

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17TH DAY OF JULY 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, Doug Miller. Staff members present were: Chris Godlewski, Plan Director; Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Duane Burrow, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Randy Hesser, Lori Snyder.

2. A motion was made and seconded (*Homan/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of June 2014 be approved as read. The motion was carried with Mrs. Wolgamood abstaining.

3. A motion was made and seconded (*Campanello/Wolgamood*) that the legal advertisements, having been published on the 5th day of July 2014 in the Goshen News and on the 7th day of July 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 (*Wolgamood/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. The application of *Church of God in Christ Mennonite, Northern Indiana Congregation, Inc.* for an amendment to an existing Special Use for a church (Specifications F - #48) to add a school, a recreational area, and a cemetery on property located on the East side of CR 113, 1,115 ft. North of Stonegate, common address of 60536 CR 113 in Concord Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #60536CR 113-140620-1*.

There were 39 neighboring property owners notified of this request.

****It should be noted that Randy Hesser arrived at this time.****

Randy Litwiller, 1702 Longwood Court, Goshen, was present representing this petition. As the church was not familiar with the County Zoning Ordinance, he reported the school has been in operation at this site. He expressed their desire to bring the property into compliance. After giving a brief history of the church, he stated they have no objection to the recommendation for tabling the cemetery request. He added they would like to move ahead with the school and recreational area and reported enrollment should stay between 20 and 30 students. He noted the recreational area is for their own use and is not something that will be rented out. He stated there will be no bleachers or lights. There is a proposed shelter for a picnic area for

family use. Their desire is to be an asset in the community and not cause any trouble. Regarding night activities, he reported they should be at a minimum.

Mrs. Wolgamood confirmed that Mr. Litwiller said there would be no concessions, bleachers, lighting, fencing, and restrooms affiliated with the softball field. Mr. Litwiller also reiterated that it is for use by the children and families of the church and possibly their youth group.

Linda and Dave Peterson, 60584 CR 113, were present in support of this request. She reported they are the adjoining neighbors to the south of the church property and are 100% in favor of approval. She reported they are good neighbors, and they are happy to have them there. Mr. Campanello asked for comments about the proposed cemetery, Mr. Peterson noted the proposed site plan shows the cemetery 20 ft. from their adjoining property. He said he spoke to the pastor and asked them to consider moving it more to the center of the church property and placing some type of screening but reported he has no objection to the cemetery on the property. Kim Anderson, 60461 Pembroke Lane, was present for this request. She stated she is not really opposed to the request but questioned if the property is large enough for the cemetery. Regarding the recreational area, she said if it is not going to make any additional equipment on the property and be close to the church, she does not really object. She reported she owns property on Surrey Lane and believes people are parking their motor vehicles there and walking through her property to get to the church property. While she does not object to that, she noted previous vandalism. She does not want to see the school operation grow any larger than it already is and expressed concern that the recreational area might increase as well.

In response, Mr. Litwiller said the cemetery is for their own use, and they would not have a problem with putting a fence around the perimeter of the property. He added that they hope for slow growth of the cemetery, and they do not foresee it being a big area. He noted he believes a cemetery that is 100' x 30' would hold over 100 graves, and they are not even looking at anything that large. In response to Ms. Anderson's concern about people walking through her property, he said he is not sure when she is located. He wondered if it is in the back corner by the housing development there. He reported they have been back there and have seen where people have been walking through. He stated they have one family who lives over there, and the children have occasionally walked to church through there. He indicated there was a well-beaten path there when the church purchased the property. If that is a problem with them walking through there, he said they can address that situation and resolve it. When Mr. Campanello asked Mr. Litwiller if they would be opposed to commitments to no lighting, grandstands, and no concessions around the ball park, Mr. Litwiller responded that would not be an issue as that is their plan anyway.

The public hearing was closed at this time.

Mrs. Wolgamood noted one issue with the site plan not being drawn to scale and out of proportion. If approved, she suggested that the Board require a revised site plan to scale. She also noted the site plan shows a proposed addition which she believes already exists.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, and the petitioner's testimony that there will not be any bleachers, lighting, concession

stands, or outside restrooms, further moved that this request for an amendment to an existing Special Use for a church (Specifications F - #48) to add a school and a recreational area 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 as represented in the petitioner's application and based on the petitioner's testimony that there will not be any bleachers, lighting, concession stands, or outside restrooms.
2. An up-to-date site plan drawn to scale to be submitted for the file.

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

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

Motion: Action: Table, **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, the request for an amendment to an existing Special Use for a church (Specifications F - #48) to add a cemetery be tabled until the August 21, 2014, Elkhart County Advisory Board of Zoning Appeals meeting to allow the petitioner to provide staff with more information including the following: access to the cemetery, cemetery capacity, setbacks, information on perpetual maintenance, and compliance with State laws for cemeteries.

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 *Mark G. & Edna E. Lambright (buyers) and Andrew J. & Kathryn B. Rogers and James L. Rogers Estate (sellers)* for a Special Use to allow for an agricultural use (keeping of two horses and one colt and for the storage of farm equipment) on property in an R-1 district (Specifications F - #1) located on the East side of West Wayne Street, 1,700 ft. South of Lawrence Street, common address of 521 W. Wayne Street in Middlebury Township, zoned A-1/R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #521W. WAYNE AVENUE-140623-1*.

There were 23 neighboring property owners notified of this request.

Mark Lambright, 13525 CR 34, Goshen, was present on behalf of this petition. Regarding the need for the request, he reported he would like to purchase the property, but he is Amish so his transportation is by horse. Regarding farm equipment, he reported he owns a small skid loader for snow removal. He went on to say that he owns this piece of equipment but would be willing to sell it if it is a problem to have it on the property. When Mr. Miller asked if he would be residing on the property, Mr. Lambright indicated yes if he buys it. Referring to the colt, Mr. Hesser asked what will happen when it matures and is no longer a colt. Mr. Lambright indicated his plan is to replace one of his old horses with the colt when it is old enough to pull the buggy. Mr. Hesser confirmed that his long term plan is to have two horses. When he inquired about the time frame, Mr. Lambright stated it would probably be in the spring of 2015.

Mr. Hesser questioned if the colt is the product of the current other horses which Mr. Lambright indicated yes.

Mrs. Wolgamood asked staff about the need for the request since the horses and barn will be on the part of the subject property is zoned A-1. Mr. Mabry said that would depend on the size of the property. If it were less than three acres, even if it were A-1, he said it would still be a Special Use permit. Mr. Hesser inquired if the subject property was in the town of Middlebury and questioned any letter response from the Town Manager. Mr. Mabry noted he is present.

Ubon Patrick, 215 Greenfield Drive, Middlebury, and reported she is speaking on behalf of Chen Ling Zhi, 504 Horizon Drive, Middlebury, who is opposed to this request. She submitted a notarized signed letter from Mr. Zhi authorizing Mrs. Patrick to speak for them *[attached to file as Remonstrator Exhibit #1]*. She indicated Mr. Zhi's property on the aerial which is located in the residential subdivision south of the subject property. She went on to say that they oppose the request because when they bought their property, they were not expecting to have livestock nearby as it is within the city limits. When you live in the city, you expect city living, not the smell of a farm.

Mark Salee, Middlebury Town Manager, 418 N. Main Street, Middlebury, was also present in remonstrance. In discussion with council members regarding this request, he said there are a couple of members who have heard some concern from residents in this area. He also noted he spoke with Sherry Crist (also present in remonstrance) about the concerns on Horizon Drive, and the consensus of the counsel would be to not approve the Special Use. He went on to say that the biggest concern is the location to the residential area. In relationship to the other Special Use that came up earlier this year, he recalled it was a much larger parcel, being 9.5 acres and fairly isolated from other properties. In the aerial photo, he indicated the location that house is being built on which is on the northern portion of the parcel, taking up very little space on the 9.5 acre property. Further, he pointed out that none of the residents in that area showed any concern or opposition at that time. From what he understands about this request, pointing out the area where the horses would be located, the nearby residents are concerned.

When Mr. Campanello questioned Mr. Salee about the residence on subject property being lived in and being cared for/maintained at this time, Mr. Salee indicated he believed the house is empty and maintenance is questionable with tall grass at this time. He noted the issue with tall grass every year even when there were residents in the house. Mr. Campanello asked Mr. Salee about the amount of horse droppings in that area compared to having an Amish family live in the house and maintain the property. He further questioned how they, as the town council, weigh those two issues. Mr. Salee said there is a fair amount of buggy traffic on that S-curve, and they are very open to the Amish community. He went on to say that they would love to have the house occupied and maintained. If it were a larger parcel and more in the realm of the other petition situation, he believes the council would not have any big concerns about it. But in this situation, there have been concerns pointed out, and they felt for this particular case, they would not want to support it. Mr. Hesser pointed out that the subject property is right at the top of the hill.

Also present in remonstrance to this request was Sherry Crist, P.O. Box 99, Middlebury. She stated she was present for the previous similar request as well. She noted this property is owned by Jim Rogers, and reported he also owned the property from the previous similar request. She reported she understands the concerns of the residents in Rolling Meadows with the

possibility that smell and manure could come off the hill down to their properties. She expressed a wish that the petitioner would have explained where the property is located as it is the first property that is seen when entering the town of Middlebury on West Wayne Street. She added that she thinks it would be tough on the horses to have a climb those hills. She expressed concern that some of the neighbors do not realize this request is being made.

David Ramundo, 310 Normandy Way, was present in remonstrance. On the aerial photo, he indicated there is one vacant lot in between his property and the subject property. He reported he lived in the Rolling Meadows subdivision for approximately 20 years, and they moved to this property a year and a half ago. He stated he is pretty easy to get along with and expressed his desire to be a good neighbor. He expressed concern about having the horses up there on this particular piece of property. While he appreciates the mode of transportation of the Amish, he feels horses on the subject property would create a general nuisance. He noted there are homes directly behind where the horses would be and expressed concern about the livestock right there.

In response, Mr. Lambright said he does not have anything else to say because if that is the way they feel, he really does not want to live there.

The public hearing was closed at this time.

Mr. Hesser noted that the site plan is not to scale. He added that he does not think the colt specification makes a lot of sense and suggested it just say three horses. He stated this request is not as conducive as other similar requests that they have approved in the past.

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

Motion: Action: Deny, Moved by Doug Miller, Seconded by Meg Wolgamood that the request for a Special Use to allow for an agricultural use (keeping of two horses and one colt and for the storage of farm equipment) on property in an R-1 district (Specifications F - #1) be denied based on the following Findings and Conclusions of the Board:

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

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 *Jamie L. & Mandy S. Miller* for a Special Use for a home workshop/business for wholesale car reconditioning (Specifications F - #45) on property located on the West side of CR 27, 1,588 ft., North of CR 112, common address of 55191 CR 27 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 #55191CR 27-140623-1*.

There were 13 neighboring property owners notified of this request.

Jamie Miller, 55191 CR 27, Bristol, was present on behalf of this request and stated he lives on the property. Mr. Campanello clarified that the existing shed is the proposed location of the business. Mr. Miller explained that he has a wholesale car business where he buys and sells

cars. Many of the vehicles would not actually show up on the site. He went on to say that he needs the Special Use permit to apply for a wholesale car license as presently he is running off of someone else's license. He said many of the vehicles will go from auction to a dealer for which he purchases them or to a reconditioning site. If the vehicles go to the property, he said it will just be for light repair work and repairs that he can do during down time. He stated there will be no body repair, painting, or major engine repair. Mrs. Wolgamood asked if cleaning up the vehicles and/or replacing the spark plugs are the types of repairs Mr. Miller will be doing on the property. He indicated that was correct and added that he also checks the vehicles to make sure all of the options and features work. When Mr. Hesser inquired about major engine work, Mr. Miller reported that he sends that out.

Mr. Miller said he previously owned half of a car dealership but has been bought-out. He continues to work under the license but needs to obtain his own. He reported this is the most cost-effective way for him to operate a wholesale business. When Mr. Campanello inquired about any vehicle storage on the property, Mr. Miller said it would be very minimal. Mr. Hesser noted the questionnaire said two vehicles. Mrs. Wolgamood asked if he talked to any neighbors about this request. Mr. Miller said his wife talked with Lavon Troyer, his adjoining neighbor to the south, who stopped over because he got the letter in the mail and was curious about the activity. When Mr. Homan inquired about how far off the road the house and barn sit, Mr. Miller said he believes the driveway back to the house is 3/10 of a mile with natural buffering all around the property. He stated neither the house nor the accessory building are in view from the road except possibly late in the fall.

Ed Miller, 55348 CR 27, was present in remonstrance. He said he lives just to the south on the east side which Mr. Campanello pointed out on the aerial photo. He reported he does not think he or anyone else has a problem with one or two cars. The question he posed was about the need for a sign if he is not trying to attract the general public. He expressed fear that one sign will lead to more signs.

In response to the question about the sign, Jamie Miller said it is simply a requirement from the state regarding the license. He explained there will not be any sign out front at the road, but a simple sign on the entry door to his building facing west will be sufficient. He reiterated that this request is subject to his approval for a wholesale license.

The public hearing was closed at this time.

Regarding the questionnaire completed by Mr. Miller, Mrs. Wolgamood said while very similar to a Special Use questionnaire, the questionnaire he completed is for a Use Variance. However, staff has given the recommendation for approval based on a Special Use. If approved, she said there needs to be a commitment stating no more than two cars. She also expressed a need for a commitment on the 2'x4' single faced sign on the entry door on west side of building.

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

Motion: Action: Approve, **Moved by** Tony Campanello, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for wholesale car reconditioning (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 imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. No more than two cars on the property for purposes of the reconditioning.
3. One sign permitted, no larger than 8 sq. ft., on the west side of the 46 X 38 ft. accessory building designated as "existing" on the site plan.

Prior to seconding the motion, Mrs. Wolgamood asked Jamie Miller if the two vehicles will be stored inside or outside. To answer that correctly, he stated they would be both inside and out. She commented that she feels his property is isolated enough that it does not matter as long as it is two cars. The motion was then **Seconded** by Meg Wolgamood.

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

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

*****It should be noted Randy Hesser steps down at this time.*****

8. The application of ***Forest River Manufacturing, LLC*** for a Special Use for a wireless communications facility (Specifications F - #31.50) on property located on the South side of Bloomingdale Drive, East of Division Street, North of CR 10, being Lots 1 & 2 of Bristol Industrial Park Partial Replat, common address of 2275 Bloomingdale Drive in Washington Township, zoned M-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #2275BloomingdaleDr-140623-1*.

There were four neighboring property owners notified of this request.

Gene Crusie of Maplenet Wireless, 4561 Pine Creek Road, Elkhart, was present on behalf of this request. He reported they just spent \$50,000 building fiber down Beck Drive to light up the whole corridor for new business. Along those lines, they now manage most of the fiber infrastructure for the county so most of these new requests are related to getting businesses connected back to that. He indicated he believes Forest River is buying this building from Lippert Components. Their main office in Elkhart is already connected to fiber so this is a way for them to extend over to there. Previously, Mr. Crusie said they served everything west of SR 15 off of another tower coming off CR 17, but there is a large group of trees on the southwest side of the industrial park that blocks line of sight to that tower. He added if there was any way they could do this without building a tower, they would. Additionally, he reported they are providing fiber service north of CR 4 by Eby's evergreen plantation, and they are renting space on a tower there. He pointed this out to show that they are not always trying to build towers and try to find other ways to do it. He noted this request is for a 100 ft. tower which is actually decommissioned from another location in Elkhart County. He pointed out one unique thing about this property is that it is already surrounded by a fence, so they do not feel they need a separate fence around the tower.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a wireless communications facility (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 commitment was imposed:

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

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

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

*****It should be noted Randy Hesser returns.*****

9. The application of ***Glen D. & Rebecca S. Harshberger*** for a renewal of an existing Special Use for a home workshop/business for the assembly of residential windows and doors (Specifications F - #45) for an indefinite period of time on property located on the West side of CR 9, 1,000 ft. South of US 6, common address of 72729 CR 9 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #72729CR 9-140620-1*.

There were two neighboring property owners notified of this request.

Referring to #18 of the questionnaire, Mrs. Wolgamood pointed out that it says that the petitioner submitted a list of proposed conditions, but she did not get that list. She asked if the list of conditions in the file is the same as what the petitioner submitted for approval. Mr. Mabry indicated yes. He went on to say those would be the 2002 conditions, but now they are listed as commitments.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner. He noted no substantial changes since 2002, although the barn has been improved. He stated the petitioners are simply asking to not have to return every two years which he has done for 12 years as this would be the sixth renewal. Mrs. Wolgamood confirmed that those were administrative renewals and did not come before the Board.

There were no remonstrators present.

The public hearing was closed at this time.

When Mr. Campanello inquired, Mr. Mabry indicated there are no complaints in the file.

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 renewal of an existing Special Use for a home

workshop/business for the assembly of residential windows and doors (Specifications F - #45) for an indefinite period of time 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. Hours of operation are 3:00 p.m. to 6:00 p.m., Monday through Friday, and 7:00 a.m. to 5:00 p.m., Saturday.
3. Exterior lighting for said premises, if any, shall be restricted to security, rural, dusk to dawn night guard-type lighting.
4. No new construction of structures and no expansion of area used for the Special Use are permitted without Board of Zoning Appeals approval.
5. One unlighted sign limited to four square feet per side is permitted.
6. The total number of employees, associates or partners is limited to three. Two such employees may reside off-site.
7. Adequate on-site parking area shall be provided for four vehicles.
8. No outside storage of anything related to the home workshop/business is permitted.
9. No inventory may be held for on-site retail sales.

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

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

10. The application of *AMMF Trustee Corporation (land contract holder) and Mark L. Slabaugh & Brenda K. Slabaugh (land contract purchasers)* for an amendment to the conditions of an existing Special Use for an agribusiness in an A-1 district for a custom livestock/meat processing facility (Specifications F - #56) to permit retail sales and change employees from 3 to 6 on property located on the East side of CR 101, 1,100 ft. South of US 6, common address of 72700 CR 101 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 #72700CR 101-140623-1*.

There were four neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner and noted Mr. Slabaugh could not be present due to the lack of a driver. He reported they are not changing anything about the current Special Use except they wish to be allowed retail sales at the suggestion of the meat inspector that he sell federally inspected boxed meat. At this custom butcher/slaughter house, he said Mr. Slabaugh does a lot of hogs, cattle, deer, and turkeys. With a freezer for orders awaiting pick-up, he has space to store some boxed pre-frozen meat that he would purchase from a wholesaler to have on hand such as hamburgers, brats, or steaks to sell to local neighbors. He noted there is no retail display case and all product will be kept back in the freezer.

Also, as an agri-business with no limitation regarding the number of employees in the ordinance, Mr. Sloat noted Mr. Slabaugh is requesting approval to increase the number of employees from the previously approved number of three to six. Although he is not adding

space or adding to the business, he simply needs more people to complete the custom orders. Referring to the site plan and questioning possible parking, Mr. Hesser asked which building the retail sales will be out of. Mr. Sloat reported the retail sales will take place within the office and suggested parking could be along the side of the drive or there would be plenty of room for parking behind the building.

Regarding the number of employees, Mrs. Wolgamood questioned the number who are not occupants of the residence as the questionnaire has conflicting answers. Mr. Sloat reported Mr. Slabaugh has six outside employees plus he and his wife.

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** 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 an amendment to the conditions of an existing Special Use for an agribusiness in an A-1 district for a custom livestock/meat processing facility (Specifications F - #56) to permit retail sales and change employees from 3 to 6 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 Special Use for the Agri-Business shall be confined to the area identified on the site plan as the 40 x 50 ft. meat processing building and outdoor holding pen.
3. No outside storage of anything related to the Agri-business is permitted except for the outdoor holding pen.
4. One unlit sign, four square feet per side, is permitted.
5. The number of employees who are not residents of the Real Estate is limited to six.
6. The residence on the Real Estate must be occupied by the owner/operator of the Agri-business.
7. No expansion of the buildings or building operations is permitted without Board of Zoning Appeals approval.
8. All blood, water, and animal tissue waste (offal) to be collected and disposed of per Indiana State Board of Health and Elkhart County Health Department regulations and will not be placed in domestic sewage system. Further, offal must be collected separate from blood and rinse water and disposed of properly.
9. All Indiana State Board of Health Department and Elkhart County Health Department regulations to be adhered to regarding pest control.
10. Schedule/Hours:
 - a. Receipt of Animals:
 - i. scheduled Monday and Friday 3:00 p.m. to 7:00 p.m.
 - ii. other times in case of emergency

- b. Customer Pickup:
 - i. Monday through Friday, 6:00 a.m. to 3:00 p.m. and Saturday, 8:00 a.m. to noon
 - c. General Hours of Operation:
 - i. Monday through Saturday, 6:00 a.m. to 3:30 p.m.
11. The duration of the Special Use shall be for an indefinite period of time unless otherwise terminated by the Elkhart County Advisory Board of Zoning Appeals.
12. There will be no backing out onto County Road 101.

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 *Cornerstone Mennonite Church, Inc (buyer) and Kenneth L. Martin Trust (seller)* for an amendment to an existing Special Use for a church to allow the establishment of a cemetery (Specifications F - #6) on property located on the South side of CR 44, ½ mile East of CR 11, common address of 000 CR 44 in Union Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 44-140623-1*. He noted the staff report does not contain any history but the petitioner was recently approved for a church on this property in June 2014. He also pointed out that the aerial photo is not old enough to show a church on the property, and the photo of the subject property also does not show the church under construction.

There were six neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners who were also present. Last month when the petitioner requested approval for the church, he said afterwards they determined they should have included in that Special Use the request for a cemetery located on the southern portion of the property. Regarding staff's recommendation to table the request, Mr. Sloat said he does not understand that need because the Ordinance provides that if they satisfy three requirements, it can be approved. As he feels they have shown those, he believes it should be approved. He went on to say the other items or issues, such as water table and state law, will have to be complied with and followed. He reported state law requires a survey be prepared and recorded showing location of lots, alleys/streets, and similar items laid out in a cemetery. He noted that the capacity is self-limiting as it will be measured out and the number of spaces determined by the size. Regarding the water table, he reported soil was tested for the church property, and he submitted a copy of that report completed by Schnoebelen's Soil Consulting [attached to file as *Petitioner Exhibit #1*]. He requested the Board approve the request, and the petitioner will deal with the requirements/laws.

If approved, Mr. Campanello questioned the next step which Mr. Sloat would be to get a survey showing plots. Mr. Homan asked about any setback requirements for a cemetery, and Mr. Mabry said he did not believe there are as far as the local Ordinance as a headstone or grave plot would not be interpreted as a structure. Mr. Sloat reported there is a reverse setback requirement by state law that you cannot disturb ground within 100 ft. of the cemetery. Mr. Burrow reported that the state setback of 100 ft. is for any structure and sub-surface structures. The Health Department will not allow septic within 100 ft. of a cemetery. Subsequently, it will impact the neighboring property owner if he wants to tile that property, he would be subject to

the 100 ft. setback. Further, Mr. Homan clarified that a farm field could still be farmed but the land could not be built upon. Based on staff knowledge and soil maps, Mr. Mabry believed, of the items listed, their biggest concern was what they believed to be the water table there. Mr. Sloat said they are raising that question but questioned the proof. Mr. Sloat noted other cemeteries in that area, and he does not know of any trouble with any of them or if any of them are at any different elevation than this one. Mrs. Wolgamood asked about the next closest cemetery. A member of the audience noted there is a cemetery one mile south of this location, and the Union Center is approximately three miles away. Another audience member noted there are several within three miles of this location.

Frank Martin, 26220 CR 46, Nappanee, was present in support of this request. He noted this is farm land, and the residence catty-corner from the subject property that would be under water before the subject property ever would be. He reported he has never seen that in his 49 years so he does not see that the water table is an issue at all. He stated there is at least 8 ft. of fall from the subject property to the adjoining property.

There were no remonstrators present.

Mr. Campanello noted he would like to see protection of neighboring properties by limiting the footprint to a certain setback from the property line. When questioned, Mr. Burrow stated he did not see the soil report but noted the USDA map from 2000, the most recent one, and also the one that was completed in 1974 for the county, shows that there is to be a water table at approximately 9-10 inches. He pointed out Mr. Schnoebelen's report shows that there is a water table at 10 inches. All three holes that Mr. Schnoebelen bored have limiting layers for septic. This type of septic would require a perimeter drain so subsequently they are going to have to artificially lower the water table on the site because Elkhart County does not allow the "Type 2" septic. He noted Mr. Schnoebelen's report is confirming what the actual soil survey shows. Further, Mr. Burrow pointed out looking at the aerial, you can see that there is perched water all around site which is also confirmed in Mr. Schnoebelen's report. When Mr. Campanello questioned Mr. Burrow further about protecting the neighboring property from the setback and if approved, should the Board limit the boundary of the cemetery to their property line, Mr. Burrow noted if state law prohibits them from putting sub-surface structures within 100 ft. of the cemetery, he suggested possibly a minimized area or larger piece of land in order to get that 100 ft. setback and not affect neighboring property.

Mr. Hesser stated while he understands the concerns of Mr. Sloat, he is not comfortable approving the request without a staff report.

The public hearing remained open.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Robert Homan that this request for an amendment to an existing Special Use for a church to allow the establishment of a cemetery (Specifications F - #6) be tabled until the August 21, 2014, Advisory Board of Zoning Appeals meeting to allow staff to prepare a report and recommendation based on additional information to be submitted by petitioner.

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

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

No: Doug Miller.

Mr. Sloat requested a deadline for the staff report so he has ample opportunity to respond. Mr. Mabry indicated the petitioner can get a copy of the staff report on August 4, 2014.

12. The application of **Chad D. Metzger** for a Use Variance to allow for a second dwelling on a single zoning parcel on property located on the North side of CR 142, 2,300 ft. East of CR 21, common address of 19771 CR 142 in Jackson Township, zoned A-1 , came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #19771CR 142-140619-1*.

There were five neighboring property owners notified of this request.

Carissa Metzger, 19771 CR 142, New Paris, was present on behalf of this request. She indicated they want to renovate an existing shop attached to their barn for her grandmother to live in for the rest of her days. She questioned removing what is completed as it seems like a waste, but noted if that is how it has to be, they will comply but right now their concern is taking care of her grandmother. When Mr. Campanello inquired about Ordinance rules regarding this, Mr. Mabry noted when a variance is approved, it should be for the least amount of relief necessary to accomplish what is needing to be done. Mr. Hesser pointed out that the bottom line is the Ordinance says you cannot have two residences on one parcel. Attorney Kolbus stated the improvements by definition, therefore make it a second residence, which is why staff is asking for certain ones of those improvements to be removed so it would no longer qualify by definition as a residence.

There were no remonstrators present.

Mr. Hesser asked her grandmother's name, which is Donna Quinn. Mr. Kolbus explained this is one case where it is based on a hardship, so they you can ask for the specific name so they can identify the aged relative who needs caretaking.

The public hearing was closed at this time.

Mrs. Wolgamood noted the main thing they are doing is a 12'x5' addition to an accessory structure to enlarge the proposed bedroom and the rest is interior remodeling and installation of a bathroom. She indicated there are a lot of out-buildings out there that have restrooms in them and suggested that could remain. She suggested the possibility of removing the kitchen making it non-residential, but agrees with staff that this request constitutes a residence. Mr. Kolbus reported that staff indicated if the kitchen facilities are removed, that would be sufficient.

Mr. Hesser noted he does not agree that the use arises from a condition that is peculiar to the property and does not believe that requirement has been met.

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 for a second dwelling on a single zoning 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 and as represented in the petitioner's application.
2. The second dwelling identified on the site plan as "proposed living area" must be converted back to an agricultural or storage use by removing the kitchen facilities when Donna Quinn no longer resides on-site.

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

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

No: Randy Hesser.

13. The application of **Jason M. & Jennifer M. Schreiber** for a Use Variance to allow for the construction of an accessory structure on property without a residence on property located on the West side of SR 13, 2,050 ft. South of SR 120, 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 #0000SR 13-140617-1*.

There were six neighboring property owners notified of this request.

Jennifer Schreiber, 607 Spring Valley Drive, Middlebury, was present on behalf of this petition. She reported they have the opportunity to relocate an existing shed onto the subject property to store a large lawn mower to maintain the property. She explained they plan to build a house there next year. She submitted a photo of the existing shed which will otherwise be torn down and taken to the landfill *[attached to file as Petitioner Exhibit #1]*. When Mr. Homan asked if the shed is currently on the subject property, she indicated it is not. If approved, she stated the shed will be moved to the property and placed on a cement foundation. When Mr. Campanello further questioned their plan to build a residence there next year, she reported that they are researching building plans and builders at this time.

When Mr. Homan inquired further about the shed possibly being torn down, Mrs. Schreiber reported another structure is being built in place of the shed, and they wanted to make use of the materials of the shed rather than throwing them away.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if the Board can put time limits on Use Variances, and Mr. Kolbus said yes. Having to meet the five specific criteria of a Use Variance, Mr. Homan said he agrees with staff on 1-4 of those. Mr. Hesser noted he is not sure that he agrees with 1, 2, and 4. Mr. Campanello asked staff about a recent request for a recreational cabin on another parcel of the former golf course and whether or not that was a Use Variance. Mr. Mabry said he wanted to say yes although he was not 100% sure. He stated he did not believe it was a Special Use. There was some follow-up discussion about the type of request it was and a remonstrator that was present at a previous hearing. Mrs. Wolgamood noted these parcels are all fairly large with this particular one being 11 acres. She noted it was mentioned during the other petition hearing that if he came in for a 100'x50' barn in an A-1 zone on 11 acres, a permit would be issued. She acknowledged that is not what this request is about but if it was a 12'x20' building for two horses, they would not be here before the Board. She also pointed out that they are going to build a house which Mr. Hesser noted was a key point to him. He went on to say that they have allowed petitioners to place accessory building on properties prior to building a house. Here the

need is because it is a unique opportunity to save some money and to maintain the property as well. He said he viewed this as the Board could place a time limit on it, and the petitioner understands if they do not put a house there, they may have to tear it down and remove the foundation. He said he is willing to give them that opportunity.

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

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

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved in that this property is in transition to a residential use and the building is necessary for proper maintenance of the property to effect the future construction.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property because the land could not be maintained properly otherwise with no equipment.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application and testimony that there will be a residence built on the property with construction to begin within two years.
2. There will be a residence built on the Real Estate with construction of said residence to begin within two years of July 17, 2014.
3. Approved for a period of two years.

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

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

No: Robert Homan.

It was clarified that the Use Variance will expire in two years at which time the petitioner will either be in compliance with the Zoning Ordinance or a new request will be required to be submitted.

**** It should be noted that Mr. Hesser steps down for the remainder of the meeting, and Lori Snyder steps in****

14. The application of *Steve S. & Deborah K. Detwiler* for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the East 915 ft. off of SR 15, 665 ft. South of CR 112, common address of 55724 SR 15 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 #55724SR 15-140619-1*.

There were 15 neighboring property owners notified of this request.

Brian Hollowell of Schrock Homes, 2523 Messick Drive, Goshen, was present on behalf of the petitioners who wish to build a new home without having to vacate the existing home during construction. Upon completion of the new home, the existing mobile home will be removed.

When Mr. Homan questioned how they access the property, Mr. Hollowell reported there is an access road off of SR 15 which is shared by three residences. Mr. Campanello inquired about getting the mobile home removed from the property and possible inclement weather. Mr. Hollowell indicated that may be an issue. When Mr. Campanello further inquired if it would be torn down or pulled off of the property, he deferred to the homeowner.

Steve Detwiler, 55724 SR 15, homeowner, reported he and his three sons will scrap out the existing mobile home and attached garage. When Mr. Campanello asked if they will be able to complete removal within 30 days, and Mr. Detwiler indicated yes. Mrs. Wolgamood inquired about his length of residency at this location, and Mr. Detwiler stated it has been 14 years. She further asked if the attached garage will remain, and he reported it will also be removed.

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** 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 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. Approved for a period of time up to and including November 30, 2015; if occupancy of the new residence and demolition of the existing residence has not been accomplished by this date, then the petitioner is required to reapply for a new Use Variance to the Elkhart County Advisory Board of Zoning Appeals.

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

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

15. The application of **Bradley Dewald and Duane L. Miller** for a Use Variance for an electrical contracting business in an A-1 zone on property located on the West side of CR 27, 1,325 ft. South of CR 42, common address of 67257 CR 27 in Jackson Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #67257CR 27-140612-1*.

There were nine neighboring property owners notified of this request.

Bradley Dewald, owner of Professional Electrical, 67279 CR 27, was present representing the petition and is the adjoining property owner to the south. He reported he purchased the subject property a year ago and had the property cleared. There is an old non-habitable home there that is being removed. He explained they purchased their home on the adjoining property with the hope of getting the subject property in the future as well. Now, they would like to build a 100'x50' agricultural building located 350 ft. back from the road with business storage as well. He reported 1,000 sq. ft. will be horse barn and four stalls (bucket truck, scissor lift, vehicle storage, and front office) for storage related to his business.

Showing enlarged photos *[attached to file as Petitioner Exhibit #3]*, Mr. Dewald stated he presently operates his business out of an accessory building on his residential property with one truck, a desk, and a small amount of leftover inventory. He showed a photo of the subject property including a tree line which remains as a buffer between the proposed building and adjoining property to the north. He mentioned widening part of the existing driveway for esthetics. He reported there will be no signage, no lights, or illumination. Additionally, he indicated there will be fencing enclosing a riding arena and two pasture areas. Regarding the request that states they are building an oversized building in a residential neighborhood, he responded by showing photos of neighboring commercial buildings. When Mr. Campanello asked about employees coming to the building, Mr. Dewald reported currently possibly one truck or one employee will show up per week to pick up an item that Mr. Dewald cannot personally deliver to them. He went on to say that it has never been their intention to have public or employees come to their property. While he said the building he currently uses on his adjoining property is fine for the business, he owns a bucket truck and scissor lift trailer which need to be stored inside.

When Ms. Snyder inquired about the accurate dimensions of the building, Mr. Dewald reported they are 50'x110'. He submitted drawings of the proposed building views *[attached to file as Petitioner Exhibit #1]*. Mr. Miller inquired if this will be on one deed to two. Mr. Dewald reported the property that he is requesting to put the agricultural building on is in his name and his business partner, Duane Miller. Originally, he stated that Mr. Miller was going to build a house on the subject property but has now changed his mind so they have no plans to ever build on the property. He noted if some unforeseen event occurs, the building could actually become an agricultural building, and a house could be built on the front portion of the property. As an answer to Mr. Miller's question, Mr. Dewald said it is currently and will remain two deeds. When Ms. Snyder inquired what is to the south across the body of water, Mr. Dewald stated it is Bainter Town which is a nature preserve, and the property to the east is all government subsidized corn/bean fields. He submitted letters from two neighbors in support *[attached to file as Petitioner Exhibits #2]*.

There were no remonstrators present.

The public hearing was closed at this time.

Ms. Snyder noted the other similar buildings in the area which must have been approved previously. Mr. Campanello indicated Rodman's (to the rear) was approved within the last few months. Because he is in partnership with someone else, Mrs. Wolgamood believes the building is being constructed for the business as its intended use and the horses are secondary. She does not believe it would ever be converted completely to an agricultural building. She noted Mr. Dewald made a wonderful presentation and pointed out his mention that all equipment will be placed inside.

Ms. Snyder noted the support letters do not say they are aware of the business use and asked Mr. Dewald who said the neighbors are aware of the business and he has shared the plans with them. He noted he feels everyone likes the fact that the overhead doors face his property and appreciates the removal of the dilapidated house and the \$20,000 spent to clear the property. Mr. Homan asked the number of employees which Mr. Dewald reported is three plus himself. He went on to say that the employees go to the jobs and not his property. Any materials are ordered and delivered to the job site or the employees go pick them up.

Mr. Homan said he understands what the petitioner wants to do and does not think it would have a particularly adverse impact on the property, neighboring property, or property values. He does not know that there is anything peculiar about the property to allow this use, and he has trouble with that issue. He also noted he would feel better if it was on one deed and for the owner/occupant of the business which it technically is not. Ms. Snyder questioned if it would make any difference if they combined it under one deed. Attorney Kolbus said it would affect his business model (co-owner).

Mr. Miller said Mr. Dewald made a great presentation with respect to how the property is going to be used but noted he struggled with the deed issue. He noted the nearby businesses, and the use is established in the rural neighborhood. He does not feel the building is out of size. Mr. Campanello expressed agreement with finding #3 but Ms. Snyder pointed out that there is no one behind him and government subsidized fields across from him.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Doug Miller that this request for a Use Variance for an electrical contracting business in an A-1 zone be approved based on the following Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner due to the fact that there is adjoining properties that have businesses running out of them and surrounding residences have agreed to construction of the building.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved as there are existing businesses adjoining said property.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property as they would not be able to have their horses there and store the business equipment inside the building.

5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application and presentation clarifying that the actual building is 50' x 110' ft.
2. No outside storage of any equipment related to the electrical contracting business.
3. No employees coming onto the Real Estate.
4. No sign related to the electrical contracting business is permitted.
5. No exterior lighting is permitted on the Real Estate.

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

Yes: Tony Campanello, Lori Snyder, Doug Miller.

No: Robert Homan, Meg Wolgamood.

16. The application of *Michael W. & Melissa K. Kelley (buyers) and Donovan T. & Jacqueline S. Leidelmeyer (sellers)* for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the South side of Warren Street (CR 16), 500 ft. East of Mill Street, common address of 411 E. Warren St. in Middlebury Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #411EWarrenSt-14023-1*. He verbally amended Commitment #2 to remove the words "*an agricultural or*".

There were 16 neighboring property owners notified of this request.

Bruce Scase, 69445 Christiana Creek Drive, Edwardsburg, Michigan, was present on behalf of this petition. He said they are looking to put a second residence on his son's property for himself and his wife in their elder years. Regarding his site plan, he noted he would like to enlarge the dimensions slightly because there is not a final decision on the size. Mr. Campanello asked about the existing 40'x45' building and the proposed 38'x10' addition. Mr. Scase stated he would like to replace the existing 38'x10' garden shed with the 40'x45' dwelling in the same location. Additionally, he reported he would like to add a one car garage to the request. When Mr. Campanello inquired about the building returning to accessory storage after the Scases no longer reside there, Mrs. Wolgamood pointed out that the proposed structure is never going to be storage and Commitment #2 means nothing. When questioned, Mr. Scase reported city sewer at the property.

Mike Kelley, owner of the residence at 411 E. Warren Street, was also present on behalf of this request. He reported when his parents pass, he would probably move into the second residence, and one of his children would move into the original residence. Mr. Miller questioned staff if that statement impacts their recommendation, and Mr. Campanello requested staff input. Mr. Mabry noted Finding #4 which relates most closely to that. Mr. Miller pointed out that the second dwelling is never going away and will never revert to storage. Therefore, the two

dwelling property will always remain which is not allowed in the current Zoning Ordinance. Mr. Mabry stated he hesitates to change a recommendation right at the podium but reiterated that Finding #4 is crucial.

Mark Salee, Town Manager, 418 N. Main Street, Middlebury, was present to get some questions answered. He said the council discussed the information they had and did not have a significant opinion either way on this request. More importantly, with River Bend Park adjoining the subject property, he stated the Park Department had questions as to what the structure is going to be. He noted that question has now been answered which is helpful. By Ordinance, he reported this structure would need to be connected to city water and sewer on its own connection. He stated the existing residence is on a well because it is an existing well. He questioned the Board about issues that may occur in the future if the property is sold, if the houses are possibly sold separately, and noted there is no access road. He reiterated that he is not present in opposition but would suggest a commitment be included to require hook-up to town utilities.

Ann and Jerry Piatt, 504 E. Lawrence Street, were present in remonstrance to this request. Mrs. Piatt stated they are adjoining property owners to the south of the subject property. She expressed their main concern is that it is zoned R-1 for single family dwellings. She said when they purchased their home, they wanted a quiet single family residence neighborhood. She did note the apartments were already there, but they had planned to put a privacy fence up anyway. She also indicated there is a privacy fence between them and the Kelleys. When she looked at the ordinance, she noted it said the intent of the ordinance is to protect the existing neighborhood as it stands, and she feels allowing this to happen would affect property value. If you have a situation like this, she questioned why they did not find a larger house, possibly buy a place in the country to build a larger house, or find one with an in-law suite or guest house on the property. She also suggested that the parents could live in the apartments next door.

Although she sympathizes with them because the Piatts did this with their parents, she stated they bought their home with suite or wing of the house for her mother. With Mr. Kelley's comment about a continuous rotation of family, she mentioned there are no guarantees about the future as the second home will always be there.

In response, Mr. Scase pointed out there is currently a building in the same location and approximately the same height and not quite as wide. He said he does not know that it would be any more visible over the privacy fence than what is currently there. As far as being able to split the property, Mr. Scase reported the east portion of the property is a flood zone so you could not put an access through there. While open to suggestions, he said he thought this was the most viable option.

Ms. Snyder questioned if they had researched the cost of city services run from the street, and Mr. Scase reported he had not. He noted the existing residence has city sewer services. Mr. Salee indicated the new residence could not be tied in to the existing sewer. Ms. Snyder noted it could be very costly. Mr. Campanello commented that the mother-in-law suite might be viable option and could be discussed with staff. Additionally, he said he does not see that they can approve an additional residence on this property.

The public hearing was closed at this time.

While she can sympathize with the request, Mrs. Wolgamood noted zoning is R-1. While she also realizes zoning of M-2 to the east and R-4 to the west, she indicated a minimum of R-2

zoning is needed for something attached to residence as a double dwelling. She also stated concern about the floodway and reiterated Ms. Snyder's point about the cost involved in connecting to city services which is required. She suggested discussion with staff as she believes somewhere in the ordinance, a person can put an addition on the house for an in-law suite, but there is criteria for it and the main mode of entrance has to be through the main house. Mr. Mabry confirmed this. While she does not know that she can support this request, Mrs. Wolgamood suggested tabling this request to look into the possibility of rezoning property to R-2 and convert the existing residence into double dwelling. Attorney Kolbus pointed out that does not change this petition, and the Board can still vote on it.

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

Motion: Action: Deny, Moved by Tony Campanello, Seconded by Meg Wolgamood that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be denied based on the following Findings and Conclusions of the Board:

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

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

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

17. The application of **Daniel Bontrager, Jr. & Nora J. Bontrager** for a Use Variance to allow for the construction of an accessory building at the same time as the construction of the residence and for a 60 ft. Developmental Variance to allow for the construction of said accessory building 60 ft. from centerline of the right-of-way (Ordinance requires 120 ft.) on property located on the South side of SR 120, 2,000 ft. East of CR 39, 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 #OSR 120-140616-1*.

There were 11 neighboring property owners notified of this request.

Daniel Bontrager, 6510 W 200 N, Shipshewana, was present on behalf of the request and said they would like to build a home in a flat area of the property and build a barn in a natural clearing out by the road. If the Board is inclined to deny this request, he said he would be happy with 75 ft. in from the road. When Mr. Campanello questioned if they have talked with State Highway about any future plans for widening the roadway, Mr. Mabry indicated he is not aware that anyone has. Mr. Bontrager mentioned he thought there was some kind of requirement about not changing the highway within a certain distance of the Toll Road. He also noted there is a hill on his property so he can only see the tops of semis as they pass on the road. Mr. Campanello

agreed that it does drop off pretty quick. Concerning Mr. Bontrager's comment that 75 ft. would be okay, Mr. Miller questioned if the ground conditions as so bad that he cannot meet the 120 ft. setback. Mr. Bontrager said the property slopes down to the south and pointed out a good-size gully. He added that the proposed site for the barn is a natural high area that would be perfect to build on.

When Mrs. Wolgamood questioned it being a barn, he noted he calls it a barn but staff calls it an accessory building. He went on to say that half will be for horses and half for storage. Mrs. Wolgamood further questioned Mr. Bontrager about where the horses will graze, and Mr. Bontrager reported he will put a fenced area out along the road. He stated they want the barn close to the house. He also mentioned a gravel pit in the center north property. When Mr. Miller asked when construction of the house will begin, Mr. Bontrager said they would like to start toward the end of August although he has not yet applied for a permit. When Mr. Miller questioned him further, Mr. Bontrager said it is not impossible to construct the home to the rafters prior to beginning construction of the barn. He indicated his contractor's preference to construct them simultaneously.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Wolgamood stated she has more of a problem with the setback then allowing them to build both structures at the same time. The Board members agreed that 60 ft. from centerline of SR 120 is too close.

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that this request for a Use Variance to allow for the construction of an accessory building at the same time as the construction of the residence be approved based on the following Findings and Conclusions of the Board:

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

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

Yes: Meg Wolgamood, Lori Snyder, Doug Miller.

No: Robert Homan, Tony Campanello.

Motion: Action: Deny, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these,

further moved that the request for a 60 ft. Developmental Variance to allow for the construction of said accessory building 60 ft. from centerline of the right-of-way (Ordinance requires 120 ft.) be denied.

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

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

*****It should be noted that Tony Campanello steps down.*****

18. The application of ***Jaime Diaz De Leon*** for a 8 ft. Developmental Variance to allow for an existing accessory building 2 ft. from the East rear property line (Ordinance requires 10 ft.) and for a 3 ft. Developmental Variance to allow for said accessory building 2 ft. from the South side property line (Ordinance requires 5 ft.) on property located on the East side of Santa Anita St., 178 ft. North of Byrd Ave., being Lot 189 and South 10 ft. of Lot 188 of Riverdale, common address of 57980 Santa Anita St. in Concord Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #57980Santa AnitaSt-140623-1*.

There were five neighboring property owners notified of this request.

Jaime Diaz De Leon, 57980 Santa Anita Street, Elkhart, was present on behalf of the petition with Faith Alvarez present as interpreter. She said that Mr. De Leon has discussed the petition with her at length, and she assisted him with interpretation when applying for the permit. She stated that Mr. De Leon purchased a shed for storage because the home is small, the lot is narrow, and there is no basement. She reported a previous application for a garage, but Mr. De Leon did not have the finances to build that garage. This is a more cost-effective alternative to store his yard equipment, tools, and toys for his children.

She said they discovered that they have approval from the Health Department to place the shed over the septic system in the back yard on skids. However, the Building Department said code requires that due to the size of the shed, it cannot be placed on skids. She reported they will be speaking with Building Commissioner Kevin Williams later today. She suggested three different options for resolution as being approved from a zoning standpoint only so the shed can be placed two ft. from the property line, being contingent on approval from Mr. Williams to deviate from the building code, or if they are able to come up with alternative shed. Additionally, she mentioned the possibility of tabling the request today for the discussion with the Building Commissioner. When Ms. Snyder questioned the prior building permit, Mr. Mabry indicated it was for an addition to the garage to the south which would have encroached into the south property line. Ms. Alvarez stated the request was actually for an attached garage to be two feet from the south side property line and an eight foot variance was needed. When Mr. Miller inquired, she said the shed is currently on the property on skids. Additionally, she noted letters in support from the neighbors who are happy to see the home being rehabilitated after ten years.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan noted neighbors' letters in support do have an impact for him. He pointed out what the Board decides may be irrelevant if a solution cannot be found to appease both the Health and Building Departments and suggested tabling the request to obtain more facts.

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

Motion: Action: Table, **Moved by** Doug Miller, **Seconded by** Robert Homan that this request for a 8 ft. Developmental Variance to allow for an existing accessory building 2 ft. from the East rear property line (Ordinance requires 10 ft.) and for a 3 ft. Developmental Variance to allow for said accessory building 2 ft. from the South side property line (Ordinance requires 5 ft.) be tabled until the August 21, 2014, Elkhart County Advisory Board of Zoning Appeals meeting to allow for additional fact finding and a possible solution.

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

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

19. The application of *John E. & Geneva Faye Yutzy* for a Use Variance to allow for two additional outside employees, for an amendment to a site plan for an existing Special Use for a home workshop/business, 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 36, 660 ft. East of CR 31, common address of 15733 CR 36 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 #15733CR 36-140324-1*.

There were six neighboring property owners notified of this request.

Paul Hochstetler of Freedom Builders, 54824 CR 33, Middlebury, was present representing this petition. He confirmed that they have a septic permit at this time and explained the lapse in time was waiting for State approval of a commercial septic for the home workshop. He submitted a signed petition from neighbors [attached to file as *Petitioner Exhibit #1*]. He gave some background information about the business which the petitioner began using 1,200 sq. ft. of the second story of the agricultural barn. As business increased, the petitioner began storing items in the shop building which is where 90 percent of the business takes place now. He noted the proposed addition is 40 ft. on the back side of the building which still meets the required setback.

Regarding the need for the Use Variance for two additional outside employees, Mr. Hochstetler stated five years is fair timeline for the sons to work at business considering their age. In the meantime, he would like to have two additional outside employees to keep up with the demand of business as his children are not an option at this point. Regarding the amendment for the Special Use and Developmental Variance, he disagreed with staff's findings #1 and #2 that this exceeds the scope of accessory or agricultural use. In this neighborhood, he researched in this square mile section and in the section to the East, the number of agricultural and/or accessory buildings that are as large or larger than what is proposed. He reported a mile to the north at 15229 CR 34, Pinecrest Farms has 20,096 sq. ft. of out-buildings being mostly ag including a 60'x76', 40'x84', 40'x80', 54'x99' and 34'x48', all being used as ag and accessory or a combination of the two. On the next road to the east, at 64122 CR 33, 11,360 sq. ft. of out-buildings including a 56'x124', 32'x50', 32'x88', and no residence, used mostly for agricultural purposes. He reported there is a property at 63557 CR 31 on both sides of the road with 11,412 sq. ft. of a mix of ag and accessory out-buildings including a 36'x126' barn that is partially used for accessories and partially used for ag, a 40'x50' shop that is all accessory, and a 40'x44' shop that is mostly used as accessory. Another property on the same road has a 50'x120' accessory building with no house. He noted the square footage of the building the petitioner is proposing is

4,360 sq. ft. and there is 1,200 sq. ft. of accessory that he is using in his barn. If you drove onto this property, Mr. Hochstetler said a person would not know that it is anything but an agricultural barn that could easily revert back to agriculture use if he would ever discontinue the business. Across the road at this location, he said there is a total of 6,544 sq. ft. of buildings which are a combination of ag and accessory. To say this size of building is uncommon in this rural community, he said is an exaggeration.

He researched and reported a list of Special Uses that have been granted for similar applications nearby as Bender's Construction which was issued a Special Use in 1999 for warehousing/storing including a construction storage yard of 3,840 sq. ft. building without a primary residence (residence currently in the construction process). He indicated they were approved to put living quarters in that building at a later hearing so that there is a residence on site. At 14835 CR 34, he said there was a Special Use granted in 2013 for Larry Borkholder for a home workshop/business for a woodworking business approving a total of 5,016 sq. ft. of accessory building for the home workshop. At 63082 CR 33, a Special Use was approved in 2003 for construction yard storage for excavating equipment including the construction of a 6,600 sq. ft. accessory building for storage of excavation equipment. Immediately next door to the east, a Use Variance was approved on 03/26/14 with no limitation on square footage of accessory buildings. For the sake of comparison, he was approved to construct a building that will increase his accessory square footage to a total of 12,768 sq. ft. on the same property which is used for buggy manufacturing and retail. Noting these, he said there are many properties that have far exceeded this request and have been approved by this Board. Both the Developmental Variance and Special Use amendment can fall under the same argument.

Pointing out a photo of the 40'x54' shop with a porch along the front on the subject property, he stated it is built to be more appealing than what was earlier referred to as a "slap-together barn" which is the intent of the new structure as well as it will attach to this building and match the style and design. In the second story of the big red barn, 1,200 sq. ft. of the approved accessory square footage so far is there. If this were to revert to a normal single family residence with no business, the shop building would be a little over 4,000 sq. ft., the barn could easily be converted to 100 percent ag use, and there is an attached garage on the house for personal storage but easily falling within a normal single family residence tract.

With only four board members present, he mentioned that they are entitled to a full board vote. If this should happen to be a two/two split, he requested to table this petition for a full board hearing.

Mr. Homan noted a home workshop/business entitles the petitioner to have two outside employees. Mr. Hochstetler stated he currently has four outside employees. As far as traffic being generated, he reported the petitioner loads or unloads one to two trucks per day which is usually a truck and trailer or a box truck. Unfinished furniture is being brought in and finished furniture is being shipped out. In the questionnaire, he indicated one semi per week, he said the petitioner noted he has one semi every two weeks. Additionally, he reported the semi turns around on the property so there is no backing in off the road. In his mind, Mr. Hochstetler said this is a far cry from full blown manufacturing from what they are used to seeing. Mr. Homan confirmed that the petitioner does not build furniture from scratch. Mr. Hochstetler added that approximately 10 percent of the business is building small jewelry display cases so some product

is assembled from scratch. Approximately 90 percent of the business is in the shop where they do furniture finishing.

Mr. Miller noted there is no one present in support or remonstrance.

The public hearing was closed at this time.

Ms. Snyder inquired about the total square footage of all accessory storage on the property which is 7,160 sq. ft. Referring back to the 03/19/14 approval for the square footage, Mr. Homan asked Mrs. Wolgamood if that was for the garage attached to the house. As it was for personal storage, he assumed it was not particularly associated with the business. Mrs. Wolgamood stated the garage that is attached to the house is an oversized garage for personal storage, but they also hold church there. She reported that type of request is issued frequently, and it was not business related. For her, she reported the issue is the proposed addition. She expressed agreement with Mr. Hochstetler that it is not a full blown manufacturing site even with an addition.

If the Use Variance were to be approved, Mr. Homan said he is not sure he has a problem with the Special Use amendment and Developmental Variance. Regarding the commitment for five years for the two additional outside employees, Mr. Homan asked if they set an expiration for it in five years at which time either family living on the property are in the business or the petitioner would come back before the Board and request two additional employees which would take it outside the definition for a home workshop. While he supports the staff's recommendation, he wants to be clear that the Use Variance drops off at the end of five years, and he must fall within the definition of a home workshop.

With the total accessory square footage reaching over 8,000 sq ft. and the house being 2,570 sq. ft., Ms. Snyder asked if this is consistent with what has been approved before. Mr. Mabry said yes and noted Mr. Hochstetler pointed out several cases where approvals were similar. Mr. Homan said this is not going to stand out as it is consistent in appearance even though the land use is different. Even though he gets uneasy about the expansion of a home workshop/business, in his opinion, it is not a very big expansion.

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 Use Variance to allow for two additional outside employees 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 duration of the Use Variance approval is five years, after which time the approval becomes void.

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

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

Motion: Action: Approve, **Moved by** Doug Miller, that the request for an amendment to a site plan for an existing Special Use for a home workshop/business be approved. Prior to voting on the motion, Mr. Homan commented that he did not feel they could approve the Special Use amendment to the site plan for the 40'x40' building if they have not approved the Developmental Variance for the accessory to exceed the primary. He questioned if they are going to approve the Developmental Variance that they should go through the three criteria on Pg. 17C in a positive manner and approve that first. When Mr. Miller withdrew his motion, Attorney Kolbus noted there was no seconder either.

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Robert Homan 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 Conditions 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 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).
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 commitment was imposed:

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

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

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

Motion: Action: Approve, **Moved by** Doug Miller, **Seconded by** Meg Wolgamood that the request for an amendment to a site plan for an existing Special Use for a home workshop/business be approved based on the following Findings and Conditions 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;

With the following condition imposed:

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

The following commitment was imposed:

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

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

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

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

21. The first staff item for Karl & Beth Chupp – 70486County Road 31 – 131220-1 – for a major/minor change for an extension to obtain the ILP was not heard. As this request was approved as a Use Variance, there is no time limit or deadline to obtain the ILP.

22. The staff item for Elias Ray & Judith Martin – 22154CR 142-140224-2 – was presented by Mr. Mabry. He noted the request was approved in February as an agri-business with an outdoor display area of 87' x 122' for farm implements. While applying for permits, the site plan now shows the display area to be approximately 20,000 sq. ft. which is almost double. He posed the question now whether the Board feels it is a minor change or a major change which would require a new public hearing. While the new proposed outdoor display area was discussed, Attorney Kolbus noted it is the entire width of the property. Using an enlarged aerial photo, Mr. Mabry pointed out the original approved area was to be grass, and now it is proposed to be gravel. Mr. Campanello stated only approximately 1/3 of the parcel is being used for the building and display area.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Robert Homan that the request be considered a minor change.

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

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

23. The staff item for Sun Cobus Green LLC – 95-28920 – for a major/minor amendment to Special Use permit site plan for a clubhouse was not heard as the petitioner needed to produce a site plan and the project was put on hold by the petitioner.

24. The meeting was adjourned at 1:13 pm.

Respectfully submitted,

Deborah Britton, Recording Secretary

Doug Miller, Chairman

Tony Campanello, Secretary