

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 21TH DAY OF SEPTEMBER 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: Chris Godlewski, Plan Director; Mae Kratzer, Planner; Matt Shively, Planner; Duane Burrows, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

2. A motion was made and seconded (*Lyon/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of August 2017 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/Atha*) 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 **Kimberly J. Leus** for a Special Use for an agricultural use for the keeping of chickens and for a Special Use for a roadside stand for the sale of fresh eggs on property located on the Northwest corner of CR 18 and Osage Dr., 2,400 ft. East of CR 115, common address of 22979 CR 18 in Concord Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0607-2017*.

There were 20 neighboring property owners notified of this request.

Kimberly Leus, 22979 CR 18, Goshen was present for this request. Mr. Miller asked how long the chickens have been on the property, and she responded since March. She continued saying they were purchased during their incubation period and kept in the basement. Mrs. Leus explained she does not plan on having a roadside stand, but she might put a sign out by the road. She added most of her eggs are sold to her co-workers or people who call her, but any left on Saturday are purchased by the Goshen Police Department. Mrs. Leus then submitted a letter in favor of her request from one of her neighbors [*Attached to file as Petitioner Exhibit #1*]. She stressed the neighboring property owners closest to her do not have a problem with this request. Mr. Hesser asked the number of chickens currently on the property, and she responded twenty-six. He also asked how she disposes of their waste. Mrs. Leus stated it goes onto a compost pile, which is spread on their garden in spring. He then questioned the property size, and it was found to be one acre. Mr. Lyon clarified Mrs. Leus also owns an adjoining property to the West.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked if the petitioner is requesting a sign. Mrs. Leus responded she would like a sign, but she will not have a roadside stand. Mr. Campanello also asked what size sign is allowed, and Mr. Godlewski stated 4 sq. ft. Attorney Kolbus stated the Special Use should be approved for the sale of fresh eggs without the roadside stand, and Condition #2

should ask only for parking. Mr. Hesser clarified the words roadside stand should not be included in approval of this request.

The Board examined said request, and after due consideration and deliberation: **Motion: Action:** Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that this request for a Special Use for an agricultural use for the keeping of chickens and for a Special Use for the sale of fresh eggs be approved based 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. Agricultural uses (keeping of chickens) are allowed by Special Use in the R-1 zoning district.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. The property is in a moderate-density residential area. The area reserved for the chickens is enclosed.
3. The Special Use will substantially serve the public convenience and welfare by allowing for a source of locally grown food.

The following conditions were 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. Need a revised site plan showing the location of parking.

The following commitments were imposed:

1. Approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.
2. Limited up to thirty (30) chickens, no roosters.

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

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

5. The application of *Steve Hill* for a Special Use for a home workshop/business for a hair salon on property located on the West side of Winding Waters Lane, 2,500 ft. North of CR 4, West of SR 19, common address of 51537 Winding Waters Ln. in Osolo Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0638-2017*.

There were 19 neighboring property owners notified of this request.

Mr. Godlewski stated the Environmental Health Department did find record of a septic system for the salon building. He added the Board should not take that into account when making their decision, but Environmental Health Department approval will be required when a remodel permit is pulled.

Steve Hill, 51537 Winding Waters Ln., and Amber Dawson were present representing this request. Mr. Miller questioned the days and hours of operation listed in the application. Mr. Hill responded he gave a general description of when she is open. He continued stressing approval of this request will allow Mrs. Dawson to stay home with their children. He added she currently works Monday, Thursday, and every other Saturday. Mr. Miller clarified the hours of operation provided are Monday thru Wednesday 9 a.m. to 5 p.m. and Saturday. Mrs. Dawson

explained she is available when their children are at school and every other Saturday. Mr. Hesser questioned an area on the site plan where it appears the building is on the neighboring property, and it was found it is on the subject property. Mr. Lyon clarified the building has plenty of room for the salon, and Mr. Hill added the previous owner had an office in the building. He went on to say heating and cooling vents still need to be run, but most of the work is complete. Mr. Lyon asked if the Environmental Health Department will require a bathroom in the building. Mr. Hill responded the previous owner installed a bathroom without a permit. He explained he spoke to the Environmental Health Department and both septic systems have been pumped. He stated the previous owner had not pumped the septic systems for twenty years, and they will require yearly pumps to clean them out. He stressed the existing bathroom is functional. Mr. Campanello questioned the hours of operation in the Staff Report, and Mr. Godlewski stated they reflect the hours listed in the questionnaire. Mr. Campanello asked if the hours should be extended to include Thursday and Friday. Mr. Hill stressed Mrs. Dawson does not plan on working any evening hours, but she may work on Thursdays or Fridays. Mr. Campanello stated if her business grows she may need to work on Thursdays and Fridays, and he stressed the petitioners are limited to the hours of operation listed with approval. Mr. Hesser stated he believe the Board should approve what is asked not any more. He continued saying any neighbors who looked at the file would see the hours of operation listed in the Staff Report, and he does not believe the Board should expand that. Mr. Hill stated Mrs. Dawson may occasionally have customers on a Thursday. Attorney Kolbus explained the business is not required to be open during the hours of operation listed, but it should not be open outside of those hours. Mrs. Dawson stressed she has a third grader and kindergartener, and it is easier for her to work during the day when they are at school.

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** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a hair salon 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 (8/10/2017) and as represented in the Special Use application.
2. Hours of operation are limited to days and times below:
Monday, Tuesday, and Wednesday from 9 AM to 5 PM and Saturday from 9 AM to 2 PM.

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 **Roger L. & Janine M. Method** for a Special Use for a ground mounted solar array on property located on the South side of CR 142, 220 ft. East of CR 121, West of SR 15, common address of 19326 CR 142 in Jackson Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0648-2017*.

There were nine neighboring property owners notified of this request.

Roger Method, 19326 CR 42, was present representing this petition. Mr. Miller asked the proposed location of the solar panels. Mr. Method then pointed out the proposed location on the aerial where a swing set is currently located. He added the system will contain eighteen panels.

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** 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 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 8/14/17) 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. As a staff item, Mr. Godlewski presented the request for approval of a minor site plan change for a Developmental Variance for *Mason Beghtel* (DV-0559-2017). Mr. Godlewski explained the request is to move the approved 24'x32' accessory structure due to the septic system location. He noted Staff recommends approval of this request as a minor change. Attorney Kolbus pointed out the Staff items were included in the Board members' packets. Mr. Hesser asked if the attached site plan shows the original or new location, and it was found to be the new location. Mrs. Britton showed the Board both the approved and revised site plans. Mr. Godlewski stated the building will be rotated 45 degrees to be farther from the septic. Attorney Kolbus pointed out both site plans were included in the packets. He explained the old site plan is dated 7/17/17, and the new site plan is dated 8/31/17.

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

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

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

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

8. As a staff item, Mr. Godlewski presented the request for approval of a minor site plan change for a Special Use for *L.C. Fewell Corp. DBA Mike's Fencing* (20052940). Mr. Godlewski explained Mike Pozzi from US Signcrafters representing L.C. Fewell Corp. request approval of a minor change for a sign. He continued saying they would like to install a new 192 sq. ft. double-sided sign, 120 ft. North of the existing sign, which will be removed. He pointed out the new sign will be smaller than the existing one, and Staff recommends approval of this request as a minor change. Mr. Hesser mentioned the sign is moving from one State Road to another. Mr. Godlewski added the sign will not be in the right-of-way, and State only governs signs that can be seen from 1/8 of a mile away.

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 approve the request as a minor change.

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 **Ralph Ortiz** for a Special Use for an agricultural use for the keeping of chickens, roosters, and ducks on a property containing less than three acres located on the Northeast corner of Treva St., & Darlene St., 1,375 ft. West of CR 5, common address of 30079 Treva St. in Cleveland Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0632-2017*.

There were 15 neighboring property owners notified of this request.

Ralph Ortiz, 30078 Treva St., Elkhart, was present for this request and stated he would like permission to keep four chickens, two ducks, and a rooster. Mr. Atha mentioned the recommended Commitment prohibits roosters, but the request includes one. Mr. Godlewski clarified the petitioner applied for a rooster, but Staff recommends the Board deny it. Mr. Lyon asked if Mr. Ortiz spoke to his neighbors, and he responded most are in favor of his request. He then pointed out where he believes a neighbor against his petition lives. Mr. Hesser stated the questionnaire does not reference ducks, and Mr. Ortiz responded he has two ducks. He continued saying they did not keep the first rooster, but his wife purchased another one. He added a few of the neighbors complained about the rooster, and he stressed the birds belong to his wife. Mr. Miller stated the Board does not generally allow roosters, and Mr. Atha stressed the subject property is in a subdivision. Mr. Ortiz requests approval to keep the chickens without the rooster, and Attorney Kolbus explained the Board will make a decision after the public hearing is closed.

Leeann Krikau, 50518 Darlene St., came on in remonstrance and pointed out her property on the aerial. Mrs. Krikau stated Mr. Ortiz lives two houses down from her property, and the back of his property faces her home. She continued saying he first had chickens and a rooster two years ago. She added at that time she put a note in his mailbox informing him of his need for a permit. She added she does not have a problem with chickens, but roosters are very noisy. She continued saying she filed a complaint, which resulted in Mr. Ortiz being told to remove all fowl from the premises. She stressed he complied at that time, but he again has chickens, a rooster, ducks, and possibly geese with no Special Use. She mentioned she filed another

complaint resulting in this meeting. Mrs. Krikau stated she believes Mr. Ortiz cannot be trusted to follow the rules due to his past behavior. She added he also has a small dog, which he allows to run loose, and it has almost been hit several times. She requests the Board deny this request.

Ralph Ortiz came back on and stated he is willing to remove the chickens to keep his neighbors happy. Mr. Atha asked if he has a fence around the property, and Mr. Ortiz responded his wife asked him to install a fence. Mr. Atha asked if the chickens can be seen from the road. Mr. Hesser mentioned the site plan does not show a fence, and he asked how they dispose of waste. Mr. Ortiz stated his wife cleans the coop. Mr. Atha then asked if she puts waste in a compost pile or the trash, and he responded she uses it on their garden. He added his wife enjoys working in their yard with the chickens. He again stressed he wants to keep his neighbors happy.

Mrs. Krikau came back on to address the fence and clarified it is chicken wire. She continued saying it keeps the chickens contained, but that is the only fence on the property. She added Mr. Ortiz keeps his property well maintained, and she explained the neighbor in between their properties has a chain-link fence.

The public hearing was closed at this time.

Mr. Hesser pointed out the Staff Report recommends approval of twelve poultry specifically chickens and ducks, and he questioned why twelve were recommended when he asked for six. He asked why the Board should approve this request for more than he needs. Mr. Godlewski stated twelve is the standard for chicken Special Uses. Mr. Hesser mentioned ducks are dirtier than chickens, and geese are dirtier than ducks. Mr. Godlewski added approval for twelve poultry would include any kind. Attorney Kolbus stated the Board can approve less than the Staff Recommendation or specify what types of poultry are allowed. Mr. Hesser suggest the Board approve this request for six poultry (four hens, two ducks, and no roosters).

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

Motion: Action: Approve, **Moved by** Joe Atha, **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 agricultural use for the keeping of chickens and ducks on a property 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 8/9/17) and as represented in the Special Use application.
2. Limited to a total of six (6) poultry (chickens and/or ducks), no roosters.

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 *Spa, Inc. (Buyer) & Joseph & Aksana Cataldo Family Trust, Joseph & Aksana Cataldo Trustees, Lili Holmes & Oli Konkle Tenants (Sellers)* for an amendment to an existing Special Use for a transitional living facility for women to include additional property

on property located on the North side of US 20, 1,000 ft. West of CR 15, common address of 23221 US 20 in Concord Township, zoned R-1, R-4, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0644-2017*.

There were 25 neighboring property owners notified of this request.

Mr. Godlewski mentioned the request to rezone the entire property to R-4 has been approved by the Plan Commission but not the Commissioners. Mr. Lyon clarified their entire property will be zoned R-4.

Sandra Bontrager, 315 N. Riverside, Elkhart, founder and director of Spa, Inc. came on for this petition. Mrs. Bontrager request approval to add property to their existing Special Use. She continued saying they came before the Board recently to present their plans for growth, which were approved. She stressed this request will not add to that growth, but it will assist them in executing their plans. She continued saying they hope to move their offices and all other operations onto this property, and she explained the new residence will house the women while the current building is renovated. She went on to say approval of this request will allow the ministry to continue undisrupted. Mr. Campanello clarified the new residence will be used as living quarters, and Mrs. Bontrager added that is the only change to their plans. Mr. Hesser asked if their new facility will be an addition or separate building, and she clarified it will be an addition to the original building. He then asked if the addition has been approved by the Board, and she responded yes. Mr. Atha pointed out the strip of property they would like to add. Mr. Hesser reiterated the residence on the new property is existing and, they do not plan to add any additional buildings.

Carrie Zickerfoose, 16406 Daisy Ave., Goshen, Executive Director of Spa Women's Ministry Homes came on in favor of this request. Mrs. Zickerfoose stressed this property will allow them to preserve their ministry during the renovation process. She explained when the property next door came up for sale they decided to purchase it to provide their clients a place to stay during the renovation/addition process. She stressed approval of this request will allow them to continue the services they provide during the transition.

Tom Christophel, 56441 CR 15, came on in remonstrance and pointed out his property on the aerial. Mr. Christophel stated about eighteen months ago the Spa presented their expansion plans to the Elkhart Chamber of Commerce. He continued saying during that meeting their plans included additional buildings in phases two and three. He stressed phase two and three were also included in their proposal when they came before the Board for approval of their plans, but they are not referenced in this request. He added they also did not mention their plans when they presented the Rezoning before the Plan Commission. Mr. Christophel stated he believes that is misleading. He then pointed out the property in question and mentioned the neighboring property is owned by the same person. He went on to say he believes the Spa may expand onto that property. He stressed the Spa is doing good in the community, but he believes they are being dishonest about their plans to the neighbors/community. He added they were told at the last hearing to install a fence, but the questionnaire says they have no fence. He explained the only fencing on the property is a light-weight picket fence to the West and a privacy fence across the front. He stressed they did not comply with the Condition imposed at the last hearing. He also stated the application increased the number of clients to twenty but states traffic will not increase. He questioned how traffic can remain the same with the increase in clients. He went

on to say since Old US 20 is a truck route, and deliveries should not have a significant impact on the neighbors. He also brought up the application says they have had no impact with their neighbors. Mr. Christophel mentioned an incident last summer when one of their clients, wrecked a pick-up truck around 11 p.m. He explained the intoxicated driver cut across his property and asked him for help getting to the Spa. He added he agrees building and code inspections should be required; however, he is concerned about security. He explained many of their clients come from abusive relationships, and he wonders if they have any security cameras or lighting. Mr. Hesser asked if a fence was installed, and Mr. Christophel responded no additional fencing was added. Mr. Campanello clarified the insurance company required an additional fence be installed. Mr. Hesser asked the purpose of the fence. Mr. Christophel responded to protect children, and he stated they have a large playground with no fence.

Mrs. Bontrager came back on and explained State Farm requested a fence be installed along the driveway for the children's protection, which they installed. She added the rest of the property does not need a fence, because children do not stay at the Spa, they only visit. She stressed she was not aware of the car accident by Mr. Christophel's property, but the driver may not have been a Spa client. She went on to say they will help anyone who comes to the Spa. Mrs. Bontrager stated the original Special Use was approved for fourteen clients, and they are only requesting an increase to twenty. She stressed their client size is not doubling. She explained the Spa came before the Board with their future plans, but only Phase one was approved. She went on to say their ministry can only grow so fast, and Phase two of the expansion will not be needed with the additional residence. She clarified they currently have five women in the second phase program who have jobs, visit their children, etc. She stressed they are becoming stable parts of the community. She added the Spa is not trying to be deceitful, but the neighboring property became available and solved a major dilemma. Mr. Lyon asked if the Rezoning should be approved before the Board makes a decision, and Mr. Godlewski responded it can happen in either order. He added a Condition should be added stating the Special Use is not valid until the Rezoning has been approved. He also mentioned the Commissioners will hear the Rezoning next month. Mr. Hesser clarified approval of this request should be contingent on the Commissioners' approval. Mr. Atha asked Mrs. Bontrager to address Mr. Christophel's security concern. She responded the Spa has been open for 19 years with 24/7 supervision. She continued saying during that time they have never had problems with angry spouses or boyfriends, because staff is always on premises.

The public hearing was closed at this time.

Mr. Miller asked if approval of this request should be made contingent on the Commissioners' approval of the Rezoning. Attorney Kolbus stressed the Board needs to make that a Condition, or the request is approved without the Rezoning.

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

Motion: Action: Approve, **Moved by** Joe Atha, **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 an existing Special Use for a transitional living facility for women to include additional property 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. Contingent on the Commissioners' approval of the rezoning from R-1 to R-4.
3. Facility to be inspected by the Elkhart County Building Department, and if necessary, brought into compliance with all State and local codes prior to operation and expansion of the facility.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 8/11/17) and as represented in the Special Use Amendment application.
2. Facility to be registered with the local fire department, and the Health Department for septic system.
3. Approved for a period of five (5) years with renewal before the Board of Zoning Appeals.
4. No more than twenty (20) residents permitted at one time.

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

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

9. The application of *Derald L. & Cynthia L. Bontrager* for a Special Use for a wireless communications facility on property located on the West side of CR 31, 1,600 ft. South of CR 10, common address of 54761 CR 31 in Washington Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0641-2017*.

There were eight neighboring property owners notified of this request.

Pat McCauley, MapleNet Wireless, 4561 Pine Creek Rd., Elkhart, was present representing the petition. Mr. McCauley stated Mr. and Mrs. Bontrager are building a new residence, and this tower will strictly be used for their internet and TV. He continued saying they are willing to allow neighbors to use the tower, if needed. He explained the tower is necessary for internet to reach the residence and will barely go above the tree line. He stressed they conducted many test including a drone survey and found a new tower to be the only option that would allow Mr. Bontrager to work from home. He stated this is different than their normal requests, but it is available for the neighbors use if needed. Mr. Campanello asked if the tower is collapsible, and Mr. McCauley responded yes. He went on to say it will be placed next to the barn and away from the residence. Mr. Hesser asked if the tower can be used by neighboring property owners. Mr. McCauley clarified it is designed for use by multiple households, but that is not their intent. He mentioned Mr. Bontrager intentionally purchased a wooded property, and the tower will not be easily seen. He explained they would build a taller tower, if it was intended for use by multiple families. He then pointed out the location of a nearby tower and stressed the proposed tower needs to be 80 ft. to receive internet at Mr. Bontrager's residence due to the tree coverage. Mr. Campanello asked if Mr. Bontrager will own the tower, and Mr. McCauley responded yes. He explained MapleNet is representing him, because Jayco and Mr. Bontrager are their clients. He also asked if the tower could be added onto in the future, and Mr. McCauley responded this tower cannot be taller than 80 ft. He explained if a taller tower is needed, they would have to replace this one.

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** 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 a wireless communications facility be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 8/11/17) 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 **James W. & Tonya S. Yoder** 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 Ashton Way, North of Stonegate, 265 ft. West of CR 113, North of CR 28, common address of 60727 Ashton Way in Concord Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0652-2017*.

There were 23 neighboring property owners notified of this request.

Mr. Godlewski mentioned several remonstrance letters have been received for this request.

James Yoder, 60727 Ashton Way, Elkhart, came on for this request and stated he would like to have a small chicken coop to house six hens for egg production. Mr. Campanello mentioned the Staff Report recommends approval of this request for twelve chickens, and he asked if Mr. Yoder would like to change that to six chickens. Mr. Yoder responded the coop is not large enough to have more than six chickens. Attorney Kolbus mentioned the application request six or fewer chickens, but Staff recommended approval for twelve. Mr. Campanello then asked if Mr. Yoder has spoken to his neighbors. He responded he has spoke to two neighbors North of his property who did not voice any concerns. Mr. Hesser asked how he disposes of waste, and Mr. Yoder responded it is composted into their garden. Mr. Campanello also asked if the chickens are a 4-H project, and he responded it started as a 4-H project but has grown. Mr. Hesser asked if his subdivision has any restrictive covenants. Mr. Yoder responded yes, but he does not know the covenants. Mr. Miller asked if anyone else in the subdivision has chickens. He stated a neighbor bordering the subdivision has chickens, but he is not aware of any in the subdivision. Mr. Campanello asked the property acreage, and it was found to be .79 acres. Mr. Campanello mentioned the chicken coop seems to be in a good location. Mr. Yoder submitted photos of a North view *[Attached to file as Petitioner Exhibit #1]*. and South view *[Attached to file as Petitioner Exhibit #2]* of the property.

Kim Otto, 23595 Stonegate Circle, Elkhart, came on in remonstrance and submitted a petition against this request *[Attached to file as Remonstrator Exhibit #1]*. Mrs. Otto went on to say many of the

neighboring property owners were not able to attend the hearing but are opposed to having chickens in the subdivision. She explained sixty-five people signed the petition, and she believes more would have signed with a longer amount of time. She added twenty-six of the signatures are from residents on Ashton Way or Ashton Ct. Mrs. Otto pointed out Stonegate Subdivision has around sixty-seven houses. She stressed it is important for the Board to know how many neighbors are opposed to this request. She explained several people are opposed, because the subdivision restrictions state livestock and poultry are not to be harbored, raised, bred, or kept on any lots in the subdivision. Mr. Hesser asked for a copy of the subdivision covenants and restrictions, and Mrs. Otto responded one is attached to the petition she submitted. She then pointed out item #25 specifically states the poultry and livestock restrictions. She stressed new homeowners are given a copy of the covenants/restrictions and believe this is a quiet, residential neighborhood. She added a copy of an article on chicken behavior is also attached to the petition she submitted, and it states chickens make a lot of noise. She mentioned the article states laying hens make screeching and cackling noises, and which can be a nuisance to the neighbors. Mr. Campanello asked if she can hear the petitioners' chickens. She responded no, because her residence is not close to the petitioners. He also asked if any other neighbors complained about the noise, and she responded yes. She added several neighbors were happy she sent petition around, because they were unable to attend the hearing. She continued saying the request is not close to her residence, but she is worried approval will open the door for more people to have chickens. Mr. Hesser asked if she is aware of any one else with chickens in the subdivision, and she responded no. She continued saying many property owners in the subdivision are worried approval will set a precedence, and she believes goats or pigs could be next. She again stressed Stonegate is a nice, quiet subdivision with well-maintained yards. Mrs. Otto stated the subject property abuts a ditch, which drains into retention pond, and the neighbors are concerned run-off could contaminate the retention area. She also mentioned the subject property is not three acres. Mr. Campanello clarified any property under three acres can have chickens with a Special Use, and the Board has approved chickens on a .2 acre property. He went on to say Goshen and Elkhart City are open to having chickens in residential neighborhoods. Mrs. Otto stated she believes a many of the subdivision residents are against allowing chickens. She added the number of signatures on the petition demonstrates how many are opposed to this request. She then requests the Board deny this petition.

John Swartzendruber, 60325 CR 113 came on in remonstrance and stressed the subdivision has deed restrictions in place. Mr. Campanello asked if Mr. Swartzendruber resides in the subdivision. He responded no but explained he owned the farmland, where Stonegate was developed. He continued saying Richard Miller developed the subdivision, but he remained involved. Mr. Campanello asked if he helped determine the covenants, and he responded Mr. Richard Miller was in charge of it. He stressed the deed restrictions were imposed to help the neighborhood remain an attractive area for housing. He stated he believes approval of the request could cause the situation to become out of control. He stressed the deed restrictions should be upheld. Mr. Hesser clarified the deed restrictions are separate from this petition, and the deed restrictions can still be imposed, if this request is approved. He explained the Board can rule this does not violate county law, but chickens can still be in violation of the restrictions.

Phil Marsh, 60894 Ridge Point Ct., was present in opposition to this petition and stated his property is located in the Southeast corner of the subdivision. He went on to say he lives

close to the property on CR 28 with chickens that run free causing a nuisance. Mr. Hesser asked if Mr. Marsh is aware of any other livestock in the subdivision, and he responded no. He continued saying he purchased his property because of the restrictive covenants, and he has lived there for twenty years. He stressed livestock can be kept on many other properties in the county. Mr. Marsh stated the only entrance to the subdivision is across the street from the subject property, and he believes property values may be affected, if this is approved. He added potential buyers may be deterred from purchasing in the subdivision, if they see chickens. He explained he understands the Board's decision does not overrule the covenants, but he does not believe the subdivision will take legal action to enforce the covenants. He requests the Board support the majority of the neighbors and deny this request.

Paul Miller, 23779 Raber Ct., came on in remonstrance and pointed out his property on the aerial. Mr. Campanello clarified the lot on the corner is vacant, and he asked where the retention area is located. Mr. Miller explained the retention area is located between the subject property, his property, and the vacant lot. He added he has a clear view of the petitioners' back yard, and he can hear the screeching, cackling, and squawking from the chickens. He stressed the chickens are very noisy.

Mr. Godlewski stated several letters and emails in opposition to this petition were received from the following: John Prah, 60595 Ashton Way *[Attached to file as Staff Exhibit #1]*; Lawrence & Kathy Drazit, 60600 Ashton Way *[Attached to file as Staff Exhibit #2]*; Kim & William Dalton, 60836 Ridgepoint Ct. *[Attached to file as Staff Exhibit #3]*; Phillip & Tina Marsh, 60894 Ridgepoint Ct. *[Attached to file as Staff Exhibit #5]*; Christine & Ronald Toth, 23950 Ashton Ct. *[Attached to file as Staff Exhibit #6]*; Michelle Waldrop, 23570 Stonegate Circle *[Attached to file as Staff Exhibit #7]*; Katrina Otis, 23700 Ashton Ct. *[Attached to file as Staff Exhibit #8]*; Lavern & Martha Ann Myers, 23731 Stonegate Circle *[Attached to file as Staff Exhibit #9]*; Sharon Murphy *[Attached to file as Staff Exhibit #10]*; Paul & Debra Miller, 23779 Raber Ct. *[Attached to file as Staff Exhibit #11]*; Michelle Troyer, 60674 Ashton Way *[Attached to file as Staff Exhibit #12]*; Paul & Debra Miller, 23779 Raber Ct. *[Attached to file as Staff Exhibit #4]*; John & Susan Wells *[Attached to file as Staff Exhibit #13]*; Vernon & Anna Stack *[Attached to file as Staff Exhibit #14]*; Sharon Murphy *[Attached to file as Staff Exhibit #15]*; Brian & Danielle Thompson *[Attached to file as Staff Exhibit #16]*; and Michelle Waldrop, 23570 Stonegate Circle *[Attached to file as Staff Exhibit #17]*. He then explained the main concerns from the letters were noise, farm animals, covenants, smells, and notice. He submitted a copy of the notice sent out by staff *[Attached to file as Staff Exhibit #18]* and stressed notice was sent 9/6/17 within the required time frame. He also mentioned it came to Staff's attention that additional fraudulent notice was sent out by someone outside of the office.

Mr. Yoder came back on and addressed the noise concern. He explained the chickens do make some noise, but he does not notice it. Mr. Hesser asked if he is aware of any chickens or livestock in the subdivision, and he responded no. He continued saying he takes precautions to make sure the coop does not smell, and he mentioned he cleans it every three weeks. Mr. Atha asked if the subdivision is on sewer/city water or on wells/septic, and Mr. Yoder responded wells/septic. He added he would have asked the two neighbors he spoke with to in favor of this request, if he had known how many letters were submitted in remonstrance. He stated he is also upset someone sent out fraudulent notice. Mr. Campanello asked if the coop is visible to his neighbors. Mr. Yoder stated he intended to plant decorative grass on the South side of the coop, but he decided to wait for approval. Mr. Lyon asked if he is reconsidering having the chickens, and he responded no. He explained he would like to come to a common ground with his

neighbors and alleviate their concerns. Mr. Campanello asked how long his son has left in 4-H. He responded he has already finished 4-H, but he would like to keep the chickens until they stop laying eggs. Attorney Kolbus mentioned according to the petition submitted in remonstrance one of the two neighbors to the North did sign in opposition.

The public hearing was closed at this time.

Mr. Campanello stated the Board has approved several chicken Special Uses in subdivisions with covenants against it, because Elkhart and Goshen City allow chickens. He continued saying the County typically allows chickens, and it is not unusual to have these requests in a subdivision. Mr. Hesser responded he believes the neighbors' concerns are exaggerated, but the enforced covenants should be followed. He added the petitioner was not aware of any other livestock in the subdivision. Mr. Miller stated the Board generally allows chickens, but he will vote for denial of this request due to the number of remonstrators and the restrictive covenants. Attorney Kolbus suggested Commitment #2 be changed to six chickens as requested by the petitioner, if the Board approves the request.

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 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 8/14/17) and as represented in the Special Use application.
2. Limited to six (6) chickens, no roosters.

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

Yes: Joe Atha, Tony Campanello.

No: Roger Miller, Denny Lyon, Randy Hesser.

Motion: Action: Denied, **Moved by** Randy Hesser, **Seconded by** Denny Lyon 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 denied based on the following Findings and Conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose and intent of the Zoning Ordinance.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. The property is in a moderate-density residential area. The area reserved for the chickens is enclosed.
3. The Special Use will substantially serve the public convenience and welfare by allowing for a local food source.

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

Yes: Roger Miller, Denny Lyon, Randy Hesser.

No: Joe Atha, Tony Campanello.

Mr. Godlewski stated the petitioners in this situation are traditionally given thirty days to remove the chickens from the property.

11. The application of *Stanley J. & Eldora A. Schrock* for a Special Use for a home workshop/business for a swing set business, for a 4 sq. ft. Developmental Variance to allow for an 8 sq. ft. double faced sign (Ordinance allows 4 sq. ft.), for a 40 ft. lot width Developmental Variance for an existing residence and accessory building on property with 60 ft. road frontage (Ordinance requires 100 ft.), and for a 7 to 1 depth to width ratio Developmental Variance for an existing residence located on the South side of CR 8, 730 ft. West of CR 35, common address of 13628 CR 8 in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0634-2017*.

There were 17 neighboring property owners notified of this request.

Mr. Godlewski mentioned a remonstrance letter was received for this petitioner. Mr. Sexton submitted an updated site plan *[Attached to file as Petitioner Exhibit #1]*. Attorney Kolbus stated the site plan submitted should be dated 9/21/17, and proposed Condition #1 should change to reflect that.

Randy Sexton, 108 E. Main St., Albion, owner of Sexton and Associates Engineering Land Planning and Surveying was present representing the petitioners. Mr. Sexton stated the subject property is 10 acres but has only 60 ft. road frontage. He continued saying the petitioners are requesting permission to operate a swing set business from their property. He explained Mr. Schrock purchased the business from his brother, and plans to build swing sets with his wife. He added they build about one swing set a week, and Mr. Schrock was not aware he needed a Special Use. He went on to say he purchased the business in May and has built about 13 swing sets. He stressed the business will likely slow down from fall to early spring, because people do not typically purchase swing sets during that time. Mr. Campanello asked if they assemble the swing sets and then deliver them to the customer. Mr. Sexton mentioned lumber was stacked outside when the business started, but it is now stored inside an existing building. He stressed lumber is delivered and immediately placed inside of the building so no outside storage takes place. He explained Mr. & Mrs. Schrock build the swing sets with simple woodworking tools, and they are not stained. He continued saying the completed product is loaded onto a 16 ft. long trailer and delivered to the customer. Mr. Hesser asked if materials are delivered by semis, and Mr. Sexton responded he believes by freight trucks. Mr. Hesser also clarified the property has plenty of room for the trucks and trailers to turn around without backing onto the county road. Mr. Sexton added they would like to place a business sign by the road. He explained the 40 ft. and 7 to 1 Developmental Variances are required because of the property's shape. He stressed Mr. Schrock works until early afternoon at a factory and would like permission to run his business from 12 p.m. to 6 p.m. He added he started working late into the night, but he understands that will no longer be allowed. He also stressed they will not have any outside employees. He explained the business provides them with some extra money to help out with their two children and get ahead in life. Mr. Hesser mentioned the requested sign and stated he

understands a home workshop/business is allowed a 4 sq. ft. double-sided sign. He asked if a 2'x2' double-sided sign is allowed.

Stanley Schrock, 13628 CR 8, Middlebury, came on for this petition. Mr. Schrock stated he would like approval of a double-sided 2'x2' sign. Mr. Hesser asked if a double-sided sign would be considered 4 sq. ft., and Mr. Godlewski clarified each side is counted towards the total square footage.

Mr. Godlewski submitted two letters in remonstrance one from Fred & Terri Ross *[Attached to file as Staff Exhibit #2]* who are against any commercial activity that could affect their property values and peaceful neighborhood. He also submitted a remonstrance letter from Richard Claybaugh, 1307 Creswick Ct. *[Attached to file as Staff Exhibit #1]* expressing his concern about noise, especially in the evening.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked if the Board can interpret the 4 sq. ft. sign for home workshop/business Special Uses as a double-sided sign, instead of 4 sq. ft. total. Attorney Kolbus responded the rule should remain 4 sq. ft. total. Mr. Hesser suggests the Developmental Variance be approved for 4 sq. ft. double-sided sign. Mr. Miller added the Board can approve the sign that was presented. Mr. Hesser suggests a Commitment be added holding the sign to 4 sq. ft. per side instead of an 8 sq. ft. sign. Mr. Godlewski clarified since the request is a Developmental Variance no Commitments are imposed; the Board would only need to grant the petitioners' request.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a swing set 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.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 9/21/17) and as represented in the Special Use application.
2. Planning Staff will review in two (2) years for compliance with this commitment.
3. Hours of operation must not fall outside the following timeframes:

Monday through Friday 12 PM to 6 PM and Saturday 8 AM to 5 PM.

Further, the motion also included that a 4 sq. ft. Developmental Variance to allow for an 8 sq. ft. double faced sign (Ordinance allows 4 sq. ft.), a 40 ft. lot width Developmental Variance for an existing residence and accessory building on property with 60 ft. road frontage (Ordinance requires 100 ft.), and a 7 to 1 depth to width ratio Developmental Variance for an existing residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 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 (9/21/2017) and as represented in the Developmental Variance 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 *Earl D. & Lillian Bontrager* for a Special Use for a home workshop/business for a small engine repair business and for a 44 sq. ft. Developmental Variance to allow for a 48 sq. ft. double faced sign (Ordinance allows 4 sq. ft.) on property located on the East side of CR 43, 2,870 ft. North of CR 10, common address of 54014 CR 43 in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0645-2017*.

There were six neighboring property owners notified of this request.

Earl Bontrager, 54348 CR 43, came on for this request and clarified he is the owner but not the occupant of the property. Mr. Hesser asked if he plans to move to the property, and he responded no. He explained his cousin is renting the property from him and would like permission to run an engine shop. He continued saying the petition is in his name as the property owner, but he is not involved with the business. Mr. Hesser questioned the requirements for a home workshop/business Special Use, and Mr. Godlewski responded the owner or occupant of a property can be approved for the Special Use. Mr. Hesser clarified the engine shop operator is the occupant but not the owner of the residence. Attorney Kolbus stated the owner of a home workshop/business does not need to own the property, if he is the occupant. Mr. Hesser then asked if that changes any of the Commitments, and Attorney Kolbus responded no. Mr. Hesser clarified the owner of the business is the occupant of the residence, and Mr. Bontrager added Orlie Bontrager intends to purchase the property from him. Mr. Hesser then asked why he needs a 48 sq. ft. sign.

Orlie Bontrager, 54038 CR 43, came on for this request as the business operator. Mr. Orlie Bontrager stated he lives in the residence and is renting the property from his cousin. He addressed Mr. Hesser's question and responded a home workshop/business is only allowed a 4 sq. ft. sign. He continued saying he does not believe he can fit all of his information on that size. Mr. Hesser asked what he would like to have on the sign, and he added only the business name is typically listed. He responded he would like a larger sign so it can be easily read from the road. He added he would consider having a smaller sign, if he can also have a wall-mounted sign on the building. Mr. Hesser stated a home workshop/business is only allowed a total of 4 sq. ft., but the Board is open to approving a 4 sq. ft. double-sided sign. He explained a sign on the building would also count towards his total 4 sq. ft. allowed. Mr. Campanello stressed this is not a commercial property, and he clarified a home workshop/business Special Use allows a commercial use in a residential area under certain restrictions.

Vernon Bontrager, 54244 CR 43 came on in favor of this request and stated the neighborhood is excited about this business.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello mentioned the petitioner is requesting a 4'x12' sign, and Mr. Hesser suggests the Board approve a 4 sq. ft. double-sided sign.

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 Special Use for a home workshop/business for a small engine repair 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.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 7/14/17) and as represented in the Special Use application.
2. No outside storage.
3. Properties must be combined onto one deed.
4. Hours of operation are limited to days and times below:
Monday through Friday 8 AM to 5 PM and Saturday 8 AM to 12 PM.

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

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a 4 sq. ft. Developmental Variance to allow for a 8 sq. ft. double faced sign (Ordinance allows 4 sq. ft.) be approved based on the following Findings and Conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. Signs are allowed as part of the Special Use Permit for a home workshop business.
2. Approval of the request will not cause substantial adverse effect on the neighboring property. A 4 sq. ft. per side sign will not cause an adverse effect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 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 (7/14/2017) and as represented in the Developmental Variance application.

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

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

13. The application of **David W. Allen** for a Use Variance to allow for two mobile homes on one parcel, for a Special Use for an existing mobile home, and for a Special Use for a new mobile home located on the South side of Homewood Ave., 615 ft. East of Adams St., North of North Park Ave., common address of 25666 Homewood Ave. in Osolo Township, zoned R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0647-2017*.

There were 25 neighboring property owners notified of this request.

Starr Sutterby, 25670 Homewood Ave., was present for this request and stated they would like approval to replace a residence that burnt with a mobile home. She explained insurance did not give them enough money to rebuild, but her father has health issues and needs to be moved into another residence before winter. She went on to say she can purchase a mobile home for a reasonable price through her employer. Mr. Lyon asked if there is an existing septic system, and she responded yes. He also asked if she spoke with the Environmental Health Department. Mrs. Sutterby stated she has Hunt Septic scheduled to pump and check the existing septic tomorrow. He then asked if she has had any problems with the septic, and she responded no. Mr. Atha asked if a Commitment should be added stating the burnt house must be removed from the property. Mrs. Sutterby stated she wanted Board approval before demoing the residence, but she does have Tubicsak Construction lined up for the demo. Mr. Hesser asked when it will be completed, and she responded within the next two weeks. Mr. Hesser asked if allowing her the end of the year to demo the residence will be sufficient, and she responded yes.

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** Joe Atha that this request for a Use Variance to allow for two mobile homes on one parcel, for a Special Use for an existing mobile home, and for a Special Use for a new mobile home 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. Mobile homes are allowed by special use.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. This is a moderate to dense older area with other existing mobile homes.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. In 1998 the Board of Zoning Appeals approved the request for a home and mobile home on the same property. The house on the property was destroyed by a fire and the petitioner is requesting to replace that house with a mobile home.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property. A special use for the additional mobile home is necessary due to the medical condition of the petitioner and house fire.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan. Mobile homes provide viable low-income housing options.

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.
2. Demolition of the burnt residence must be completed by the end of the year.

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 8/14/17) and as represented in the Use Variance and Special Use applications.
2. Mobile home must in good condition:
 - a. Must be installed to manufactured specifications
 - b. Must have proper tie-downs
 - c. Must have proper skirting
 - d. No outside storage; junk, debris, or inoperable vehicles

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

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

Mr. Miller asked if mobile homes are allowed on property without Board approval, and Mr. Hesser mentioned the first mobile home with the residence was already approved. Mr. Godlewski clarified the approved situation is staying the same, but the primary residence will be replaced by a mobile home.

14. The application of *Wayne & Corinna R. Wingard* for a Use Variance to allow for a second dwelling (existing) on a parcel located on the East side of CR 35, 750 ft. South of CR 20, common address of 59156 CR 35 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0468-2017*.

There were nine neighboring property owners notified of this request.

Mr. Godlewski mentioned this request was tabled at the July 20, 2017, Board of Zoning Appeals Meeting. Attorney Kolbus pointed out the public hearing was closed at that time. Mr. Hesser asked if additional information should be heard. Mr. Godlewski stated the request ended in a tie vote because Mr. Campanello was absent. Attorney Kolbus mentioned the Board can re-open the public hearing, if they have any questions, but the entire case does not need to be reheard. Mr. Hesser mentioned he did not see the July minutes in the packets. However, he believes he voted for denial along with Mr. Miller, and Mr. Atha and Mr. Lyon voted for approval. Mr. Hesser asked if Mr. Campanello has had a chance to read the minutes from the last hearing. Mr. Campanello responded yes and added he would like to hear from Mr. Doriot. Mr. Hesser mentioned the public hearing should be re-opened and asked if notice should be sent to the neighboring property owners before new testimony is heard. Mr. Campanello stated in order to make a decision he would like to hear the petition. Attorney Kolbus clarified the Board needs to make a motion to re-open the hearing, but they do not need to re-notify the neighbors.

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the public hearing be re-opened for this request.

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

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

Mr. Campanello asked why the petitioner needs a second dwelling.

Blake Doriot, B. Doriot and Associated, P.O. Box 465 New Paris, was present representing this petition along with the owners, Mr. & Mrs. Wingard. Mr. Doriot informed the Board that the property went through a Minor Subdivision, and he pointed out the subdivision lots. He continued saying when the Wingards purchased the residence the outbuilding had an existing apartment. He added they decided to remodel the apartment, and a complaint was filed about an illegal residential use. He explained the Wingards spoke to Staff and were told to complete a Minor Subdivision. He continued saying he believes a Minor Subdivision would be difficult because of the septic system location. Mr. Doriot stated they were not aware of the illegal use when they purchased the property, and income from renting out the apartment was a factor in their purchase. He stressed the illegal use was not mentioned during the Minor Subdivision process, their dealings with the Environmental Health Department, or their title check. He added the property owners would simply like to continue this use, but the apartment square footage is now over the square footage allowed for a dawdy house. He mentioned they spoke to all of the neighbors, and a petition in support of this request was submitted at the previous hearing. Mr. Doriot stated the petitioner's would like approval to keep their investment by continuing the use of the apartment. He stressed the Wingards did not create this use out of malice, and they were not aware of the problem. He added a Minor Subdivision will not be practical due to septic location. Mr. Atha asked if the back property could be accessed by an easement, and Mr. Doriot responded he believes that would cause the property to lose value. He stressed it is a nice piece of property made up of a residence, barn, and outbuilding, which the apartment was constructed in by a previous owner. He stated the Use Variance has put a burden on the owners, and he added all of the neighboring property owners are in favor of this request. He went on to say dawdy houses can be seen all over the county. Mr. Hesser stressed this petition is not for a dawdy house. Mr. Doriot agreed it is a rental property, and he added Middlebury has many rental properties with two residences. Mr. Miller asked if the accessory structure was originally built with the apartment, and Mr. Doriot responded no. He explained it was built with a bathroom, and a previous owner remodeled the building to make an apartment. Mr. Campanello asked if Mr. Troyer, the previous owner, rented the apartment, and Mr. Doriot responded yes. Mr. Atha added the property has two mailboxes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stressed Board members are not held to their prior vote. Mr. Campanello asked the Board the reasoning behind their previous votes. Mr. Hesser explained he voted for denial, because it is a rental property, which is not permitted. He added he understands it has been a rental property for a long time, but it is not permitted by the Ordinance. He pointed out the Board has denied similar requests. He explained the Board recently denied a request for multiple rental units, which had been used illegally for some time. He also mentioned Use Variances are the hardest to approve, and he does not find this property peculiar in any way. Mr. Campanello stated he believes it is peculiar, because the apartment has been rented for several years. He continued saying the Wingards purchased the property without knowing about the illegal use, and the property already has two mailboxes. He added most of the neighbors are in support of this request. He mentioned a previous petition was denied, because several neighbors

were against the request. Mr. Miller stressed the accessory structure in question was originally an outbuilding with a bathroom, which was later converted into an apartment. Mr. Atha stated he made his decision, because it has been a rental property for several years. However, he added he now does not believe the Board should encourage people to do something, and then ask for permission. Mr. Campanello mentioned the current owners did not convert the building. Mr. Hesser responded someone looking at the property should wonder why it has an apartment and realize it is not zoned for that. He also added a title search would not find Board of Zoning Appeals action. Mr. Godlewski stated a subdivision should be found, and Attorney Kolbus added any recorded Commitments would be found by a title search. Mr. Hesser asked when the petitioners purchased the property, and it was found to be purchased three to five years ago. Mr. Lyon clarified the apartment has been used since they purchased the property.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that this request for a Use Variance to allow for a second dwelling (existing) on a parcel 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. This has been an existing use for several years. This is also in an area, which is known to have dawdy houses. A large number of neighbors are in favor of this request.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The building has been used as a rental unit for several years and provides a place for the resident to live.
4. Strict enforcement of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan. The Comprehensive Plan involves the neighbors surrounding the property, and they are all in favor of this request.

The following condition was imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 6/12/17) and as represented in the Use Variance application.
2. Needs Elkhart County Environmental Health approval for septic.

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

Yes: Tony Campanello, Denny Lyon.

No: Joe Atha, Roger Miller, Randy Hesser.

Motion: Action: Denied, **Moved by** Randy Hesser, **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 Use Variance to allow for a second dwelling (existing) on a parcel be denied.

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

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

No: Tony Campanello.

Mr. Hesser mentioned the apartment is currently occupied and suggested the tenant be given time to vacate the premises. Mr. Godlewski suggested 180 days, and Mr. Campanello stated the tenants should be given a year.

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Randy Hesser that the occupants of the apartment have one year to vacate the premises.

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

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

15. The staff item for Mason Beghtel (DV-0559-2017) was previously heard as item #7 on page 4.

16. The staff item for L.C. Fewell Corp. DBA Mike's Fencing (20052940) was previously heard as item #8 on page 5.

16. The meeting was adjourned at 11:07 A.M.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary