

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 21<sup>ST</sup> DAY OF MAY 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, Suzanne Weirick, 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 16<sup>th</sup> day of April 2015 be approved as amended. Mr. Hesser noted a correction in the York Elementary School hearing – Item #14 on Page 15. He stated that he had abstained from voting but reported he had also recused himself from that proceeding which was not indicated in the minutes. The motion was carried with a roll call vote with Mrs. Weirick abstaining.

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

4. 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. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #57547CR 27-150408-1*.

There were 12 neighboring property owners notified of this request.

The petitioner was not present.

There were no remonstrators present.

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

**Motion: Action:** Table, **Moved by** Randy Hesser, **Seconded by** Robert Homan that this request for a Special Use for a mobile home be tabled until later in the meeting.

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

**Yes:** Robert Homan, Tony Campanello, Roger Miller, Suzanne Weirick, Randy Hesser.

**\*\*See Page 16 – Item #19 for further action on this petition.\*\***

5. The application of **Matthew B. & Sarah Brady** for a Special Use for the keeping of chickens and goats on a tract of land containing less than three acres on property located on the North side of CR 28, 350 ft. West of CR 13, common address of 24051 CR 28 in Concord Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #24051CR 28-150413-1*.

There were 13 neighboring property owners notified of this request.

Sarah Brady, 24051 CR 28, Goshen, was present on behalf of this petition. She reported they recently moved to this location in September 2014, and they want to make this their permanent home with a couple of goats and a few chickens. They want their children to be able to learn life skills from raising and caring for the animals. Also, as a family of six, they use a large quantity of eggs. She reported speaking to most of the neighbors who did not express any issues or concerns. Additionally, she submitted a letter from one of her neighbor's *[attached to file as Petitioner Exhibit #1]* and pointed out their residence on the aerial photo. As some members of the family are lactose intolerant, she reported plans to use the goats' milk.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for the keeping of chickens and goats on a tract of land containing less than three acres 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 4/13/15) and as represented in the Special Use application.
2. No roosters.
3. Special Use limited to ten chickens and two goats.

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

**Yes:** Robert Homan, Tony Campanello, Roger Miller, Suzanne Weirick, Randy Hesser.

6. Staff Item – Creekside Church of the Brethren – 20034060 – major/minor change to a Special Use for a church was presented by Jason Auvil at this time. He explained the request is for an amendment to a site plan for a Special Use permit for the church, located at 60455 CR 113, in Concord Township, zoned A-1, to build a 30'x40' playground area to include a swing set, sand box, and a park bench. He noted the attached site plan, aerial photo, and photo of swing set. In his discussions with Mr. Zerbe, a church representative, Mr. Auvil suggested if they were just erecting a swing set, he feels a swing set is not defined as a structure in our Zoning Ordinance. But as they are proposing a "playground", which was not on the original site plan, he said it changes the intended use of the subject parcel. Mr. Miller asked if this request is due to the size of the playground area. Mr. Auvil said it is because of the size and the change in use. When Mrs. Weirick questioned the difference between a swing set and a playground, Mr. Auvil stated a piece of equipment versus a sited area with multiple pieces of equipment and noted it is a 30'x40' pad compared to a 9, 12, or 15 sq. ft. area. Mr. Miller pointed out the size of the

playground would also have some influence on the noise factor, number of people using it at one time, and possibly different hours than the church operation. When Mr. Hesser inquired when this Special Use was approved, Mr. Auvil reported December 3, 2003 and noted it is a fairly large parcel of property. As a growing faith community, Mr. Auvil said their intention is to provide as much engagement for their faith community. When Mr. Miller asked about a child care facility existing at the church facility, Mr. Auvil stated he did not believe there was. Mr. Hesser commented that he would think the community would be appreciative of the use of the playground. Looking at the photo, Mrs. Weirick noted that this particular structure could fit in anyone's back yard. Mr. Miller said he would consider it a minor change. Being where it is located, Mr. Campanello expressed agreement. Mr. Homan also felt it is a minor change.

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

**Motion: Action:** Approve, **Moved by** Robert Homan, **Seconded by** Roger Miller that the playground addition is a minor change to the site plan of the existing Special Use.

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

**Yes:** Robert Homan, Tony Campanello, Roger Miller, Suzanne Weirick, Randy Hesser.

7. The application of *Evan Stutzman (buyer) and Lowell D. Miller (seller)* for a Special Use for a home workshop/business for a fish farm on property located on the East side of S. Main Street, 346 ft. South of Spring Street, common address of 416 S. Main Street in Middlebury Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #416SMAIN STREET-150410-1*.

There were 30 neighboring property owners notified of this request.

Evan Stutzman, 104 North Scott, Middlebury, was present on behalf of this petition, as they are purchasing the property. He explained they want to put fish tanks in the accessory building to raise tilapia for local restaurants and individuals to purchase. When Mr. Hesser inquired if they are currently operating the business, Mr. Stutzman reported they have a location in Goshen but would move the system to Middlebury. Mr. Homan inquired about city services. In response, Mr. Stutzman said they met with the city sewer/water staff who indicated everything is okay. Although the building is not attached to city services, it will be pumped into the city sewer. When Mr. Hesser questioned waste going into the sewer system, Mr. Stutzman said most of the waste is harvested for fertilizer and taken off site (solids) so the waste is mostly water. When Mr. Homan questioned any antibiotics or toxins of any kind being used, Mr. Stutzman indicated none are used.

Mr. Miller asked about any possible noise from the operation. Mr. Stutzman reported that blowers would be used inside the building to aerate the water for the fish and would not be heard outside. He noted the building will be well insulated for temperature control which will also serve to keep any noise inside. When Mr. Miller inquired about any major improvements to the building or changes to the size, Mr. Stutzman noted none at this time other than insulating it.

Henry Yoder, 203 Eugene Drive, Middlebury, was present in remonstrance to this request. He stated he resides in the cul-de-sac possibly 250 ft. behind the subject property. He expressed feeling that it is not appropriate to have a fish farm in an R-1 zoned residential area in Middlebury. He suggested it would be easier to deny this request now than to get it removed

once it has been approved when the smell of processing fish could become a problem. He noted he understands there is going to be future expansion of the business to processing fish, not just growing them. He reported he is one of the closest neighbors down-wind from this location and any possible odor from the business.

Mr. Yoder noted he and some of the neighbors asked to visit the existing operation in Goshen, and were refused because the place is such a mess. Based on this, he questioned why they would think the proposed new location in Middlebury would not be the same way. He expressed concern about property values especially if there is an odor from the business. When Mr. Campanello questioned the length of his residency at his current address, Mr. Yoder said 3+ years. Mr. Campanello asked Mr. Yoder if he knew what the building was used for in the past, but Mr. Yoder stated he did not know and questioned if the Board had that knowledge. Mr. Campanello also said he did not know. If this request is approved, Mr. Yoder questioned if there would be additional permitting or a request required prior to any fish processing beginning at this location.

Also present in remonstrance was Lloyd Fry, 200 Eugene Drive, who said he has lived at his address for a year. He, too, noted concerned about possible odor. He reported Mr. Miller previously had a garage in the existing structure which produced very little noise. He questioned whether this is a good location for the business as there is a very limited amount of space if Mr. Stutzman wishes to expand the business in the future.

Mark Salee, Middlebury Town Manager, was present to clarify the town's position which is dependent upon the neighbor's feelings about the proposed use. He did state that water and sewer are available and not a problem. He noted that the town was told there would be no processing going on at this location. Lastly, if the neighbors' concerns are strong enough that the Board would deny the request, he said the town would support them.

In response, Lowell Miller, 514 Crystal Ridge, Middlebury, who is the current owner of the subject property, stated that the previous use was a retail greenhouse years ago and noted this will not be a retail outlet. While this is a residential neighborhood, he noted nearby businesses by Special Use permits for a restaurant, insurance company, and apartment in one building to the south, a three unit apartment building to the north, and a bed and breakfast, child care and beauty shop on same stretch. Regarding traffic, Mr. Miller said Mr. Stutzman would probably not generate any more traffic than he himself created previously.

Regarding processing, Mr. Stutzman stated there is no processing at this time. He said he was just being open with the neighbors about the possibility in the future. Any future processing would be done in two rooms at the front of the building separate from the larger area which would contain the fish tanks. He went on to say that those two rooms would be finished off with stainless steel, plastic walls, and would be FDA approved if they do expand the business and begin processing fish. At this time, he reported odor is not an issue as there is no processing. Concerning the smell, he explained it is not like a chicken or hog barn where there are huge vents controlling temperature. He noted in this case, everything is contained and all waste is put into a plastic container inside the building, capped inside the building, and taken off the property by him via his pick-up truck. He said there are no big delivery trucks or any commercial vehicles of that sort. He said the neighbors will not be able to tell any difference from outside the building as there is no waste kept outside that would smell.

Concerning the mess of the current fish farm as stated by a remonstrator, Mr. Stutzman reported they are in the middle of moving with closing on the property scheduled for tomorrow pending the outcome of this hearing. Because of the moving preparations, it is not the best time for a tour. He said he wants to be able to show the fish farm in the best circumstances and felt the current conditions would not be a good representation of the business. He went on to say that he would love to be able to show neighbors the process. When Mr. Hesser inquired if they process fish at their current facility, Mr. Stutzman reported they are just a wholesale business at this time. He reported that the output is so small that deliveries are made using coolers in a pick-up truck as opposed to large delivery trucks. He also explained that fish come every couple of months in a box approximately 2'x3' in size. Additionally, he reported he transports feed bags and waste in his truck so there is very little traffic.

When Mr. Miller inquired about how many pounds of fish he processes per week, Mr. Stutzman said he hopes to do somewhere between 600 and 800 pounds a month, with each fish weighing approximately 1.5 pounds that would be approximately 500 fish a month. There was some discussion about the extent of cleaning of the fish, and Mr. Stutzman said he can scale and gut but there is no whole fish carcass. He reported if he would scale and gut 1,000 fish, the waste would be no more than a 5-gallon bucket. Mr. Stutzman said his definition of processing is having to obtain licenses from food associations for cutting actual meat fillets. He stated the license he has from the DNR allows him to sell whole or do minimal cleaning.

Mr. Homan inquired about the location of the current operation in Goshen and the character of its surroundings. Mr. Stutzman stated it is located in the small building formerly occupied by Midwest Rubber on Wilden Avenue, just past Mapletonics. When Mr. Hesser inquired, Mr. Stutzman reported the current building is within the city limits.

The public hearing was closed at this time.

Mr. Hesser noted a lot of similar previous approvals have been in industrial areas. On the other hand, he stated it is more or less a giant aquarium. As he understands neighbors' concerns, he said he would add a condition of no processing if approved. In addition to no processing of fish, Attorney Kolbus suggested the Board consider setting a time limit of possibly two years to see how the business works out. As far as he is concerned, Mr. Homan said once you gut and scale a fish, there will be waste that will begin to smell. He said he feels "processing" is a loophole in this case. The fish are not being frozen up whole and something is being done to them before they are frozen so there is going to be an odor. If approved, Mr. Homan said he would definitely want to see a time limit to review it.

Mrs. Weirick asked if either of the remonstrators had driven past the current location to possibly notice an odor. Mr. Yoder said he has not driven past, but he also believes the current location is set back off the road. He reported he has been to markets where fish odor is noticeable long before you get there. Mr. Miller noted he wanted a definition of "processing". He asked Mr. Stutzman about gutting being part of processing. Mr. Stutzman stated it would be a form of processing, but in his mind, processing is a different method. When Mr. Campanello inquired what the Health Department or FDA consider his operation would be. Mr. Stutzman said he would be required to obtain a HACCP certification by the FDA, meet any county or city requirements, and follow the guidelines of a clean facility. Mr. Campanello asked if the FDA considers gutting and scaling of fish as processing. Mr. Stutzman said to his understanding, they do not. He suggested if processing is the issue, it can be done off site. Mr. Kolbus noted earlier

Mr. Stutzman had referred to processing as cutting the fish into fillets and cutting the head and tail off which is more than gutting and scaling. Mr. Miller suggested they define processing as cutting into fillets as opposed to cleaning.

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

**Motion: Action:** Approve, **Moved by** Roger Miller, **Seconded by** Randy Hesser 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 fish farm 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 4/10/15) and as represented in the Special Use application.
2. No processing (filleting) of fish.
3. Approved for a period of one year with a new application/renewal before the Board.
4. Waste to be removed promptly.

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

**Yes:** Roger Miller, Randy Hesser.

**No:** Robert Homan, Tony Campanello, Suzanne Weirick.

After further consideration and deliberation:

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Suzanne Weirick 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 fish farm 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 4/10/15) and as represented in the Special Use application.
2. Approved for a period of one year with a new application before the Board.
3. Processing (filleting only) of fish permitted on the Real Estate as represented by the petitioner with waste to be removed upon completion of the processing for the day.

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

**Yes:** Tony Campanello, Suzanne Weirick, Randy Hesser.

**No:** Robert Homan, Roger Miller.

***\*\*It should be noted that Mrs. Weirick steps down at this time  
for remainder of meeting.\*\****

8. The application of ***River Oaks Community Church of Elkhart Inc.*** for an amendment to an existing Special Use for a church to include outdoor recreation and a park on property located on the East side of CR 115, 3,400 ft. South of CR 18, common address of 58020 County Road 115 in Concord Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #58020County Road 115-150413-1*.

There were 42 neighboring property owners notified of this request.

Jeff Schaffer, 3620 Oak Ridge Drive, Elkhart, was present on behalf of this request as a member of the church. He noted others present were Pastor Tim Rowland, Senior Pastor; Chair of the Deacon Board, and the Facilities Manager. He explained that the church would like to construct a playground on the property, two athletic fields, and a walking path around property. He noted they have 30 acres and this is an opportunity to open up the church property for use by the community from dawn until dusk. When Mr. Hesser questioned installation of any lighting, Mr. Shafer said there will be no additional lighting but mentioned existing parking lot lighting. Mr. Campanello noted one site plan shows one athletic field and another layout shows two fields. Mr. Schaffer said they have not made a final decision on the final plan for the athletic fields at this point whether it will be a one regulation-size field or two smaller youth fields. He went on to explain that either option will utilize the approximate area shown on the large aerial photo [included in file as *Petitioner Exhibit #1*]. As the athletic field area will disturb more than an acre, he reported they will follow the requirements.

Jim Weaver, 57564 CR 115, Goshen, was present in remonstrance. He said he feels there are issues that need to be addressed and questions that need to be answered. He reported he shares a property line with River Oaks to the north and indicated his property on the aerial photo. He noted a property line pin that was knocked out during church construction. Giving some history, he noted issues with the trespassers on his property from the nearby Oxbow Park and expressed concern about possible similar issues occurring due to the increased pedestrian traffic on the church property. He also reported a situation in early 2015 where kids were running around in his newly seeded alfalfa field adjacent to the church and noted concern for the increasing seriousness of issues such as running over a meth lab which was less than 1,000 ft. north of the church driveway. He questioned security of subject property late at night with this proposal. He noted the existing lighting at the church and the fact that they do not plan any additional advanced lighting in that area. Regarding the hours of operation, he further questioned how they are going to officially close the park. Referring to the pamphlet he received from the church via the mail that indicated this would be a neighborhood park, he noted the church draws on the community so the park will also.

He wondered who will bear the liability of people who wander onto his property from the church in the event that something happens. He questioned if he needs to erect a fence between River Oaks and his farm with razor wire on top to keep people out. He requested a survey be completed since the pins were knocked out during the church construction. He questioned if law enforcement has been consulted and if they will patrol the park and inquired about law enforcement's opinion regarding this request. He noted police are very interested in activities that occur within a half mile radius of this locality in some of the homes, mostly with regard to drug activity. While he realizes the church's intent is to improve the community and make some recreation available to members of the community, at the same time, he feels there are security

issues that need to be addressed, including the liability that the church may end up carrying. He suggested these issues need addressed and possibly revisited within a reasonable amount of time to see if everything is going okay. With increase of population density, he said encroachment also increases.

Also present was Susan Greely, who leases adjacent property to the north from Jim Weaver for horses. She indicates trespassing into the woods is an existing problem. She noted when speaking with trespassers, they always seem to think the property belongs to the church even with a fence and "No Trespassing" signs posted. She did note some of the fence is down. Secondly, she stated they use extremely high voltage wire fence and expressed concern that a small child could be injured and questioned liability. She said she is not opposed to the park and feels it is a good idea. She noted Elkhart County has a problem with drug dealers, users, and other issues at night. She stated she would like to see a 6 ft. chain link fence placed between her property and the church, and noted currently there are two tents and some trash in her woods which someone walked onto the property to put there. Within the last week, she reported the Derrs, who are also adjoining neighbors to the church, had to ask trespassers to leave their property as well. When Mr. Campanello asked if she felt trespassers are accessing her property from the church property, she said she is sure they are although it could be from other areas as well. However, she reported there is only one area of their property which is not fenced and it adjoins the church. She noted additional fencing down between her property and the Derr property. Additionally, she reported they have had old farm equipment items stolen from the woods and suggested it was sold for scrap metal. Mrs. Greely said she just wants to know that something is being done to protect the adjacent property owners. When Mr. Homan inquired who owns the fence at the rear of her property, she stated she believes it is a line fence that was there when the property was purchased.

In response to Mr. Homan's question, Mr. Weaver said there was an old existing fence which is either a section line or a line for a "160" through there. He went on to say that fence is pretty much gone. He said the current fence, which is not a line fence, that Mrs. Greely is talking about is one that the Greelys erected after getting permission from Mr. Weaver to pasture horses on his property. Mr. Weaver noted he and Mr. Greely discussed the erection of the fence by Mr. Greely and agreed that the fence would belong to Mr. Weaver when the Greelys no longer use the pasture. Concerning mention of the fence being broken down, Mr. Homan questioned whose responsibility it is to maintain fence. Mr. Weaver said it is not his fence until the Greelys are no longer there. Mrs. Greely said the portion of fence that is broken down is not electric fence, and she believes it is a "line" fence which would be a joint fence. She stated she is proposing that the church put up a fence on their side of the line and that they maintain it.

Mr. Campanello asked if the proposed walking path is anywhere close to the electrified fence. Mr. Schaffer indicated not that he is personally aware of. Although he said he is not exactly clear where the electric fence is located, he noted everything they are proposing will stay in front of the church building and they are purposely attempting to keep people away from the back of the building. Looking at the aerial, Mr. Campanello said the path could possibly be in close proximity to the electric fence. Mr. Schaffer said the church's intent is to actually stripe the walking path on the pavement. He pointed out a large copy of flier *[included in file as Petitioner Exhibit #2]* which was sent out to neighbors much farther than 300 ft. He reported they received some letters in return expressing some appreciation for what they intend to do. In response to items



mentioned, Mr. Schaffer reported there a lot of activities that happen at the church during the week. He guessed the facility is used most evenings of the week, if not all of them. He noted he does understand the concerns about what happens in the evening. If for some reason the request is denied, he said the church will maintain the status quo. With the Facilities Manager present today, he reported they will do their best to look at each of these issues and attempt to address them. If additional signage is required, he stated the church will do that.

Outside of this hearing, he said the church likes hearing neighbor concerns, and they try to address those concerns as soon as possible. He noted that a couple of months ago, the church had an activity on a Sunday evening with some outside music. He reported some neighbors indicated the next day that their activity was a little loud, and the church thanked them and promised not to do that again. Beyond today's decision, he said they will talk to the neighbors and address their concerns. To address the concerns about this request, he suggested if they are bringing more people onto the property in the evenings and on the weekends, there may be a decrease in negative activities with an increase in traffic on the property. He feels the park might help alleviate some of those issues and concerns because they are welcoming people onto the property during the week during non-church hours.

Mr. Homan inquired about any intentions of using any type of bleachers or restroom facilities. Mr. Schaffer said, at this point, he does not think their vision has gone that far. He reported the creation of these fields will create a natural hill on the East side of the fields. He said what they propose for the park is actually mostly natural equipment that they have looked at. He said they are talking about building a hill with a slide that will go down the hill. He compared their vision to Rock Run Park on the north side of Goshen. Mr. Schaffer indicated they have talked about constructing a future storage building which may include restrooms which they realize would require a future application. He noted there is an existing port-a-potty on the NE corner of the property that has been there for a number of years. Currently, he reported activities on the property, mostly by church members, include use of the pavilion, football games on Sundays, and a garden. He said they do not expect to add any additional facilities at this time. If they do, he said they would be in contact with the Building Department. Mr. Miller noted the Narrative of Request states that restrooms will be open to the public.

Pastor Tim Rowland, 56902 Meadow Wood Drive, addressed the issue of restrooms. He explained there are restrooms inside the existing facility where a small café is also located. Additionally he noted the potential of having the café available possibly one night a week in the future. He said the restroom facilities will not be additional.

Regarding the previous statement made that a new survey would need to be completed because the markers were disturbed during construction of the church, Mr. Campanello asked if a survey would be required with the county for this project. Mr. Schaffer said he understood that concern but he did not see the need for it in this project. At this point, he explained the walking path is just grass mowed shorter than the rest of the grass. If funds come available, he said it may become a mulch path. He said he does not see anything that they are proposing anywhere near the property lines. While he understands the neighbor's concern, he reported the original building was constructed in the early to mid 90's. He suggested that unless there is a concern that the church has encroached, in which case they would address it with the neighbor, he said he does not see any need to complete a survey at this time.

Mr. Hesser inquired if most of the church members are from the surrounding area or if the church draws from all over. Mr. Schaffer indicated they are drawing from all over such as Concord, Jefferson, and Middlebury Townships. When Mr. Hesser further inquired if there are a fair number of members from this area, Pastor Rowland said on a Sunday morning, the church has an average of 1,000 people with some from the immediate area and some from a larger area as well. He said he does not think this park is designed as a destination park that will draw people from farther away. He said it is mainly for people who could walk or ride their bikes to it and enjoy the park. Frankly, he reported that this is already occurring in the evenings. Mr. Schaffer noted the area that received their mailed pamphlet was basically the neighborhoods directly south of the church property over to the river.

There were no remonstrators present.

The public hearing was closed at this time.

As a property owner, Mr. Hesser noted he appreciates concerns that neighbors have about trespassing and negative activities, but he does not see this as interfering with that and feels it would be an asset for the neighborhood. Mr. Miller said he can only speak from concerns he had with other projects like this, for example, the Pumpkin Vine. He noted previous concerns about trespassing which seems to have decreased because people are out and about. He went on to say he sees this as being self-governing. He suggested the church may want to talk to the land owners about a fence but he does not believe it has anything to do with this proposal.

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

**Motion: Action:** Approve, **Moved by** Roger Miller, **Seconded by** Robert Homan that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a church to include outdoor recreation and a park 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 = 4).

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

9. The application of *Daniel J. Yoder and Susan Yoder* for an amendment to an existing Special Use for a commercial greenhouse in an A-1 district to allow for the construction of a storage building on property located on the West side of CR 31, 0.17 miles South of CR 36, common address of 64165 CR 31 in Elkhart Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #64165CR 31-150410-1*.

There were seven neighboring property owners notified of this request.

Daniel Yoder, 62420 Old CR 17, Goshen, was present on behalf of this request. He said the commercial greenhouse has been a very good thing so far. He reported conversations with the neighbors, and to his knowledge, there are no issues. He said they are producing lettuce and

selling to local grocery stores, but he overlooked the need for storage of equipment and boxes in his original request. Mr. Hesser confirmed with Mr. Yoder that the location of the proposed storage building is to allow for future greenhouse expansion.

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 an amendment to an existing Special Use for a commercial greenhouse in an A-1 district to allow for the construction of a storage building be approved with the following condition:

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 4/10/15) and as represented in the Special Use application.

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

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

10. The application of *Community Church of Waterford* for an amendment to an existing Special Use for a church to allow for the construction of an accessory building on property located on the East side of CR 21, 900 ft. South of CR 38, common address of 65154 CR 21 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 #65154CR 21-150410-1*.

There were 13 neighboring property owners notified of this request.

Karl Graber of Pacemaker Buildings, 71786 CR 29, Syracuse, was present representing the petitioners on behalf of this request. He explained the proposed accessory structure is for a couple of trailers, a van, and some additional equipment that sits outside now. The property would look nicer and the items would be more protected if stored inside. He said the proposed structure will be very complementary to the current structure in color and style and will sit just off the parking lot to the south. He went on to say the building would be very indicative of all farm buildings in the area. When Mr. Hesser inquired further about the types of vehicles the church has to store, Mr. Graber said they have an enclosed utility trailer, an open trailer, and a church van to store inside. He noted they are trying to plan ahead and allow room for possibly parking a bus inside in the future. When Mr. Homan questioned the eave height, Mr. Graber stated he believes it will have a 12 ft. eave with a 10 ft. overhead door.

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** 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 the construction of an accessory 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 4/10/15) and as represented in the Special Use application.

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

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

11. The application of *Scott & Arlene Heflin (buyers) and Elaine M. Earnhart, Personal Representative (seller)* for a Special Use for an existing home workshop/business for golf cart modification and accessories retail and a Developmental Variance to allow for an existing 48 sq. ft. sign (Ordinance allows maximum of 4 sq. ft.) on property located on the West side of CR 7, 2,000 ft. North of Bristol Street (CR 10), common address of 54125 CR 7 in Osolo Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #54125CR 7-150413-1*.

There were 21 neighboring property owners notified of this request.

Sally Hernandez of Berkshire Hathaway, 1741 E. Bristol, was present on behalf of this petition representing the buyers. She reported the building has been there since 1955 and has been a business use since that time. The former Mock's TV & Appliance is currently a second hand store and has been for two or three years. The current store generates quite a bit of traffic both with customers and deliveries with truck loads of furniture being delivered. As the Mock family still owns the property, business has been allowed to continue on the property. Additionally, adjacent to this property is a 1,800 sq. ft. residence that was constructed in 1972, which she pointed out on the aerial photo.

Regarding the proposed use of golf cart modification, she said Mr. Heflin is not a mechanic and does not operate a mechanics business but instead modifies golf cart bodies by taking a factory-built shell or body onto the golf cart with power tools. She went on to say he generally picks up a golf cart, brings it to his property as he is operating out of a home garage currently, and delivers it back to the customer upon completion. She reported this location will provide more space for him. Included in the questionnaire, she noted he might like to have a small retail business to go along with the request which would be accessories like rear view mirrors, seats, and items people can purchase for their golf carts. However, for the most part, Mr. Heflin will not have a lot of walk-in traffic as most customers will stop by or call him about a job. After placing the order and receiving the parts, Mr. Heflin will transport the cart to complete the job. Additionally, she mentioned it is more of a seasonal business during spring and summer, but their main purpose is that they would like to live in this home. Over the last

several years, since the Mocks have passed away, although their estate still owns the property, there has been some deterioration of the property. She reported the property needs a facelift and some maintenance which the Heflins plan to do if this is approved and they purchase the property. Ms. Hernandez noted their current home is very well maintained, and they take good care of what they have. She expressed feeling this would be an improvement to the community and the property. Mr. Hesser inquired about the number of carts converted in the course of a week.

Scott Heflin, 51643 Lakeland Drive, responded to Mr. Hesser's question by stating the number varies each week from one to three. When Mr. Hesser questioned if this is a full-time job, Mr. Heflin said this business would be in the summer months. Regarding the pick-up and delivery of the carts, Mr. Homan inquired about the type of vehicle used to do this. Mr. Heflin stated he has a pick-up truck with a trailer that will hold two carts at a time. He went on to say that most of his business is conducted over the phone. Mr. Homan asked about the parts and how they are received. Mr. Heflin said they are ordered on-line and most parts are shipped UPS or FedEx. He went on to say if it is larger, such as a body, he picks that up personally. Mr. Homan noted concern about the large amount of daily traffic on CR 7 and lack of a turnaround on the subject property. Mr. Heflin reported he does not receive semi-truck deliveries and that a box truck could turn around on the property.

Additionally, Ms. Hernandez stated that the current business operation on the property has larger box trucks for furniture coming and going from property. She also pointed out that these parts would be much smaller than car parts. Looking at the aerial photo, Mr. Hesser questioned if vehicles park behind the building. She stated that there has been an issue with the current occupant parking vehicles behind garage. Pointing out a double door in the front of the business, she said it is plenty wide to accommodate a golf cart. She also noted a carport between the residence and business where Mr. Heflin could bring the carts around to enter through the back of the building. At this time, she reported the front 2/3 of the store is filled with product and the back is storage. When a large truck is brought in now, it needs to get to the rear of the building to be unloaded. Also, currently the carport is also full of furniture. She noted both of these issues have been a problem with the neighbors. This proposed business will have no outside storage or exterior display of product. Mr. Heflin does not stock product to be sold but modifies them for customers. She said this will truly be a home workshop and much less of a retail space. Even his small retail section will not be anything like the volume of retail that has been going on there for the last couple of years.

Regarding the Developmental Variance for the sign, she said the Heflins would like the sign to remain because it is already there which is easy. She submitted a packet *[attached to file as Petitioner Exhibit #1]* including an aerial with a red "X" indicating the existing sign. Noting it is clearly larger than a 4 sq. ft. sign although it is set back from the road and raised up a bit, she reported she has driven down the road several times to observe how she felt about the sign as well. When Mr. Hesser inquired if the sign is lighted, Mr. Auvil said there is electric to the sign, whether it works or not. Mr. Hesser asked if the Heflins intend to use it as a lighted sign. Mr. Heflin said he will accept whatever is approved. When Mr. Hesser further asked the period of time the sign has been in place, Ms. Hernandez said the Mocks' daughter reported the sign has been in place 40-50 years in that configuration. Also included in the packet submitted, she noted the last two pages which are a report from the Sheriff's Department of the last five years of accidents on that

section of road (North of Bristol Street and South of CR 6 on CR 7) and their causes which are nothing to do with the sign or visibility there. If driving north on CR 7 from Bristol Street, she reported you cannot even see the sign because trees block it until it is very close. Noting the speed limit is 45 MPH in that section, but traffic travels much faster than that, she thinks a smaller sign would be harder to read and may cause more traffic issues with people trying to read it. With the current sign having been there for years, people are used to it. Additionally, she noted on Pg. 1 and Pg. 2 of the exhibit, the daycare sign down the road, which is 4'x5', is more injurious than the subject sign as it is closer to the ground. There was some discussion about whether or not the sign is in the right-of-way.

Jackie Davis, 54105 CR 7 North, was present. If this request is approved, she questioned if the Heflins sell the property, if this business would transfer to the next buyer. Attorney Kolbus said it would be limited to the golf cart operation as has been described today. Any change in the type of business would have to come back before the Board for another public hearing.

Bruce Tassell, 54128 CR 7, was present in support of the request. He reported he lives directly across the street from the subject property.

Karen Kloss, 54215 CR 7, was present speaking both in favor and remonstrance. She indicated she is just south of the subject property. Noting she feels a new, healthy business in this location is a great idea, she expressed concern about the sign. She reported that she knows the sign is lit because several years ago, the sign was bright pink which was horrendous when lit in the residential neighborhood. Therefore, she has an objection to the size of the sign and the fact that it can be lit up. She questioned the need for a large sign if it is not a walk-in business. In response, Ms. Hernandez said the petitioners probably do not need a sign that large, but in this case, the sign is existing. There would be some construction effort to take it down and put in a new sign. She suggested they would be agreeable to say they will never light it, remove the capability of it being lighted, and possibly even remove the bottom panel if required. She noted the existing sign is held in the ground with concrete, and it is sturdy. She noted the Heflins will abide by the Board's decision but felt it would be easier to leave the existing sign at this point.

There were no remonstrators present.

The public hearing was closed at this time.

Ms. Hernandez made an additional comment regarding the very limited retail sales of golf cart accessories in the shop. As this is part of the request, she noted there could be a small amount of walk-in business, so the sign could be for that purpose.

Mr. Campanello noted if the sign is in the right-of-way, it may be required to be moved. If that is the case, the issue could be rectified at that time. Mr. Homan confirmed that the previous and current businesses have operated outside of a Special Use. Regarding the Special Use, Mr. Hesser said he does not have problem with the business as a home workshop. Regarding the sign, if it is unlighted, he went on to say he does not have a problem with it as it is currently. Eventually it is going to be torn down which will be a change in the site plan, although he is not sure that he would agree to a replacement sign that large. At this time, however, he does not see a need to tear it down.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Randy Hesser 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 existing home workshop/business for golf cart modification and accessories retail 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 04/13/15) and as represented in the Special Use application.

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

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the request for a Developmental Variance to allow for an existing 48 sq. ft. sign (Ordinance allows maximum of 4 sq. ft.) be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following condition was imposed:

1. Sign to be unlit and the Developmental Variance does not apply to a replacement sign.

**Vote:** Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

**Yes:** Tony Campanello, Roger Miller, Randy Hesser.

**No:** Robert Homan.

12. The application of *Verlin O. & Norma Schlabach* for a Special Use for a home workshop/business for a sharpening shop and for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure on property located on the East side of CR 35, 989 Ft. South of CR 22, common address of 58304 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 #58304CR35-150413-1*. Mr. Hesser asked if this is a truly a Special Use request or if it would be an amendment of an existing Special Use, Mr. Auvil said he believes it would be an amendment. He also questioned what the number of employees was increased to in the April 2004 amendment approval.

There were six neighboring property owners notified of this request.

Verlin Schlabach, 58304 CR 35, Middlebury, was present on behalf of this petition. In 2000, he reported they asked for a Special Use for a sharpening shop, Pine River Grinding, but that business was sold in 2007. Currently, he said they rebuild tire shredding cutters for the tire shredding industry. He said his request is for an additional 40'x80' structure out the back end of the existing building. When he requested the previous Special Use amendment in 2004 and

requested two additional employees, he noted that request was denied. For 15 years, he said they have worked under the guidelines for a Special Use with only himself and three sons working in the business with no outside employees. He said the business has been good, and he is looking forward to this business supporting more than one family. As some of his sons have expressed an interest in joining the business, it is going to take a little bit more. He reported they are working out of a 40'x60'=2,400 sq. ft. building currently, and he is requesting an additional 40'x80'=3,200 sq. ft. Mr. Hesser noted the questionnaire states the proposed structure is 60'x60' but the site plan shows it as 40'x80'. Mr. Schlabach reported that the septic will be a factor with the originally proposed size building of 60'x60' so they reduced the size to 40'x80'.

Regarding the issue of being injurious to neighboring property, he said that he did not believe anyone was present in remonstrance but noted the use will intensify some with the larger building. When Mr. Campanello questioned the use on the property in the Northeast corner of the aerial, Mr. Schlabach indicated it is a farm. Mr. Hesser confirmed that the property to the north has all houses and farms. Farther East, Mr. Miller noted there is a nearby weld shop, Jo-Mar, and another business. Wanting more clarification about the situation with the sons and outside employees, Mr. Homan asked if they are old enough that they are moving out and if they have their own families. Mr. Schlabach said his three youngest sons, ranging in age from 17 to 20, who help him in the business, currently still reside at home. Regarding the 2004 request for additional employees, Mr. Schlabach explained in the original approval in 2000, he was granted two outside employees. But in 2004, he requested two additional outside employees which were denied. Ever since they sold the sharpening shop in 2007, he has had no outside employees. Noting the current request for three outside employees and acknowledging that Mr. Schlabach is planning for the future, Mr. Hesser asked if Mr. Schlabach could get by with two. Mr. Schlabach said not without his son's help. He went on to say, although the son is only 20 years old, he has expressed interest in joining the business at some point in the future.

Marlin Bontrager, 59700 CR 43, Middlebury, was present in support of this request. He agrees that the petitioner needs more room as it is crowded. He said Mr. Schlabach has a good business going and noted other nearby businesses.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello said this business is getting really big. Mr. Hesser acknowledged other nearby businesses although he stated Mr. Schlabach has been pushing the limits of a home workshop. He said part of him thinks that adding this much is probably going too far but it is a larger parcel so he is not sure that is necessarily a problem. But he said he would not go beyond two outside employees. Although Mr. Miller thinks the business is great, he noted it has had one change after another, and this is a big one. Mr. Campanello expressed concern that this use is outside of the definition of a home workshop/business. Mr. Miller said his gut is telling him this is too much of a change and too big and feels it is no longer a small workshop but a business. Mr. Homan noted the existing Special Use granted for a sharpening business with two outside employees, and questioned what the Board is voting on. He went on to say that the only difference he sees in the application that might fall outside the bounds of that it is that the application now is for three full-time employees. He further questioned if the Board needs to reapprove the home workshop. Regardless of how they feel about the building, Mr. Hesser said he would clean up the existing Special Use request.



Concerning the Developmental Variance, Mr. Homan noted with the new ordinance, the petitioner is allowed by right twice the square footage of the house. There was additional discussion about square footages, and Mr. Auvil reported this request makes the accessory storage square footage four times the living space.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the request for a Special Use for a home workshop/business for a sharpening shop be approved based on the Findings and Conclusions of the Board:

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

The following condition was imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 04/13/15) and as represented in the Special Use application.
2. Approved with two employees who reside outside the residence.
3. The business to include the repair of tire shredding cutters.
4. Approved for the owner/occupants of the Real Estate being the owner of the business.

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

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Robert Homan that the request for a Developmental Variance to allow the total square footage of accessory structures to exceed the total square footage in the primary structure be approved based on the Findings and Conditions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare.
2. Approval of the request will not cause substantial adverse affect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

**Vote:** Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

**Yes:** Robert Homan, Tony Campanello, Randy Hesser.

**No:** Roger Miller.

13. The application of *Martin W. Metzger and Sheri L. Metzger (buyers) and Clyde B. Selby and Katrina K. Selby (sellers)* for a Use Variance to allow for the construction of a second

dwelling on a parcel on property located on the North side of CR 40, 780 ft. West of CR 1, common address of 30159 CR 40 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 #30159CR 40-150413-1*.

There were three neighboring property owners notified of this request.

Martin Metzger, 30159 CR 40, was present on behalf of this petition. He said the house is in bad shape and needs to come down, and they need to put a new one up while living in the old one. When Mr. Homan questioned the timeline, Mr. Metzger said they will begin and complete the project as soon as possible and noted the bank wants the house constructed in six months. When Mr. Homan asked about the Zoning Clearance being started within 90 days and the project completed within one year, Mr. Metzger said he believes he can meet those deadlines. Mr. Miller stated he has an issue with demolition within 30 days of occupancy in the new residence because sometimes that is tough to do. When he asked Mr. Metzger about that deadline, Mr. Metzger stated he would prefer a little longer, but he will comply either way. Mr. Miller suggested 90 days for completion of demolition.

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** 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 a second dwelling on a parcel 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 existing home shall be demolished within 90 days of occupancy of the new residence.
3. The Improvement Location Permit is to be taken out within 90 days from the date of the approval and new home to be completed within one year from the date of the issuance of the building permit.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 04/13/15) and as represented in the Use Variance application.

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

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

14. The application of **Roy Schwartz (land contract purchaser) and The Verna I. Zook Revocable Trust (land contract holder)** for a Use Variance for warehousing and storing of semi tractors and trailers on property located on the North side of CR 48, 1,414 ft. West of CR 127, in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #000CR 48-150413-1*.

There were five neighboring property owners notified of this request.

Roy Schwartz, 17351 CR 48, Syracuse, was present on behalf of this request. He reported he resides on the West adjoining the subject property. He explained a friend, Gerald Yoder, who is also present, asked to store a few trailers and trucks there that were not being used which are taking up a fourth or possibly less of the gravel parking area. He went on to say that the items are mostly static and remain parked there, and no business is being run on the subject property. Mr. Schwartz submitted some photos of the property *[attached to file as Petitioner Exhibit #1]*. The question was raised about turnaround on the property as opposed to backing onto and off of CR 48, and Mr. Schwartz indicated there is plenty of room. Although he is not sure of the original use of the parking, he reported it was used for some years under a Special Use as an insulation business, Haab Insulation. He noted there is much less activity on the property currently than from the previous business use there.

When Homan asked about the requested time period of one year, Mr. Schwartz said the time limitation was not part of his request. When Mr. Homan asked staff about Finding #2 as having “a minor and temporary impact” and Condition #2 for a one year period, Mr. Auvil said part of the conversation was that these vehicles had been acquired and the idea was to get rid of them, sell them, or trade them, and it seemed very temporary in the conversation he had with Mr. Schwartz which is a deviation from the long-term plan. He went on to say that this is an A-1 zone, but those vehicles are not used on-site. When Mr. Homan inquired about the future of these vehicles, Mr. Schwartz said Mr. Yoder had a trucking company, which he sold. He had a few trucks left over and needed a place to store them.

Gerald Yoder, 69106 CR 29, New Paris, was also present in support of this request as the owner of the trucks and trailers. He reported the trucks/trailers have shop tools inside, left over from the business he sold. He said he gets into the trailers periodically for tools for his own use, but would like to try to get another business going elsewhere in a few years. Regarding staff’s recommendation for a one year approval, Mr. Yoder said he questioned that himself when he heard that, not knowing where that came from. He thought possibly they would have to come back every year for renewal which they would be willing to do. When Mr. Homan questioned Mr. Yoder’s time frame of 3-5 years, Mr. Yoder said there is another location being built in the Topeka area where they would move this equipment but that project will not be completed within one year.

Steve Eldridge, 17172 CR 48, was present in remonstrance to this request. He pointed out his property on the aerial photo. He submitted a copy of a signed petition and two letters from realtors *[attached to file as Remonstrator Exhibit #1]*. He indicated five signatures of neighboring property owners in opposition to findings on the Staff Report to three of the four conditions. Regarding the value of property adjacent to the subject property, he reported that included in his exhibit are letter from two separate realtors who both concurred that this request would cause a substantial decrease in property value. Noting nearby neighbors take pride in the care of their properties and referring to signatures on the petitioner, he stated that Maynard Miller’s view as he exits his driveway is these trucks and trailers parked across the street. Also signing the petition was Glen Graber, who Mr. Eldridge reported probably has the worst situation, as he looks at semi-trucks parked along beside his driveway every time he drives in and out. He noted the description states the property is protected on three sides by trees. While Mr. Eldridge said this is true, he reported along the stretch of Mr. Graber’s driveway, the screening is only approximately 60 feet wide with leaf trees. As the screening is not evergreens, the trucks are

more visible especially in the winter months. Pointing out comments from the realtors, he noted one study shows that unstructured land use such as this can cause up to a 63% decrease in property value. If this is true, he indicated that one-half million property values would turn into \$200,000 property. For most people, he feels one of the largest investments in their lifetime is their house and property. Noting one cannot control the economical effects on property values, he said they can control what comes into their neighborhood and goes against zoning regulations. He said the neighbors do feel that this request is detrimental to their property values. Referring to Item C of the petition, he said he does agree that the situation is peculiar about this piece of property due to the fact that there are four semis and four trailers parked in an agricultural zone which is not right. He questioned how trucks can be making money and getting revenue back if they are parked and not being used which is unusual to him. Regarding the issue of an "unnecessary hardship", Mr. Eldridge said the unnecessary hardship is on the surrounding property owners, not the petitioner. He questioned if Mr. Schwartz is getting revenue from the trucks being parked there thus leading to a hardship for him if they are not allowed to be parked there. He pointed out that there are proper, more logical places to store these items, and noted Mr. Schwartz owns a large commercial property not far away in Syracuse with a large raw storage facility on one end, manufacturing in the middle, and a three or four bay truck loading dock on the south side. He questioned why these items could not be stored on this property which would be more appropriate. He noted the rules imposed for no warehousing/storing in an A-1 district is contrary to all of this.

Pete Meyer, 17140 CR 48, was also present in remonstrance to this request. He showed his residence on the aerial photo. He stated they purchased their property because of the nice country setting, without industrial parks, junk yards, and semis. His biggest concern is when he comes home, visitors come, or possibly a potential buyer for his house, they will take note of the semi-trucks parked there. He stated he does not like it, a potential buyer would not like it, and if he were purchasing his own house, he would not buy it because of the trucks and trailers parked there.

In response, Mr. Schwartz thanked his neighbors for their comments. He said he did not realize there were any questions or issues. While he feels their response is over-dramatic for a few trailers and semis, he said this request is not that big of a deal to them. Noting the trees between the trailers and Mr. Graber's driveway, he agreed that they would be highly visible in the wintertime. He said he did not realize it was a problem with any of the neighbors. He did report the property in Syracuse is rented to tenants, so it would not be a possibility for parking these items. Additionally, he noted he is being paid by Mr. Yoder to park the trailers there. When Mr. Homan asked how long these trucks have been parked there, Mr. Schwartz said his neighbors could probably answer better than he could. It was suggested they have been there less than a year.

Mr. Homan inquired about the previous insulation business on the property being Mr. Schwartz's business. Mr. Schwartz reported he is buying the property on land contract, and the insulation business was there prior to his involvement. He indicated that the insulation business had much more activity with trucks in and out of the property than there is currently.

Mr. Meyer made an additional comment about the insulation business. He reported Mr. Haab had a box truck that left the property in the morning and returned in the evening.

The public hearing was closed at this time.

Mr. Homan noted there seems to have been a miscommunication about the term of this Use Variance. He said he felt the remonstrators made some very good points particularly since this is a request for a Use Variance and is the most difficult request to support based on the five criteria that are in the ordinance. Mr. Campanello noted agriculturally, there could be more of a nuisance such as a chicken or hog farm. Mr. Hesser noted if he had the choice between granting it for six months and giving the petitioner six months to remove the items, he would choose the latter. Understanding the predicament and the need for time to relocate them, he said he would give them a reasonable time to do that.

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

**Motion: Action: Denied, Moved by Robert Homan, Seconded by Randy Hesser** that this request for a Use Variance for warehousing and storing of semi tractors and trailers be denied based on the following Findings and Conditions of the Board:

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

The following condition was imposed:

1. Petitioner is allowed six months (11/21/15) to make other accommodations to park and store the vehicles and trailers currently on the subject property.

**Note:** Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).

**Yes:** Robert Homan, Roger Miller, Randy Hesser.

**No:** Tony Campanello.

15. The application of **Richard Miller, Loranna Miller, Wayne E. Miller, and Ruth Ann Miller** for a Use Variance 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. 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.

Wayne Miller, 13267 CR 36, Goshen, was present on behalf of this request. He said he has an existing Special Use for home workshop/business at his present location and plan to move to this location later this summer. He wants to construct another building there at the new location to continue his business. Mr. Hesser questioned ownership of the property to the North and the subject property. Mr. Miller reported he owns the whole ten acres with their son,

Richard, and his wife, but he is going to live in the small house. Mr. Hesser stated it appears the building encroaches on the other property as well. Mr. Miller reported the back property line will be moved back to accommodate the new structure. Mr. Hesser clarified that the proposed workshop will be on Mr. Miller's property.

Mr. Hesser inquired why this request is a Use Variance instead of a home workshop. In the petition, Mr. Auvil said it was unclear whether this was going to be for business or for hobby. He went on to say that staff was not aware that this was going to be a business and that the petitioner will live on site. Mr. Auvil read from #2 of the questionnaire and noted if the petitioner is going to move there, that changes everything. Questioning the Board Attorney, Mr. Hesser asked if the Board were inclined to allow this as a home workshop, if the petition would need to be re-advertised, and Mr. Kolbus indicated yes. Additionally, Mr. Hesser noted the request cannot switch from a Use Variance to a Special Use. Within a petitioner, Attorney Kolbus said less could be granted, such as fewer employees, but Mr. Hesser noted the correct property was not covered in this current petition. He asked if the petition could be amended without having to reapply and pay a new fee. Attorney Kolbus indicated the fee could be waived but for that to take place, the property would need to be deeded. Noting conflicting information in the questionnaire, Mr. Homan questioned the number of employees currently and if Mr. Miller intends to have employees. Mr. Miller stated it is a one-man shop. According to site plan, Attorney Kolbus noted half of the new building will be on the existing site and half on the northern site and suggested placing a condition that a building permit could not be obtained until the additional property is deeded to him because it is tied to this property as some of it will be on this property. Additionally, he feels re-advertising would be burdensome at this point.

Marlin Bontrager, 59700 CR 43, Middlebury, was present in support of this request. He reported he is a neighbor to the Millers. He reported he knows they are working on moving the property line and that it has been surveyed.

There were no remonstrators present.

While he understands what Attorney Kolbus said, Mr. Hesser said he does not want to grant a Use Variance in this case and does not feel there is sufficient reason to grant one. Feeling there has been a misunderstanding with the petition/request, he suggested the parcel needs to be corrected and the request should be submitted as a home work shop. He noted if the petitioner desires to proceed with this request with a ruling by the Board, he has that option. He went on to say that he would be inclined to table this request to permit him to re-apply as a home workshop, waive the fee, and re-advertise.

Attorney Kolbus questions Mr. Miller's construction plan and noted the deadline for the July BZA meeting has passed so this matter would not be heard until July 2015. Based on the current information, Mr. Hesser said the Board cannot approve what Mr. Miller wants to do which is basically relocate his home workshop. Mr. Hesser questioned Attorney Kolbus further about why the other course is better. If he was reading the Board correctly, Mr. Kolbus felt the Board would approve the home workshop so he suggested they grant the Use Variance. Mr. Hesser said the property that was advertised does not cover the location of the whole building, and he does not feel that the petitioner meets the criteria because every hardship and unique condition to it is self-created. Mr. Auvil reported the petition can be revised and put on June agenda with a correct legal description submitted by Friday, May 29, 2015.

The public hearing was left open.

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

**Motion: Action:** Table, **Moved by** Randy Hesser, **Seconded by** Robert Homan that this request for a Use Variance 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 be tabled until the June 18, 2015, Elkhart County Advisory Board of Zoning Appeals meeting to allow petitioner to submit a correct legal description and revise petition to a Special Use for a home workshop/business with new application fee waived.

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

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

16. The application of *Bryan Lee Fox and Kim Annette Fox* for a Use Variance to allow for the residential use (detached accessory building) in a B-3 district and a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of said detached accessory building on property located on the West side of intersection of North Main Street and Fourth Street, 890 ft. North of Market Street (CR 46), 840 ft. East of SR 15, common address of 68327 N. Main Street in Jackson Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #68327N. MainSt-150410-1*.

There were 30 neighboring property owners notified of this request.

Karl Graber of Pacemaker Buildings, 71786 CR 29, Syracuse, was present representing the petitioners. He reported the petitioner has lived at this residence for a long time and was able to purchase the parcel behind him in the last year with the intent of placing a workshop on the property. Additionally, he said Mr. Fox was not aware of any issues when he purchased it. Mr. Graber reported the property is on the edge of the B-3 zone, and noted residential areas North and South of the petitioner. He stated it would have far more negative impact if someone put a business back there than this proposed personal storage building. When Mr. Hesser questioned if it is currently two parcels, Mr. Graber reported it is under one legal description but zoning splits the parcel. Mr. Graber also noted the 7 to 1 issue was created when the petitioner purchased the second lot, although it is only approximately 50 ft. beyond the 7 to 1 ratio.

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** 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 residential use (detached accessory building) in a B-3 district and a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of said detached accessory building be approved with the following conditions imposed for the Use Variance:

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 for the Use Variance:

- 1. Approved in accordance with the site plan submitted (dated 04/13/15) and as represented in the Use Variance application.

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

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

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

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

18. Staff item – Creekside Church of the Brethren - *See Item #6 – Page 2* for previous action on this item.

19. *See Page 1 – Item #4* for previous action on 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.

At this time, an amended motion was **Moved by** Randy Hesser, **Seconded by** Robert Homan, that this request for a Special Use for a mobile home be tabled until the June 18, 2015, Elkhart County Advisory Board of Zoning Appeals meeting.

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

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

20. The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

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Deborah Britton, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary