

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21st DAY OF JANUARY 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; Mark Kanney, Planner; Liz Gunden, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Tony Campanello, Roger Miller, Randy Hesser, Suzanne Weirick, Denny Lyon.

Excused: Robert Homan.

2. Chris Godlewski recognized Kathy Wilson and her retirement after 34 years of service for Elkhart County. He went on to introduce Deb Britton as Kathy Wilson's replacement and Amanda Denlinger to replace Deb Britton as the Planning Assistant. He also added that Denny Lyon is now a member to the Board of Zoning Appeals.

3. A motion was made and seconded (*Campanello/Miller*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of December 2015 be approved as read. The motion was carried with a unanimous roll call vote.

4. A motion was made and seconded (*Miller/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. A motion was made and seconded (*Campanello/Lyon*) to elect the following board members: Mr. Lyon as Hearing Officer, Mr. Hesser as Chairman, Mr. Miller as Vice Chairman, and Mr. Campanello as Secretary.

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

Yes: Denny Lyon, Randy Hesser, Roger Miller, Suzanne Weirick, Tony Campanello.

6. The application of ***Beer and Morgan Equipment Company, Inc.*** for a 27 ft. Developmental Variance to allow for the construction of an addition to an existing convenience store for kitchen, retail and storage 93 ft. from centerline of the right-of-way of US 6 (Ordinance requires 120 ft.) on property located on the Southwest corner of SR 15 and US 6, common address of 72025 SR 15 in Jackson Township, zoned B-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #72025SR 15-151202-1*.

There were five neighboring property owners notified of this request.

Randy Yoder, 27453 CR 150, Nappanee, was present representing the petitioner. He stated they would like to build an addition on the west side of the building as they are in need of more space. With their increased traffic volume and high demand from customers, they would like to build a kitchen in the addition as well as creating extra space for storing kitchen supplies.

Mr. Yoder explained that in building the addition, it will create more opportunity for them to enlarge the retail area of their store, and better meet the needs of their customers. He went on to say that with moving their storage area to the new addition, it will create opportunity for them to bring their facility up to date, including their restrooms which are the original facilities that were put in over 50 years ago.

Mr. Hesser asked if there was a reason they didn't want to add to the back instead of to the side of the building. Mr. Yoder stated that they are unable to add onto the back of the building because of the diesel islands, and the east side is where their offices are located. He continued explaining the dimensions of the addition and that being a 20 ft extension on the west side of the building.

There were no remonstrators present.

The public hearing was closed at this time.

Hesser said his only issue is visibility, which is not a problem here.

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

Motion: Action: Approve, **Moved by** Suzanne Weirick, **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 27 ft. Developmental Variance to allow for the construction of an addition to an existing convenience store for kitchen, retail and storage 93 ft. from centerline of the right-of-way of US 6 (Ordinance requires 120 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the Building Permit (where required).
2. Approved in accordance with the site plan submitted (dated 12/2/15) and as represented in the Developmental Variance application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

7. The application of **Robert Winings** for a Special Use for a mobile home on property located on the West side of Paul Street, 640 ft. North of Mishawaka Road (CR 20), common address of 57577 Paul St. in Baugo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #57577PaulSt-151204-1*.

There were 29 neighboring property owners notified of this request.

Robert Winings, 1109 W. 6th Street, Mishawaka, was present on behalf of this petition. Mr. Winings would like to place a 1470 mobile home on the property to reside in. Mr. Miller asked if there was a current mobile home located on the property. Mr. Winnings replied no, however when he purchased the property over 30 years ago there was an old mobile home on the property that he lived in. He went on to say that because it was so old, it was tore down and removed from the property. Mr. Lyon asked the petitioner if he previously owned the property. He replied no, and explained that he rented and now he owns the property. Mr. Hesser asked the staff if there was a reason why there is no owner/occupant or if we have gotten away from doing

them. Mr. Godlewski stated as he recalls; owner/occupants are relevant for Special Use situations for home workshop/businesses. Attorney Kolbus stated that if the board wishes, it can be required. Mr. Hesser confirmed that this is considered a Special Use for a residence.

Kenneth Geans, 29800 Oregon Avenue, Elkhart, came on to be heard. Mr. Geans stated he knows the petitioner just by seeing him on the street. He owns lots 48, 49, and 50 which are the adjoining properties to Mr. Winings. Mr. Geans expressed that he is very happy with results of Mr. Winings owning the property and maintaining it. He stated that he was unsure if the board was aware that the city is trying to annex most of the neighborhoods. He went on to say that Mr. Winings is a perfect example of what the community is losing with annexing properties. Mr. Geans stated that the idea of the city annexing the surrounding neighborhoods is very offensive to him. Mr. Hesser stated that the County has nothing to do with City annexation regarding owner/occupant properties. Mr. Geans responded saying he understands, however his point is that we are losing neighborhoods of diminished value where people that are forced to live in the city can actually move out and own their own properties.

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** Suzanne Weirick, **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 mobile home be approved with the following conditions imposed:

1. Approved for a period of three years with a one year review to verify compliance with the following:
 - a. The mobile home shall be adequately stabilized, skirted and have tie-downs installed.
 - b. The water supply and sewage disposal system shall be installed in accordance with County Health Department specifications.
 - c. Adequate provisions for storage shall be provided at all times to eliminate exterior storage of personal property, tools and vehicles, except licensed motor vehicles.
 - d. At all times, the premises shall be kept free of abandoned junk vehicles or parts thereof as described by Indiana State Law.
2. Approved in accordance with the site plan submitted (dated 12/4/15) and as represented in the Special Use application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

8. The application of *T and T Fertilizer, Inc., an Indiana Corporation* for a Special Use for an existing agribusiness in an A-1 zone on property located on the Southeast corner of CR 15 and CR 40, common address of 66058 CR 15 in Harrison Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #66058CR 15-151202-1*.

There were five neighboring property owners notified of this request.

Tom Lechlitner, 25701 CR 32, Goshen, was present on behalf of this petition. He stated Elkhart County did not have their business on record including the following work that Elkhart County asked them to do; eight years ago Elkhart County made them remove some tile and continue on with tile around the facility, as well as digging a retaining pond. This agri-business was originated in 1964 by John Nunemaker and when started, the property was 3.7 acres off of an 80 acre field that Mr. Nunemaker owned. Mr. Lechlitner reported that the company has serviced the area since it was originated, in 1964. He went on to reference a previous Special Use permit that was issued in 1974 for a liquid fertilizer storage building. He stated that half of the existing building use is for what was requested in the previous Special Use permit and the other half of the building is used for shop work and skid storage. Mr. Lechlitner is requesting to build a 60'x70' addition off the back of the building for additional equipment storage. In order to be in compliance, Elkhart County told him they need to apply for a Special Use permit for T and T Fertilizer to do business in an agri-zone.

Mr. Hesser inquired about what was written on the site plan regarding the building to the far East, as he could not clearly make out the provided information. Mr. Lechlitner returned to the podium and responded saying that's where they place their dike containments. He went on to say that the Diking Law came into effect stating anything over 2,500 gallons of storage must be placed into dike containments. Within that same area as indicated by Mr. Hesser, they store liquid fertilizer and have a loading pad. He stated there is some overriding between the state and the county, but the state overrides a lot of specifications.

Mr. Miller asked if farmers come in to have their tanks filled. Mr. Lechlitner stated they fill at the business and deliver. Mr. Miller questioned if there are space regulations that the state has given for filing the tanks at the business or delivery. Mr. Lechlitner responded saying that they are required to have 125% containment area for the largest containment and he wasn't sure if there was any specific requirement for acreage. Mr. Miller said it's not that they would require it, he was just curious.

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** Suzanne Weirick, **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 agribusiness in an A-1 zone 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 revised to-scale site plan to be submitted for approval by staff.

The following commitment was imposed:

1. Approved in accordance with the revised site plan to be submitted for approval by staff and as represented in the Special Use application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

9. The application of *Ministerio Evangelistico Cristo Te Llama Inc., an Indiana Non-Profit Corporation* for an amendment to an existing Special Use for a church to allow for the construction of a detached sanctuary building and to change the days and hours of operation on property located on the South side of Modrell Avenue, 400 ft. West of Independence Street, 1,400 ft. North of Bristol Street (CR 10), being Lot 57B of Ceja Modrell Avenue Minor Subdivision, common address of 25404 Modrell Avenue in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #25404MODRELL AVENUE-151210-1*.

There were 20 neighboring property owners notified of this request.

Jack McDonell, 904 S Evergreen, Kankakee, Illinois, builder of proposed building was present on behalf of the petitioners. Mr. McDonell stated they have updated drawings with the parking spaces free of the septic area, including more spaces than needed. He went on to say that the proposed building seats 288 and with that, they will be providing 75 parking spaces. He then had a question about the commitment form and wondered if that is to be executed after the meeting. Mr. Campanello replied saying that the current site plan provided to the board is not updated. Mr. McDonell went on to say that he called Elkhart County a few days prior, and asked if he needed to have the site plan submitted before the meeting and they told him that he could bring the site plan to the meeting. Mr. Campanello asked Mr. McDonell to submit the site plan. Revised site plan submitted *[attached to file as Petitioner Exhibit #1]*. Mr. Campanello commented that the commitment form will be mailed by the staff to the owners of the property seven to ten days after the hearing. He went on to say that the petitioners will need to sign it, get it recorded, and then bring the recorded copy back into the staff. Mr. McDonell inquired if everything passes today, how soon would they be able to start the building permit application. Mr. Auvil replied the staff will need the completed commitment form back and then he will be able to apply for the building permit.

There were no remonstrators present.

Mr. Hesser questioned the hours of operation and stated that the hours seem limited. Mr. McDonell responded saying the hours of operation are only during their service times. Mr. Hesser also questioned the hours of the day care on location. The petitioner responded saying the daycare was for the previous owners, and they do not currently offer daycare services. Mrs. Weirick questioned if the board should approve them to expand the requested hours on the front side, so they won't have to come in and apply again at a later date. Mr. Hesser agreed that the hours seem very limited. Mr. McDonell confirmed that the new building will only be utilized for church services, and the hours will remain the same. Mr. Campanello asked if the septic is existing or proposed. Mr. McDonell replied that the septic is existing. Mr. Miller asked if existing septic is adequate for both the proposed building and the existing building. Mr. Campanello noted that the decision is up to Health Department. Mr. McDonell stated he previously talked to the Health Department and they said that it was approved. He then asked the board if he should provide the information from the Health Department in writing. He stated the only thing being added to the new building is two restrooms. Mr. Campanello stated the Health Department will want a company to inspect the work, and then Mr. McDonell can take the information in and apply for a permit.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a church to allow for the construction of a detached sanctuary building and to change the days and hours of operation 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 1/21/16) and as represented in the Special Use application.
2. Hours of operation to be: Tuesday and Friday 6:30 pm to 8:00 pm and Sundays 2:30 pm – 5:00 pm.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser

10. The application of *Amos M. & Naomi M. Zimmerman* for an amendment to an existing Special Use for a greenhouse and a roadside stand to sell bedding plants and vegetables, to allow for the construction of an additional building to store soil and a 10 ft. Developmental Variance to allow for said building 65 ft. from centerline of the right-of-way of CR 11 (Ordinance requires 75 ft.) on property located on the Northwest corner of CR 11 and CR 138, common address of 65417 CR 11 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 #65417CR 11-151120-1*.

There were 11 neighboring property owners notified of this request.

Amos Zimmerman, 65417 CR 11, Goshen, was present representing the request. He acknowledged that he was in agreement with the staff analysis that was presented.

Mr. Miller confirmed that this building will just hold soil. Mr. Zimmerman replied yes, and went on to say that it will be a one-sided building.

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 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 greenhouse and a roadside stand to sell bedding plants and vegetables, to allow for the construction of an additional building to store soil 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 11/20/15) and as represented in the Special Use amendment application.

The motion also included the request for a 10 ft. Developmental Variance to allow for said building 65 ft. from centerline of the right-of-way of CR 11 (Ordinance requires 75 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 90 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 11/20/15) and as represented in the Developmental Variance application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

11. Mr. Auvil presented the request for a minor change for Elkhart County Gravel – 20072458, to construct a 2,160 ft addition to an existing building to store and maintain equipment that supports Elkhart County Highway Department operations on a 36.85 acre parcel.

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

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

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

12. The Certification of Residency for Suzanne Weirick, Roger, and Denny was presented by Chris Godlewski. Forms were submitted and signed for the record.

13. The application of *Elvin M. & Vada M. Nolt (property owners) and Wilson Castillo and Luis Moreyra (business owners)* for a Use Variance for a vehicle repair business on property located on the South side of CR 36, 1,262 ft. West of SR 19, common address of 28240 CR 36 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 #28240CR 36-151214-1*.

There were six neighboring property owners notified of this request.

Daniel Calderon, was present as an interpreter on behalf of the petitioners. He explained the reason they are here today is because the workers are just trying to make a living like everyone else. Mr. Calderon stated they have been working at the property for quite awhile. He went on to say that they have meant no harm to anyone, and it was out of their ignorance that they did not know they needed to get a permit to work. Mr. Calderon stated that the workers are from Guatemala and came to the United States of America many years ago trying to provide for their families. He went on to say that they used to work at the building located on the neighboring property, and they were doing the same type of business that they are presently doing. As they didn't know they needed a permit for their vehicle repair business, he went on to say that they are willing to do what they need to do so everything is in compliance with the

Elkhart County rules. Mr. Calderon stated that he has known the gentlemen for a very long time, and he has a business relationship with them as well. He went on to say that he has heard people complain about chemicals going into the ground such as anti-freeze and oil. He addressed the complaint stating that when a vehicle comes into their shop, they are typically vehicles that have been in a collision and the vehicle comes to them empty of all fluids. Since the vehicles are empty of all liquids when they arrive, he stated that they do not dispose of liquids onto the ground. Mr. Calderon explained that he buys a lot of vehicles from insurance auto auctions that have flood damage, and he brings his vehicles over to the shop to have the mechanics clean the seats, repair windshields, repair the interior and exterior of the vehicles. He went on to say that he is asking the board to give them the opportunity to work and follow the rules and regulations as set out by Elkhart County. As most of the mechanics families live paycheck to paycheck, Mr. Calderon stated that if they are unable to get a permit to keep working, their families will be financially in a bad way.

Mr. Hesser asked if they have considered moving the business to a different location. Mr. Calderon stated that he has been trying to look into alternative options, but at the moment they do not have the budget to purchase a facility nor have they found a good location in proper zoning areas. He went on to say that if the board would be willing to give them a chance to do things properly, they see the business only being in the current location for another year. Mr. Calderon stated that the outside storage has been cleaned up. Mr. Hesser asked if they are renting just the shop or if they are renting the whole property including the house. Mr. Calderon replied that they only rent the shop. Mr. Hesser asked if he knew who lives in the house. Mr. Calderon replied that he was unsure, however he knew his name was Keith. He went on to say that Mr. Nolt is the property owner and also owns the adjacent property to the west.

Mr. Calderon stated the renter has shown a lot of hate towards the mechanics, so he went over to the house and asked him if there was anything that the mechanics were doing wrong and the renter replied no. He went on to say that the renter explained when he used to have the whole property, he was doing the same kind of business until the county stepped in and did not allow him to do business anymore. The renter questioned why the county would let the current mechanics do the same type of business, that they denied him from doing. Mr. Calderon stated that those things are not fair and very immature. He went on to say that it is a very good thing that the county is aware of everything now because they are willing to bring everything into compliance. Mr. Hesser questioned who the mechanics are leasing the shop from. Mr. Calderon stated that they are leasing the shop from the owner of the entire property, Mr. Nolt.

Elvin Nolt, 28240 CR 36, Elkhart, was present as the property owner. He stated when he bought the properties from the previous owner; the relevant property and neighboring property, the mechanics were working at the shop located at the neighboring property doing the same type of business. Mr. Nolt stated that the mechanics moved over to their existing shop shortly after he had remodeled it. He went on to say that he was unaware that they did not have the proper permits pulled. Mr. Nolt explained that he had asked the mechanics to clean up the property and went on to say that if someone were to go out there now, they have everything cleaned up and it looks very nice. As he is a business owner that has a Special Use permit himself, he knows what it takes and he wants to make sure the mechanics comply with the rules. Mr. Nolt stated that he will do whatever he needs to do for them to be in compliance and is in favor of them being

granted a permit. He confirmed that there are no contaminating fluids that they work with as the majority of the type of work they do is interior and body work.

Marilyn Yoder, 131 North Middlebury Avenue, Mishawaka, was present representing her neighboring property to the East. Mr. Hesser disclosed that Marilyn Yoder is an employee of his; however that she is not present to speak on behalf of any connection with her employment. Mrs. Yoder replied that she did not know that Mr. Hesser would be present. She went on to say that her primary concern is being a neighboring property owner, that the ground water is kept safe. She stated she is unsure as to what type of vehicle repairs they are doing, and she disagrees with the current use of the property as the surrounding land is residential and agricultural.

Anna Kronk, 28148 CR 36, Elkhart, was present representing her residence located two properties to the East. Mrs. Kronk stated that there are times they have more than 20 cars at a time that are being worked on, and the noise is very loud. She went on to say that some days they can smell glue and paint fumes. Mrs. Kronk explained that for the amount of cars they work on at a time, the property is not large enough to have both the house and shop on a one acre parcel. She also added that she feels the zoning should stay agricultural.

Mr. Hesser asked if the petitioner would like to respond to the questions that have been raised. Mr. Calderon stated in response to fumes, he is not aware of any painting that the mechanics have been doing, but went on to say that if they did, he does not believe that the fumes could be smelled from that far away. He agreed that having all the vehicles on the property does not look good. Mr. Calderon questioned if they agree not to store vehicles outside, or conduct any projects on vehicles where fumes would be released, if Elkhart County would allow them to continue on with their business. Mrs. Weirick asks how long the business has been in the facility. Mr. Calderon stated they have been in the building to the west for at least four years, and the building to the east for approximately one and a half years.

The public hearing was closed at this time.

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

Motion: Action: Denied, Moved by Randy Hesser, **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 Use Variance for a vehicle repair business be denied with the following condition imposed:

1. The petitioner is given six months (7/21/16) to remove the business and have all associated property removed from the site.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

14. The application of *Clarence J. & Gretchen D. Yoder* for a Developmental Variance to allow an existing residence on property served by an access easement on property located on the 1,000 ft. North of CR 28 and 300 ft. East of Zollinger Road, common address of 18425 CR 28 in Jefferson Township, zoned A-1, came on to be heard.

When Mr. Hesser asked the audience if there was anyone present on the matter, no one responded.

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

Motion: Action: Withdraw, **Moved by** Randy Hesser, **Seconded by** Suzanne Weirick that the Board accept the petitioner's request to withdraw the petition.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

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

15. The application of **William C. & Kristin Fenech** for a Use Variance to allow for the construction of an addition to an existing accessory structure on property without a residence on property located on the Southeast corner of Lagoon Road and Sunset Lane, West of CR 17, 900 ft. North of SR 120, being Lots 32, 34 & pt of 33 of Riverlan Isles, common 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 #LAGOON ROAD-151214-1*.

There were 27 neighboring property owners notified of this request.

Nick Miller, 70300 Shady Lane, White Pigeon, MI, was present on behalf of petitioner. Mr. Nick Miller stated in order to clean up the property and make it look nicer, they would like to enlarge the existing accessory structure to store trailers inside. He went on to say that the petitioner's residence is located down the street, so they have no intention of putting a residence on that parcel of land, just an accessory building. Mr. Campanello questioned if the petitioner owned the property back in 1994 when the accessory structure was built. Mr. Nick Miller confirmed that the building existed when the petitioner purchased the property. He went on to say that since the petitioner has owned the property he has only improved it and now they just want to expand the accessory structure to fit more things inside. He also added that there has never been a house on the property that he is aware of.

Frank Lucchese, 22095 Sunset Lane, came on to be heard. He stated that he has talked to his neighbors, and there is no concern about this request. He confirmed that he has lived in the neighborhood since before Mr. Fenech moved in and there was no house on the property, and does not believe that there ever was one.

Bill Fenech, 22245 Sunset Lane, petitioner came on to be heard. He noted his residence is a few houses down from the property. He also stated the land is over seven acres and has a small channel running through it. Mr. Fenech confirmed that he does not know of any house that was ever built on the property, but stated that the lot is probably buildable with special reinforcements for the house. He also stated that he helped bring sewer to the neighborhood, and went on to say that they as owners have improved the area if anything. Mr. Fenech stated that the property will be nicer when the project is finished, as the building is older and they are looking to make updates.

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** Suzanne Weirick that the request for a Use Variance to allow for the construction of an addition to an existing accessory

structure on property without a residence be approved based on the following Findings and Conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. This structure has been on the property since 1994.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved as a residence is not feasible in that area.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property as the building needs updated and indoor storage is needed. If the board were to require a residence on the subject property, it would be considered an additional hardship.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 12/14/2015) and as represented in the petitioner's application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon.

Abstain: Randy Hesser

16. The application of *Clarence J. & Gretchen D. Yoder* was heard previously as Item #4 on page 9.

****It should be noted Mr. Hesser returns to the board at this time.****

17. The application of *Matthew Miller* for a renewal of an existing Special Use for a home workshop/business for a construction business and for a Developmental Variance to allow for a 20 sq. ft. sign (Ordinance allows 4 sq. ft.) on property located on the East side of CR 33, 1,150 ft. South of US 33, common address of 68548 CR 33 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 #68548CR 33-151028-1*.

This item was tabled from last month's hearing due to petitioner's absence.

Matthew Miller, 68548 CR 33, Goshen, was present on behalf of this request. Mr. Hesser noted there was a remonstrator present last month who discussed outside storage and semi truck loading concerns. Mr. Matthew Miller apologized as he was not here for the last meeting and said he did not get the notice. He went on to say that Elkhart County told him the meeting was supposed to be sometime in December, but he was busy trying to finish up the year and should have called in. Mr. Hesser brings the conversation back to the petition. Mr. Matthew Miller

responded regarding the storage and loading of supplies at his home workshop/business by saying that he occasionally has materials dropped off. Typically, the vehicle that does the delivery is a straight truck that fits in his drive way, however a couple of times they delivered the supplies with the use of a semi truck. While he told the supply company not to send semi trucks out to his location for deliveries, he said that they sometimes miscommunicate and send the wrong vehicle. Mr. Matthew Miller stated that he does not expect any more semi trucks to deliver supplies since he does not like the semi trucks coming out to his location, as they have to park on the side of the road.

Mr. Hesser questioned what kind of materials the supplier is delivering that requires them to deliver the items with a semi truck. Mr. Matthew Miller responded saying he constructs metal roofing, so the supplier delivers metal and other supplies. Mr. Hesser confirmed that he has tried to address the situation with the supplier. Mr. Matthew Miller responded yes. Mr. Hesser then expressed the concern someone had regarding the supplies that are being stored outside. Mr. Matthew Miller stated that there are times he will store the materials outside for two or three days until he is able to bring the supplies inside, because it creates more work to move it into his garage only to move it again, as supplies are usually in and out within a few days. He went on to say that because he realizes he is in a residential neighborhood and wants to get along with his neighbors, he makes an effort to store the supplies in a way where the property does not look cluttered.

Mr. Hesser noted a requirement of home workshop/business is that there is to be no outside storage, even temporary. Mr. Matthew Miller replied that his business will be closed for the winter and will open back up the middle of March. During his time off, he will be creating more room for inside storage. He went on to say that summer and fall are his busiest seasons, and he intentionally puts projects off until the winter when he has more time to complete projects such as these. As he was not aware that any of his neighbors had made complaints regarding the outside storage, he said he will take care of the issue. Mr. Matthew Miller stated that he has put up a privacy fence between his home workshop/business and his neighbors to help with the privacy of his business. Regarding the sign, he said before constructing it, he spoke to four of his neighbors across the road and one to the north; he showed them pictures of the sign prior to constructing it. He stated that everyone was in agreement with the sign and had no issues with it.

Mr. Hesser noted the 4 sq ft sign restriction for a home workshop/business, and went on to say the primary use for a home workshop/business should be the home. Mr. Matthew Miller stated when he applied for the Use Variance he thought he applied for the sign permit as well. When Mrs. Weirick asked if he had the documentation from when he submitted the request, he replied that he did not have it. He went on to say that he gets most of his customers from phone calls, so he is not home during the day. He explained that the purpose of the sign is not to have an office/retail facility. Mrs. Weirick asked Mr. Matthew Miller what the approximate dimensions of the sign are, and he estimated that the sign was 6'7"x5'. Mr. Auvil stated that generally the face of the sign does not include any support structures and that the ordinance allows the sign to be 4 sq ft for a home workshop/business. Mr. Hesser commented that if the face of the sign was 1'x4' the existing sign would be in compliance. Attorney Kolbus confirmed that the face of a sign does not include any structural or framing elements. Mr. Auvil noted the original petition from year 2013 for a Special Use indicates that the petitioner answered no to the question regarding if the petitioner was requesting a permit for a sign, and therefore no permit

was pulled before constructing the sign. Mr. Kolbus confirmed there was no sign provided on the site plan from the petition submitted in 2013.

No one was present in the audience.

The public hearing was closed at this time.

With semi trucks and straight trucks unloading on the street, Mr. Miller stated that the business seems to be growing outside of the home workshop/business as defined in the Zoning Ordinance. While she understands there was a complaint about semi trucks parking on the street, Mrs. Weirick stated she is inclined to believe he is making a good faith effort in eliminating the semi truck deliveries. Mr. Hesser noted that by approving this petition they are not permitting him to keep allowing semi truck deliveries, and that they will deal with this issue on a case-by-case basis of whether they think it is a violation or an error on the supplier's behalf. Mr. Kolbus stated that the issue can be addressed with a commitment. Mrs. Weirick went on to say that she does not think the commitment should be added, as a person cannot control what their suppliers do. Mr. Hesser agreed with Mrs. Weirick's statement. Mr. Hesser commented regarding the existing sign that it does not look like a 4'x5' sign. Mr. Matthew Miller went on to say that he should have measured it, but he thinks it is about 4'x5'. Mr. Hesser questioned how difficult it would be for Mr. Matthew Miller to bring the sign into compliance, bringing the dimensions to 1'x4'. Mr. Matthew Miller replied that it would be nearly impossible, and went on to say that when he built it he wanted to make it large enough that people could read. Mrs. Weirick commented that the existing sign was tastefully done, and the issue is that it is located in a residential area. Mr. Campanello stated that as a builder, the petitioner should have known he was required to obtain a permit prior to constructing the sign. Mr. Hesser questions if this specific sign could be allowed to remain there but not be replaced. In addition to Mr. Hesser's question, Attorney Kolbus states that the staff would need more guidance if it can or cannot be maintained. Mr. Miller agrees that the sign has been done very tastefully, however he also agrees that as Mr. Matthew Miller is in the construction business, he should have known to obtain a permit before constructing. Mr. Campanello states the sign must stay within 4 sq ft. Mr. Miller feels he could modify the sign to be in compliance. Mr. Hesser suggests following the given staff report allowing the petitioner six months to bring sign into compliance. Mr. Hesser says that when he reapplies for the sign, he would have to include the sign in the site plan.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **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 renewal of an existing Special Use for a home workshop/business for a construction business 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.
2. Revised sight plan is to be submitted for approval by staff.

The following commitment was imposed:

- 1. Approved in accordance with the revised site plan to be submitted for approval by staff and as represented in the Special Use application.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

Motion: Action: Deny, **Moved by** Randy Hesser, **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 Developmental Variance to allow for a 20 sq. ft. sign (Ordinance allows 4 sq. ft.) be denied with the following condition imposed:

- 1. Petitioner given six months to bring existing sign into compliance with home workshop rules.

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

Yes: Tony Campanello, Roger Miller, Suzanne Weirick, Denny Lyon, Randy Hesser.

At the conclusion of this motion, Mr. Auvil pointed out that the intention of the home workshop/business signs are to be placed on a building, as both sides of the sign are counted.

- 18. There were no items transferred from the Hearing Officer.
- 19. The request for a minor change for Elkhart County Gravel was previously heard as item #11 on page 7.
- 20. The certification of residency for Suzanne, Roger, and Denny was previously heard as item # 12 on page 7.
- 20. The meeting was adjourned at 10:38 am

Respectfully submitted,

Amanda Denlinger, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary