

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19TH DAY OF APRIL 2018 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; Matt Shively, Planner; Mae Kratzer, Planner; Duane Burrow; Planner, Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: 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 15th day of March 2018 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Atha/Lyon*) 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.

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

4. The application of **Mario Saldivar** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres located on the Southwest corner of CR 22 & Fairwind Dr., 1,600 ft. East of CR 9, common address of 25700 CR 22 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-0111-2018*.

There were 13 neighboring property owners notified of this request.

Mario Saldivar and Maria Saldivar, 25700 CR 22, Elkhart, were present for this request. Mr. Miller asked if they agree with the proposed condition and commitments, and she responded yes. She clarified twelve chickens and two adult horses are allowed. Mr. Hesser mentioned he does not see any fencing on the site plan. Miss Saldivar explained they have a barn and a fenced pasture for the horses. Mr. Lyon asked if they keep the chickens in the same barn, and she responded no. Mr. Hesser asked where the chickens roost, and she pointed out the location of a fenced in coop on the aerial. Mr. Atha questioned the size of the pasture, and Mr. Saldivar responded 2.25 acres. It was found 2.25 acres is the size of the entire property, and Mr. Campanello suggested the pasture may be .75 acre. Mr. Atha then asked how the manure is disposed, and Miss Saldivar responded it is spread over their plants.

Henry Harris, 25668 Applewood Ct., came on in favor of this request and pointed out his residence on the aerial. Mr. Harris explained they have lived on that property since 2009, and it is about 266 ft. from the horses' pasture. He continued saying Mr. Saldivar has owned at least one horse the entire time he has lived there. He pointed out where they were previously kept in a small shed, but clarified they have since been moved to a new barn. He stressed they have no

problems with Mr. Saldivar, and enjoy watching the foal grow. He then pointed out the residence closest to the subject property, and the agricultural area surrounding most of the property. He explained the neighboring property is a cow pasture, and the neighbors next to them keep horses on four acres. He continued saying their horse feeding station is 127 feet from the nearest residence. Mr. Harris stressed they do not smell the horses, and they are not a bother. He added a rooster occasionally crows, but it is less annoying than noise from the US 20 bypass and nearby police firing range. He then pointed out a lot in the subdivision next to Mr. Saldivar that is used for drainage. He mentioned when looking through the Ordinance he saw a section about the requirements for a feeding station. He brought up an example where a property did not meet the size requirements, but it was approved since the neighboring property had the same use. He stressed he believes this request should be approved since it is surrounded by agricultural and vacant property. He added the Saldivars' chickens sometimes run loose and should be contained, but Mr. Harris stressed he is in favor of this request.

Richard Dirmyer, 25647 Applewood Ct., came on in remonstrance. Mr. Dirmyer stressed he does not have a problem with the horses or chickens, but he is tired of Mr. Saldivar always pushing the envelope. He explained he came home from work last night to find three adult horses on the property. He asked who will police the number of horses kept on the property, and if visiting horses are allowed. He added they do not use a trash service, but they instead burn their trash outside. He stressed they currently have a 10x10 trash pile and a wrecked car in the driveway. He mentioned maintenance of the property is minimal, and he asked if he needs to call in every time the rules are not followed. He stated last night three full grown horses were on the property not including the foal. He stressed he is concerned with the property's upkeep, because he owns three lots closer to the subject property than Mr. Harris's house. Mr. Miller clarified enforcement of the conditions and commitments imposed rely on the neighbors calling in. Mr. Dirmyer asked if visiting horses are allowed. Mr. Campanello suggested he talk to Mr. Saldivar, and he responded he cannot speak Spanish. He continued saying he has a large and small dog that run free, and he will not go onto his property. Mr. Miller stated he understands his concerns, but he believes the neighbors need to work out some of the problems themselves.

Mr. Saldivar and Miss Saldivar came back on and stated they agree with the two horse limit. She explained their friends have horses they bring to visit, and she asked if that is allowed. Mr. Miller stressed the suggested limit is two horses, and Miss Saldivar asked if that only applies to the horses permanently living there. Mrs. Kratzer stated the Ordinance has no provisions to allow visiting horses. Mr. Hesser mentioned one of the recommended Commitments prohibits roosters.

The public hearing was closed at this time.

Mr. Atha stressed he is concerned about the pasture size. Mr. Hesser mentioned the site plan does not show fencing. He request a revised site plan be submitted showing the fence and the area where the chickens are kept. He continued saying the site plan can be approved by Staff. He stressed it needs to show the fence, pasture, and chicken coop location. He then stated he understands the remonstrator's concern about enforcement, but he believes this is the only way to regulate the situation without denying the request. He added a time limit could be imposed on this request in case problems or concerns arise. Mr. Campanello stated he does not believe a time limit is needed, because similar requests are frequently approved without one. He went on to say he believes this is between the neighbors, and a complaint can be filed, if

problems arise. Mr. Hesser stressed Special Uses for animals have been approved with or without time limits, and he suggested imposing one due to past problems with compliance and the small property size. Mr. Miller added he agrees with Mr. Campanello, because similar requests have been approved in the past without a time limit. He continued saying he believes the petitioners will adhere to the two horse limit. He stressed some of the problems are between the neighbors and need to be worked out amongst themselves. He mentioned a revised site plan should be submitted.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The petitioner must provide a revised site plan showing the location of the horse fence and chicken coop.

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 to a maximum of twelve (12) chickens, no roosters, and a maximum of two (2) adult horses at any one time.

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 **James R. & Christina A. Pearson** for a Special Use for warehousing and storing RVs on property located on the West side of CR 31, 1,400 ft. South of CR 40, common address of 66287 CR 31 in Elkhart 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-0137-2018*.

There were six neighboring property owners notified of this request.

James Pearson, 66287 CR 31, Goshen, was present for this request and pointed out his property on the aerial. Mr. Lyon asked if the entire property is fenced in, and Mr. Pearson responded yes. He explained a fence runs north and south along CR 31 and around the entire field. Mr. Lyon clarified access for the lot will be off of the existing driveway. Mr. Pearson then pointed out and explained his plans for an area off of the drive to serve as entrance for the storage yard. Mr. Miller asked if any RVs are currently on the property, and he responded no. Mr. Hesser questioned surface for parking. Mr. Pearson explained the area is very flat, and he already received estimates from businesses to excavate, remove top soil, and add gravel for roads. Mr. Miller asked if the trees on the site plan are proposed or existing, and Mr. Pearson responded pine/evergreen trees and woods already surround the majority of his property. Mr. Hesser noted the site plan does not resemble the property. Mr. Lyon mentioned staff

recommended twenty-five units per acre, and he asked if Mr. Pearson is okay with that. He added the site plan shows additional units. Mr. Pearson stated an architect drew up his site plan, but he believes twenty-five per acre is sufficient. Mr. Atha questioned lighting on the property. Mr. Pearson responded he does not plan on installing any, but he can if it is required. He explained the storage lot will be very open with a drive around the property for easy entrance and exit. Mr. Campanello asked if he owns the transport company, and he responded no. He continued saying he would like to start a storage lot, because he works in the RV business and sees the need for more storage. Mr. Campanello noted the Staff recommendation is for twenty-five RVs per acre, and Mr. Hesser clarified that is a total of one hundred. Mr. Miller questioned the acreage, and it was found to be 4.10 acres. Mr. Pearson explained his entire property is over seven acres, but the proposed storage lot is a little over four acres. Mr. Lyon stated he believes this is a secluded area. Mr. Atha questioned traffic on CR 31, and he responded RVs constantly drive up and down the road. He then pointed out his residence and the location of a large RV storage lot about a mile from his property. He also pointed out the direction of several RV factories, and he stressed Elkhart County is the RV capitol of the world. He added his operation will not increase traffic on this road. Mr. Campanello asked if he has spoken with Highway about widening his drive, and Mr. Pearson explained the drive is not widening where it meets the road. He then pointed out the proposed gate location, and he stressed the RVs will have plenty of room. He added he sometimes has to take RVs home for work, and a 40 ft. one can easily turn in and out of his drive. Mr. Hesser asked if Highway approval is needed, and Mr. Campanello responded he wants to ensure RVs can drive on and off of the property without blocking traffic. Mr. Hesser stated he did not see a sign or any security lights mentioned in the questionnaire, and Mr. Pearson responded he can install lighting if needed. He also asked if the operation will be limited to daylight hours, and he responded they plan to impose hours of operation. Mr. Miller mentioned the site plans for RV storage lots typically show drainage, but he is not sure that is needed due to the land makeup and soils. Mr. Atha asked if he has any problems with ponding, and he responded only the back corner by the ditch became soft during all of the rain in February. He stressed he will take measures to prevent flooding, and they have never had water site the ten years they have lived there. He continued saying he believes this is the perfect location to run this operation without being obtrusive to the neighbors. He added he spoke to a few of his neighbors who had no problems with his request, and he pointed them out on the aerial.

Max Mault, 66147 CR 31, the neighbor directly north of Mr. Pearson came on in remonstrance. Mr. Mault explained he owns 6.5 acres. Mr. Miller pointed out the lot directly north of the subject property is wooded, and it was found he actually lives two lots to the north. He stated he spoke to all of the neighbors, and not everyone is in favor of this request. He explained a petition was signed by several neighbors living from CR 40 to CR 42 who are against the storage lot. Mr. Miller questioned their reasons for being opposed to the request. Mr. Mault responded this is an agricultural and residential area, which they do not want turned commercial. He added they moved to this area because of the serenity, and they do not wish to see that compromised. He stressed this road already has a large amount of traffic, because it is a main route to Fairfield High School. He went on to say he realizes he cannot prevent people from using the road, but he believes the neighbors have a right to be against what is being proposed. He explained when he received notice of the request he talked to all of his neighbors,

and most are opposed to having this operation here. Mr. Mault stated he understands the Board can vote in favor of this request, but he would like them to understand the neighbors see this as a negative proposition. He then submitted the signed petition in remonstrance [Attached to file as Remonstrator Exhibit #1]. He mentioned the five lots north of the subject property are under very restrictive covenants, which he did not bring because they do not apply to Mr. Pearson's property. However, he believes he should be required to adhere to residential code. Mr. Miller explained Mr. Pearson is requesting a Special Use for warehouse and storing RVs on an A-1 property, which the Board has granted in the past. Mr. Campanello asked about RV traffic, and Mr. Mault explained they take CR 31 south to US 33. He also stated the property north of the proposed lot is three acres of water, and he believes this operation will only worsen the situation. He pointed out the Horne Ditch and stressed it has only been dredged once. He also pointed out the area with high voltage lines and a power station. He explained Mr. Pearson was concerned about the power station location, because he believed it would devalue his property. He went on to say the power company agreed to leave the station in its existing location, and he believes it is less invasive than trailers. He stressed this storage lot will devalue his property.

Nathan Kauffman, 16206 CR 40, came on against this petition and pointed out his property on the aerial. Mr. Kauffman stated Mr. Pearson said a few of the neighbors were in favor of his request, but those neighbors signed the petition against this. He stressed they would like to keep the property values up, because this is currently a nice residential area. He also pointed out the RV lot mentioned by the petitioner is actually another mile north, and the property he showed is actually a field. Mr. Kauffman mentioned a large number of RVs drive up and down the road, but they do not stop to pull into a drive off of that road. He stated a few months ago Mr. Pearson kept a few RVs on his property to help out a friend, and that gave them a chance to see how this operation would look. He stressed he is not opposed to Mr. Pearson helping out a friend, but he does not want RVs stored on the property all of the time. He explained due to the power lines, he has an open line of site to the subject property. He added he shares the same concerns as Mr. Mault and the other neighbors. Mr. Kauffman stated he understands the county grants Special Use requests, but he wanted to ensure their concerns were heard. Mr. Miller asked how far the subject property is from Fairfield High School, and he responded about a mile. He summarized their concerns as increased traffic, noise, and light from headlights.

Mr. Pearson came back on and stated he appreciates the neighbors concerns. He apologized for pointing out the wrong property, and he explained the existing lot is after the subdivision. He stressed his property is buffered with trees, and he does not think this operation will devalue the neighbors' property. He explained he can see Mr. Kauffman's barn from his property, but he cannot see his residence. He again stressed he spoke to the neighbors south of his property a few days ago, and they had no problems with his request. He added a row of trees and his residence stand between the proposed lot and those neighbors, and across the road is an empty corn field.

The public hearing was closed at this time.

Mr. Hesser stressed RV storage lot requests are tough calls, and he does not believe Mr. Pearson purposefully made any misrepresentations. He continued saying he can see the neighbors being in favor of his request, but then also signing a petition against it to avoid conflict. He explained this is an unusual area with mixed agricultural and residential uses. He

stated RV lots are typically more secluded, and he mentioned every neighbor signed the petition against this request. He went on to say he does not believe it is an obtrusive use, but he understands the remonstrance by the neighbors. He added he understands the importance of RV storage lots, but he is leaning towards denial of this request. Mr. Campanello agreed he is also against this request, because he believes it will bring too much RV traffic to CR 31. He continued saying a large number of neighbors are against this request, and he is not sure this is the best location for an RV storage lot. Mr. Lyon brought up his concern about the county regulated drain behind the property and what may drain into it. Mr. Campanello stated he believes everything will leach into this property, and Mr. Hesser stressed he will not work on RVs. Mr. Campanello mentioned his biggest concern is not the property, but the RV traffic on CR 31. Mr. Miller stated he drove past this property after school let out, and there was a lot of traffic. Mr. Campanello responded he understands it is already a heavily traveled road, but he believes this request will impact the traffic patterns. Mr. Miller voiced his concern due to the proximity to the school.

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

Motion: Action: Deny, Moved by Roger Miller, Seconded by Tony Campanello that this request for a Special Use for warehousing and storing RVs 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. This property is in close proximity to Fairfield Schools, and a large number of neighbors are opposed to this request.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a 4.10 acre parcel in a low-density residential and agricultural area.
3. The Special Use will substantially serve the public convenience and welfare by providing additional RV storage.

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 *L.S.E. Investments Inc.* for a Special Use for a daycare on property located on the North side of Old US 20, 1,582 ft. East of Ash Rd., common address of 30677 Old US 20 in Cleveland Township, zoned M-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0138-2018*.

There were 12 neighboring property owners notified of this request.

Katherine Baker, 51315 Stony Brooke Dr., Granger, was present for this request. Mr. Miller asked if the daycare is currently operating. Mrs. Baker responded they currently run their day care in St. Joe County, but they would like to move to Elkhart County. Mr. Campanello asked if she purchased the building, and she responded they will pending approval of the request. Mr. Hesser mentioned the site plan does not show any fencing around the playground. Mrs. Baker responded it is fenced, but since it is a ministry day care a fence is not required. Mr. Hesser clarified the entire parcel is fenced in, including the back. He then voiced his concern about traffic on Lexington Ave. Mr. Lyon asked if everything will take place inside, and she

responded everything except for playtime, which is in the back. Mr. Campanello asked who governs daycares, and she responded the state. He clarified they mandate when a fence is needed, and she responded yes. Attorney Kolbus mentioned he believes the state requires fenced in play grounds. Mr. Campanello stressed this is the perfect location for a daycare.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he believes this is a great location for a daycare. Mr. Campanello mentioned the size of the parking lot and commercial entrance are sufficient for this request. Mr. Hesser stressed a revised site plan should be submitted showing the fenced in play area for approval by staff. Attorney Kolbus pointed out the site plan only shows the building.

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 daycare 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 revised site plan submitted (dated 4/19/18) 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 that Mr. Hesser recused himself and stepped down*****

7. The application of ***Concord Community Schools*** for an amendment to an existing Special Use for a school on property located on the Northwest corner of CR 11 & CR 24, common address of 59397 CR 11 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-0143-2018*.

There were 38 neighboring property owners notified of this request.

Nate Koontz, Director of Facilities for Concord Schools, 59040 Minute Man Way, was present for this request. Mr. Koontz explained their intention is to construct a new maintenance building on the southwest corner of the Jr. High property. He continued saying the building will be approximately 8,000 to 8,500 sq. ft. and will house the schools maintenance and grounds department. Mr. Miller asked if it will house the department for the entire district or only this school, and he responded it will house maintenance and grounds for the district. He explained that department is currently housed in a building on the back side of the high school, but they have other plans for that space. Mr. Campanello questioned the existing drive and parking off of CR 24, and Mr. Koontz responded when that was put in they did not have plans for the high school. He continued saying the district intended to look at the high school for improvements at that time, but that was delayed due to the economy. Mr. Campanello asked if the high school

plans were ever mentioned in previous meetings, and Mr. Koontz responded he did not work for the school at that time. He explained the drive and parking lot currently serve the practice fields to the north. He continued saying it can continue to be used that way since the practice fields are utilized during the evening, and the proposed building will only be open during the day. Mr. Campanello questioned outside storage, and Mr. Koontz responded an area west of the building is set aside for storage. He explained it will be approximately 7,000 sq. ft. of asphalt, which they plan to fence in with privacy slats with additional natural screening to protect the neighbors. He added there is existing screening, and they plan to add onto that. He explained they currently employ four maintenance, three grounds, and two office staff that will be housed in this building. Mr. Lyon asked if the building is large enough for the staff, and Mr. Koontz responded he would love to have more room. However, they currently occupy a building that is the same size, and that is all they can afford. Mr. Lyon asked if they will add onto it at a later time. He responded he does not see them expanding, because they plan to have additional storage at other facilities.

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 an amendment to an existing Special Use for a school 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 3/14/18) and as represented in the Special Use amendment application.

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

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

Abstain: Randy Hesser.

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

8. The application of ***Daryl K. & Vonda Kay Bontrager*** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres, for a 45 ft. Developmental Variance to allow for the construction of an addition to the residence 32 ft. from the centerline of the right-of-way of CR 33 (Ordinance requires 75 ft.), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure located on the West side of CR 33, 1,800 ft. South of CR 28, common address of 61121 CR 33 in Clinton 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-0127-2018*.

There were four neighboring property owners notified of this request.

Paul Hochstetler, 54824 CR 33, Middlebury, was present representing the petitioners. Mr. Hochstetler pointed out he did not request a square footage variance, and he stressed only half of the building will be personal storage with the other half agricultural. He explained the entire square footage of the building was counted towards the personal storage total, when half is agricultural. He then stated they plan to replace an existing building with the new agricultural/personal storage building and also construct an addition to the north end of the residence. He clarified a setback variance is needed for the 14~~0~~34~~0~~ addition in order to be in line with the existing residence. He added the addition will not interfere with the existing well and septic. He explained if the addition is moved to meet the required setback, the new family room would be constructed off of the back corner of a bedroom. Mr. Hesser clarified the covered porch on the site plan is 32 ft. from the center line of CR 33, and the rest of the house is setback about 40 ft. He clarified the new addition will be in line with the bulk of the residence. Mr. Hochstetler stated he believes the request is to be 32 ft. from the center line, because the porch is that close. Mr. Hesser pointed out once the addition is added to the residence a square footage variance is not necessary for the accessory structure. Mr. Hochstetler mentioned the building is within the square footage allowed even without the new addition. However, he believes the square footage variance was probably included in case the horse request was denied. Mr. Hesser stressed if that request is not needed the Board will dismiss it. Mr. Miller questioned a pasture area for the horses, and Mr. Hochstetler pointed out the pasture on the aerial. Mr. Hesser requested a revised site plan be submitted showing the pasture. Mr. Hochstetler explained the petitioners plan to keep two horses at the agricultural end of the building, but he is unsure of the size of the pasture. Mr. Atha requests the pasture size be put on the revised site plan. Mr. Hesser mentioned the entire property is about an acre and he suggested half of it may be pasture. He then asked how they plan to dispose of waste, and Mr. Hochstetler responded they spread it over the pasture. Mr. Atha mentioned that is common practice. Mr. Hochstetler explained if the horses are denied the proposed building size will change to remove the agricultural use. Mr. Campanello questioned a spot on the aerial, and it was found to be a garden.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lyon mentioned the request appears to be well thought out, and he believes a revised site plan should be submitted showing the fence. Mr. Atha mentioned the horses have plenty of room.

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 an agricultural use for the keeping of animals on a tract of land containing less than three acres 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 revised site plan submitted (dated 4/19/18) and as represented in the Special Use application.
2. Limited to a maximum of two (2) adult horses at any one time.

Further the motion included that a 45 ft. Developmental Variance to allow for the construction of an addition to the residence 32 ft. from the centerline of the right-of-way of CR 33 (Ordinance requires 75 ft.) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 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 revised site plan submitted (dated 4/19/18) 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.

Motion: Action: Dismiss, **Moved by** Joe Atha, **Seconded by** Randy Hesser that this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the primary structure be dismissed at the request of the Planning Staff.

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 *Samuel M. & Lydia Ann Kauffman Trustees of the Kauffman Family Revocable Trust (Land Contract Holders) & David Raber (Land Contract Purchaser)* for a Use Variance to allow for the construction of an accessory structure on property without a residence, for a Special Use for an agri-business for a deer farm, and for a Developmental Variance to allow for the construction of an accessory structure on property with no road frontage served by an access easement located 258 ft. South off of CR 24, 1,340 ft. West of CR 41, 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-0140-2018*.

There were four neighboring property owners notified of this request.

Mr. Godlewski stated the Use Variance was deemed unnecessary by Staff since the request is for an agribusiness. Mr. Miller asked if deer farms have any special regulations for fencing or disease control.

David Raber, 11630 CR 24, came on for this request and stated he would like permission to operate a deer farm. Mr. Miller questioned government regulations for deer farms, and Mr. Raber responded they require an 8 ft. tall fence. Mr. Hesser asked if he is related to the neighbors, and he responded they are his parents. Mr. Hesser then stated that staff recommended a commitment requiring an easement be added to approval. Mr. Raber explained he is in the process of purchasing a 100 ft. of road frontage back to his property from his parents. Mr. Campanello asked if he sells the deer to butchers, and Mr. Raber responded people purchase them for hunting. Mr. Atha then asked how many deer he currently owns. Mr. Raber stated he has fourteen, but he is not sure how many he will have in the future. Mr. Hesser asked if the

entire parcel is fenced in, and Mr. Raber responded no. Mr. Hesser questioned the fenced in area, and Mr. Raber pointed it out on the aerial. Mr. Atha asked if the petitioner plans to fence in the entire property, and Mr. Hesser request the petitioner highlight the fenced in area on the site plan. The highlighted copy was then submitted to the record as a revised site plan *[Attached to file as Petitioner Exhibit #1]*. Mr. Campanello asked the number of deer he plans to keep inside the tall fence, and he responded he currently has fourteen. Mr. Hesser clarified his deer are kept in the small area and do not roam the entire property. Mr. Lyon asked if he will expand the fenced area, and he responded probably. Mr. Atha questioned the fenced in area's size, and he responded around an acre and a half. Mr. Atha clarified fourteen deer are kept on 1.5 acres, and he asked if any grass is left. Mr. Raber stated some is left, but he needs to change their pasture for access to fresh grass. Mr. Hesser asked if he breeds the deer, and Mr. Raber explained he currently has two bucks for breeding.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stressed under the Board of Zoning Appeals Rules of Procedure representations made during the hearing are part of approval.

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 an agri-business for a deer farm 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 commitment was imposed:

1. Approved in accordance with the revised site plan submitted (dated 4/19/18) and as represented in the Special Use application.

Further the motion included that a Developmental Variance to allow for the construction of an accessory structure on property with no road frontage served by an access easement 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 revised site plan submitted (dated 4/19/18) and as represented in the Developmental Variance application.
3. Must apply for a driveway permit.
4. There must be an access and maintenance agreement for the easement or ownership of property with road access.

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

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

No: Joe Atha.

Attorney Kolbus mentioned the original application included a Use Variance for an accessory structure, which Staff determined to be unnecessary with approval of the agribusiness. He continued saying the Use Variance should be dismissed.

Motion: Action: Dismiss **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Use Variance to allow for the construction of an accessory structure on property without a residence be dismissed.

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 *Paul W. & Colleen R. Schlabach* for a Use Variance to allow for the construction of a second residence on a parcel located on the West side of SR 13, 1,500 ft. North of SR 120, common address of 52649 SR 13 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 #UV-0129-2018*.

There were eight neighboring property owners notified of this request.

Mr. Godlewski mentioned when the Zoning Ordinance is amended these requests will be permitted uses.

Paul Hochstetler, 54824 CR 33, Middlebury, came on representing the petitioners. Mr. Hochstetler stated he is building a new residence, and the old one will be demolished once construction is completed. Mr. Hesser mentioned the Staff Report does not have a deadline for the existing residence to be removed, and he asked how long he needs to remove it. Mr. Hochstetler responded they typically give themselves 90 days after the certificate of occupancy is issued, and Mr. Campanello offered him more time. Mr. Hochstetler stated it will take him 120 days max, but he does not believe it will take him that long. Mr. Hesser asked if the current residence will be demolished or moved. Mr. Hochstetler stated it will be moved if someone purchases it, but it may have to be demolished.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second residence on a parcel 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 3/9/2018), the petitioner's testimony, and as represented in the Use Variance 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 *TA Investment Group, LLC* for a Special Use for warehousing and storing RVs on property located on the East side of CR 43, 1,860 ft. North of CR 40, in Clinton 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-0069-2018*.

There were 10 neighboring property owners notified of this request.

Mr. Miller stated the application mentions proposed chicken barns. Mr. Godlewski explained chicken barns are allowed by right in A-1 zones, unless they reach the threshold that requires a rezoning.

Tim Helmuth, 7060 W 665 S, Topeka, was present for this request. Mr. Helmuth explained he purchased this property a few years ago for investment options. He continued saying he is currently looking into an RV storage lot and chicken barns. Mr. Hesser asked how many chickens he plans to keep on the property, and he responded 49,000 layers. Mr. Godlewski stressed that use is permitted in an A-1 zoning district. Mr. Helmuth stated chicken barns are not currently an option. Mr. Campanello asked if this is a predominately Amish community with a large number of horse and buggies on the road, and he responded yes. Mr. Campanello also mentioned this road is narrow, and he asked how often RVs travel it. Mr. Helmuth explained CR 40 has a lot of RV and travel trailer traffic, and he does not expect this operation to increase traffic very much. Mr. Campanello asked what direction the RVs travel from on CR 40, and he explained it is a main route from Topeka to Millersburg and Goshen.

Marlin Hochstetler, 65436 CR 43, was present against this request and pointed out his property about 400 ft. north of the subject property. Mr. Hochstetler voiced his main concern is traffic, and he stressed this is in the heart of Amish Country. He explained 42 children under the age of 18 who frequently ride their bikes live on that mile long stretch of CR 43. He stressed it is currently a quiet and narrow country road. He added he believes at least 1,000 RVs can be stored on the 30 acres, and he stressed this operation will substantially increase traffic. Mr. Hochstetler stated this request is not consistent with the surrounding zoning. He again mentioned CR 43 is in very bad shape after this winter. He then explained to the Board that he moved to CR 43 from CR 38, because of the amount of RV and truck traffic on that road. He mentioned a time when his children tried to turn into their driveway and were yelled/cussed at by an RV driver. He stated he understands not all RV drivers are the same, but they all seem to be in a hurry. He request RV storage lots be kept in industrial areas, rather than the country on roads that are not made to withstand the heavy traffic. He added he believes a lot of land is available off of roads that were built for heavy traffic. He went on to say he understands the RV industry creates a lot of jobs, and they need lots for parking. However, he mentioned he went around to the neighbors and collected signatures from those against this request. He then submitted an additional letter from one of the neighboring property owners opposed to this request *[Attached to file as Remonstrator Exhibit #1]*. Mr. Godlewski then submitted a revised site plan submitted by the petitioner prior to the hearing *[Attached to file as Staff Exhibit #1]*, and the petition mentioned by Mr. Hochstetler with remonstrance letters attached to the back *[Attached to file as Staff Exhibit #2]*. Mr. Miller pointed out the proposed lot is 30 acres. Mr. Hochstetler mentioned it is around the half mile mark between CR 38 & CR 40. He stressed he is also concerned property value will decrease due to the eyesore an RV lot will likely create.

David Hochstetler, 65613 CR 43, the neighbor directly across from the subject property came on in remonstrance. Mr. Hochstetler explained his children attend a private school, and they refuse to ride their bikes because of the RVs and their drivers. He stressed he would hate to see them deterred from riding their bikes on their road due to the traffic this operation will cause. He added the factories build nice RVs, but he does not want to see hundreds of them at a time. He stressed CR 43 is in bad condition, and this parking lot will only increase the existing problems with drainage in this area.

Merlin Miller, 65711 CR 43, another neighbor across the road from the petitioner, came on opposed to this request. Mr. Miller stated he shares his neighbors concerns. He mentioned he spoke to a few people on CR 40, and they are concerned about how fast RVs travel down that road. He is concerned an RV could someday flip over into their yard, and a child could be in the way. He stressed sixteen residences and several children live along their mile long stretch. Attorney Kolbus asked if CR 43 is chip and seal in that area, and he responded yes. He added half of the road has washed out on one corner.

Mr. Helmuth came back on for this request and explained he is simply seeking investment options to generate more income. However, he stressed he does not want to create a hardship for the neighbors. Mr. Campanello pointed out the petitioner lives in a different county, and he asked why he did not inspect the road before purchasing the property. Mr. Helmuth responded his first intention was to build chicken barns, but timing has not worked out. He explained in the mean time he had someone interested storing RVs on the property. He continued saying his thought was to have a Special Use now for a storage lot, and then build the chicken barns in the future. However, he stressed he does not want to cause any problems with the neighbors, and he would vote against this petition himself. Mr. Hesser mentioned he can withdraw the request, because chicken barns are allowed by right. Mr. Helmuth asked if withdrawing the request would be better than denial, and Mr. Godlewski mentioned a one year waiting period for reapplying for this request is imposed with a withdrawal. He added he believes the same time frame is imposed for denial. Mr. Helmuth stated even if the Board approves this request, he would still be skeptical starting the operation. Mr. Hesser stated he appreciates Mr. Helmuth's candor.

The public hearing was closed at this time.

Mr. Hesser stated he has several concerns. He brought up the Staff Report and several Board members requested a revised site plan. He continued saying the site plan submitted is better, but it still does not show everything he needs to see. He added he does not want the revised site plan approved by Staff, because he would need see the additional details before considering approval of this request. He stressed his inclination is to deny this request or table it for a more detailed site plan. He mentioned he is very concerned about this operation due to the condition of CR 43. He stated the Board understands RV storage lots are needed, but he believes they have to decide which places are appropriate and which are not. He added the petitioner has other plans for the property that will not be affected by denial of this request so he is leaning towards denial. Mr. Campanello agreed he is also leaning towards denial. He continued saying RV companies make it appealing for people to rent out their property for RV storage, but he believes they need to be DPUDs instead of Special Uses. He stressed the Board needs more details on the site plans, and he does not believe this is a good location for a storage lot. Mr. Miller added CR 43 is a very narrow, chip and seal road, but he treats it like a gravel road on

bike rides. He stressed this is not the right area to park 750 RVs, and several children live along that road.

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

Motion: Action: Denied, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Special Use for warehousing and storing RVs 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 cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will not substantially serve the public convenience and welfare.

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

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

12. As a staff item, Mr. Godlewski presented the request for a minor change to the site plan for a Use Variance for *Jeffery S. Sweazy* (UV-0023-2018). He explained the request is to add a 320 sq. ft. screened porch which is 20% of the previously approved 1,600 sq. ft. structure. He added the request is attached to the Board's packets, and Staff recommends approval as a minor change. Mr. Hesser asked if Mr. Sweazy is the gentleman who recently received approval for a smoker. Mr. Godlewski pointed out Mike Hoover from the Environmental Health Department spoke at the originally hearing about food licensing. Mr. Hesser clarified he is adding a porch, and Mr. Godlewski suggested it is more like a lean-to. Mr. Campanello mentioned he believes Mr. Sweazy is working on this systematically. Mr. Godlewski stated he seems a little unsure and maybe uncommitted. He suggested possibly making this a full blown amendment, if he comes back with another request. Mr. Hesser asked if the procedural history will show approval of this minor change the next time he comes before the Board, and Mr. Godlewski responded yes. Mr. Miller mentioned he is against approval as a minor change. Mr. Hesser asked if the vote has to be unanimous, or if a majority will pass. Attorney Kolbus explained since the Board was given the ability to approve up to 20% as a Staff Item a majority vote will work. Mr. Campanello stressed denial of this request would cause the petitioner to pay for a full amendment for a small addition.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board approve the request as a minor change.

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

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

No: Roger Miller.

13. The meeting was adjourned at 10:34 A.M.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary