

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF NOVEMBER 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 Vice Chairperson, Meg Wolgamood. Staff members present were: Brian Mabry, Zoning Administrator; Mark Kanney, Planner; Liz Gunden, Planner; Kathy Wilson, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. Election of Chairman: Robert Homan nominated Randy Hesser who accepted the nomination.

Motion: Action: Approve, **Moved by** Robert Homan, **Seconded by** Tony Campanello that the Board approve the election of Randy Hesser as Chairman of the Board.

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

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

3. A motion was made and seconded (*Miller/Homan*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of October 2014 be approved as read. The motion was carried with a unanimous roll call vote.

4. A motion was made and seconded (*Campanello/Miller*) that the Board accepts the Zoning Ordinance and Staff Report materials as evidence into the record and the motion was carried with a unanimous roll call vote.

5. The application of *Michael Vanderpool and Shawn M. Berchiatti* for a 2 ft. lot width Developmental Variance to allow for the construction of a residence (Ordinance requires 80 ft.), and a Developmental Variance to allow for the construction of said residence on property served by and unimproved and non-maintained county road on property located on the Southeast side of Southwest/Northeast alley, 230 ft. Northeast of US 33, 426 ft. Southeast of CR 44, common address of 68106 US 33 in Benton Township, zoned R-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #68106US 33-141020-1*.

There were six neighboring property owners notified of this request.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, was present representing the petitioners who are present and submitted a site plan [attached to file as *Petitioner Exhibit #1*] which was also included in the Board members' packets. He indicated the Vanderpools live in the home that faces US 33. With the parents' health conditions that have deteriorated over the last few years, their daughter desires to build a new home on the rear portion of their property to care for them. He reported a septic inspection has been completed to see how the site could be configured.

Regarding the requested variances and noting the 1 ft. 9 in. variance for the frontage, Mr. Lang pointed out, using the aerial photo, that there are currently two homes to the north that access the drive location with one having much less frontage than the subject parcel. He noted

one of those lots is small in size compared to normal lot size in the county. He added that the variance request is well made up with the depth of the parcel square footage-wise. He noted the septic design sheet prepared by Meade Septic has room for a septic system located up-hill from where the flood concern is, and they have an approximate location of the septic system for the existing home. He indicated there is room for a replacement septic on the up-land side of the parcel if needed which is still outside of the floodplain area of concern. If necessary, Mr. Lang stated they will work with the Health Department to ensure the elevation portion of it is built accordingly so it would be out of the floodplain.

When Mr. Homan inquired if the proposed parcel for construction has been deeded off already, Mr. Lang said that will be completed if this request is approved. Mr. Homan questioned the parking lot on the alley, and Mr. Lang reported it belongs to the nearby church. He went on to say that the church has drives off of US 33 and Elkhart Street but also has access off of the alley. He noted that although the alley may be used by the church, he suggested the traffic would be very limited to possibly Sundays and Wednesdays when services may be held. He went on to say that this request would not be a major traffic imposition to the alley with this one additional home.

When Mrs. Wolgamood asked if the alley is maintained, Ms. Berchiatti stated that the church maintains it. Regarding the floodplain, Mr. Campanello questioned the age of the two houses to the north and noted they would also be in the floodplain. Mr. Lang stated he did not know when the homes were built but noted many homes in that area were built prior to any concerns about floodplains. When Mr. Campanello asked if they have been to the Health Department to determine if this proposed septic system would be approved, Mr. Lang said the site plan was submitted to the Health Department. When Mrs. Wolgamood asked if he was confident that they can get the floodplain high enough for the septic, Mr. Lang said he believes so.

There were no remonstrators present.

The public hearing was closed at this time.

After reading the information and today's testimony, Mr. Homan said that information would lead to the belief that there is a solution to the septic problem. He noted it is a nice lot, and although the road situation is not the best, he would not be opposed to having it divided into a buildable lot. Mrs. Wolgamood noted her concern is that it is on a non-maintained access road, but said the church is well-established. There was some discussion about the possible address for the proposed parcel.

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 2 ft. lot width Developmental Variance to allow for the construction of a residence (Ordinance requires 80 ft.), and a Developmental Variance to allow for the construction of said residence on property served by and unimproved and non-maintained county road be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. The indication from the Health Department is that the septic is a solvable issue.
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 as a residential construction site.

The following conditions were 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. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

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

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

6. The application of *John A. Gilbert, Jr. & Amy Dawn Gilbert* for a Developmental Variance to allow for the construction of a residence on property served by an access easement on property located on the North side of SR 120, 1,670 ft. East of CR 35, 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 #00SR 120-141020-1*. He submitted a letter of remonstrance received November 18, 2014, from Gerald Alexander *[attached to file as Staff Exhibit #1]*.

There were three neighboring property owners notified of this request.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the petitioners. He noted confusion because Gerald Alexander also signed the petition in support of the request, which Mr. Doriot read aloud, that was carried around to neighbors by Amy Gilbert, and submitted *[attached to file as Petitioner Exhibit #1]*. It was suggested Mr. Alexander possibly changed his mind after signing the petition. Using a large aerial map (included in filed), Mr. Doriot pointed out other similar situations in the area with multiple homes on easements. He went on to say that he visited the site with Capt. Jeff Sager of Middlebury Fire Department who indicated they will get back there if necessary. He reported Capt. Sager noted he liked a horseshoe drive and suggested that or a passing blister to move tankers around, and Mr. Doriot stated they will commit to installing a horseshoe drive or passing blister to allow passing of emergency vehicles. He reported most of the neighbors have agreed it will not affect property values. Additionally, he indicated the subject parcel will be as valuable or more-so than any other properties on the easement and said this is not uncommon in the York Township area.

When Mr. Homan inquired about maintenance of the easement, Mr. Doriot said they have a loose agreement with a couple of residents on the easement who own snow plows doing the plowing. He went on to say that the potential buyer is more than willing to do his part. Mr. Hesser asked about a recorded easement or agreement, and Mr. Doriot said he located a recorded easement but did not find a maintenance agreement. When Mrs. Wolgamood further asked if the recorded easement designates the number of parcels that utilize it, Mr. Doriot stated he did not find it in the easement. He went on to say that if approved, they will be completing an administrative or minor subdivision. Mr. Homan asked if a minor subdivision would bring any definition or clarity to the other property owners as to who is responsible for the easement. Mr. Doriot said it does not. The subdivision would simply make it meet the ordinance. He noted

they could dedicate a portion of the subject parcel for the easement, but it would be dedicated in the middle and not connect to anything. He said this is a workable situation but not the best. Noting the end result is going to be a three acre tract, Mrs. Wolgamood inquired why it would go through a subdivision other than administrative. Mr. Doriot stated there is a one year limitation on an administrative to pull a building permit, and whether or not the petitioner will pull a permit this year or next will trigger how they proceed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan mentioned it is not a perfect situation, and there is already significant development on this easement. When Mrs. Wolgamood noted there is no indication when the other homes were constructed, Mr. Hesser posed that question to Mr. Doriot who said at least one of the homes is modular so it would have been after the 1960's. Mr. Homan noted the letter from the remonstrator said they purchased their home over 20 years ago. Additionally, Mrs. Wolgamood pointed out that the remonstrator also noted one new home had been constructed since they moved there. Mr. Doriot said he believed the Gilbert property is the one new home since then.

Mrs. Wolgamood noted the subject property is not tillable with all of the existing trees. She questioned that impact of one more house and noted being bothered by the fact that there is no maintenance agreement and the Board's contribution if approved. Mr. Hesser recalled fairly recently where the Board required a maintenance agreement and noted his concern with the lack of one as well. When he asked about the prospect of getting a maintenance agreement, Mr. Doriot said he will do his best to get one. Attorney Kolbus noted there are currently four residences served by the easement. Although he would like to live back there, Mr. Miller said he would not expect services back there. He noted concern with public safety.

Mr. Miller questioned the staff's major objection to this request. While it could be argued, Mr. Mabry said adding one more residence to the easement would be a negative. Mr. Homan noted the unknown prospect of a maintenance agreement ever happening. Mr. Hesser suggested it could be a condition. If it were a condition, Mr. Homan questioned if all the properties served by it would be required to agree to it and sign it or if it would be just the subject parcel agreeing to the contract. He said he would think it would be all or nothing. When Mr. Campanello asked how many people were on the petition, Mr. Doriot said there were four but one of them sent the remonstrance letter. Mr. Campanello noted it would only behoove all of them to agree to a maintenance agreement. Mr. Doriot stated he will have the Gilberts' realtor put something together to be signed, and they will approach every individual on the easement.

Mr. Hesser questioned Attorney Kolbus about whether the terminology of a valid maintenance agreement from this lot to the road would be something he could determine. Mr. Kolbus said he believes they have always had an issue when they go beyond the boundaries of the property. Mr. Hesser indicated he is just talking about from the subject property to the road, something that would be enforceable as to these two lots. Mr. Kolbus said these two lots would be a reasonable relation to the request before them. Mrs. Wolgamood noted the one property in front does not utilize the easement. Mr. Hesser said if the easement goes across his property, he would have to agree to it. Mr. Doriot said it does go across his property. Attorney Kolbus confirmed that the property owner would just have to agree to it.

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 Developmental Variance to allow for the construction of a residence on property served by an access easement be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. As much as the petitioner has agreed to install a circular drive or passing blister which would facilitate adequate access by emergency vehicles which was a question brought by staff.
2. Approval of the request will not cause substantial adverse affect on the neighboring property **as there are already four properties served by this easement.**
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property as this is already a familiar use in that location and without the variance a residential home could not be constructed.

The following commitment was imposed:

1. A circular driveway or passing blister and maintenance agreement approved by both owners of the two parcels addressing maintenance concerns on the easement adjacent to their property.

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

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

7. The application of *ECB Real Estate Holdings, LLC* 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 West side of CR 43, 1,300 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 #000CR 43-141020-1*. He amended Condition #3 to a commitment.

There were seven neighboring property owners notified of this request.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was present representing the purchasers and realtor of the owners. He apologized as he did not realize when he was before the Board previously for a request for the subject property that the proposed owner was going to have more accessory storage than living space in the proposed shop house. The owner plans to live in the shop house while constructing the new larger house, and then the shop house will be converted into a home office for personal use.

When Mrs. Wolgamood questioned the possible need for Board action on the second residence, Mr. Mabry said the proposed ordinance has provisions to allow an accessory dwelling under certain circumstances if it meets those. When Mr. Hesser asked if the new home will be larger than the accessory storage, Mr. Doriot said yes. Mrs. Wolgamood inquired if the proposed building will be a single story or two stories, Mr. Doriot said he believes it is a single story. He noted it is already built and awaiting delivery.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted and as represented in the petitioner's application.

The following commitment was imposed:

1. The accessory portion of this structure must not be used for commercial storage.

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

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

8. The application of *J. D. & Judith K. Garner (buyers) and Jerry & Juanita Vannoster (sellers)* for a Special Use for a mobile home on property located on the East side of CR 23, 240 ft. South of 1st Street, common address of 68382 CR 23 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 #68382CR 23-140909-1*.

There were 20 neighboring property owners notified of this request.

Brett Garner, 68966 CR 33, Goshen, was present representing his parents who are the petitioners. He indicated they have basically the same reasons, medical hardship, as the previous owners and are asking that his brother stay on the property with them to provide care. When Mr. Hesser asked who owns the subject property, Mr. Garner reported that his parents do.

As the Hearing Officer, Mrs. Wolgamood noted there were remonstrators present at the previous hearing. She said her decision was based on the fact that they did not present anything to her about the medical history, and she felt she needed evidence. She noted the previous owners got the Special Use approval based on a medical need. She said she believed in most instances some type of written medical verification is required.

Emmon Schmucker of Coldwell Banker Real Estate, 663 CR 17, Elkhart, was present in support of this request. He reported that he worked with Vannosters when they purchased the property years ago and feels they have done a good job maintaining the appearance of the property. He stated he believes that JD and Judy Garner have a similar need and could enjoy a quality of living that not everyone gets with family close by as opposed to some type of assisted living facility. He said he would recommend approval based on the situation being the same as the previous owners with the same stipulations. He noted the family is aware of the rules regarding rental property.

The first remonstrator was Patricia Gardner, 68426 CR 23, New Paris. Although she has known the Garners for more than 14 years and considers them good friends, she said for the last four years, she has given up the privacy of her back yard because the main living area of the

mobile home on the subject property looks out at her back yard which is uncomfortable for her. As County Road 23 is busy, relaxing on the front porch is not something that she chooses to do either.

When they downsized in 2005, she stated that if the mobile home had been there on the property, they never would have considered moving into the area. When she was at the hearing on October 15, 2014, she indicated she became aware that the Garners' son was living with them in the home to help with their health issues, which she does not know the details of. She went on to say that her understanding is that the home has three bedrooms and a full basement that could be converted into living space which would eliminate the need for the mobile home. When Mrs. Wolgamood asked Ms. Gardner to show the location of her home on the aerial photo, Ms. Gardner indicated her home is two houses to the south of the subject property.

Lora Parker, 68404 CR 23, New Paris, was also present in remonstrance. She indicated she is the adjoining neighbor south of the subject property. She said they did not oppose the Special Use for the Vannosters who were great neighbors. They felt it would help them be able to stay on the property longer, but that did not happen as the Vannosters sold the property. She stated the mobile home has caused their property value to lower with their property being directly adjoining but not to the extent that they felt the need, until the property was being sold, to raise any concern. At this point, she feels the Garners have other alternatives and noted the Garners went ahead with the purchase of the property after the original denial. In doing so, she suggested the Garners may have another plan, and with a son in construction, there are other options.

For clarification, Mrs. Wolgamood asked Mr. Garner if this is no longer a buyer/seller situation, which he stated is correct. His parents have purchased the home and are living there now. She asked if Mr. Garner's brother, Tim, is living in the mobile home at this time to which Mr. Garner indicated he is not and stated they have not done anything with the mobile home. He went on to say that his brother has been living with him part of the time and with their parents part of the time. When Mr. Campanello questioned the possibility of remodeling the basement for Tim to reside, Mr. Garner said they would have the expense of an egress window but the rest could be framed out and done. He further indicated his parents did not want to lose the home so they went ahead with the purchase. He noted he does not understand that horses behind would make the property value any less.

The public hearing was closed at this time.

Mr. Hesser noted his feelings are two-fold as the subject property was previously approved for a nearly identical purpose but in the prior situation someone was already living there and wanted to add the mobile home, and it was expected to be a temporary thing. By passing it on to a subsequent owner, he said it would almost be implying that the mobile home is going to be a permanent thing. He said he can understand the neighboring owners' objections based on that.

As far as the medical conditions, he stated he would take them at their word and does not have a dispute with that. If they were to remove the mobile home, and later came back with a new request for a mobile home and medical paperwork, Mr. Campanello suggested that the Board would approve it. Mr. Hesser said he does not know that they would. Mr. Miller said he is not sure he would be in favor of it with the neighbors' objections. While he appreciates the situation the Garners are in and he would like to have a similar situation, Mr. Miller said he

would only want to do it with his neighbors' approval. Mrs. Wolgamood noted the original approval for the Vannosters for their medical hardship had approval of the neighbors.

As Hearing Officer, Mrs. Wolgamood said she struggled with this request which is why it is before the Board at this time. At that point, she noted it was a buyer/seller situation but now the buyers have bought it. Mr. Homan compared it to a recent similar request for a second residence for a caregiver which was denied. Mrs. Wolgamood said she also had to put herself in the position of the neighboring property owners and noted it is within 300 ft. of other single family residences. She indicated if it were outside of the 300 ft. and somewhere out in the county, there would be no question about it for a medical issue. Mr. Hesser felt it was a difficult question and a very close call.

The Board examined said request, and after due consideration and deliberation: **Motion: Action: Deny, Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for a mobile home 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 not cause substantial and permanent injury to the appropriate use of neighboring property provided the mobile home is removed from the property when the medical hardship no longer exists as represented in the petitioner's application.
3. The Special Use will substantially serve the public convenience and welfare by allowing the petitioner to reside on their property with assistance from relatives.

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

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

No: Tony Campanello.

9. The application of *Lee M. & Jaimene N. Garner (buyers) and J. D. & Judy Garner (sellers)* for a Special Use for a home workshop/business for massage therapy (Specifications F - #45) on property located on the North side of CR 142, 1,929 ft. West of CR 121, common address of 19767 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 #19767SR 142-141020-1*.

There were five neighboring property owners notified of this request.

Lee Garner, 21131 CR 46, New Paris, was present on behalf of this request. He said his wife is currently renting office space for her massage business, but with two children and one on the way, they would like to have the business located closer to home. He noted the request for one employee is possibly for a small amount of future growth. He said they would like a small sign near the road at the drive entrance.

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 a Special Use for a home workshop/business for massage therapy (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 commitment was imposed:

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

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

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

10. The application of *Marion E. & Mary Bontrager* for a Special Use for an agricultural use for the keeping of horses on a tract of land containing less than three acres (Specifications F - #1) on property located on the North side of SR 4, ½ mile East of CR 35, common address of 13763 SR 4 in Clinton Township, zoned A-1, came on to be heard.

There was no one present on behalf of the petition or in support or remonstrance.

There were 11 neighboring property owners notified of this request.

The Board examined said request, and after due consideration and deliberation: **Motion:** **Action:** Table, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that this request for a Special Use for an agricultural use for the keeping of horses on a tract of land containing less than three acres (Specifications F - #1) be tabled until the December 18, 2014, Elkhart County Advisory Board of Zoning Appeals meeting for petitioner to be present with petition to be dismissed at that time if no one appears.

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

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

11. The application of *St. James Boxing Club, Inc.* for a Special Use renewal for a youth and adult recreational center (Specifications F - #20) on property located on the North side of Old US 33, South of LaRue Street at intersection, 500 ft. East of CR 3, being Lots 5-1-4 & Tri W side lot, common address of 28867 Old US 33 in Baugo Township, zoned M-2, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #28867OLD US 33-141020-1*.

There were 10 neighboring property owners notified of this request.

Larry Young, 129 N. West Street, Mishawaka, was present on behalf of this petition. He said they are in the process of remodeling and repurposing the interior of the building which was donated to the boxing club. Currently, he reported they are running amateur boxing and soccer inside the facility. In the future, he explained they will be adding martial arts, computer classes, and tutoring for the youth. He reported they have a commitment from Notre Dame to provide computers and students for tutoring. Mr. Young stated they are working on additional funding, and have applied for numerous grants and are seeking donations. When Mr. Campanello inquired about the age of St. James Boxing Club, Mr. Young indicated Ben Barnes was original

founder, and he believes it goes back to the late 60's. He went on to say that he has been involved since 1973.

There were no remonstrators present.

From the previous request, Mr. Hesser recalled a lack of plumbing in one of the buildings and inquired about any problems operating out of the building. Mr. Young said one building, which is used for the soccer, does not have plumbing at this point. He explained there is water run to that area but there is nothing inside the building which they intend to add. He said there is a lot of work to do and improvements to make, but they have had no problems with the facilities so far.

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** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use renewal for a youth and adult recreational center (Specifications F - #20) be approved with the following condition imposed:

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

The following commitment was imposed:

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

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

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

12. The application of *Ryan S. & Teresa K. Penner* for a Special Use for a home workshop/business for a wholesale greenhouse (Specifications F - #45) on property located on the West side of SR 19, 1,303 ft. South of CR 30, common address of 62269 SR 19 in Olive Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #62269SR 19-141020-1*.

There were five neighboring property owners notified of this request.

Ryan Penner, 62269 SR 19, Elkhart, was present on behalf of this petition and indicated they want to put up a greenhouse to sell herbs to the wholesale market. He noted they feel it would be advantageous to the community. He indicated their plan is to grow the herbs in the greenhouse and package them in a small room in the existing shop building on the southwest corner of the property. Mrs. Wolgamood confirmed that there will be no retail sales from the property. When Mr. Miller asked about the size of the proposed greenhouse, Mr. Penner indicated 136'x30' which is as large as they will need, but they may go smaller.

When Mr. Campanello asked about truck traffic, Mr. Penner said they plan to make deliveries with their personal vehicles. He added that they may have to purchase a small van, but there will be no large trucks coming to the property. Mr. Campanello noted the Board would not want any backing in from or out onto SR 19. Mr. Penner noted the location of the greenhouse could change depending on the survey but said they will stay within the setbacks. There was

some confusion and discussion about a 260 ft. measurement on the site plan. Mr. Penner said he believed that measurement was from the highway to the back of the building.

There were no remonstrators present.

Mr. Miller expressed concern about future possible growth and large trucks being able to move around on the property with the placement of the greenhouse, realizing it is placed to optimize the sun exposure. Mrs. Wolgamood noted any amendments to the site plan would require coming back to the Board, and she believes he would be limited to the current site plan.

The public hearing was closed at this time.

Mrs. Wolgamood said she felt a notation or corrected site plan is needed. Mr. Hesser noted that Mr. Penner also indicated he may move the greenhouse even though it would remain within the required setbacks. For clarification, Mrs. Wolgamood suggested deletion of the 260 ft. indicated on the site plan or an explanation of what the 260 ft. is. Mrs. Wolgamood suggested a revised site plan could be submitted to staff in lieu of returning to the Board.

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 home workshop/business for a wholesale greenhouse (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 a revised site plan to be submitted to staff explaining the 260 ft. notation and as represented in the petitioner's application.
2. Retail sales are prohibited.

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

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

13. The application of *James Carl Isza (landowner) and Kurtiz Rochefort (business operator/renter of property)* for a Special Use for warehousing and storing (park a commercial vehicle) in an A-1 District (Specifications F - #44) on property located on the North side of Janet Street, 450 ft. East of Ash Road, 1,400 ft. North of CR 10, being Lot 13 of Peck's 2nd Sub., common address of 30909 Janet St. in Cleveland Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #30909JanetSt-140923-1*.

There were 15 neighboring property owners notified of this request.

Kurtiz Rochefort, 30909 Janet Street, was present on behalf of this petition, and indicated he would like to be allowed to park his commercial truck in his driveway. When Mr. Homan asked about the purpose of the truck, Mr. Rochefort reported he bought the truck in hopes of finding a lift for it to haul 20 yard dumpsters. He stated he has found that piece of equipment in Ohio and has the financing to get it. He was waiting for the outcome of this hearing. He said he

has storage in Mishawaka for his containers and could store the truck at that location, but it would be unsecured and there has been vandalism in that area to other trucks.

Referring to the photos that showed tires and a moped on the property, Mr. Rochefort indicated those items have been removed. He also reported the black truck in the photo belongs to his son and needs transmission repair which should be completed within the next month or so. He went on to say that the only vehicles in the driveway would be the commercial truck, his wife's summer car, his pickup truck, and his wife's Blazer. He submitted letters from neighbors in support of his request *[attached to file as Petitioner Exhibit #1]*. When Mr. Homan inquired how long Mr. Rochefort has been in business, Mr. Rochefort reported since 1995 but he has been at this location for two or three years. He said he has done a lot of clean up since they've been renting the property.

Mr. Homan noted that the complaint mentioned dumpsters on the property. Mr. Rochefort said he delivers dumpsters to job sites. He explained that he left a dumpster on his property for the weekend to save some time but did not think about it bothering the neighbors. Other than that, he said dumpsters are not at his house. Normally, only the commercial truck and trailer are parked at his residence. When Mrs. Wolgamood asked if the truck is normally parked beside the building, he indicated he could park it anywhere in the driveway that would make it better for any of the neighbors. He noted another concern is keeping the truck's diesel engine plugged in to prevent freezing which would also be an issue if he parked the truck in Mishawaka.

Mr. Hesser asked if the truck would fit in the garage which Mr. Rochefort indicated no. Additionally, he indicated he is just trying to expand and grow his business, and this truck is a key piece of equipment that is needed. Referring to the site plan, Mr. Homan noted the truck is shown parked along the west property line. He asked if there is any barrier or fence there. Mr. Rochefort stated there is a four foot privacy fence. Mrs. Wolgamood asked if a diesel truck has to sit idle for a period of time after it is started. Mr. Rochefort indicated because this particular truck does not have air brakes, he can move it immediately after he starts the engine. Regarding the letters of support that were submitted, Mr. Homan asked if the adjoining neighbor to the west sent a letter. Mr. Rochefort stated no but indicated that he thought that neighbor (John) was going to be present today. He said he had spoken with him.

Maenette Atkinson, 30932 Janet Street, was present in support of this request. She indicated Mr. Rochefort is one of the best neighbors she has had in the 53 years she has lived there. She reported there have been other commercial vehicles in the area in the past that no one complained about. Referring to the complaint, Mr. Homan asked about dumpsters being present currently, in the past, and any possible impact on her. Ms. Atkinson indicated they are not there anymore and have no impact on her.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan expressed that this is a difficult request because the ordinance is pretty firm against parking commercial vehicles in a residential area. He noted the nature of Mr. Rochefort's business is handling containers, and he made a mistake by keeping a container at his residence, and someone did not like it. He pointed out that the truck cannot fit into his garage. Oftentimes, Mr. Campanello said the Board looks at the number of neighbors in support or remonstrance of a petition which weighs into the decision. Being that there are several letters from neighbors in support, he stated he would be inclined to approve the request.

Attorney Kolbus commented that if approved, since it is a rental situation, he would suggest a time limit with renewal before the Board so it is not indefinite. Mr. Homan noted the ordinance is on the side of the complainant. Mr. Miller noted concern about other items sitting in the yard of the subject property in the photo. Mr. Homan pointed out that people tend to get the property cleaned up when coming before the board. Mr. Hesser commented that a time limit makes sense because of the addition of an accessory to the truck which Mr. Rochefort mentioned and because of the possible expansion of the business.

As he is leaning toward supporting staff report, Mr. Homan suggested a time period to make arrangements for the vehicle and suggested 90 days.

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

Motion: Action: Denied, **Moved by** Robert Homan, **Seconded by** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for warehousing and storing (park a commercial vehicle) in an A-1 District (Specifications F - #44) be denied with the following condition imposed:

1. The petitioner has 90 days to make arrangements to store or park his truck in an alternate location.

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

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

No: Randy Hesser.

14. The application of *Marvin & Malinda Miller* for a Special Use for a home workshop/business for a bakery (Specifications F - #45) on property located on the South side of CR 48, 1 mile east of CR 133, common address of 13836 CR 48 in Benton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #13836CR 48-141020-1*.

There were four neighboring property owners notified of this request.

Marvin Miller, 13836 CR 48, Syracuse, was present on behalf of this petition. He expressed their desire to open a home-based vending bakery to provide baked goods to the public and to provide employment for their seven daughters who reside at home. Mrs. Wolgamood confirmed with Mr. Miller that the previously approved Special Use never materialized. She further inquired if they had any plans to reinstate that Special Use, and Mr. Miller said no. When she suggested rescinding the previously approved Special Use for the property, Mr. Homan agreed that he would not want two home workshops going at the same time. Attorney Kolbus noted the motion could include that rescission.

When Mr. Homan asked about the need for Health Department approvals/certification, Mr. Miller stated they do not need certification for home-based vending, but they are restricted to what they can bake and must sell out of their house or at farmers' markets as opposed to taking products to stores. Mrs. Wolgamood confirmed that there are no proposed additions, and it is only an interior remodel project. Mr. Miller noted they are framing in a garage door and installing a passage door which is the only outside construction. She further confirmed that there is ample room for turnaround on the property.

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** Meg Wolgamood that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a bakery (Specifications F - #45) be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The previously granted Special Use (20082006) is null and void as it no longer applies to the use of the property.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Backing onto CR 48 is prohibited.

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

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

15. The application of *Country Echoes Attn: Michael R. Hostetler (buyer) and Mahlon & Marie Hostetler (sellers)* for a Special Use for a school (Specifications F - #38) on property located on the South side of CR 144, 800 ft. West of CR 3, 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 #OCR 144-141017-1*.

There were six neighboring property owners notified of this request.

Michael Hostetler, 70360 CR 3, Nappanee, was present on behalf of this petition. He reported they want to build a new schoolhouse as the current school is overloaded with students. When Mrs. Wolgamood inquired if they were vacating the existing school, Mr. Hostetler stated they are going to divide the students in the current school and build an additional one.

Regarding the ball diamond, he explained it will be used by the children attending the school. She further asked if CR 44 is a paved road, and Mr. Hostetler reported it is dirt. Referring to the application and the reference to attached teacher quarters, she noted it is a small area and inquired if the teacher will reside there. Mr. Hostetler said it will be used for an occasional overnight stay. She went on to question if the teacher quarters area will be utilized by the school for other uses such as a classroom, and Mr. Hostetler indicated no. Regarding a driveway, she asked if they had spoken with the Highway Department and if a curb cut will be required along with a driveway permit. Mr. Hostetler stated they will need one.

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

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

The following commitment was imposed:

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

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

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

16. The application of *Leon & Susan L. Miller* for a Use Variance to allow for the construction of a second dwelling on a parcel on property located on the West side of CR 33, 1,572 ft. North of CR 38, common address of 64713 CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #64713County Road33-141014-1*.

There were 11 neighboring property owners notified of this request.

Leon Miller, 64713 CR 33, Goshen, was present on behalf of this request. He explained they would like to replace the existing house with a new one and then get rid of the old one. When Mrs. Wolgamood asked if he had any issues with the recommended time frame to remove the existing residence, he stated he would like to have 90 days to allow time to do some selling and recycling of parts of the house. He stated he did not have a problem with the deadline of March 31, 2016, to have the entire project completed. When she inquired about the possibility of a new driveway, he indicated they will use current driveway.

There were no remonstrators present.

Mr. Homan asked if the permit had to be pulled within a certain amount of time. Mrs. Wolgamood indicated this is a Use Variance so it does not. She noted a Developmental Variance has the time deadline.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Meg Wolgamood, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as amended by the Board, as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following condition imposed:

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

The following 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 demolished within 90 days of the issuance of the Certificate of Occupancy for the new residence.
3. The petitioner is required to return to the Board of Zoning Appeals if occupancy of the new residence and demolition of the existing residence has not been accomplished by March 31, 2016.
4. No new driveways are permitted.

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

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

17. The application of *Nelson L. Lehman & Esther Lehman and Daniel R. Bontrager & Ruby F. Bontrager* for a Use Variance for a business repacking and selling bulk foods in an A-1 district on property located on the West side of CR 31, 550 ft. South of CR 36, common address of 64091 CR 31 in Elkhart Township, came on to be heard.

Mr. Mabry presented the Staff Report/Staff Analysis, which is attached for review as *Case #64091CR 31-141013-1*.

There were five neighboring property owners notified of this request.

Esther Lehman, 64091 CR 31, Goshen, was present on behalf of this petition and stated she and her husband are owners of the property. She reported they had a previous Special Use for a home vending bakery, but it is no longer in operation as they got burned-out running the business. She went on to say that two of their daughters and husbands would like to operate a bulk food variety store. She said they feel it would be beneficial to the community. When Mrs. Wolgamood inquired about the Bontragers, Mrs. Lehman indicated it is their daughter and husband who reside next door on adjoining property to the north. She questioned further about the Lehmans' involvement in the business. Mrs. Lehman said they will not be involved, but they own the property.

When Mrs. Wolgamood asked about semi trucks or large vehicles making deliveries to the property, Mrs. Lehman said they had that with the bakery so there is a large driveway on site. Regarding signage, Mrs. Lehman reported there is an existing sign which they will replace with a new one of the same size. Regarding the number of employees, because this is a Use Variance and difference from a Special Use, Mr. Hesser explained that all employees count whether residents of the property or not. Mrs. Lehman indicated six employees who are all family members. When Mrs. Wolgamood questioned ample parking area, Mrs. Lehman reported the bakery was pretty busy, and there was plenty of room.

Leon Miller, 64713 CR 33, Goshen, was present and stated he would be in favor of the request.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted Finding #3 is a stretch for him, but he can get there. There was discussion about the screening that was required in the previously approved Special Use but never completed.

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 Use Variance for a business repacking and selling bulk foods in an A-1 district be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted and as represented in the petitioner's application.
2. Required to complete screening as shown on the current site plan and previous site plan.

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

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

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

19. The first staff item regarding a new board member was presented by Brian Mabry. He indicated Janea Schirr, a realtor, has been recommended as a board member beginning January 2015. He noted he and Mrs. Wilson met with her and explained the basics of zoning. Prior to approval, he noted they asked her to observe a meeting so she is in the audience today.

With Doug Miller having served through October 2014 and Mrs. Wolgamood leaving the Board at the end of this year, Mr. Hesser commented that he enjoyed working with both of them. He felt the current Board members were able to reach a consensus after discussions, and although they have disagreements, they respect each others' opinions and move on afterwards. He noted they have both been very professional.

20. As a staff item, Mr. Mabry gave an update on the Zoning Ordinance. He noted the Zoning Ordinance draft has been set for December 2, 2014, at 6 p.m., as a public hearing with the Plan Commission. If recommended for approval, he said it will go to the Board of County Commissioners on December 15, 2014. Attorney Kolbus added that the recommended effective date of the ordinance if approved will be February 1, 2015, to allow staff to make the adjustment and changeover to the new ordinance. He went on to say that at the January meeting of the BZA, there will be a number of rule changes that the Board will have to effectuate if the new ordinance passes so that everything is ready to go on February 1, 2015.

21. Lastly, as a staff item, Mr. Mabry introduced Sara Seigler as a new part-time Planning Assistant as she was present to observe this meeting.

20. The meeting was adjourned at 11:28 a.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary