

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF JUNE 2015 AT 8:30 A.M.
MEETING ROOM - DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Jason Auvil, 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, Roger Miller, Jennea Schirr, Randy Hesser.

2. A motion was made and seconded (*Miller/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21st day of May 2015 be approved as amended. Mr. Hesser noted on Pages 10 and 14, there was an incorrect statement that no remonstrators were present and suggested those two statements be deleted. The motion was carried with a unanimous roll call vote.

3. 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.

4. The application of **Larry E. Yoder (buyer) and Marvin L. & Erma T. Miller (sellers)** for a Developmental Variance to allow for the construction of a residence and barn on property served by an access easement on property located on the 320 ft. East off of CR 35, 2,300 ft. South of CR 22, common address of CR 35 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #CR 35-150518-1*.

There were two neighboring property owners notified of this request.

Paul Hochstetler of Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners who were also present. He said the Yoders want to move closer to their children, Dennis and Margaret Lehman (daughter), but there is no room to attach anything for a dawdy house on the Lehman property. He went on to add that the restrictions for accessory dwellings are unrealistic in terms of size for functional living quarters. He explained the proposal is to purchase this parcel from Marvin Miller with the sale being subject to this approval. They will share the existing driveway owned by the Lehmans. He noted previous discussion with Planning Staff about the best procedure in this case including possibly a two lot minor subdivision. He expressed they are open to that if it is a better option, but either way, they face the challenge of having no road frontage. Regarding history of the parcel as clarification, Mr. Hochstetler reported this 41 acre parcel is not part of Crystal Bend Subdivision but part of the leftover property from the subdivision. He indicated he does not know about the history of the previous 3 to 1 denial.

In order to protect these parcels in the future, Mr. Hochstetler submitted a letter from Graber Law Firm stating Attorney Ohaneson will prepare the new deeds with easements being a

permanent part of both parcels and signed letters from the Lehmans and Yoders expressing agreement to the easement and a maintenance agreement between parties. Mr. Hochstetler stated they will provide recorded copies if approved [*attached to file as Petitioner Exhibit #1*]. He also reported that Ron Justice is prepared to move forward with the survey if approved. Noting staff concern about proliferation of driveways, he pointed out that there is no new driveway proposed as they would be using the existing driveway. Regarding traffic, he stated this will not generate a safety concern with this being only two people. Regarding the hardship, he noted they are creating a landlocked parcel, however, if this parcel has already been denied a 3 to 1 variance, he questioned how this parcel will ever be developed if the Board does not approve something. Regarding the possibility of an administrative subdivision and zoning, he noted the only issue is road frontage as the three acre minimum has been met, and 7 to 1 is not an issue. Additionally, he expressed feeling that they have covered the concern for long-term.

Mr. Miller asked the size of the subject parcel, and Mr. Hochstetler reported it is 136 ft. 9 inches wide and 957 ft. deep. When Mr. Hesser inquired about the owners of the parcel to the East, Mr. Hochstetler reported the Lehmans also own the parcel to the East of their residential parcel. He went on to say that he is not sure why it is two different parcels, but they own both of them. There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked if they can vote on this if it is not a legal lot yet. Mr. Hesser said it is proposed and as long as it is properly advertised, the Board can vote on it. Mr. Campanello questioned if the easement would be required to become deeded as a possible commitment. Mr. Hesser questioned Mr. Hochstetler about why an accessory dwelling couldn't be built on the East parcel. Mr. Hochstetler stated the same issue would exist there as it does not have any frontage, and dawdy house rules are that you have to attach the dwelling to accessory structure. He noted there is room to detach on the East parcel but that is not allowed. Mr. Auvil clarified that the new Zoning Ordinance says that an accessory dwelling does not have to be attached and just has to meet size limitations.

When Mr. Miller asked about the use on the East property, Mr. Hochstetler reported it is pasture at this point. Without knowing if it is a separate parcel, he indicated he can't say for sure but if it is not, that might be an option. Mr. Miller inquired about new land use rules regarding a detached parcel. Mr. Auvil reported that road frontage requirements are still the same. When Mr. Miller questioned if the use of the driveway is extendable beyond the current owners if they would sell the property, Attorney Kolbus said it can be written to run with land.

Mr. Hesser noted the Board is very reluctant and rarely grants variances with easement access, and to grant one to allow the creation of a new parcel seems to go against that. Mr. Homan agreed they have shied away from easements in general. In looking at the three criteria, he stated he agrees with the petitioner in Findings #1 and #2, but he does agree with staff in Finding #3.

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

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the Board adopt Finding #3 of the Staff Analysis as the Finding and Conclusion of the Board, and based upon this finding, further moved that this request for a Developmental Variance to allow for the construction of a residence and barn on property served by an access easement be denied.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

5. The application of **Jennifer Schuetz** for a Special Use for an agricultural for the keeping of one pot-belly pig in an R-1 district on property located on the West side of Quebec Street, 215 ft. North of Byrd Street, being Lots 178 & 179 of Riverdale, common address of 57973 Quebec Street in Concord Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #57973 Quebec St-150515-1*.

There were 26 neighboring property owners notified of this request.

Jennifer Schuetz, 57973 Quebec Street, was present on behalf of this request. She stated she has a pet pot-belly pig that she has had for 2 ½ years, and she would like to keep her. She reported the pig is no different than the dogs and cats she has. When Mr. Miller inquired about a reason for the complaint being filed, she said she does not know and there was none given. Mr. Homan questioned fencing, and Ms. Schuetz reported there is a 6 ft. privacy fence around the back yard. She further stated the pig is either in the house or in the fenced area with the dogs. When Mr. Homan questioned if pot-belly pigs produce more waste than a dog, she reported it is bigger but not more, and she picks it up every week just like she does the dogs'.

Robert Ottman, 57991 Yukon Street, was present in support and noted his property extends from Yukon Street back to Quebec Street. He reported he is in his garage all the time and does not hear the pig which is quieter than some of the kids in the neighborhood. Additionally, he noted the petitioner takes good care of the pig, and he does not see any reason for the complaint. With the enclosed fence, he reported you can't see the pig, hear it, or smell it.

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 Special Use for an agricultural for the keeping of one pot-belly pig in an R-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 (dated 5/5/15) and as represented in the Special Use application.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

6. The staff item for Wakarusa Historical Society – 95-2901 – major/minor change to site plan was presented by Mr. Auvil. He explained he was contacted by Craig Spicher, a representative of the Wakarusa Historical Museum requesting to move a historic shed from nearby adjacent property on site where an existing shed is currently located. The current shed

will be shifted over but basically they are adding one shed. He noted they have a previously approved site plan, and this is a request for a minor adjustment to the site plan. It was noted that the petitioner owns both parcels, and both sheds are on skids.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the Board approve the request as a minor change.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

7. The application of **Nathaniel W. Babcock and April M. Babcock** for a Special Use for an agricultural use for the keeping of 15 chickens on a tract of land containing three acres or less on property located on the South side of Rebecca Drive, 850 ft. West of CR 15, 450 ft. South of CR 26, being Lot 22 of Ferndale Sub. 1st. Extension, common address of 23152 Rebecca Drive in Concord Township, zoned A-1, came on to be heard.

Mr. Auvin presented the Staff Report/Staff Analysis, which is attached for review as *Case #23152RebeccaDr-150504-1*.

There were 30 neighboring property owners notified of this request.

April Babcock, 23152 Rebecca Drive, was present on behalf of this request. She explained they would like to keep chickens on their property for the sake of education as they have six children, with all except one being home-schooled. She also indicated they are involved in the 4-H poultry club and would prefer 12 because two children show poultry. According to the required amount of space for chickens, which is two square feet per chicken, the existing pen they have now is large enough with 36 sq. ft. alone on the inside of the coop and 24 sq. ft. on the outside. When Mr. Campanello inquired as to the reason for the request, Mrs. Babcock reported they had a previous complaint about chickens, but they were financially unable to apply for the Special Use at that time. In response to Mr. Campanello questioning if the chickens ever run loose, she reported that every once in awhile when the pen and coop are being cleaned, the chickens run around the yard. She further reported some of the children keep an eye on the chickens during that time, and the chickens have never left the yard.

Helen Finnigan, 23127 Marydale Drive, was present in remonstrance. She indicated her only concern is the possible odor from the chickens as she used to live down the road from a chicken farm. When Mr. Miller questioned if she was talking about the current smell, she reported she has never smelled these chickens and did not even know the chickens were there.

Also present in remonstrance was Charles Gould of 23100 Rebecca Drive, who indicated he lives two houses away from the subject property. He said the petitioners' sons came around with a petition stating they were going to raise six chickens for the county fair. While he said he does not have a problem with six, he noted concern about the possibility of an increase to 12 or 15. He also expressed concern about odor and questioned their process for removal of waste. He wondered if the chickens will just be used for eggs or if they will butcher them to eat and questioned where butchering may take place. He discussed the current problem of the H5N2 bird flu. He mentioned concern that the chickens may be loose and come into his yard. He did note the petitioners' chickens have not been a problem. He feels six chickens can supply enough eggs for a small family.

In response, Mrs. Babcock said that they have been at this residence for 2 ½ years, and they were unaware they could not have chickens on their property. She reported the smallest flock they have had is 12, and said they cannot even smell them with the house windows open which are six feet away from the chicken coop. Additionally, she reported they use the waste to fertilize their garden. Regarding the bird flu, she reported they are very aware of it, being part of the Poultry Club, and have every intention of contacting BOA to register the flocks. She went on to say if there is a breakout within a five mile radius of them, they will be notified immediately and placed under quarantine. While the fair will not have live poultry present this year, she reported the club has come up with some great ideas on showing chickens via photos and journals. She reported they have 11 chickens currently. Mr. Homan inquired further about the chickens running loose in the yard. She reported the chickens are loose for approximately 20 minutes while the coop and pen are being cleaned. When they are outside the pen, the kids are present monitoring the birds. When Ms. Schirr asked if they have a fenced yard, Mrs. Babcock stated the yard is not completely fenced. If approved, Mr. Campanello suggested they might think of putting up a fence so that the chickens cannot get loose.

Mrs. Finnigan asked if anyone asked the opinion of the neighbor, directly behind the subject property. Attorney Kolbus stated a letter was sent to the property owner, and the hearing was advertised in the newspaper which is all that is required.

Patricia Gould, 23100 Rebecca Drive, was also present in remonstrance. She said she is against this request if the petitioners do not have a fenced yard. She stated she was asked about six chickens and signed the petition, but the request is for more than that.

The public hearing was closed at this time.

Mr. Campanello questioned if the ordinance states anything about the number of chickens, and staff indicated it does not.

Mr. Hesser asked about the signed petitions included with the questionnaire. Mrs. Babcock said her two younger sons, who are involved in the 4-H Poultry Club, took the petitions to neighbors for signatures. She reported that she did not ask them to indicate six chickens, and she was not aware if the kids stated specifically six chickens. Concerning staff's recommendation for approval of six chickens, Mr. Auvil said six seems to be the number that a lot of communities in the area are going with and seemed to be a standard number. While Mr. Hesser said he appreciates the concern of remonstrators, he noted the chickens have been on site with no reported problems. Regarding odor, he said if the chickens are properly managed, the smell can be controlled. He did add that he feels 15 would be pushing the limit. There was additional discussion about fencing.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **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 an agricultural use for the keeping of 15 chickens on a tract of land containing three acres or less 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 (dated 5/4/15) and as represented in the Special Use application.
2. The number of penned chickens limited to 12 with no roosters permitted.
3. Contain the chickens in temporary fencing when they are outside the coop and pen while it is being cleaned.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

***** It should be noted that Mr. Hesser recuses himself and steps down*****

8. The application of **Middlebury Community Schools** for an amendment to the site plan of an existing Special Use for a school to include a concession/restroom building and a transportation building on property located on the Northwest corner of Northridge Drive and Wayne Street (CR 16), 800 ft. Northeast of US 20, common address of 56853 Northridge Drive in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #56853NorthridgeDr-150512-1*.

There were 20 neighboring property owners notified of this request.

Andy Beerman of Commonwealth Engineers, Inc., 9604 Coldwater Road, Ft. Wayne, IN, was present on behalf of this request. Using the aerial photo, he showed the locations of the proposed structures and explained the project. He noted water and sewer is available on-site, and they have been working with the Town of Middlebury, the Town Manager, the town utilities, and the Fire Department to work through any possible issues. When Mr. Miller questioned any possible environmental issues with changing fluids on the buses, Mr. Beerman reported there is a grease/oil grit interceptor inside the building before it goes to the sewer which can be inspected by the town as well. He went on to say that the concession buildings will have a small grease trap inside as well, and the utility companies are comfortable with their plans.

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** 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 an amendment to the site plan of an existing Special Use for a school to include a concession/restroom building and a transportation building 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 (dated 5/12/15) and as represented in the Special Use application.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr.

Abstain: Randy Hesser.

*****It should be noted that Mr. Hesser returns to the Board*****

9. The application of ***Life Tabernacle Church Inc.*** for an amendment to an existing Special Use for a church to allow for relocation of proposed structures and addition of new structures on property located on the Northeast corner of CR 26 and CR 13, in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #00000CR 13-150518-1*.

There were 43 neighboring property owners notified of this request.

Mark Johnson, 23452 Spring River Drive, Elkhart, was present on behalf of this request and stated they want to build a church and accessory buildings but would like to build a garage first to house the equipment to maintain the property. Being permitted to build the garage would help them get started on the property and would allow them to set up some recreational facilities on the property. He explained the long term goals are to build a family life center and a church on the subject property that they have owned since 2007 with plenty of room for future building as well although not currently in their plans. At this time, he said they rent the farmland portion to a local farmer and would continue to do so. When Mr. Homan inquired, Mr. Johnson confirmed that there is no actual church activity at this point on the property.

Mr. Miller questioned the relocation of proposed structures. Mr. Johnson stated they are relocating their church to that property from their current location on Middlebury Street, near the downtown area of Elkhart. He explained they do a lot of community events, such as the block party that was held on Saturday with inflatable party recreation equipment in the parking lot of their current facility. He went on to say they would like to do this type of thing at the subject property, although they are not currently ready to build the church facility. He stated the church group is raising money and working towards that goal but is not ready at this time.

Mr. Miller noted the condition recommended by staff that they sign and record a commitment prior to any permitting for construction and asked Mr. Johnson if that would be a problem. Mr. Johnson said he was unsure of the requirements of the commitment form. Mr. Auvil commented that many churches are putting in recreational facilities such as parks and trails but those are accessory uses to a property. He went on to say the intent of the Special Use permit was to allow for a church/place of worship and in that spirit of the primary use being a church, the petitioners are asking to do something else as the primary use first with no timeline for the church being built. He explained that staff is concerned about the accessory use prior to the primary use. Mr. Auvil suggested that a request for a Special Use for a recreational field would have been more appropriate. Mr. Johnson disagreed and said their original intent when they purchased the property was a church and recreational facilities on the property which was approved in 2008. In the meantime, they have been paying off the subject property and their current property to enable them to build. He went on to say that he came in to the office requesting to build a garage and recreation facilities. It was the staff recommendation that he appear for the board meeting in May 2015, but the Board declined to hear him at that time. At that time, the Board said that he needed to present the entire church as a completed finished

project in order to present it which is why he is here today. When Mr. Homan inquired, Mr. Johnson showed the location of the proposed building on the current site plan.

Toni Closser, 59600 West Bend Drive, Elkhart, was present as the acting President of the Yellow Creek Trail Homeowners Association. She said it is not that they object to this request, but they were under the assumption that the church was going to be built. Additionally, she expressed concern about the possibility of an access drive from the church into the development. Mr. Campanello stated there is no proposed drive on the site plan. There was some discussion about the location of the church property line near the subdivision. She noted their concern with just having accessory buildings there without the church and no timeline for church construction on the property. She went on to say that the church has owned the property for 7-8 years with no church construction, and now they are requesting to build a garage and activity center. She expressed concern that the church will never be built.

In response, Mr. Johnson said they are a very good neighbor, and they have lots of activities to support the community. He noted they have a long-standing prison ministry, drug/alcohol programs, and provide life skills training classes at Bashor Children's Home and the Elkhart Community Schools. Regarding the subject property, he noted one of the reasons it was chosen was its nearness to Bashor. He expressed that they would love to be neighbors with their local community at this property as their goal is to be inclusive, not exclusive. Mr. Johnson does not feel that this request would be negative as they would be creating recreation space for the neighborhood who would be welcomed onto the property. Although the retention pond is on church property, he said it is also maintained for the benefit of the neighborhood as well as the church property.

There was some discussion of the possible different phases of construction on the property. When Mr. Campanello questioned, Mr. Johnson clarified that he is not asking to construct a ball diamond and gravel parking lot at this time. He went on to say that they would like to build the garage and possibly basketball and volleyball courts which would be located along the pond. Mr. Johnson noted he was told to include all structures on the site plan. Mr. Hesser explained that technically the request is to modify the site plan but as part of the request, he questioned that they are really asking for a variance to construct an accessory structure prior to the primary structure. He went on to draw a parallel to a residential property, and stated the Board very rarely approves accessory structures on property prior to the house. In the cases that they do approve, he noted it is with a commitment to a time frame for construction of the house. Mr. Johnson said it is their goal within the next two years to have the next building completed as they have money set aside for it. But they were not ready to present that project today. Mr. Hesser noted the Board's concern is having the accessory structure on the property without the church and without a commitment for future construction.

The public hearing was closed at this time.

There was some discussion about the recommended commitment #2, and Attorney Kolbus suggested an alternative. Mr. Campanello questioned the need to re-advertise to clarify the request and pointed out that there was never an approved site plan in the original approved Special Use. Mr. Auvin went on to say that the original Special Use had a general concept of a site plan. Mr. Homan suggested the approval comes down to whether or not they have confidence that the church building will be constructed within a reasonable amount of time. Mr. Campanello noted a 10'x20' sign hand-drawn on the site plan, and questioned if the sign needs

to be approved for the size and location. Attorney Kolbus clarified if the request is approved, the sign is approved as shown on the site plan. While he does not doubt that they are sincere in their desire to build the church, Mr. Hesser suggested a way to address issue is to modify #2 with a time limit. Mr. Miller said it seems as much of a compromise as they can do. Mr. Campanello expressed feeling it needs to come back to the Board with a petition to construct accessory structures prior to the primary structure with neighboring property owner notification. Mr. Hesser said they could already be building anything that was on their previously approved site plan. Mr. Auvil clarified that the original Special Use approval required a detailed engineered site plan which has never been submitted and would still need to be submitted.

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

Motion: Action: Approve, **Moved by** Jennea Schirr, **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 an amendment to an existing Special Use for a church to allow for relocation of proposed structures and addition of new structures 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 provided a properly engineered site plan is submitted and reviewed by the Board of Zoning Appeals.
2. The primary structure (church/place of worship) is required to be constructed within five years.
3. No outdoor lighting for recreational facilities.
4. Use of outdoor recreational facilities limited to dawn to dusk.

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

Yes: Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

No: Tony Campanello.

10. The application of **Shawn J. & Monica J. Stutzman** for a Special Use for an agricultural use for the keeping of chicken on a tract of land containing three acres or less on property located on the West side of Heritage Way, 700 ft. East of CR 18, being Lot 17 of Indian Creek Colony, common address of 19616 Heritage Way in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #19616HeritageWay-150-518-1*.

There were 16 neighboring property owners notified of this request.

Shawn Stutzman, 19616 Heritage Way, was present on behalf of this request. He stated they have had chickens for a couple of years not realizing there was an issue, and they currently have 12 chickens on the property which they would like to keep. Using the aerial photo, he noted the parcels are more than an acre. He went on to say that the chickens are not visible from the road, and there is a 10 ft. tall evergreen hedge between them and the only adjoining neighbor. Mr. Stutzman stated they do not keep any roosters and use the chicken manure to fertilize their

garden. Additionally, he said the chickens never roam free, and they use the eggs for their family. He noted some neighbor kids enjoy checking for eggs.

When Mr. Miller questioned him about the complaint, Mr. Stutzman said he did not know the source of the complaint as none of the neighbors have ever talked to him negatively about the chickens. He clarified that they have never had bunnies. He explained that the trash was construction debris left from an addition to the house which was completed right about the same time as the snow hit last winter. He reported that the trash was gone within two days of complaint. When Mr. Homan questioned the size of the chicken coop, Mr. Stutzman clarified that it is a mobile 4'x5' double-decker coop.

Mark Moore, 19674 Heritage, was present and stated he resides on the property to the west of the subject property. While he is not really opposed to the chickens, he stated they did not get their notice until Tuesday of this week. He said a few of the neighbors have contacted his wife and had not received their notices. He noted Rose Chevalier and Jack Walters were two of those neighbors. He reported there is a Homeowners Association and covenants for this subdivision and questioned if the petitioner is aware of that. When Mr. Moore stated not all of the neighbors were on the list, Mr. Auvil informed him that required notification is only within 300 ft. of the subject property and any subdivision covenants are not of concern to the Board. Mr. Hesser explained that however the Board decides this request; the Homeowners Association can still enforce their covenants which are private rules, not governmental rules. Attorney Kolbus further explained that this action does not bind the Homeowners Association. When he suggested the neighbors were not informed in a timely matter, Mr. Hesser noted there have been issues with the postal service within the last two weeks. Attorney Kolbus stated the rules require mailing 10 days prior to the hearing and these notices were mailed 12 days prior to hearing. He noted having the same issue at Plan Commission recently, but they were timely mailed by staff.

In response, Mr. Stutzman said he did not feel any of the issues raised were pertinent to this proceeding. Further, he reported he has lived there for six years and never heard that there was a Homeowners Association.

The public hearing was closed at this time.

Attorney Kolbus commented that this acreage is three times the amount from the earlier petition today. Mr. Miller said he did not have a problem with the quantity. Mr. Kolbus suggested adding the commitment that the chickens be in temporary fencing when not inside the coop.

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

Motion: Action: Approve, **Moved by** Jennea Schirr, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of chicken on a tract of land containing three acres or less 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 (dated 5/18/15) and as represented in the Special Use application.
2. The number of penned chickens limited to 12 with no roosters permitted.
3. Chickens are to be temporary fenced with they are not inside the coop.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

11. The application of ***Elkhart Christian Academy, Inc.*** for an amendment to an existing Special Use for a school to allow for the construction of a gymnasium on property located on the Northeast corner of CR 22 and CR 9, common address of 25943 CR 22 in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #25943CR 22-150515-1*.

There were 27 neighboring property owners notified of this request.

Debra Hughes of Marbach Brady & Weaver, 3220 Southview Drive, Elkhart, was present on behalf of this request and noted others present as Jeffrey Zimont, Executive Pastor of First Baptist Church who has the authority over the Elkhart Christian Academy School, and David Bailey, General Contractor for the project. She explained the school would like to add a gymnasium structure immediately East of the existing school building with no seating at this time. They want to use the structure for a practice facility. When Mr. Hesser asked about additional proposed items on the site plan, she stated that is the master plan, but they are only requesting to construct only the gym and associated parking at this time.

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** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a school to allow for the construction of a gymnasium 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 (dated 5/15/15) and as represented in the Special Use application.
2. Approved for the gymnasium and parking area only.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

12. The application of ***Phyllis E. Hess*** for a Special Use for an agricultural use for the keeping of a pot-belly pig in a R-1 district on property located on the Northwest side of Decamp Boulevard, 730 ft. South of River Garden Drive, being Lot 59 of Plat of Lots 26 to 31

Inclusive in Decamp, common address of 57319 Decamp Blvd. in Concord Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #57319DecampBlvd-150508-1*.

There were 13 neighboring property owners notified of this request.

Phyllis Hess, 57319 Decamp Boulevard, was present on behalf of this request and noted the Homeowners Association also signed her petition. She stated the pig is the family pet and is inside 90% of the time. Additionally, she reported the pig is potty-trained and goes outside with the dogs. She reported she puts bedding down for the pig to defecate on, and the dogs stink more than the pig. Ms. Hess reported the pig gets regular vet checks including getting her hoofs trimmed. When Mr. Miller inquired about possible reasons for the complaint, she stated she does not know why there was a complaint filed. She reported the Fire Department is behind her property, and they do not have a problem with the pig. Lastly, she stated she has a privacy fence around the yard, and no one can see her.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted most of the immediate neighbors seem to have signed the petition.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Jennea Schirr that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of a pot-belly pig in a R-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 (dated 5/8/15) and as represented in the Special Use application.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

13. The application of **Borkholder Trust, Larry J. Borkholder and Alta Mae Borkholder, as Co-Trustees** for an amendment to an existing Special Use for a home workshop/business for a woodworking business to allow for furniture finishing, and an amendment to an existing Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure (residence) to allow for the construction of an additional building for furniture finishing on property located on the North side of CR 34, 840 ft. East of CR 33, and East side of CR 33, 1,350 ft. North of CR 34, common address of 14835 CR 34 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #14835CR 34-150518-1*.

There were 14 neighboring property owners notified of this request.

Paul Hochstetler of Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners. He said the original Special Use was approved for woodworking, but they have started doing some of finishing and need additional room to dry and store the products before, during, and after the finishing process. Although the finishing process requires more room for storage, he noted that type of business does not require a lot more people. Because of that growth in their business and moving into that area of the furniture business, they are requesting the proposed 80'x80' structure. Referring to the staff report, Mr. Hochstetler said in his mind, this is a far cry from an industrial use, noting some days there would be several delivery trucks and some days no trucks at all. Regarding fitting within the parameters of a home workshop/business, he pointed out this business is a father, his sons, and no other outside employees. Addressing the size of the structure, based on a 62 acre parcel, he stated this is obviously a farm, and looking at other farms in the surrounding area, the size is easily compatible to farm use. He went on to say if this was no longer a finish shop, it could easily be a farm-use building and not out of proportion. When Mr. Hesser asked if the proposed structure would be a pole barn type, Mr. Hochstetler reported it will be stick built with a foundation, with 10 ft. side walls, and 22 or 24 ft. to the peak. He listed farm-use comparable properties in the surrounding area.

Regarding Finding #2 that the on-site use is too intense, he said it is several trucks a day at the most with ample turnaround area shown on the site plan, no backing onto the road, and fairly light traffic compared to an industrial use. Mr. Hochstetler stated the air make-up system that they use with a spray booth for collecting dust and fumes, keeps the noise, dust, and fumes inside. He went on to say that they have already addressed issues with the Health Department for safe storage of the finishing products in a concrete contained area which is part of the building design. He submitted a signed petition from an adjoining neighbor *[attached to file as Petitioner Exhibit #1]*. He pointed out that part of the idea is a large enough building so there is no outside storage.

Regarding Finding #3, Mr. Hochstetler indicated this will serve the public by providing quality furniture. He noted this area is known for quality wood furniture products, and people come from all over the country to buy these items. When Mr. Hesser inquired, Mr. Hochstetler reported they will not be building any additional furniture and will use the existing building for that. He did note they will be doing some outside finishing projects in addition to finishing the products they make. Mr. Hochstetler suggested they could probably double in capacity the outside work plus the products they build, partially because the finishing process takes less time than the building process. When Mr. Hesser inquired if the finishing process requires use of any power equipment, Mr. Hochstetler said they would currently have power to their spray booths. He added that they may have to do some sanding between coats of finish but power to the building would just be an extension of power from the existing generator.

Lastly, he gave neighbor comparables with Special Use permits regarding accessory square footage in excess of residential sq ft. He feels to deny this request would be inconsistent with what is going on in the neighborhood. Mr. Homan noted hours of operation as 6 a.m. to 3 p.m. but questioned the days. Mr. Hochstetler stated they are Monday through Friday for the most part, but they may work some Saturdays. In the existing home workshop/business, Mr. Homan asked if they are building products from scratch. Mr. Hochstetler went on to say that the proposed request will include constructed pieces brought to the property for staining and

finishing. Mr. Homan inquired about the possibility of volatile chemicals or hazardous materials being used, and Mr. Hochstetler reported most of what they use are water-based chemicals. Regarding spills on the ground, he said he does not know the level of contamination there could be. He stated there are concerns they have to address for storage of chemicals in case of a spill such as a concrete bunker to contain stored materials.

When Mr. Homan asked about retail sales, Mr. Hochstetler reported the products are sent to retail locations. He noted the customers he referred to in the questionnaire as coming to the property are dealer customers. Mr. Miller noted that this business continues to grow and questioned what the next phase may be which is of concern to him. While Mr. Campanello agreed, he noted if they are not adding any employees, it is still a home workshop/business.

There were no remonstrators present.

The public hearing was closed at this time.

While Mr. Homan noted the Board has approved Developmental Variances for excessive square footage for home workshops, he said he is very particular about protecting the home workshop/business within the definition in the ordinance and does not see much reason to go beyond that. In this situation, the amendment to allow for finishing is not a big step for him but the square footage does concern him. He read the definition of a home workshop/business which is a clarification from the revised ordinance from 02/01/15. Based on this clarification of the home workshop/business, he said he is hesitant to approve anything beyond that. Looking at the other nearby buildings although they are agricultural uses, Mr. Hesser said he feels less uncomfortable with the size of the building because it is a home workshop that is limited to building and finishing furniture so that is all it can be used for. He went on to say he is more comfortable that if the home workshop ceases, it will be back to an agricultural building. This additional finishing part is not a very intense, noisy use. Additionally, Mr. Hesser noted they are not adding employees. Mr. Homan listed square footage totals on the subject property and noted the request is in excess of the allowed home workshop by 1, 524 sq ft. He also expressed feeling that bringing furniture to the property is a step up in the intensity.

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 an amendment to an existing Special Use for a home workshop/business for a woodworking business to allow for furniture finishing be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. The home workshop will continue to operate within the confines of the definition of a home workshop/business and the additional process of finishing is a minor adjustment to the original request application.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property as evidenced by no remonstrance and again, the home workshop/business operating within the confines of the definition of a home workshop/business.
3. The Special Use will substantially serve the public convenience and welfare by continuing to provide furniture fabrication business in the immediate area.

The following condition was imposed:

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

The following commitment was imposed:

1. The business will operate as represented in today's testimony and questionnaire with regard to operation of the business but abiding by the site plan of the original Special Use for the home workshop.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

Motion: Action: Deny, **Moved by** Robert Homan, **Seconded by** Tony Campanello that the request for an amendment to an existing Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure (residence) to allow for the construction of an additional building for furniture finishing be denied based on the fact that the square footage will be excessive and beyond the reasonable description of the square footage requirements for a home workshop/business.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr.

No: Randy Hesser.

After additional discussion and deliberation by the Board:

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Robert Homan that the Board revise the Special Use amendment approval to require a revised site plan consistent with the Board's findings to be submitted for approval by the Board of Zoning Appeals showing total square footage of accessory structures up to 7,756.

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

Yes: Robert Homan, Roger Miller, Jennea Schirr, Randy Hesser.

No: Tony Campanello.

14. The application of **Robert G. & Cindy L. Metzger** for a Special Use for a home workshop/business for custom woodworking and a Developmental Variance to allow for two 12 sq. ft. signs for said home workshop/business (Ordinance allows one 4 sq. ft. sign) on property located on the West side of CR 3, 850 ft. North of CR 42, common address of 66847 CR 3 in Olive Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #66847CR 3-150424-1*.

There were nine neighboring property owners notified of this request.

Bob Metzger, 66847 CR 3, was present on behalf of this petition. He explained he has some woodworking tools and would like the opportunity to possibly sell items that he makes. He went on to say that he is employed and works four days a week off-site. The home workshop would be a part-time business with no outside employees. When Mr. Homan inquired about everything being contained within the building such as dust collection and inventory, Mr. Metzger confirmed that everything is inside. Some retail sales would occur on site. Mr. Homan noted the hours being listed on the questionnaire as being irregular with Mr. Metzger working

outside the home four days a week, but suggested there should be some kind of time limit. Mr. Metzger said he would not expect to be working in the shop late in the evening. The questionnaire also indicated the shop would not be open on Sundays.

Regarding the signs and the staff's recommendation for denial, Mr. Hesser questioned the need based on the anticipated smaller number of retail customers. Mr. Metzger agreed that traffic coming to the site would either know of him or have previously heard about his business. He added that his plan is to build custom products or use his C & C router for repeat custom order business. He noted this type of work would more than likely be for a factory and not retail. When Mr. Hesser inquired about the possible need for a developmental variance for the size of the building, Mr. Metzger said he received that variance on November 19, 2014.

When Mr. Campanello questioned any truck traffic, Mr. Metzger said he does not anticipate any truck deliveries as he transports wood with his vehicle and also had a utility trailer if needed. When Mr. Homan asked about wood finishing, Mr. Metzger said that he would finish the products. He reiterated that the products are mostly for personal use, and he is not putting out large quantities of product, noting he built a boat that took three years to complete.

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, further moved that this request for a Special Use for a home workshop/business for custom woodworking 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 (dated 4/24/15) and as represented in the Special Use application.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser

Motion: Action: Deny, **Moved by** Robert Homan, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for two 12 sq. ft. signs for said home workshop/business (Ordinance allows one 4 sq. ft. sign) be denied.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

15. The application of **Richard Miller, Loranna Miller, Wayne E. Miller, and Ruth Ann Miller** for a Special Use to allow for a woodworking business in an A-1 district and a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the North side of CR 24,

250 ft. East of CR 43, common address of 10673 CR 24 in Middlebury Township, came on to be heard.

Mr. Hesser noted this was tabled from last month and the public hearing remains open.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #10673CR 24-150413-1*.

There were seven neighboring property owners notified of this request.

Mr. Hesser noted the reference in the Staff Analysis to this as a home workshop. He questioned whether a home workshop is being requested and noted previously the request was a Use Variance. Mr. Auvil said he believes it would be a home workshop and went on to say that the petitioner was not living on-site at the time of the previous request. They were also adjusting a property boundary. Mr. Hesser clarified that now it would be a request for a home workshop and subject to those rules.

Marlin Bontrager, 59700 CR 43, Middlebury, was present on behalf of this request and the petitioners. He explained that Mr. Miller is moving to this location and will reside there. He needs a shop for his business which is currently being operated elsewhere. Mr. Bontrager reported that a copy of the recorded deed has been filed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated this request makes perfect sense as a home workshop/business.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **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 to allow for a woodworking business 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 (dated 4/13/15) and as represented in the Special Use application.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

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 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 (dated 04/13/15) and as represented in the Developmental Variance application.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

16. The application of **Michael H. Titus** for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the Southeast side of CR 1, 240 ft. Southeast of Cobus Lake Drive, being Lot 2 of Cleveland Estates, common address of 53460 CR 1 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #53460CR 1-150518-1*.

There were 15 neighboring property owners notified of this request.

Michael Titus, 53472 CR 1, was present on behalf of this request. He stated he would like to construct a building for personal storage with a driveway and overhead doors facing CR 1. As he reported he has not made a final decision on the size yet, Mr. Hesser noted if the request is approved, the Board would be approving the site plan and Mr. Titus would have to come back to the board if the building size changes.

Julius Vlaeminck, 53422 CR 1, Elkhart, was present in remonstrance. He reported he lives two properties to the north of the subject property. He stated he feels the area was developed for residential housing and with the school, it should be kept residential. Mr. Hesser explained the staff recommended along with the approval that the subject property could not be sold separately in the future unless there is a house constructed on it. He asked Mr. Vlaeminck if this would satisfy his concern, and Mr. Vlaeminck guessed it would. Mr. Campanello further explained if Mr. Titus combined the two parcels into one, he would not have to come before the Board for approval.

Also present in remonstrance was Jerry Stowe of 53519 CR 1, who stated he believes this building will take away from their property value. He noted the lots were developed for a subdivision or individual homes and all of the other lots have a house on them. As this is close to the school, he expressed concern about problems with parking and pick-up at the school, and stated police stop traffic so the buses can get out. He also noted fear that this building will turn into something other than a storage building. When Mr. Hesser inquired if the subject property was in a subdivision, Mr. Stowe indicated it is not but it is near subdivisions.

The public hearing was closed at this time.

Mr. Campanello stated the building is in the correct spot, and reiterated that if the parcels were combined, the petitioner would not need to be here.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **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 Use Variance to allow for the construction of an accessory structure without a residence 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 (dated 5/18/15) and as represented in the Use Variance application.
2. The Real Estate is not to be sold separately from the adjoining parcel to the south (current tax code #20-01-26-152-001.000-014), which is also owned by the Grantor, Michael Titus, until such time as a primary residence is constructed on the Real Estate.

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

Yes: Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

No: Robert Homan.

17. The application of **Nusbaum Investments, LLC (buyer) and Traco, LLC (seller)** for a Use Variance for warehousing and storing automobiles on property located on the North side of CR 38, 1,114 ft. East of CR 17, common address of 21825 CR 38 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #21825CR 38-150515-1*.

There were seven neighboring property owners notified of this request.

Bill Nusbaum, 152 Metzler, Nappanee, was present on behalf of this request. He reported he is in the process of purchasing the property and wants to move in within the next 30 days. He said he would like to put up a privacy fence to store vehicles as he operates a tow service. In driving past this subject property, Mr. Miller noted there were some vehicles sitting on the property. Mr. Nusbaum said there was previously a repair facility with a whole lot full of broken-down vehicles. He went on to say he wants to install a fenced privacy area where vehicles can be stored out of sight and securely. When Mr. Miller asked if he would continue with the servicing of vehicles, Mr. Nusbaum said they do not service them. He explained it will be temporary storage, and most vehicles will not be there for more than 30 days. Mr. Homan noted it is basically an impound lot, and Mr. Nusbaum agreed. Mr. Hesser questioned staff regarding Finding #3, and Attorney Kolbus stated the request would have needed a Special Use instead of a Use Variance prior to the new Zoning Ordinance. When Mr. Hesser noted it was approved for a wood cutting business and questioned if that use occurred recently, Mr. Nusbaum said it was most recently a repair shop called Precision Diesel.

Mark Kay, 21523 CR 38, was present and stated he owns the property to the West of the subject property. He stated he was not present in support of or against the request. He noted the owners of the towing company came over and introduced themselves which he appreciated. He reported if the plan is the towing business only and the eventual farming of the remaining land, he is all in favor of that. He reported he drove past some present tow facilities and noted concerns about quality of life, property value, and the impact. He noted he supports this request but wants to protect his property. In looking at the other salvage yards located in the county; he said he does not want that happening next to him. Specifically, he said the visual impact is a concern to him. He noted he has seen the petitioner's plan for fencing and believes it will have a positive impact on the area. He said he was not sure how the current shop and previous landscaping businesses got in there as he never received any type of notification for those. Prior to receiving additional information, he was concerned about possible noise, the possibility of a car crusher coming in, and any materials that might get into the ground. He stated he thinks

this request is far better than the previous use on the property. Attorney Kolbus mentioned to Mr. Kay the commitments recommended by staff if approved.

In response, Mr. Nusbaum stated he understands Mr. Kay's concerns. He said he wants to live there and does not want it to look like a junk yard. He reiterated this will be a towing company. He said he is not going to crush cars and will not be hauling commercial vehicles. Regarding contaminates, he said usually when the vehicle is involved in a crash the fluids drain out at the accident scene. Regarding vehicles that are brought to the lot, he stated they will be hauled away and taken to a junk yard. He went on to say that by law, 30 days is the maximum storage at his lot, and he begins the process with the State of Indiana after two weeks. He did say it may possibly be 45 days before the actual auction of the vehicle.

The public hearing was closed at this time.

There was some discussion about a change in the new Zoning Ordinance that unintentionally discontinued warehousing and storage in an A-1 zone by Special Use which is a proposed future revision to the new Zoning Ordinance.

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 Use Variance for warehousing and storing automobiles 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 (dated 5/15/15) and as represented in the Use Variance application.
2. Fencing to be provided around the 100 ft. x 200 ft. vehicle storage area designated on the site plan; no storage of vehicles outside this 100'x200' fenced vehicle storage area.
3. No vehicle sales and no salvaging of vehicle parts permitted on the Real Estate.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

18. The application of **Lee Andrew & Rachael Elizabeth Miller** for a Special Use for a mobile home on property located on the West side of CR 27, 3,200 ft. South of US 20, common address of 57547 CR 27 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Hesser noted this item was tabled from last month's meeting.

There was no one present on behalf of this request, and Attorney Kolbus indicated the petitioners were notified.

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

Motion: Action: Dismiss, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for a mobile home be dismissed by the Board based on the failure of the petitioners to appear.

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

Yes: Robert Homan, Tony Campanello, Roger Miller, Jennea Schirr, Randy Hesser.

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

20. *See Page 3 – Item #6* for previous action on the staff item for Wakarusa Historical Society – 95-2901.

21. The meeting was adjourned at 12:29 p.m.

Respectfully submitted,

Deborah Britton, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary