

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 18<sup>TH</sup> DAY OF AUGUST 2016 AT 8:30 A.M.**  
**MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 ELKHART ROAD, GOSHEN, INDIANA**

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Liz Gunden, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

**Present:** Robert Homan, Tony Campanello, Roger Miller, Denny Lyon.

**Absent:** Randy Hesser, Suzanne Weirick.

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 June 2016 be approved as read. The motion passed with Homan abstaining.

3. A motion was made and seconded (*Lyon/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21<sup>st</sup> day of July 2016 be approved with the following corrections: on page 10 the wireless communications facility was denied based on location and Hesser's motion did not include any findings for #2 and #3. Also, in regards to the Waypoint Community Church, Mr. Hesser referred to the pavilion as a minor change, but stated it all should have been brought as an amendment. The motion passed with Homan abstaining.

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

5. The application of **Norman L. & Linda S. Moser** for a 20 ft. lot width Developmental Variance to allow for the construction of a residence (Ordinance requires 100 ft.) on property located on the East side of CR 15, 1,000 ft. South of CR 28, common address of 61166 CR 15 in Harrison Township, zoned A-1.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0381-2016*.

There were five neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465, New Paris, was present representing the petitioners who were also present, and submitted a list of notified property owners [attached to file as Petitioner Exhibit #1]. Mr. Doriot stated this property has been the Mosers' home for 40 years, where they have raised their children, and entertained their grandchildren and other relatives. However, now the home is too large for them, and it is time to downsize. He went on to say Mrs. Moser would like her garden, which she has maintained for years, to go with the original property. Mr. Doriot stated he does not think it is a detriment to the neighbors, but enforcing the ordinance would be injurious to the Mosers. He submitted a petition signed by the Mosers' neighbors in favor of this request [attached to file as Petitioner Exhibit #2]. Mr. Doriot stated the neighbors do not have a problem with this request, and all of the necessary departments will look over and approve this request before the

home is built. He went on to respectfully disagree with staff, and state he feels this is a good thing for the community. Mr. Campanello questioned what is in the garden, and Mr. Doriot responded raspberries and other plants she has worked on for years. Mr. Lyon confirmed the Mosers are going to live in the new house. Mr. Doriot stated the reason Mrs. Moser does not wish the gardens to go with the new home is that the gardens extend to the old home and take up a good portion of the property. Mr. Homan asked if there needs to be a Developmental Variance in order to have a Minor Subdivision; Mr. Auvil responded yes. It was found that this request does not meet minor subdivision criteria with less than 100 ft. of road frontage on a County Road, which is the reason for the Developmental Variance being needed. There were no remonstrators present.

The public hearing was closed at this time.

Mr. Kolbus stated the third finding in the staff analysis is negative; in order to approve this request a positive finding needs to be found on that point. Mr. Miller stated strict application of the ordinance would cause unnecessary hardship for the petitioners.

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

**Motion: Action:** Approve, **Moved by** Denny Lyon, **Seconded by** Tony Campanello that this request for a 20 ft. lot width Developmental Variance to allow for the construction of a residence (Ordinance requires 100 ft.) be approved, based on the Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. The proposed parcel will need to go through the minor subdivision process.
2. Approval of the request will not cause substantial adverse effect on the neighboring property. This is a residential and agricultural area.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following condition was imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).

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

**Yes:** Robert Homan, Tony Campanello, Roger Miller, Denny Lyon.

**\*\* It should be noted Randy Hesser arrives at this time.\*\***

6. The application of *Phillip & Jeannine Tom* for a 25 ft. lot width Developmental Variance and a 7 to 1 depth to width ratio Developmental Variance to allow for construction of a residence on property located on the East side of CR 33, at the East end of CR 108, 33 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0382-2016*.

There were four neighboring property owners notified of this request.

Blake Doriot, P.O. Box 465, New Paris, was present representing the petitioners, and submitted a list of the notified neighboring property owners [attached to file as Petitioner's Exhibit #1]. Mr.

Doriot went on to state he agrees with the staff analysis except for needing a building permit pulled within 90 days. He stated the building permit will not be taken out in that time frame due to the property being offered for sale. Mr. Doriot went on to say they will record this variance on a deed splitting the property within 90 days. Mr. Miller asked how long of a time frame Mr. Doriot is requesting, and he responded suggesting six months with the option to renew. Mr. Auvil stated he is okay with one year and an option to renew, and Mr. Doriot agrees with Mr. Auvil's suggestion. Mr. Hesser questioned which lot was being discussed. Mr. Doriot outlined the parcel and requested the proposed property line be moved back an additional 150 ft. in order to have access to the fence around the barn. Mr. Doriot also submitted a petition signed by the neighbors in favor of the request [attached to file as Petitioner Exhibit #2].

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello questioned if there would be a second driveway added or an easement, and Mr. Doriot responded there will be an agreement in place in which the driveway will be shared. He went on to say the vehicles will enter at the same point and then the drive will split. Mr. Hesser questioned if this property would go through a subdivision. Mr. Doriot stated it will not, and he did not believe it was a condition of approval.

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

**Motion: Action:** Approve, **Moved by** Denny Lyon, **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 25 ft. lot width Developmental Variance and a 7 to 1 depth to width ratio Developmental Variance to allow for construction of a residence 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 one year 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) with possible renewal by the staff.
2. Approved in accordance with the site plan submitted (dated 7/18/16) and as represented in the Developmental Variance application.

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

**Yes:** Tony Campanello, Roger Miller, Denny Lyon.

**No:** Robert Homan, Randy Hesser.

7. The application of *Glen E. Eash, Trustee, and Anna M. Eash, Trustee* for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence and accessory structure and for a 60 ft. lot width Developmental Variance to allow for the construction of a residence and accessory structure (Ordinance request 100 ft.) on property located on the West side of CR 43, 2,581 ft. North of CR 32, in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil reported the petitioner submitted a request to withdraw.

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:** Withdraw, **Moved by** Roger Miller, **Seconded by** Randy Hesser that this request for a 7 to 1 depth to width ratio Developmental Variance to allow for the construction of a residence and accessory structure and for a 60 ft. lot width Developmental Variance to allow for the construction of a residence and accessory structure (Ordinance request 100 ft.) be withdrawn at the request of the petitioner.

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

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

8. The application of *Emma M. Martin, Individually and as Personal Representative of the Estate of Levan M. Martin, Deceased*, for an amendment to an existing Special Use for warehousing and storage to modify the original site plan on property located on the South side of CR 36, 1,900 ft. East of SR 19, common address of 27608 CR 36 in Harrison Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0362-2016*.

There were four neighboring property owners notified of this request.

Loren Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners, and stated he concurs with the Staff Analysis. He continued saying in regard to #5 on the questionnaire the petitioner's existing sign fits within the requirements set by the staff. He went on to state the existing permit is for the two and a half acre area outlined in red. However, Mr. Martin wishes to increase his property to 5 acres and add on to the existing shop and eventually add an additional storage building. He continued that Mr. Martin hopes the future building will eliminate the outside storage. Mr. Sloat also commented on #8 of the questionnaire stating Mr. Martin does not have a problem with the hours of operation or with #9 the condition of no retail sales. He went on to point out the location is in a quarter section of the county that is already commercially zoned. He stated there is a pallet recycling facility and an excavation construction company close to the property. Mr. Hesser questioned if there is a residence on the property, and Mr. Sloat responded the residence is currently being rented.

Ron Martin, 27608 CR 36, was present as the petitioner, and stated the land surrounding the property will either be owned by him or his family and will remain farm land. He continued saying the house will either continue to be rented or turned into an office.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser questioned the three year renewal in the proposed conditions, and stated he does not believe it is necessary. Mr. Hesser also mentioned he appreciates the power point materials with the petition so they can be reviewed ahead of time. The Board confirmed the three year renewal will not be included in this petition.

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 an existing Special Use for warehousing and Storage to modify site plan 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 7/15/16) and as represented in the Special Use Amendment application.
2. The Special Use permit shall be confined to the 5-acre area around the buildings as shown on the site plan.
3. No exterior loud speakers.
4. Exterior lighting to be limited to security, dusk-to-dawn type lighting.
5. One (1) unlighted 2 x 2 ft. sign.
6. Screening with tree / shrubs to be maintained between the construction storage yard and CR 36. Screening necessary to the South and West of the property if and when the area is developed residentially.
7. All equipment to be stored to the rear of the proposed 70'x150' cold storage building away from CR 36 in an orderly manner.
8. Hours of operation to be Monday through Friday, 6:00 a.m. to 5:00 p.m.; and Saturday, 7:00 a.m. to Noon.
9. No retail sales on site.

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

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

**Abstain:** Denny Lyon.

9. The application of *Timothy J. & Louetta M. Schlabach* for a Special Use for a home workshop/business for a woodworking business on property located on the South side of SR 4, 1,460 ft. East of CR 35, common address of 13754 SR 4 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 #SUP-0370-2016*.

There were 12 neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners. Mr. Hochstetler stated the property owner primarily builds kitchen cabinets. He went on to say the proposed building falls within the square footage requirements in the Zoning Ordinance; in addition the number of employees meets the Special Use requirements. He stated they are currently operating out of the existing barn, but would like to use it for agricultural use again, if the request is approved. Mr. Hochstetler also mentioned they have combined the two parcels into one parcel and recorded it as a new parcel.

Mr. Campanello asked the amount of semi traffic coming through the property, and Mr. Hochstetler responded less than one a week. He continued stating they use primarily pick-up trucks and trailers or box trucks. Mr. Campanello also questioned if there will be sufficient room for a semi turnaround, and Mr. Hochstetler replied yes. Mr. Homan questioned the size of the parking lot. Mr. Hochstetler stated on the site plan it is 50 ft. to the sign, and the parking area may have to extend out some as it is tight the way it is drawn. He went on to agree due to the property being on SR 4, it is not safe to back into or out onto the road. Mr. Homan asked if a u-

shaped drive would be a possibility, but Mr. Hochstetler stated the highway department does not like to approve those. If approved, Mr. Campanello asked about adding a condition to submit a new site plan showing the radius needed for a driveway turnaround for staff approval. Mr. Hesser questioned the building dimensions; Mr. Hochstetler stated it is 70'x98'. Mr. Hesser commented the driveway is then around 130' across. Mr. Campanello questioned if this will go through Tech Review. Mr. Godlewski replied it will not go to Tech Review; it will only go through an internal staff review. Mr. Homan then added the condition of no backing in and out or parking on SR 4.

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** Denny Lyon 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 woodworking business 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. Revised site plan to be submitted for staff approval showing semi traffic turn around.

The following commitments were imposed:

1. Approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use application
2. Backing out or backing in of vehicles from/onto SR4 is prohibited; and no parking on SR 4.

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

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

10. The application of **Paul D. Hochstetler, Jr. and Jolene R. Hochstetler** for an amendment to an existing Special Use for a campground to amend the original site plan and change ownership on property located on the East side of CR 33, 1,000 ft. North of CR 12, common address of 54824 CR 33 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0371-2016*.

There were five neighboring property owners notified of this request.

Paul Hochstetler, 54824 CR 33, was present on behalf of this petition, and showed the previous Girl Scout Camp on the aerial. Mr. Hochstetler went on to say the camp was split between three new owners, and his parcel has many of the existing cabins. He wishes to name the site Singing Hills Retreat and rent the cabins but no campers. He stressed they do not have camper hook-ups, and all of the cabins have septic systems and are all fully functional. Mr. Hochstetler stated he has talked to some of his neighbors. His neighbor to the South, Mike Jacka, and the neighbor across the road, Phil Tom, sent emails in support of the petition [attached to file as Petitioner Exhibit #1 and #2]. He went on to say his family resides in the house by the road, and access to the cabins will be through their residential drive to the parking areas at each cabin. Mr. Hesser

questioned if the entire property was advertised in the papers; Mr. Kolbus confirmed the entire 77 acres was advertised. Mr. Miller asked about limiting the number of cabins, and Mr. Hochstetler responded the petition is for four new 1-bedroom cabins. In addition to the new cabins the existing cabins will also be used, with the new and existing cabins combined they will have a total of 14 bedrooms. He continued saying they stopped at 14 cabins because it is the maximum number allowed for a Bed & Breakfast Special Use. He also clarified there will not be 14 buildings, but two 4-bedroom and six 1-bedroom cabins. Mr. Miller questioned if the facility would be operating year round; Mr. Hochstetler confirmed it will operate year round.

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 campground to amend the original site plan and change ownership 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 7/15/16) and as represented in the Special Use amendment application.

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

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

11. The application of *Richard Evans Jr. & Edna L. Evans* for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than three acres on property located on the North side of Vista View Drive, 290 ft. East of Prairie View Drive, South of CR 40, common address of 18155 Vista View Drive 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 #SUP-0373-2016*.

There were 31 neighboring property owners notified of this request.

Edna Evans, 18155 Vista View Drive, was present on behalf of this petition. Mr. Evans stated they talked to neighbors about getting chickens last fall, and no one complained. She went on to state they bought the chickens this spring, which she admitted was too many. However, she stated they keep the lot very clean, and the chickens have plenty of room to roam. Mrs. Evans stated they have gotten rid of several chickens, but requests they be able to keep 30 chickens. She went on to state her reason for requesting so many chickens is, she has a large family and several of the chickens are not laying eggs. She also stated they have only kept one of the original roosters, but will get rid of it if needed. Mr. Miller questioned the use of the chickens, and Mrs. Evans responded they are for eggs. She continued that she has a family of seven, and they use a lot of eggs. Mr. Miller also questioned if there is a building the chickens are kept in;

Mrs. Evans stated they have a roost building and an egg laying building for the chickens. Mr. Homan asked the current number of chickens on the property; she stated they currently have 47 and one rooster. Mr. Campanello then questioned how they dispose of the chicken waste. Mrs. Evans responded they burn the waste or use it as fertilizer for their yard. She also included they thoroughly clean the area every two weeks. Mr. Hesser questioned if the limit of six chickens would be acceptable; Mrs. Evans stated six chickens will not feed her family. She went on to request for 30 chickens, and stated she has signatures and letters from most of their neighbors in support of the petition. She also included that her husband is ill, and the chickens have had a positive effect on him.

Jennifer Walters, 18128 CR 40, was present in support of the petition and stated she shares a property line with the Evans. She went on to state her house is placed backwards so the front faces the Evans' residence. She also stated they have a pool in the back yard, and they have not noticed any smell. Mrs. Walters shared that her children like to feed the chickens, and they do not hear the roosters.

Autumn Carey, the petitioners' daughter-in-law, 18155 Vista View, came on to be heard. Mrs. Carey stated she does not have a problem with the chickens, and they are well taken care of. She also stated she has not noticed a smell, and her children love to help with the chickens. She also added that she has talked to the neighbors, and only one neighbor has ever complained about the chickens. Mr. Miller questioned if Mrs. Carey lives next door to the petitioners; she stated she lives in the petitioners' residence.

Jennifer Walters, came back on to be heard and stated they have several other neighbors who have more than six chickens. To point out that there are more chickens in the area.

Dan Monschein, 18110 CR 40, came on to be heard in favor of the petition. He stated the Evans' property is directly behind his, and he has no problem with the chickens. He continued saying he sits on his patio and watches the chickens. He also mentioned he mows his grass up to their fence line and does not notice a smell.

Donna Hackett, 18135 Vista View, the next door neighbor to the petitioners on the East, was present in remonstrance. Mrs. Hackett stated she was never asked about the chickens; they just suddenly had 50 chickens and 6 roosters, who started crowing at 5:30 a.m. She went on to stress that this is the middle of a subdivision, and the original covenants of the subdivision stated no livestock was allowed. Mrs. Hackett stated she has no opposition to six, but 50 chickens smell especially when they burn the waste. Mr. Hesser asked about the subdivision covenants mentioned before, and if anyone else in the subdivision has chickens or other livestock. Mrs. Hackett stressed that no one else has livestock and that someone had horses at one time and had to get rid of them. She also mentioned that the Evans have turned two storage buildings into chicken coops, and have raised chickens in their garage. Mr. Lyon asks if they have a Home Owners' Association, and Mrs. Hackett replied they do not.

Jim Hackett, 18135 Vista View, came on in remonstrance, and stated his concern is trying to sell his house with a chicken coop next door. He went on to say he obtained a copy of the original covenants and rule #8 states no livestock. Mr. Campanello questioned if Mr. Hackett has a problem with six chickens and no roosters; Mr. Hackett responded he does not.

Craig Rodman, 18169 Vista View, came on in support of the petition, and stated he lives adjacent to the west of the Evans'. Mr. Rodman went on to say he does not have a problem with the chickens, and his children love to feed them. He also stated they are really good neighbors,



and he does not notice a smell when he walks into the pens. Mr. Rodman also brought up that everyone seems to burn things in their neighborhood, and he does not hear the roosters inside of his house.

Mrs. Evans responded saying she does not understand how the chickens smell. She mentioned that the Code Enforcement Investigator was asked about smell and told Mrs. Evans she could not smell the chickens. She went on to say the investigator also told her they have plenty of room. Mrs. Evans stressed that six chickens would not help their family, and they have put a lot of money and a lot of work into them. She also mentioned that most of the neighbors enjoy the chickens, and another neighbor in support of their petition was unable to attend the meeting. She stressed that the Hacketts are the only neighbors who have issues with the chickens. Mr. Miller stated that 30 chickens is a large number and asked if she would be ok with a smaller number of chickens. Mrs. Evans requested 20 chickens to help her family.

The public hearing was closed at this time.

Mr. Campanello mentioned Goshen City allows up to six chickens, and in this county the Staff recommends six with no roosters. Mr. Lyon stressed six chickens will not help the Evans. Mr. Auvil said they do not have guidelines for an exact number, but six is a number a lot of communities use such as Goshen. He went on to state Staff would not be opposed to more than six chickens. He also mentioned that generally, with hens laying eggs, you can expect six eggs per dozen chickens. He again stressed that Staff would accept a larger number than six, but six is the standard they use. Mr. Campanello suggested a time limit be placed, if more than six chickens is approved. Mr. Hesser noted this is a pretty densely populated area, but he does not have a problem going over six. He stressed that the main issue with smell is a maintenance problem, and it sounds like the Evans are good about keeping the area clean. He also mentioned 30 seems excessive for this size lot, but a time limit for review makes sense. Mr. Miller suggests 20 chickens, no roosters with a one or two year renewal.

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 a Special Use for an agricultural use for the keeping of chickens 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 7/18/16) and as represented in the Special Use application.
2. Limited to twenty chickens at any one time, and no roosters.
3. Approved for a period of 18 months from August 18, 2016, with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

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

12. The application of *Patrick J. & Stacy L. McCauley* for a Special Use for a wireless communications facility on property located on the Northeast corner of CR 37 and CR 46, common address of 68446 CR 37 in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0376-2016*. Mr. Auvil noted a Public Records Request by a tower company with collocation interest in regards to this tower. He recognized a nearby cell phone tower, but this is a smaller internet tower. He also noted there is a drainage easement nearby, which Mr. Doriot will address.

There were 10 neighboring property owners notified of this request.

Pat McCauley, 68446 CR 37 Millersburg, came on representing the petition. Mr. McCauley stated he has bought two 3-acre parcels and is building a home on the north parcel. He went on to point out the proposed site for the tower, and stated the two parcels will be combined before completion of the home. He continued saying once the two parcels are combined, he will be well within his setbacks and the drainage issue will be eliminated. Mr. McCauley submitted a colored copy of his site plan [attached to file as Petitioners Exhibit #1]. Mr. Miller questioned how many feet to the nearest property, and Mr. McCauley stated 245 ft. from the corner of his house, several hundred from the South neighbor, and farther from the North neighbor. Mr. Campanello questioned the height of the proposed tower. Mr. McCauley stated he is requesting a taller tower than he originally planned, at 140 ft. He also added it will be for his personal use in order for him to work from home.

Wes Herschberger, 69105 CR 37, approximately  $\frac{3}{4}$  mile south from Mr. McCauley, was present for the petition. Mr. Herschberger stated he is currently using Embarq and receives subpar service. He went on to say he is excited about the possibility of high speed internet in the area, and it will help him and other business owners who occasionally work from home. He also stressed this tower will be able to service many rural homes with considerably better internet service.

Blake Doriot, Elkhart County Surveyor's Office, submitted arials showing the concerned setbacks, which have now been relieved [attached to file as Staff Exhibit #1]. He continued saying he believes this is needed and is okay with the tower as long as it meets the required setbacks.

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 a Special Use for a wireless communications facility 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 7/18/16) 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, Denny Lyon, Randy Hesser.

13. The application of *Marion Schrock* for a Special Use for a ground mounted solar array panel system on property located on the South side of US 20, 1,831 ft. East of 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 #SUP-0378-2016*.

There were 10 neighboring property owners notified of this request.

Brian Burkholder, Solar Energy Systems, 1952 W. Market St, Nappanee, was present representing the petitioner. Mr. Miller questioned if the energy produced by the solar panels will be solely for the owners use or will it also service the neighbors, and Mr. Burkholder responded it is grid interactive and would back-feed NIPSCO giving the owners credit. Mr. Miller clarified it will not feed the neighboring properties and questioned the size of the panels. Mr. Campanello stated it is 70' x 200', and Mr. Burkholder responded of that 70 ft., there is a ground rack and also dead space. He also stated the maximum height is approximately 14 ft., but there is a pond to the South, woods to the North and West, and also an embankment on the North side. He continued because of the natural barriers, the neighbors will not be able see the panels. Mr. Hesser questioned the location of the pond, and how the panels will be hidden. Mr. Burkholder pointed out the location on the aerial.

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 Special Use for a ground mounted solar array panel system 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 7/18/16) 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, Denny Lyon, Randy Hesser.

14. The application of *Monroe & Frieda Yoder* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of SR 4, 1,260 ft. West of SR 13, common address of 12734 SR 4 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 #UV-0366-2016*.

There were seven neighboring property owners notified of this request.

Merv Stoltzfus, Merv's Construction, 60112 CR 41, Middlebury, was present representing the petitioners, and stated the Yoders would like to live in their existing home until

their new home is finished. He continued stating they do not wish to move off of the property, and they are hoping to begin construction within the next 60 days. Mr. Homan questioned the hash tagged structures on the site plan and their use. Mr. Stoltzfus responded stating the structures are a home and barn, which will both be coming down. Mr. Campanello asked about the condition of six months, and Mr. Stoltzfus responded he was hoping for year.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Homan suggests a condition that an Improvement Location Permit be issued within one year of approval. The Board found no issues with 12 months to tear down the existing residence after the Certificate of Occupancy has been issued for the new residence.

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

**Motion: Action:** Approve, **Moved by** Robert Homan, **Seconded by** Denny Lyon 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. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 12 months from the date of the grant and construction work completed within one year from the date of issuance of the building permit (where required).
3. The old residence must be removed within 12 months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 7/15/16) and as represented in the Use Variance application.

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

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

15. The application of *Kyle D. & Michelle R. Miller* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the East side of SR 13, 1,200 ft. North of SR 4, common address of 61190 SR 13 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 #UV-0368-2016*.

There were 8 neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, Middlebury, was present representing the petitioners, and stated the current residence is very small. He continued stating the Millers wish to build a larger home for their family, and wish to stay on the property while the new residence is built. Mr. Hochstetler also stated he is requesting 90 days to tear down the existing structure after the Certificate of Occupancy is issued, because of this, the six months restriction is not a problem. Mr. Hesser questioned the location of the new residence on the site plan; Mr. Hochstetler pointed out the proposed residence and garage.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser questioned why these petitions are brought before the Board. Mr. Auvil noted this will be in the next Zoning Ordinance Amendments meeting which will take place at the end of this year and will take effect in January or February of next year if approved. He continued until that takes place these petitions will have to be brought before the Board.

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 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 old residence must be removed within 6 months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 7/15/16) and as represented in the Use Variance application.

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

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

16. The application of *Jesse L. and Rebecca Denlinger* for a 20 ft. Developmental Variance to allow for the construction of an accessory structure 55 ft. from centerline of the right-of-way of CR 30 (Ordinance requires 75 ft.) on property located on the North side of CR 30, 5,025 ft. West of CR 15, common address of 61964 CR 13 in Harrison Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Revised Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0155-2016*.

There were 12 neighboring property owners notified of this request.

Jesse Denlinger, 61964 CR13, was present on behalf of this request. Mr. Denlinger stated the biggest problem with the 55 ft. location at the last meeting was dealing with the run-off and proposed a berm along the East and North corner of the property line to catch the water. He went on to state there is a natural swale, and putting the structure at the required 75 ft. setback would put it right at edge of the swale. He continued saying he is requesting a setback of 55 ft. to keep it out of the swale. Mr. Hesser questioned the 16'x32' structure towards the North side of the property on the site plan, and Mr. Denlinger responded it is a cold storage building. Mr. Homan asked the elevation of CR 30; Mr. Denlinger stated the roadway is built up higher than his property. He went on to say they will build the structure up and leave a low area between the building and road. Mr. Lyon questioned the parking lot materials. Mr. Denlinger responded the first 30 ft. of parking will be hard surface, but the remainder will be limestone or gravel. Mr. Campanello said it makes sense to put it at 55 ft. rather than the required 75 ft., and he does not believe it will cause a sight problem.

Mr. Hesser made a motion to re-open the public hearing. He also noted to include prior comments.

Mr. Homan questioned whether the proposed berm would block water flow onto the field. Mr. Denlinger stated he is unsure and the berm was suggested to him. Mr. Homan believes this will only cause the water to stay on the property and cause issues with the road. Mr. Lyon stated if the berm is removed the water will flow right onto the property to the East, and he believes only the roadside portion of the berm should be removed. Mr. Hesser questioned if the entire berm should be taken out. If approved, Mr. Campanello requests Mr. Denlinger bring in a new site plan with the berm removed for staff approval.

Gerald DeMunda, 23894 Margarite Way, owns the property directly East of the Denlingers, came on to be heard in remonstrance. Mr. DeMunda stressed the area is wet and about seven acres drains through the Denlingers' property, and his concern is that the velocity of the water will increase with this new structure. He continued saying currently when it rains heavily, sheets of water drain over the open area in the Denlingers' property. He also stated there is a drainage tile in the corner of the Denlingers' property, which drains both roads, but there is not a tile across his property. Mr. DeMunda stressed there seem to be serious issues that will degrade his property with the current site plan. He also believes the berm along the east side of the property is not a bad idea. However, a berm along the North East corner will cause drainage to channel across Mr. DeMunda's property. He continued saying the full seven acres of water which drains on the Denlingers' property with the proposed berm, will be channeled along CR 30 and Mr. DeMunda's property. Mr. Hesser recognized not granting the variance will impose on the natural swale of the land and channel the water even more than if the variance is granted. Mr. DeMunda argued the drainage plan does not show contours or elevation of the land, and he believes this is information the Board needs to consider. Mr. DeMunda went on to stress the need for a retention basin to catch the run-off from the Denlingers' drive, but the site plan does not show a retention basin. He continued saying the proposed building will be five feet from the property line making it difficult to not trespass while constructing and maintaining the building. He continued saying the proposed building will be built up causing channels, which will cause a loss of agricultural use on his property. Mr. DeMunda finished by saying his main concern is there is no retention basin for clean-up of equipment and the berms on the site plan are on the property lines.

Mr. Auvil noted the petitioner is not responsible for the neighborhood drainage only for the drainage from his property. Mr. Lyon agreed, but stated redirecting his property's drainage to another property is an issue. Mr. Hesser suggested if the variance is denied, Mr. DeMunda's issues will be worse.

Mr. DeMunda submitted copies of his comments [attached to file as Remonstrator Exhibit #1].

Mr. Denlinger came back on to be heard and stated he is willing to come up with a plan they can work together on. Mr. Campanello questioned if there is a County swale along CR 30, and Mr. Denlinger stated there is on the North side. Mr. Denlinger also added there will be a swale for the parking area, and they are only bringing the building pad up 24 inches. Mr. Campanello questioned directing water from the hard surfaces towards the natural swale along CR 30. Mr. Lyon responded he could do that, but then he is not retaining water on site. He continued saying he is adding to the swale with hard surface and building run-off. Mr. Lyon asked the difference in elevation from the building site to the North East corner of the property,

and Mr. Denlinger responded about two to three feet. Mr. Lyon questioned if the building is built back further, could a retention area be made in front of the building. Mr. Denlinger stated during a heavy downpour there is a lot of water in that area. Mr. Campanello suggested leaving the building at the 55 ft. setback and have the run-off flow into the natural swale. Mr. Miller questioned if the water needs to be retained or if it can be directed off of the property, and suggested they decide where to place the building and leave the drainage issue alone.

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 this request for a 20 ft. Developmental Variance to allow for the construction of an accessory structure 55 ft. from centerline of the right-of-way of CR 30 (Ordinance requires 75 ft.) be approved, based on the 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 effect on the neighboring property. This is an agricultural area with numerous accessory and agriculturally related buildings.
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. Approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Developmental Variance application.

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

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

**No:** Denny Lyon.

17. Staff item: Mr. Auvil and Mr. Williams will be taking a class, meaning Mr. Auvil will be gone from BZA meetings for 12 months during this course and Mr. Godlewski will be taking his place.

18. The meeting was adjourned at 11:03 a.m.

Respectfully submitted,

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Laura Gilbert, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary