

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF OCTOBER 2017 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: Matt Shively, Planner; Mae Kratzer, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

Absent: Tony Campanello.

****It should be noted Mr. Lyon recused himself and stepped down****

2. A motion was made and seconded (*Miller/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21th day of September 2017 be approved as read. The motion was carried with a unanimous roll call vote.

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

4. The application of ***Thor Motor Coach, Inc.*** for a 3 ft. Developmental Variance to allow for the placement of a sign 7 ft. from the property line (Ordinance requires 10 ft.), for a 4 ft. Developmental Variance to allow for the placement of an 8 ft. tall sign (Ordinance allows 4 ft.), and for a 61 sq. ft. Developmental Variance to allow for a 93 sq. ft. sign (Ordinance allows 32 sq. ft.) located on the North side of Waterford St., 1,255 ft. East of SR 19, common address of 1060 E. Waterford St. in Harrison Township, zoned M-2, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0703-2017*.

There were five neighboring property owners notified of this request.

****It should be noted Mr. Campanello arrived at this time****

Gary Potts, owner of Professional Permits, 58171 Dragonfly Ct., Osceola, was present representing Thor Motor Coach and Premier Signs. Mr. Potts stated Thor would like to install a new sign at their 1060 E. Waterford St. location. He explained they would like approval of three Developmental Variances for an internally-illuminated ground-mounted sign. He continued saying the proposed sign is 8 ft. tall with only 4 ft. allowed, 92.4 sq. ft. with only 32 sq. ft. allowed, and 7 ft. from the road where 10 ft. is required. He stressed approval of this request will not be injurious to public health, safety, morals, or general welfare, because the proposed setback will increase sign visibility. He added the use and value of the adjacent areas will not be affected in an adverse manner, because the sign will improve the property. He also stated strict application of the Zoning Ordinance would result in an obscured sign from the neighbors

landscaping and sign. Mr. Potts explained Thor would like to place their sign in line with the neighboring property's sign, and he stressed it will be partially obscured, if moved to meet the setback. Mr. Hesser requests an aerial of the property and questioned the location of the neighbor's sign. Mr. Potts pointed out its general location, and the proposed location for their sign. He also pointed out an existing tree line, which will obscure part of the sign. Mr. Campanello asked if the Variance will make a substantial difference on such a large piece of property. Mr. Potts stressed the sign will be partially obscured at the required setback due to the amount of traffic in the area, but he does not believe it will make a huge difference. Mr. Campanello clarified Mr. Potts believes the sign will be obscured to motorists, if the Variance is denied. Mr. Hesser asked if the sign can be moved east to alleviate the visibility problem, and Mr. Potts responded no. He continued saying it was originally set back at 50 ft., but Thor did not think it was visible at that location. He explained when they filed the setback Variance; they found two additional Variances were required. Mr. Potts reiterated the setback, overall size, and height of the sign all require Variances. Mr. Hesser suggested moving the sign closer to the driveway, and Mr. Atha mentioned the setback Variance may no longer be needed, if the sign is moved away from the tree-line. Mr. Miller clarified the proposed sign will not replace an existing sign, and Mr. Potts reiterated it is a new location, with no existing signage. Mr. Atha added moving the sign closer to the driveway may cause visibility problems, and Mr. Potts stressed they must observe the sight triangle. He mentioned the proposed location is outside of the vision triangle at the requested setback. He stated they would not be opposed to moving the sign back 3 ft., but he added they would like to be in line with the existing sign on the neighboring property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he is not concerned about the sign size. He continued saying he understands the county has areas with several grandfathered-in structures, but he stressed this petition is for a new sign. He explained he believes the Petitioners have flexibility to move the sign back, while maintaining the line-of-site without causing any hardship. He added he is inclined to vote with the Staff Report. Mr. Campanello stated if this district had strict rules/regulations, he would understand enforcing the setback, but he does not have a problem approving the Variance. Mr. Miller stated he is in favor of the Staff Report, because he does not see a reason for the Variance. Mr. Campanello mentioned three feet is not a huge difference. Mr. Miller stressed the request does not seem important enough to allow the petitioners to vary from the standard. Mr. Hesser stated he does not agree with the first two findings in the Staff Report, because he does not believe the request is injurious to public health or has an adverse affect on the neighboring properties. However, he continued he does not believe strict application of the Zoning Ordinance will cause unnecessary hardship to the property owners.

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

Motion: Action: Deny, Moved by Randy Hesser, Seconded by Tony Campanello that this request for a 3 ft. Developmental Variance to allow for the placement of a sign 7 ft. from the property line (Ordinance requires 10 ft.) be denied in accordance with finding #3 of the Staff Analysis as the Findings and Conclusions of the Board:

3. Strict application of the terms of the Zoning Ordinance would not result in an unnecessary hardship in the use of the property. The petitioner has not demonstrated the need to encroach the sign setback.

Further, the motion also included that a 4 ft. Developmental Variance to allow for the placement of an 8 ft. tall sign (Ordinance allows 4 ft.), and for a 61 sq. ft. Developmental Variance to allow for a 93 sq. ft. sign (Ordinance allows 32 sq. ft.) be Approved in accordance with the Staff Analysis as the Findings and Conclusions of the Board, 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 180 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 9/6/17) and as represented in the Developmental Variance application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Randy Hesser.

Abstain: Denny Lyon.

****It should be noted Mr. Lyon returned to the Board at this time****

5. The application of *Daniel J. & Susan D. Yoder* for an amendment to an existing Special Use for a commercial greenhouse to allow for a new storage building on property located on the West side of CR 31, 875 ft. South of CR 36, common address of 64165 CR 31 in Elkhart Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0679-2017*.

There were six neighboring property owners notified of this request.

Daniel Yoder, owner of Yoder's Produce, 64165 CR 31, Goshen, was present for this request. Mr. Yoder stated he would like approval to construct a storage building for boxes, packages, seeds, etc. in the front, North corner of the existing greenhouse.

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** 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 an amendment to an existing Special Use for a commercial greenhouse to allow for a new storage building be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 8/30/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

6. The application of *RMYC, Inc. (Buyer) & Nelson J. & Laura M. Ramer (Sellers)* for an amendment to an existing Special Use for an athletic field to allow for a school on property located on the North side of CR 44, 1,450 ft. East of CR 11, common address of 24717 CR 44 in Union Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0734-2017*.

There were eight neighboring property owners notified of this request.

Loren Sloat, attorney in Nappanee, 102 Heritage Pkwy., was present representing RMYC and the Ramers for this request. Mr. Sloat explained RMYC received approval to have an indoor/outdoor athletic park at this location in 2006. He continued saying a number of conservative churches joined together to build a center for their children, and it is now also used for funerals and similar functions. He mentioned several of the children attend the school by Yellow Creek Mennonite Church, which has outgrown its facilities. Mr. Hesser asked if the school is private or public, and Mr. Sloat responded private. He stated a proposed drawing for the school was submitted, and acreage will be added to the existing property to make it a total of 5.2 acres. He explained the existing facility's mound system was installed on the neighbors' property, and that situation will be eliminated with the purchase of additional property. He mentioned a separate mound-system will be installed for the school, and he believes the existing parking will be adequate for both the athletic center and school. He explained the uses will be complimentary leaving enough parking for both. Mr. Sloat stated they would like to start the foundation this fall. He explained contractors from the churches involved will be responsible for constructing the school. Mr. Hesser asked if they plan to finish the school by the summer of 2019, and Mr. Sloat responded their goal is to be ready for the next school year. Mr. Hesser mentioned the questionnaire states 2019, and it was found to be an error. He clarified the school should be completed for the 2018-2019 school year.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he does not understand Staff's wording of Finding #3 and questioned why the school will serve as an accessory structure to the existing recreational use. He explained he does not see that as the reason this request will serve the public. He suggested the public is served by providing an additional educational facility. He asked Staff's reason for the finding, and he stressed he would not add that the request is for families of the conservative Mennonite Church to the finding. Mrs. Kratzer responded it was worded that way, because the athletic facility already exists. Mr. Lyon asked if the new school will have athletic facilities. Mr. Hesser stressed the athletic facilities exists, but the school is not accessory to that use.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Roger Miller that this request for an amendment to an existing Special Use for an athletic field to allow for a school be approved based on the following Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose and intent of the Zoning Ordinance. Schools are allowed by Special Use in an A-1 zoning district.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a low-density residential and agricultural area.
3. The Special Use will substantially serve the public convenience and welfare by providing an additional educational facility.

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 9/19/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

7. The application of *Bristol-Washington Township Public Library* for an amendment to a Special Use for a public library to add property and revise the site plan located on the South side of SR 120, 310 ft. West of Maple St., West of Division St., common address of 505 W. Vistula St. in Washington Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0729-2017*.

There were 34 neighboring property owners notified of this request.

Carol Anderson, Director of Bristol Public Library, 6690 W 100 S. Topeka, was present for this request. Mrs. Anderson stated the Library is celebrating their 100th year and would like to build an outdoor pavilion for activities and programs. She mentioned the original site plan for the library needs to be revised to include the pavilion.

John Nymeyer, 51949 SR 15 N., Bristol, was present in favor of this request and stated he owns the property directly behind the library. He stated he believes the pavilion will be a huge asset to the Town of Bristol and the library.

Mr. Hesser asked the location of the pavilion, and Mrs. Anderson pointed out the library and the pavilion's proposed location on the aerial. Mr. Hesser also asked if the library owns the property, and Mrs. Anderson responded it was purchased in 1979. She added it is on a separate deed than the library.

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** 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 an amendment to a Special Use for a public library to add property and revise the 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 commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 9/18/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

8. The application of *Bella X Lin* for a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than three acres located on the West side of Dundee Court, 800 ft. South of CR 20, common address of 18147 Dundee Ct. in Jefferson Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0713-2017*.

There were 19 neighboring property owners notified of this request.

Bella Lin, 18147 Dundee Ct., Goshen, was present for this request. Mr. Miller asked if she is okay with the limitation of twelve chickens, no roosters, and Mrs. Lin responded she would like permission to keep up to ten chickens. Mr. Lyon asked how many chickens she currently owns, and she responded none. Mr. Hesser asked the neighboring property's zoning and stated it looks agricultural. Mrs. Kratzer mentioned it appears to be zoned A-1, and Mrs. Lin added it is vacant land. Mr. Atha asked her plan to dispose of waste, and Mr. Campanello asked if she will spread it on a garden. Mrs. Lin responded she does not have experience with chickens, but she plans to use it as fertilizer for the plants on her property.

Mrs. Kratzer submitted a remonstrance letter from James and Amy Deters, 18151 Dundee Ct. [Attached to file as Staff Exhibit #1]. She stated the letter expresses concerns about having an agricultural use in the subdivision. Mr. Lyon asked if the Deters are adjoining property owners, and Mr. Shively responded they own the property to the North. Mrs. Kratzer also submitted a copy of a petition in opposition to this request attached to a copy of the subdivision covenants and restrictions [Attached to file as Staff Exhibit #2]. Mr. Lyon asked if Mrs. Lin has spoken to any of her neighbors, and she responded no. Mr. Atha asked if the chickens will be contained. Mrs. Lin stated their backyard is already fenced in, but they will also purchase a chicken coop. She pointed out the property to the West and stated she believes they have chickens. Mr. Hesser mentioned the remonstrance petition suggests the subdivision has covenants and restrictions in place, which prohibit poultry. Mrs. Lin stated her realtor informed her of the need for a Special Use, because the property is less than three acres. However, she stressed she was not aware of the subdivision limitations. Mr. Hesser asked if anyone in the subdivision owns chickens, and she responded no. Mr. Miller mentioned the covenants state no animals may be kept for commercial purposes, and Mrs. Lin stressed the eggs are only for her family. Mr. Campanello stressed the Board's decision should not be based on the covenants. Mr. Atha asked the fence's height, and she responded 5 ft. She added the chickens will be kept in a coop, and Mr. Atha clarified they will not be free-range. Mr. Hesser gave Mrs. Lin time to read the remonstrance

letter and review the petition. Mrs. Lin responded to the letter saying they purchased this property, because she wanted to be in the Middlebury School district. She went on to say she has a five, nine, and eleven year old, and she prefers her children attend that school. She explained they would like chickens for the fresh eggs they provide, and they were not aware of the limitations. She stressed they do not want a rooster, and chickens are not noisy, so they should not disturb her neighbors. She mentioned they only need enough chickens to provide eggs for their family. Mr. Hesser pointed out the subdivision covenants and restrictions are attached to the submitted petition, and he asked if she knew chickens were prohibited. Mrs. Lin responded she had not seen the restrictions. Attorney Kolbus explained property owners in the subdivision have the right to enforce the covenants and restrictions even if the Board grants this request. He continued saying the citizens in the subdivision have private rights, and the Board acts on the public rights. He again stressed she may have a problem with the neighbors, if the Board approves this request. Mrs. Lin stated she will keep the chickens clean. Mr. Hesser clarified as long as the covenants are valid; the neighbors have the right to enforce them.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stressed the Board's decision is not based on the subdivision covenants and restrictions. He continued saying the Board typically allows chickens in limited quantities with no roosters. Mr. Hesser stated he would be inclined to rule with the covenants and restrictions, if a neighbor had been present to confirm no chickens are kept in the subdivision. He added Mrs. Lin has not indicated that any chickens are kept in the subdivision.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha 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 9/11/17) and as represented in the Special Use application.
2. Limited up to 12 chickens, no roosters.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon.

No: Randy Hesser.

9. The application of *Glenn M. & Rosellen M. Weaver* for a Special Use for an agribusiness for a farm repair shop on property located on the Northwest corner of CR 42 & SR 119, common address of 26253 CR 42 in Harrison Township, zoned A-1, came on to be heard.

Mr. Shively presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0730-2017.

There were five neighboring property owners notified of this request.

Glen Weaver, 26253 CR 42, Wakarusa, was present for this request and stated Mervin Weaver would like to renew his shop permit. Mr. Atha asked if this request is to renew an existing permit, and Mr. Hesser pointed out the property changed ownership. Mr. Glen Weaver explained he purchased the property from Mervin Weaver. Attorney Kolbus mentioned this request is needed, because previous approval was contingent on Mervin Weaver being the owner/occupant of the property. Mr. Hesser asked if the Board still imposes owner/occupant commitments, and Attorney Kolbus responded the owner/occupant is not typically named in the commitment. Mr. Hesser also asked if the business will change, and Mr. Glen Weaver responded no. He continued saying he owns the property, but Mervin Weaver rents the building from him. Mr. Atha asked who lives on the property. It was found Glen Weaver lives in the residence, and Mervin Weaver lives on the property to the West. Attorney Kolbus clarified Mervin Weaver no longer lives on the property but will continue to operate the business. He continued saying this request is for an agribusiness and does not have the same restrictions as a home workshop/business.

Mervin Weaver, 26425 CR 42, Wakarusa, came on as the previous property owner and current business operator. Mr. Mervin Weaver explained he owned the property, but he sold it to Glen Weaver and now lives on the property to the West. He added the business will not change. Mr. Miller stated approval of this request in accordance with the Staff Analysis will remove the owner/occupant condition.

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** Joe Atha, **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 agri-business for a farm repair shop 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 9/18/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

10. The application of **Steven G. & Deborah J. Gaby** for a Special Use for a ground mounted solar array on property located on the North side of CR 18, 400 ft. East of CR 33, common address of 15421 CR 18 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Shively presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0737-2017*.

There were 16 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 1952 W. Market St., Nappanee, was present representing Mr. & Mrs. Gaby. Mrs. Salyer stated they would like to install a solar system on

the back, West corner of the property ten feet from both the rear and side property lines. Mr. Campanello asked if ten feet meets the required setback, and Mr. Shively clarified the setback for accessory structures is five feet from the side and ten feet from the back. Attorney Kolbus asked if the property behind the proposed panels is farmland, and Mrs. Salyer responded yes. She continued saying they spoke with the neighbors and did not receive any complaints. Attorney Kolbus asked if dust from the farm affects the solar panels, and Mrs. Salyer responded rain typically washes it off. She added solar panels have been installed on hog barns, and the dust has no affect on them. Mr. Campanello asked if the electrical current is affected by the distance between the panels and building, and she responded no with correctly sized wire.

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** Joe Atha, **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 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 9/18/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

11. The application of *Michael & Elisabeth Grieser* for a Special Use for a ground mounted solar array on property located on the East side of CR 33, 1,650 ft. South of CR 34, common address of 63286 CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Shively presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0736-2017*.

There were 11 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 1952 W. Market St., Nappanee, was present for this request. Mrs. Salyer stated this solar array will be placed behind the building, approximately 23 ft. from the property line. Mr. Campanello asked the system's height, and she responded 12 ft. She added it will be half the size of the Gabby's system. Mr. Lyon asked if the property is part of a subdivision, and she responded no. Mr. Lyon asked if a subdivision lot adjoins the property to the East, and Mrs. Salyer stressed the neighbors do not have any problems with this request.

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** Joe Atha, **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 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 9/18/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

12. The application of *James McDonald (Buyer) & Donald G. Kaser (Seller)* for a Special Use for warehousing and storing of commercial trucks and trailers on property located on the Southeast corner of Ash Rd. & Carroll Ave., 550 ft. North of Old US 33, in Baugo Township, zoned B-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0725-2017*.

There were 18 neighboring property owners notified of this request.

Harvey Hansen, 1331 Summerset Ct., Goshen, was present representing both the buyer and seller of the property along with the purchaser, James McDonald, 4832 Ridge Circle, Pembroke, Texas. Mr. Hansen stated the petitioner would like to utilize this vacant property. He continued saying they spoke to the surrounding neighbors, and they were all in favor of this request. He explained they do not plan to remove all of the trees from the property, but their focus will be the center area. He went on to say the property has a gate on Ash Rd. that will be used for access. He added trees will be left to create a buffer. He stressed the property needs to be cleaned up, and after that is completed the trucks and trailers can be brought onto the property. He continued saying the equipment will only be stored on the site for nights and weekends, and it will be kept secure. Mr. Campanello asked what type of trucks will be kept there, and Mr. Hansen responded two dump trucks. Mr. Miller clarified the trucks are used for paving, and Mr. Campanello asked if they will be cleaned on the property.

Mr. McDonald came on to answer Mr. Campanello's question, and responded only empty trucks will only be stored on site. He continued saying they haul gravel, sand, etc., and he stressed anything left will be dropped off before the trucks return to the property. Mr. Lyon asked how many vehicles they plan to keep on the property, and he responded two. Mr. Campanello addressed the trailers mentioned in the questionnaire. Mr. McDonald stated a 25 ft. flatbed trailer and a car hauler/small equipment trailer will also be stored on site. He stressed his equipment is in good condition. Attorney Kolbus asked the current use of the property, and Mr. McDonald responded vacant land.

Mr. Hansen added the property is currently a dumping ground, and the neighbors are happy to see it be put to good use. Mr. Miller questioned the purpose of the outlined area on the site plan. Mr. Hansen responded the entire property is fenced, but the trees will be removed in the outlined area to provide a parking area. Mr. Campanello mentioned the remaining trees will act as a buffer. Mr. Atha asked if the parking area will be paved, and Mr. McDonald responded it will be gravel. He continued saying the property is covered in trees, and an existing, decrepit

building will be torn down. Mr. Hansen explained the building and property is known for being used by the homeless. Mr. Miller stressed this request is for a Special Use, and the property's zoning will not change. Mr. Campanello stated it is currently zoned B-1. Mr. Hesser asked if trucks will have room to turn around without backing on/off of the road, and if the gate is set back enough to be unlocked without blocking traffic. Mr. Hansen responded yes. Mr. Hesser also mentioned the site plan shows two driveways. Mr. McDonald stated the fence has multiple gates, but not all are large enough for vehicles. Mr. Hesser clarified the gate off of Ash Rd. will be the only one used.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked if the number of trucks stored on this property is expected to grow, and Mr. McDonald stressed it has not grown in 40 years. Attorney Kolbus mentioned the application restricts the operation to two trucks and two trailers. Mr. Hesser stated he would prefer a more detailed site plan, but he understands it better after the presentation. Mr. Campanello added no buildings were proposed at this location. Mr. Hesser stated the petitioner mentioned the property is fenced in, and vehicles can pull off of the road to unlock the gate. He stressed the petitioner is bound to the representations made at the hearing. Mr. Miller asked if a time limit should be imposed. Mr. Campanello pointed out no remonstrators were present, and he would recommend a five year period. He asked if the request should be monitored by complaints. Mr. Hesser stated he is comfortable approving this request without a time limit, because the use presented is very restrictive. He continued saying if the business grows it will violate the Special Use. Attorney Kolbus explained if anything represented in the application is violated, the petition will need to come back before the Board.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for warehousing and storing of commercial trucks and trailers 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 9/15/17) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

****It should be noted Mr. Hesser recused himself and stepped down****

13. The application of *Annette Munsell (Buyer) & Almeda B. Whirlledge Zumbrun (Seller)* for a Special Use for a learning facility on property located on the South side of Washington St., 150 ft. West of Jefferson St., common address of 110 W. Washington St. in Clinton Township, zoned B-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0739-2017.

There were 30 neighboring property owners notified of this request.

Annette Munsell, 5995 W 185 S, Topeka, and Andrea Filburn, 65763 Tropicana Ave., Goshen, were present for this request. Mrs. Munsell stated they would like to operate a learning center for children with disabilities at this location. She continued saying it currently operates out of Mrs. Filburn's residence, but they can only teach half-days at that location. She stressed they would now like a location where they can teach full-days. Mr. Campanello asked if their building is separate from the neighboring building, and she explained they share a wall. Mr. Lyon asked if parking is adequate, and she responded parking is available behind the building. She continued saying their architect told them five parking spaces can fit in the back. Mr. Campanello mentioned street parking is also available. Attorney Kolbus asked their plans for a sign, and Mrs. Munsell responded she is not sure. She explained the building has three windows on the front, which do not leave much room for a sign. She added the existing sign is beside the door, which they will replace with their sign. Mr. Campanello asked if signs within town limits are under the Board's jurisdiction, and Mr. Lyon responded yes. Mr. Miller suggests a commitment be added stating the new sign be no larger than the current sign. Attorney Kolbus mentioned the proposed sign appears to be larger than the current one and asked for an approximate size for the proposed sign. Mrs. Munsell responded she is not sure, and Mrs. Kratzer recommended Mrs. Munsell estimate the size of the sign. Mr. Campanello mentioned the existing sign appears to be 2x3 and Mrs. Munsell proposed a 4x6 sign. Attorney Kolbus clarified a Commitment should be added stating the sign can be no larger than 4x6

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a learning 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 commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 9/18/17) and as represented in the Special Use application.
2. Sign limited to 4x6 mounted to building.

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

Yes: Denny Lyon, Joe Atha, Roger Miller, Tony Campanello.

Abstain: Randy Hesser.

****It should be noted Mr. Hesser returned to the Board at this time****

Attorney Kolbus pointed out two remonstrance letters were received for the Amber Graddy hearing scheduled at 10:30 A.M. and requests the Board read them before the petition is heard. Mrs. Graddy was also given a copy of the letters to review when she entered the hearing room.

14. The application of *Amber Graddy* for a Special Use for a homework shop/business for a massage studio on property located on the East side of N. Division St., 460 ft. North of CR 8, common address of 806 N. Division St. in Washington Township, zoned R-1, came on to be heard.

Due to the remonstrance letters received: hearing continued to the end of the meeting to allow the petitioner time to review the letters.

See item #16 on page 14.

15. The application of *Alan K. & Kaylene Y. Ediger* for a Use Variance to allow for the placement of a ground mounted solar array prior to the construction of a residence and for a Special Use for a ground mounted solar array on property located on the South side of CR 126, 2,700 ft. West of CR 27, common address of 18262 CR 126 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Shively presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0735-2017*.

There were eight neighboring property owners notified of this request.

Alan Ediger, 57556 Walden Ct., Goshen, was present for this petition and stated the property address is 18262 CR 126. Mr. Hesser clarified the property is currently vacant. Mr. Ediger stated he intends to build a home on the property. He explained he needs to install the panels before the house, because solar panel net metering and tax credits will be greatly reduced at the end of this year. He mentioned he attempted to start his house this year, but the contractors were busy. He continued saying he has a contractor set to start construction next spring. He pointed out the solar panels will be placed towards the back of his property, at the bottom of a small hill. He stressed he has spoken to all of his neighbors, and they are in favor of this request. He added the panels will not be visible from the road.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** 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 placement of a ground mounted solar array prior to the construction of a residence and for a Special Use for a ground mounted solar array 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 9/18/17) and as represented in the Use Variance and Special Use applications.

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

Yes: Joe Atha, Tony Campanello, Roger Miller, Denny Lyon, Randy Hesser.

16. The application of *Amber Graddy* for a Special Use for a homework shop/business for a massage studio on property located on the East side of N. Division St., 460 ft. North of CR 8, common address of 806 N. Division St. in Washington Township, zoned R-1, came on to be heard.

Mr. Shively presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0743-2017*.

There were 14 neighboring property owners notified of this request.

Mrs. Kratzer submitted two remonstrance letters for the record from Rob & Judith Harms [Attached to file as Staff Exhibit #1] and Mary Brindley [Attached to file as Staff Exhibit #2].

Amber Graddy, 806 N. Division St., Bristol, was present for this request. Mrs. Graddy stated she would like permission to operate a massage therapy business from her residence to provide pain relief, health and wellness. She continued saying she has an associate's degree in massage therapy in addition to being licensed in Indiana. She added she is also a registered nurse and has worked in health care since 1999. She explained she operated a massage business in LaGrange County for three years, but the building she rented costs as much as her mortgage. She stressed her business is very professional and she currently has around 150 clients. She continued saying she has not taken any clients while waiting for Board approval. She also added many of her clients have called her asking when she plans to open. Mrs. Graddy stated she purchased the property from her neighbor in 2006. She explained she has owned it for almost 12 years and mentioned many of the complaints listed in the remonstrance letter are false. She stressed she takes good care of both her children and home. Mrs. Graddy added she has four parking spots available for clients. She explained she will only take one client at a time, because she will be the only therapist. She stressed this business will help her family economically. She then submitted a petition signed by neighbors, Bristol business owners, and clients in favor of her request [Attached to file as Petitioner Exhibit #1]. She explained Camille's and Town Hall along with a few physicians and nurse practitioners are excited for her business. She added she specializes in neuromuscular entrapment, which helps with pain relief, and she has helped a LaGrange County physician manage her migraines. Mrs. Graddy stated massage therapy is becoming more popular, and she believes her business will greatly benefit Bristol. Mr. Hesser asked if the driveway is an easement and if it is on her property and Mrs. Graddy responded yes. She explained she was under the impression she owned the property, and she cared for it for five years. However, she continued saying her neighbor surveyed the property and found they owned the easement. She stressed she has the right to use the driveway to access her property. She stated she could install a sign instructing her clients to stay off of the neighbors' property. She then pointed out her section of the driveway and parking area. She continued saying the clients come in her front door and do not need to drive or walk across the neighboring property. Mrs. Graddy stressed she believes the remonstrance to her request stems from a personal problem between her and the neighbor. She mentioned a criminal case is currently in the works, and she

believes that may have fueled her neighbor's remonstrance. Mr. Lyon asked who the easement serves, and she responded it serves her property and the Harms. Mrs. Graddy stressed she would like to provide another option for pain management. She continued saying she has received referral letters from local doctors and nurse practitioners, and she works with occupational and physical therapists in the area. She again stated her business will be run in a professional manor. Mr. Hesser asked where her business was operated in the past, and Mrs. Graddy responded she rented a space in LaGrange County. Mr. Hesser asked her to address the remonstrance letter, which mentioned people parking in the easement. She responded no one has parked there, and she believes her neighbor would have called the police, if that had occurred. She explained she parks on the yard to leave the drive open for clients.

Attorney Kolbus stated Staff pulled the approved subdivision plat and found the easement is not on Mrs. Graddy's property [Attached to file as Staff Exhibit #3].

Rochelle Dibley, 808 N. Division St., came on in remonstrance and stated she owns the property North of Mrs. Graddy. She stressed she does not have a problem with Amber, but she also does not want a business in a residential area. She explained they chose their property because of the location. She continued saying despite being inside town limits, it is a residential area. Mr. Lyon stated the property's zoning will not change. Mr. Dibley mentioned the road is heavily traveled by motorists who miss CR 8, and she believes the business will generate more traffic.

Mrs. Graddy came back on and stated she respects Mrs. Dibley's opinion. She stressed she will not employ any other therapists and added she can only help one client at a time. She explained she typically schedules clients for an hour of therapy and allows for half an hour between clients. She stressed she will only have around three to four clients a day, three to four days a week. She added she does not believe traffic will noticeably increase. She also explained she is requesting a Special Use not to rezone the property commercial. Mrs. Graddy pointed out a canoe and kayak business not far from her residence, which is zoned commercial. Mr. Campanello also asked if the signatures on the petition are from clients. Mrs. Graddy responded yes, but neighbors and other business owners in Bristol also signed it. Attorney Kolbus pointed out the petition indicates clients, business owners, and neighbors next to each signature. Mr. Hesser confirmed Staff did not receive a letter from the Town of Bristol in favor or against this request. He then asked if she has the needed equipment for her business, and Mrs. Graddy responded yes. She explained she has the table, equipment for a vacuum therapy, hot stones, aroma therapy, nerve entrapment, etc.

The public hearing was closed at this time.

Mr. Hesser stated he does not like approving requests for easements, because they can cause problems between the neighbors like this situation. He continued saying he does not see a massage studio as a high impact business, but he understands the objection to having a business served by an easement. He continued saying he believes most of the concerns expressed in the letters do not pertain to the home workshop/business. However, he added he is worried about the activities mentioned in the letters, and he suggests a time limit be imposed, if this petition is approved. Mr. Campanello proposed a time period of one year.

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 Special Use for a homework shop/business for a massage studio 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.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 9/18/17) and as represented in the Special Use application.
2. Sign is limited to 4 sq. ft.
3. Approved for a period of one year with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Joe Atha, Roger Miller, Denny Lyon, Randy Hesser.

No: Tony Campanello.

17. The meeting was adjourned at 10:59 A.M.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary