and a retail sales showroom (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 North side of CR 32, ½ mile East of CR 7, common address of 26589 CR 32 in Harrison Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #26589CR 32-140117-1*.

There were eight neighboring property owners notified of this request.

Attorney Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners who were also present. He submitted a copy of the power point presentation *[attached to file as Petitioner Exhibit #1]* and a signed petition in support of the request *[attached to file as Petitioner Exhibit #2]*. In addition to being their attorney, he also pointed out his neighboring residence to the west on the south side of the road. Referring to the power point presentation, Mr. Sloat explained the layout of the site plan. He explained the only thing they are doing is amending the site plan to add a warehouse. He went on to say that nothing has changed; the operation, number of

employees which is two part-time retired gentlemen. He noted it is a family operation that supports the petitioner, his wife, and children. The petitioner needs space to store raw materials, finished product, and room to work. He indicated the new warehouse would be located to the rear of the existing shop and would fit in architecturally with the existing structures and noted the Martins have made major improvements to their property since they have purchased it. He noted they are a welcome addition to the neighborhood. Regarding the Staff Analysis Finding #1, Mr. Sloat mentioned the scope of accessory use being hard to define. Referring to the Ordinance definition of accessory building or use, he said he feels the area, extent, and purpose of the use all need to be taken into consideration when determining if the request satisfies the intent of the Ordinance. He feels the use is incidental and subordinate to the primary purpose of the property which is to rear his family, raise his children, and provide care and support for them in the comfort and convenience of their home. He added that there is nothing in the Ordinance that puts a limit on the size of a building that is used for a home workshop, and there is nothing that defines the meaning of "scope".

Referring to #2 regarding neighboring property and staff's finding that the request exceeds the expectations for an agricultural neighborhood, he feels the neighbors should be asked how they feel about the impact that the request has on their neighborhood. He pointed out the signed petition from all adjacent neighbors to the subject property with the exception of one who is present today who are all in favor of this request. Looking at the neighborhood, Mr. Sloat pointed out large buildings in the area including a farm shop across road that is 60'x180' or 196' and noted additional large buildings in the community. In the power point presentation, he also listed previous petitions he has worked on for large building that were approved when denial was recommended and suggested the appropriate scope is between 8,100 and 8,900 sq. ft. Regarding the staff's statement that the proposal intensifies the site to full-blown manufacturing use, he read the definition of "full-blown", suggested any successful business has to be "full blown", and that Mr. Martin's business is already full-blown. He went on to say that Mr. Martin just wants to be full-blown in a better way by separating the inventory from the work space which has been the common theme of all of the other workshops he has worked on in the past. He pointed out that this request is for less than the one approved last fall that was approved for 8,100 sq. ft., and staff said it was within the scope of an accessory use and had a good deal of nearby support for expansion. He noted this petition is for 6,000 sq. ft. which is 2,000 sq. ft. or 25% less than the one approved last November.

When Mr. Miller inquired about a change in noise level, Mr. Sloat indicated there will be no change in noise or equipment. Mr. Miller suggested they are creating a safer work environment.

Regarding the dog kennel, Mr. Homan confirmed with Mr. Sloat that it is gone and no longer in operation.

Dan Miller, 26508 CR 32, was present in favor of this request and noted that Mr. Martin needs more work space.

Rocky Rigsby, 26572 CR 32, was also present in favor and noted he owns the property directly south across the street from Mr. Martin. He noted Mr. Martin has improved his property, and the neighborhood is re-seeding and improving itself which has been occurring since 1987 when he moved in. Mr. Rigsby feels that Mr. Martin's request is within the spirit of the community and said each of the properties there are still farms. He said that Mr. Martin is

doing what he needs to do to support his family and help this community grow and reported that you don't even know that there is anything going on there. He agreed that there are large buildings all through the community, and he said he is in full support of Mr. Martin's request.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller said he doesn't see the intensity increasing which is a huge factor, and he does see the opportunity to clean up Mr. Martin's shop and make it a safer work environment. Based on the nature of the community it is in, he also doesn't think it will be out of place. With all of the examples presented by Mr. Sloat, Mr. Campanello said he would support it also. Mr. Hesser said he believes this type of request is a judgment call and to say a specific size makes it fair or unfair is a disingenuous argument. He went on to say that size is a factor, number of employees is a factor, noise, fumes, dust, and traffic patterns are all factors. He said the focus has to be if it is a home workshop with its work still primarily residential or primarily a farm. He felt Mr. Rigsby's comments focused on that issue in a convincing way and because of that, he has no objection to the request but he does take issue with the fact that the Board can't consider size, number of employees, noise, fumes, dust, and traffic. Mrs. Wolgamood said she felt that the Board could consider those factors. She noted when Mr. Sloat was making his point about the area, she was trying to read of the rest of them and said she could probably pick out four or more that would be just the opposite. She did say that she also agrees with what Mr. Hesser said about Mr. Rigsby's comments.

If the Board approves this request, Mrs. Wolgamood noted there are no conditions or staff recommendation for approval so care would need to be taken. Mr. Hesser noted they have the previous conditions and are only changing the 60' x 60' building. Mr. Homan pointed out that one condition from 2010 is no sign and the site plan shows some retail space. He questioned if the petitioner would want to use the allowed 4 sq. ft. for signage and if they should remove that condition. Mrs. Wolgamood stated that the questionnaire indicates no sign. Mr. Hesser went on to say that previous condition had to do with the kennel. When Mr. Hesser asked Mr. Sloat about an existing sign, Mr. Sloat reported there is no sign. There was further discussion that the Ordinance would allow a sign. Mr. Hesser said he would remain silent on the sign because he believes the no sign language was with respect to the kennel. When Mr. Hesser questioned if action is needed to be taken regarding termination of the kennel, Attorney Kolbus said he would consider their petition as an offer to revoke the kennel Special Use.

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

Motion: Action: Approve, Moved by Doug Miller, Seconded by Tony Campanello that this request for an amendment to an existing Special Use for a home workshop/business for a wood working shop and a retail sales showroom (Specifications F - #45) be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare.

The following condition is 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 as represented in the petitioner's application for amendment of the existing Special Use including the amended site plan submitted therewith (site plan identified in application materials as "printed on 1/16/14").
2. The nine conditions included in the August 19, 2010, Special Use approval for the home workshop business be included as commitments:
 - a. No more than two outside employees.
 - b. No expansion of the facilities.
 - c. Hours of shop operation to be 7:00 AM to 5:00 PM Monday through Friday; Hours of store 10:00 AM to 5:00 PM Monday through Friday; 10:00 AM to 7:00 PM Saturday.
 - d. One sign, unlit, per ordinance.
 - e. Permit to be renewed in a period of five years before the Board of Zoning Appeals.
 - f. No expansion of business without Board of Zoning Appeals approval.
 - g. No outside storage of anything related to the business.
 - h. The Special Use shall be confined to the 40' x 60' shop building, the 20' x 40' area of the barn remodeled for showroom, and the 60' x 60' warehouse.
 - i. Approved for petitioner/occupant of residence on site.
3. The Special Use permit for a kennel approved August 19, 2010, under Case # 26589CR 32-100719-1 is revoked in its entirety.

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

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that the 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 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.

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

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

12. The application of *Robert C. Dixon & Cynthia Ewing* for a 25 ft. Developmental Variance to allow for the construction of a detached garage 50 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) on property located on the East side of Ash Road, 2,700 ft. North

of US 33, common address of 56680 Ash Road in Baugo Township, zoned R-1, came on to be heard.

Mr. Miller noted the public hearing is open.

Mr. Mabry noted this request was tabled in December 2013 and January 2014 so the petitioner could provide a more accurate site plan. He presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #56680AshRd-131125-1* and submitted a revised site plan *[attached to file as Staff Exhibit #1]*.

Robert and Cynthia Dixon, 56680 Ash Road, were present on behalf of this request.

As a contractor, Mr. Miller said he does not understand why the garage cannot go beside the existing house with vehicles pulling in beside it because even if the garage is pulled forward six feet from the front of the existing setback, there would be 10 feet between that and the septic system which would meet County guidelines and would not require a variance.

Steve Ramer of Coach House Garages, P.O. Box 320, Arthur, Illinois, was also present on behalf of this request. He said he thinks the reason the Dixons are requesting the setback is because they want to be able to pull in from their existing driveway and not have to make a new approach onto Ash Road. They would pull in and make one turn into their garage. He noted Mr. Miller is correct and it could be positioned on the south side of the structure, and it could be reversed so the doors came out to the west but that would require considerably more driveway work on the petitioners' part which would be less convenient for them than having the doors facing north. As it is a very busy road, they do not want to back out into the roadway. The existing driveway could be used as a turnaround in the proposed site plan.

Mr. Campanello mentioned they probably have windows on the side of the house that they would like to look out at other than the side of the garage. Mr. Ramer noted there are windows on that side of the house. When Mrs. Wolgamood inquired about a turnaround currently, Mr. Dixon reported there is not and added that they attempt to back into the drive when they return home if the road is clear. Otherwise, they have to back out onto the roadway. Mr. Ramer reiterated that the current driveway would serve as a turnaround if the request is approved. He noted that the 54' CL measurement is from the footer so with a 16 inch soffit, the measurement would be closer to 52 ft.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello said he thinks the request makes sense. Looking at the aerial photo, Mr. Homan noted the Staff Analysis #2 that the request would cause substantial adverse affect on the neighboring property and that other detached structures in the area meet the required setbacks. Although the west side of Ash Road is St. Joseph County, there are structures closer to the road. While understanding it is not Elkhart County's jurisdiction, he questioned whether or not this developmental variance would impact the value of any property in that location on Ash Road. Mr. Miller reported currently working on a project right around the corner in St. Joseph County and drives through that area frequently. In looking at this specific piece of property, he said he personally doesn't see the requested location as an issue given the context of that entire stretch of how all the housing and garages set both east and west side of the road. Additionally, he stated it would be far safer than what they have. To her, Mrs. Wolgamood indicated that is the biggest reason to approve this request.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Tony Campanello that this request for a 25 ft. Developmental Variance to allow for the construction of a detached garage 50 ft. from centerline of the right-of-way (Ordinance requires 75 ft.) be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
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 location of the septic system necessitates placement of the building in the proposed location. It is also a much safer environment for ingress/egress in terms of public safety both for the owners and general public.

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 as presented in the petitioner's application and a revised site plan submitted dated February 10, 2014.

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

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

No: Randy Hesser.

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

14. The first staff item was the Certification of Residency Form for Randy Hesser presented by Chris Godlewski which he submitted into the record at this time [see attached].

15. The next staff item was the distribution of BZA Rules of Procedure by Brian Mabry. He noted copies were distributed in the Board packets. He indicated there were a few changes that he and Attorney Kolbus discussed after distribution of the rules that related to 2.1E regarding to the payment of the Board members to make it more closely parallel some other language in the Plan Commission Rules. Attorney Kolbus stated that in 2.4A Payment of Staff, there is language about within the budget fixed by the County Council so he had suggested amendments to 2.1E to make that language consistent with 2.4A. He indicated that Mr. Mabry will have to provide them with that. Additionally, he said it is a more generic language but it is consistent with what they have elsewhere in the rules. Mr. Mabry noted another one on page 4, E1 that was some clarification. He noted action on this is expected next month. He stated the applications are part of the exhibits to the Rules and those have not been modified much but said he did follow one Board member's suggestion to add graph paper as part of the application to attempt to assist with site plans being drawn to scale. Attorney Kolbus said the proposed changes he discussed with Mr. Mabry were in the text portion of the Rules from pages 1 to 24, not in the exhibits.

16. The meeting was adjourned at 10:51 am.

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary