

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF DECMEBER 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; Jason Auvil; Zoning Administrator; 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, Denny Lyon.

Absent: Roger Miller, 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 November 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 *Austin Heflin & Daina Heflin, Husband & Wife* for renewal of an existing Special Use for a wedding venue on property located on the North side of CR 36, 290 ft. East of CR 15, common address of 22889 CR 36 in Harrison Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0701-2018*.

There were 15 neighboring property owners notified of this request.

Austin & Daina Heflin, 22889 CR 36, were present for this request. Mr. Lyon asked about any changes since the last time they came before the Board. Mrs. Heflin stated the facilities have been updated to meet all state and county requirements. She explained an exit signs, a fire detection system, and handicap ramps/parking have all been added. She continued saying they also needed a hand washing station, and hand sanitizing stations were installed rather than water. Mr. Hesser pointed out the request appears to be a straight renewal, but question fifteen in the application mentioned additional buildings. Mr. Heflin responded they originally planned to construct new buildings, but they amended the request to allow them to use the existing structures. Mr. Hesser clarified the two 40x60 buildings were part of the original application. Mrs. Heflin stated events have been held at their location, and their neighbors have voiced a few complaints. She continued saying since receiving the complaints, they made it clear in their contract that all music must be turned off by 9 p.m. on Sundays, and 11 p.m. on Fridays and Saturdays. She explained their clients have permission to clean up until midnight, but the music must be turned off by the designated time. Mr. Lyon asked if the neighbors are

aware of the addition to the contract, and she responded they wanted to make the Board and neighbors aware of it at this time. She added the neighbor directly across from them stated he noticed a difference in the noise level when the barn doors are closed. She went on to say as long as temperatures allow they can close the doors to lessen the noise. She stressed they take their neighbors' complaints seriously and try to address their concerns. She added they also extended the fence line to the end of their driveway to deafen the noise. She stressed they have taken actions to protect the neighbors and address their complaints.

Jim Flora, 63945 CR 15, the property directly west of the petitioners, was present in remonstrance. Mr. Flora submitted a letter in remonstrance from Robert & Rena Leinbach, 64013 CR 16, and he proceeded to read the letter *[Attached to file as Remonstrator Exhibit #1]*. Mr. Flora stated he has not noticed any efforts to keep the noise down, and he does not recall ever seeing the barn doors shut. He explained the doors face the west, and all of the noise is directed towards his property. He stated the music is normally very loud, but one recently was not too bad. He continued saying the bass from the barn vibrates the windows in his living room. Mr. Lyon asked for his suggestions to lessen the noise. Mr. Flora suggested the interior of the building be sound deadened, and the doors shut. However, he has never seen them shut, and he is not sure the building is climate controlled. He stressed sound deadening the building would be a solution to the noise issue.

Barbara Martinez, 63834 CR 15, came on opposed to this request. She stressed she is unable to enjoy her free time outside due to the noise. She continued saying the weddings begin in the spring and take place through October. She stated it feels like a party is taking place in her yard, and she can still hear the bass with her windows shut and TV on. She added they live in the country where it should be quiet, and she can no longer stand the noise.

Jackie Hackney, 63954 CR 15, the property northwest of the petitioners, was present against this request. He stated the noise is terrible, and his china cabinet vibrates when the music is playing. He continued saying he spent around \$1,500 to plant trees along his back property line to deaden the noise, but it takes years for them to grow. Mr. Lyon asked the size of his trees, and he responded about six feet tall. He then stated the barn doors are never shut, and he hears all of the guests yelling and hollering. He stressed it was a nice country neighborhood, but it is now a nightmare.

Anna & Dan Umbower, 63792 CR 15, were both present in remonstrance, and pointed out their residence on the aerial. She stated events take place all summer long, and the guests are often rowdy. She continued saying she has recordings of the noise on her iPhone. Mr. Hesser stated if she wishes to submit them as evidence, the Board would need to keep the phone for thirty days. She then decided against submitting it for the record. Mrs. Umbower stated the bedroom windows at the back of their house, and they hear a constant thump. She explained she has not spoken to the petitioners, because no one answers the number listed on their website. She went on to say she has called the police, and she could probably call them every weekend. She stressed events take place on Sundays. She added the music is typically heard until about 10:30 p.m., and then they still hear the crowd noise. Mr. Umbower stated the tension in the neighborhood resulting from this operation is unfortunate.

James White, 63652 CR 15, a distance north of the wedding venue, came on opposed to this request. He stated the noise is loud enough to be annoying at his property, and it can last all

weekend long. He stressed he feels for the people that live closer, because it is so loud. He continued saying it was a nice quiet neighborhood but not anymore.

Renda Bidding, 63891 CR 15, a ways from the subject property, was present against this request. She stated her bedroom faces the South, and she is unable to keep her windows open due to the noise. She stressed she works on the weekends and wakes up at 4:30 a.m. She continued saying she cannot sleep due to the constant noise until 11 p.m., and she then wakes up five and a half hours later for work. She added she does not understand why the building cannot be sound proofed. She mentioned she has attended weddings in similar venues, and the neighbors were not being bothered. She stressed she needs to keep working, and she would like to be able to sleep.

Mr. & Mrs. Heflin came back on and stated this is a learning process for them. Mr. Heflin explained he ordered material to cover the existing holes since the barn was constructed in the 1850s. He added the venue is not temperature controlled, but they did purchase fans to assist with air-flow. He continued saying their hope is to keep the doors closed after the sun goes down. He stressed he spoke to several people regarding air-flow, noise, and sound, and he hopes covering the cracks and crevices will help. He stated they are open to suggestions. Mrs. Heflin apologized for the effect this operation has had on the neighbors. She stressed it was not their intention to harm anyone, they only wanted to help people have their dream wedding. She pointed out they addressed complaints by speaking to the person, driving to their homes during events, and trying to have the music turned down. She stressed their children live on the property and also need to sleep. She continued saying they make their clients turn the noise down, when they feel it is excessive. Mr. Lyon asked if the music is typically a live band. They responded it is usually a DJ, but they allow either. Mr. Heflin added an off-duty Goshen police officer is on staff to ensure everything runs smoothly and keep the noise down. Mrs. Heflin pointed out the facility is not temperature controlled, and the doors cannot be closed when it is ninety degrees outside. Mr. Heflin added they added fans to work towards being able to close the doors. Mr. Lyon asked what the Board is acting on, and Attorney Kolbus clarified the request is for a renewal.

The public hearing was closed at this time.

Mr. Lyon stated the petitioners appear to be working to keep the sound down, but he also understands bands and DJs get carried away with the sound. He continued saying he is unsure what the Board can do to control it. Mr. Campanello clarified original approval from 2014 included a two year renewal commitment. Mr. Hesser stated he understands the neighbors' concerns, but this operation has been in place for four years. He continued saying he understands some bands and DJs feel the need to be extremely loud, but the petitioners have spoken about addressing the sound problem. He suggested approving this request for a shorter period of time to give the petitioners a chance to correct the problem. Mr. Lyon clarified Mr. Hesser's suggestion is to approve it for one year rather than two. Mr. Atha pointed out wedding season begins in April or May, and he suggested reconsidering this request in July to see how it is going. Mr. Lyon stated that only gives the petitioners three months, and Mr. Hesser stated several weddings will already be booked at that time. Mr. Campanello stated the petition was approved in 2014, and the petitioners were aware at that time that the neighbors needed to be appeased. However, he continued their solutions have not worked, and the problem has not been solved in their four years of operation. He added he is surprised HVAC has not been added to

the building since approval. Mr. Hesser stated he cannot remember, if remonstrators were present at the renewal in 2016. Attorney Kolbus stressed he does not believe the business was in operation at the time of the renewal, because they were unable to finish everything in the first two years. Mr. Hesser stated the Board has heard multiple wedding venues, and it is hard to differentiate them. Mr. Atha pointed out similar venues are typically in the middle of nowhere, and Mr. Hesser agreed this is a denser neighborhood than most. Mr. Auvil brought up he believes the neighbors do have concerns, but staff has no record of complaints against this property for noise. He stressed the noise can be causing problems, but the neighbors need to file a complaint with the county to have a record to base Staff's findings and recommendation. Mr. Lyon asked if Staff is notified when the Sheriff's Department is called to a property. Mr. Auvil explained some deputies have decimeters to record the noise, but their policy is to have people quiet down. He continued saying he believes very few tickets are issued for noise, but it is not their procedure to notify Staff when those tickets are issued. Mr. Campanello stated it appears that the neighbors are trying to work with the petitioners instead of filing complaints. He continued saying the Heflins are also working with the neighbors, but he is not sure they can afford to invest the amount of money needed to solve the noise problem. Mr. Campanello then asked the remonstrators present, if they would like to see the wedding venue shut down, and all hands were raised. He stated he believes one more, shorter time period should be allowed.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **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 renewal of an existing Special Use for a wedding venue 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. The request is approved in accordance with the site plan submitted (dated 10/15/18) and as represented in the Special Use application.
2. Approved for a period of one (1) year with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

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

Mr. Campanello stressed the petitioners have one more chance to make this right and keep the noise down. He suggested changing or eliminating DJs.

5. The application of *Michael Bird & Jamie L. Bird, Husband & Wife* for a Special Use for a home workshop/business for a reflexology business on property located on the North side of Briarhill Dr., 1,760 ft. West of Old CR 17, North of CR 26, common address of 22581 Briarhill Dr. in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0702-2018*.

There were 21 neighboring property owners notified of this request.

Mike Bird, 22581 Briarhill Dr., was present for this request. He stated they would like permission to operate a home workshop/business to provide reflexology services out of their residence. Mr. Hesser asked, if any restrictive covenants exist within the subdivision prohibiting operating a business out of a residence. Mr. Bird responded no, and he added they spoke to the home owners association. Mr. Hesser also asked if he is aware of any other home workshops in the area, and he responded no. Mr. Lyon asked if the neighbors have been contacted, and Mr. Bird stated his wife contacted a woman who is part of the home owners association about this request.

Mr. Auvil submitted a letter received in remonstrance from John & Jacqueline Thain, 59527 Ridgewood Dr. *[Attached to file as Staff Exhibit #1]*. He stated the Thains were unable to attend the hearing due to work, but their concern is that this business will have an adverse affect on their property value and increase traffic. He added they also believe signage would be a problem.

Robert Riddle, 22653 Briarhill Dr., came on opposed to this request. He stated he has lived in Briar Hill Subdivision since 1974, and he represents the Briar Hill Homeowners Association as treasurer. He continued saying he was contacted by Jamie Bird in regards to the subdivision's covenants and restrictions, and he did not see anything in the covenants that prohibits a business. However, he stated the officers of the homeowners association discussed the matter, and they do not want businesses in the subdivision. He mentioned a situation back in the 1980s when a resident wanted to fix cars in his driveway but was denied. He stressed he does not have anything against the petitioners, and he does not even know them personally. He continued saying he does believe approval of this request will set a bad precedent in the subdivision for allowing businesses. He added many people could follow the precedent and start businesses of their own. He stressed he admires their entrepreneurship, but a residential area is not the appropriate location for a business. Mr. Lyon asked the number of people the homeowners association represents, and he responded about one hundred families. Mr. Campanello asked if Mr. Riddle is aware of any other businesses operating in the subdivision. He responded some people have babysat in their homes over the years, but this request as a sole income would likely produce a lot of parking and a commercial sign. Mr. Campanello suggested approving this request for one year with renewal before the Board, and Mr. Riddle stressed any approval will still set a precedent. Mr. Hesser clarified Mr. Riddle is stating no one in the subdivision is operates even a distribution business out of their residence, and he responded not to his knowledge. Mr. Hesser also pointed out the petitioners represented in the questionnaire that there will be no outside employees or signs, and he asked if that addresses his concerns. Mr. Riddle stressed his main concern is the precedent approval of a business sets. Mr. Hesser clarified subdivision covenants do not prohibit businesses. Mr. Riddle explained businesses were not an issue when the subdivision was established in the 70s, and he stated it would be difficult to write restrictions to cover every situation that arises.

Mr. Bird came back on and stated he appreciates the neighbor's concerns. He stressed customers will be by appointment only, and the appointments are about an hour long. He continued saying plenty of parking is available in their driveway, and two cars should be the maximum in the driveway at a time. He also added the only sign they might have would hang on the porch. Mr. Hesser pointed out the questionnaire states no signage. Mr. Bird responded they would only have a sign, if it was required. Mr. Lyon asked if the operation will be run permanently from the residence. Mr. Bird explained the reflexology business is not their main

source of income, because he is a pastor. He continued saying his wife runs this business on the side, and it is not her full-time job. Mr. Lyon asked if he has any objections to approval of the request for a period of time with renewal before the Board, and he responded no. Mr. Auvil stated he lives close to the subdivision, and he is aware of at least five businesses in it. He explained two people sell eggs, one distributes Avon, and one is a daycare. He stressed he does not see the need to impose a time restriction.

The public hearing was closed at this time.

Mr. Hesser stated a home workshop is entitled to have a 4 sq. ft. sign and two outside employees. However, he continued the questionnaire states no sign or outside employees, and he asked if the petitioners could add a sign and employee with no commitment added. Attorney Kolbus suggested making no sign or outside employees a commitment.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a reflexology 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. The request is approved in accordance with the site plan submitted (dated 10/16/18) and as represented in the Special Use application.
2. No sign is permitted.
3. No outside employees are permitted.
4. Approved for a period of one (1) year with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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

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

6. The application of *James A. Lightner & Andria (Padget) Lightner, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district located on the South side of Nelson Ave., 180 ft. East of CR 108, South of CR 20, common address of 27468 Nelson Ave. in Concord Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0705-2018*.

There were 19 neighboring property owners notified of this request.

James Lightner, 27468 Nelson Ave., was present for this request. Mr. Lightner request his children be allowed to keep their animals. He explained they currently own twelve chickens and five goats that they use for eggs, milk, cheese, and meat. He continued saying his wife has a doctor's note explaining her need to have the animals for food. He stated they raise chickens in the spring and butcher them in the fall along with some of the goats, because he wants to teach his children where food comes from. Mr. Lyon asked if manure is still piled along the back property line, and he responded it is now kept in a compost pile. Mr. Atha clarified the compost

pile is contained, and he asked how they dispose of waste. Mr. Lightner responded his parents, neighbor, and sister all use it for fertilizer. Mr. Atha then questioned the size of the goat pens, and Mr. Lightner responded 15x30. He added the pens are located in the southeast corner of the property. Mr. Lyon clarified the fence will be 5 ft. off of the property line.

Amber Wilson, 58000 & 58004 CR 105, was present in remonstrance. Mrs. Wilson submitted a signed petition from a few of the neighbors who were unable to attend the meeting *[Attached to file as Remonstrator Exhibit #1]* along with pictures *[Attached to file as Remonstrator Exhibit #2]*. She then pointed out her property on the aerial, and she mentioned the submitted pictures were taken from her driveway and backyard. She stressed the petitioners do not have a fence, and the animals roam freely. She added manure is still dumped on her property. She continued saying the animals attracted several flies last year, and her family was unable to enjoy their backyard. She stressed she is not opposed to animals. She went on to say her daughter is involved in 4-H, but their horse is boarded rather than being kept on their property. Mrs. Wilson also stressed the pictures show that the animals do not have a lot of vegetation, and the property is full of clutter and trash. She stressed she believes it is inhumane to keep the animals in such a small pen. She added she understands the value of children having animals, but they should be kept at an appropriate location. Mr. Lyon asked if the goats are her main concern. Mrs. Wilson responded the petitioner also had a rooster, and the chickens often wander into her yard. She went on to say chicken wire was installed at the end of her driveway, which she believes is on her property, since wood from her driveway was used to hold it up. She stressed the properties are too close for agricultural animals, and the noise, smell, bugs, and flies are out of control.

Carolyn Conley, 57933 16th St., located on the corner of 16th and Nelson was present opposed to this request. She stressed approval of the request will set a precedent for anyone looking to keep agricultural animals in a residential neighborhood. She stated she is not against farm animals, but they need space and a proper location.

Sione Vakalahi, 51979 Bellflower Ln., Granger, the owner of some property next to Mrs. Conley was present to hear the request. He stated he is not opposed to the request, because he does not know the petitioner or live in the neighborhood. Mr. Lyon asked who lives on his property, and he responded it is vacant land. He stated he received a letter about the hearing, and he came to listen to their plans.

Mr. Lightner came back on and stated he put fly catchers up to help alleviate that problem. He continued saying a majority of the smell comes from the neighbor's back yard, but he does not wish to discuss that now. He then submitted a petition signed by his immediate neighbors in favor of his request *[Attached to file as Petitioner Exhibit #1]*. Mr. Lightner was then shown the pictures submitted by Mrs. Wilson, and Mr. Hesser asked if the pictures are accurate. He responded the pictures were taken yesterday. He continued saying the neighbors have no problem with the animals. He stated part of the problem is a property line dispute between him and the neighbor. He stressed they have been working on cleaning up the property since purchasing it almost ten years ago. He continued saying the last few years were difficult, because he was in an accident that left him disabled. He then addressed the penning of the animals, and he stressed the chickens do not roam her yard. He stated the goats do not get out, and he keeps them in separate pens. He explained one buck is kept by the old house, and the four does are in the back corner. He stressed he tries to keep the flies and smell under control, and he will install a fence once he can afford it. He added the property also needs to be surveyed

before he installs a fence due to a property dispute. Mr. Lyon asked if he would have a problem limiting approval to either chickens or goats. Mr. Lightner explained they need the goats, because their milk is the only kind his wife can drink. He added she also needs the unprocessed eggs from their chickens. He stressed the doctors have found no other solution for her situation. Mr. Atha asked why Mrs. Lightner can only drink unpasteurized milk, and he responded she has a GI problem. He continued explained unpasteurized milk has bacteria in it that aids with the natural passing of bodily fluids. Mr. Hesser pointed out a doctor's note was submitted explaining the need for this request.

The public hearing was closed at this time.

Mr. Atha stressed this request is for a small farm in an R-2 zone. He stated it appears to be well hidden, but it creates a large amount of smell and noise. He continued saying he would consider approving chickens and possibly two goats. Mr. Lyon clarified the entire property is not currently fenced in. Mr. Lightner pointed out the goat pens are fenced. Mr. Hesser stated chickens are routine approvals without roosters. He added he understands the need for goats, but it is not a land use issue. He stressed his concern is the goats. Mr. Campanello suggested allowing the petitioner to have five goats until the number can be brought down to three. He continued saying the request can be approved in accordance with staff's recommendation, but once two of the goats are gone, they cannot be replaced. Mr. Lightner asked if the total number of goats allowed would include the does and buck, because he needs the buck to impregnate the does. He continued saying the does must get pregnant to continue the milk supply. Mr. Hesser pointed out kids do not count towards the number allowed until they reach adulthood. Mr. Lightner explained the kids are typically for the other goats' supplies. Mr. Hesser clarified approval of the request would be for three total goats. Mr. Campanello added a time period should be imposed to allow him to bring the number of goats down to three, and Mr. Lyon asked if one year is long enough. Mr. Campanello stated he is unsure how old a goat should be to use it for meat, and Mr. Lightner stated three to five years. Mr. Atha asked how long goats lactate, and he responded as long as they are being milked after having their kid. He added he uses a different goat every year.

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

Motion: Action: Approve, **Moved by** Tony Campanello, that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district be approved. **None seconded.** Motion dies for lack of a second.

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 animals on a tract of land containing less than three acres and in an R-2 district 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. The request is approved in accordance with the site plan submitted (dated 10/17/18) and as represented in the Special Use application.
2. The use is limited to a maximum of twelve (12) chickens at any one time, no roosters.

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

Yes: Joe Atha, Randy Hesser.

No: Tony Campanello, Denny Lyon.

Mr. Campanello stressed the note the petitioner provided is from his doctor, and he believes the goats really do help this woman. He continued saying she deserves to live a good life, and he is in favor of this request since the goat milk is giving her that. Attorney Kolbus asked Mr. Lyon's thoughts on the request since he did not second the first motion or vote for approval of the second. Mr. Lyon responded his thoughts were the same as Mr. Campanello's. Mr. Atha explained he is opposed to the goats, and unpasteurized milk can be purchased in Goshen that is technically for dogs. Mr. Godlewski reminded the Board to consider land use only for approval or denial. Mr. Atha stressed he does not believe a residential area is the right location for a small farm. Mr. Hesser suggested a new motion be made or the request be tabled until the next Board of Zoning Appeals Hearing. Attorney Kolbus stated the Board should have five members at the next hearing and can reach a decision at that time. He added the public hearing is closed, so the request will be debated, and the Board can then make a decision.

Motion: Action: Table, **Moved by** Denny Lyon, **Seconded by** Joe Atha that the request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district be tabled until the January 17, 2019, Advisory Board of Zoning Appeals Meeting due to a tied vote.

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

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

Mr. Hesser explained when the missing Board member returns, he may decide the testimony from this hearing is enough to make a decision, or he can reopen the public hearing.

7. The application of *Alvin E. Cripe & Mary Jean Cripe, Husband & Wife* for a Special Use for a home workshop/business for motor vehicle repair and service on property located on the North side of CR 48, 1,500 ft. West of CR 13, common address of 24507 CR 48 in Union Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0743-2018*.

There were 14 neighboring property owners notified of this request.

Loren Sloat, Attorney from Nappanee, 102 Heritage Parkway, was present representing Alvin & Mary Cripe along with Mr. Cripe. Mr. Sloat submitted a copy of his presentation [Attached to file as *Petitioner Exhibit #1*]. He stated they agree with the Staff Analysis. He explained Mr. Cripe is a dairy farmer along with his brother-in-law, and he pointed out his residence and the primary dairy operation on the aerial. He stressed he has farmed all his life, but he also has a knack for fixing things. He continued saying he is a great mechanic, and he can also fix diesel engines. He explained the petitioner would like to construct a mechanics shop on this property for the public to supplement his dairy income. He pointed out the property is on CR 48, which

Ts to the east, keeping traffic on this road down. He then went through some of the submitted pictures and pointed out the location of the residence and an area to the east where he plans to construct the shop. He explained he primarily works on one vehicle at a time, and he plans to construct a 60x80 shop with three bays, 16 ceilings, and 14 doors. He stressed he only has one employee, and his sons also help him. He stated they only work on one vehicle at a time. Mr. Hesser asked the maximum number of vehicles that will be kept on the property at a time, and Mr. Sloat responded three. He stressed all vehicles will be kept inside. Mr. Hesser stated he is concerned this business will be very successful, and fifteen or so vehicles will be parked outside with only four parking spaces. Mr. Sloat stressed that is not the petitioner's intention, and any changes will be brought back before the Board. Mr. Hesser asked the need for a larger sign, and he explained a home workshop allows a 4 sq. ft. sign. He added the Board frequently permits a 4 sq. ft. double-sided sign. Mr. Sloat responded he does not see the need for a larger sign, and he wanted to see, if the Board would grant it. He went on to say he does not believe any neighbors object to this request, and he asked that the Board approve this request. Mr. Hesser asked if a variance is needed for the parking spaces, and Mr. Auvil responded no. Mr. Atha asked if they spoke to the neighbors to the south, and Mr. Sloat responded yes. He then stated approval of a smaller sign is okay, since the business will mostly be by word of mouth.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if anyone has a problem approving a 4 sq. ft. double-sided sign, and no concerns were raised.

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 Special Use for a home workshop/business for motor vehicle repair and service 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. The request is approved in accordance with the site plan submitted (dated 11/9/18) and as represented in the Special Use application.
2. Limited to one (1) double-sided sign four (4) square feet per side.

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

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

8. The application of **Dana Bontrager & Lori Bontrager, Husband & Wife** for a Special Use for a wireless communications facility on property located on the West side of CR 33, 2,000 ft. South of CR 20, common address of 59285 CR 33 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0751-2018*.

There were 11 neighboring property owners notified of this request.

Pat McCauley, 4561 Pine Creek Rd., Elkhart, was present representing the petitioners. He stated Bontrager Excavating is one of their customers, and their current connection no longer meets their growing needs. He explained they have been working with them to construct a tower, and they also plan to move some equipment from CR 22 to this location to provide better connectivity in the area. He added the tower will be right up against the building and self contained with no power or driveway. Mr. Hesser asked the tower's proposed location, and he pointed it out on the aerial.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 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. The request is approved in accordance with the site plan submitted (dated 11/9/18) and as represented in the Special Use application.

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

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

9. The application of *New Paris Conservancy District* for an amendment to an existing Special Use for a wastewater treatment plant to add an administrative building on property located on the North side of CR 29, 550 ft. East of CR 25, common address of 18121 CR 29 in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0721-2018*.

There were five neighboring property owners notified of this request.

Kenneth Jones, Jones Petrie Rafinski, 200 Nibco Pkwy. Suite 200, Elkhart, was present for this request representing the New Paris Conservancy District as their District Engineer. He explained New Paris Conservancy District is a local government entity with an elected board of trustees that administer and run its affairs with the authority to levy taxes and collect an operation and maintenance fee every month from their customers. He continued saying they have existed since the late eighties with a little over 900 customers. He added they provide sanitary sewer service to the unincorporated town of New Paris. He pointed out the existing treatment facility along with drying beds for the sludge that comes out of the facility and two existing buildings surrounded by a security fence. He went on to explain one building is a service garage, and the other is a mixed use building, that contains a laboratory for testing, small garage, and an office for the bookkeeper. He stated 200 or so of the 900 customers still actually stop into the office to pay their bill in person. He pointed out a concrete ledge that contains the treatment tanks, and no barrier exists between visitors to the site and that area. He added the southwest corner of the building is the head works of the plant causing a distinct odor in the

office area. Mr. Jones stated after reviewing their finances and going through an audit with the Department of Local Government Finance, they have enough capital in the improvement fund to construct an administrative building. He explained their meetings currently take place around folding tables in their laboratory, and the main HVAC air intake is right above the lab door, only 8 ft. from the selector tank, the smelliest part, of the treatment plant. He then pointed out the conservatory district's property, and the corner in which they plan to construct an administrative building large enough to hold a meeting room, office space, and front door to receive customers. He added their plan will separate the administration side completely from the wastewater treatment facility. He pointed out one tank is not in use, and tomato plants grow in it. Mr. Jones stated the project is out for bid, and they will be collected on January 10th at their next meeting. He continued saying five contractors are interested, and it will be a simple post-frame building on slab, with a vestibule and drop box for payments. He stressed it is rare for very many people to attend the meetings, except when rate reviews take place. However, he continued a church or school is rented, if they anticipate more people showing up than they can hold. He stated the meeting room will not be large enough to hold 100 people, because that is not feasible when it is rarely needed. He then explained one employee is on site Monday through Friday, and the operator will stay inside the fenced in area. He added the new building will remain outside of the fenced area to separate it from the rest of the operation. Mr. Lyon asked if the building will be placed next to the lagoons, and Mr. Jones responded the plan is to disrupt the least amount of farmed ground.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a wastewater treatment plant to add an administrative building be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/31/18) and as represented in the Special Use application.

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

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

10. The application of **Scott W. Radeker & Robyn G. Radeker, Husband & Wife** for a Special Use for a hair salon on property located on the North side of Cedar Creek Dr., 230 ft. West of CR 38, North of CR 14, common address of 13195 Cedar Creek Dr. in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0748-2018*.

There were 15 neighboring property owners notified of this request.

Robyn Radeker, 13195 Cedar Creek Dr., Middlebury, was present for this request. Mr. Campanello asked if the subdivision has a Home Owners Association with covenants/restrictions. Mrs. Radeker responded they do have an HOA. She explained their covenants state, if anyone is opposed to a request, a vote is held, and it is allowed when over 51% of the votes are in favor of it. She stated they went through the process and received approval by over 51%. She added the neighbors on either side of their residence are also in favor of the request. She then submitted the results of the HOA vote [Attached to file as Petitioner Exhibit #1] and letters written by neighbors in favor of the request, Darryl Swartz [Attached to file as Petitioner Exhibit #2] and Terry Whitley [Attached to file as Petitioner Exhibit #3]. Mr. Lyon asked how many clients she services a day, and she responded currently she does not have any. She explained they recently moved to the area, but she has been a stylist for 23 years. She continued saying when her second child was born, 12 years ago, she knew that her family needed her home, and she then decided to operate an in home salon. She added they lived in Crawfordsville, when this first began, and she went before a Board similar to this one. She stated they understood the simplicity of a part-time salon, with only one stylist and one client at a time. She stressed aside from seeing a car, you cannot tell, if someone is visiting or having their hair done. She mentioned the neighbor who was opposed to their request at the first location became a client along with his wife. Mrs. Radeker stated they moved to Lafayette and also operated the business there. She continued saying many of their neighbors became clients, and one neighbor, a few houses away, did not know they had a salon until they moved. She stressed her business is very simple, but some people allow it to become an issue when it is not. She again stated she currently does not have any clients, but she only plans to have around six or seven appointments a day. Mr. Lyon questioned parking in the driveway, and Mrs. Radeker responded there is more than adequate room. She explained they have a three car garage, and the third bay is the salon.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated the petitioner is not requesting a sign, and this is a simple 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 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 commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 11/12/18) and as represented in the Special Use application.

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

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

11. The application of *Amber Graddy* for renewal of an existing Special Use for a home workshop/business for a massage studio on property located on the East side of N. Division St.,

460 ft. North of River Rd. (CR 8), common address of 806 N. Division St. in Washington Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0752-2018*.

There were 14 neighboring property owners notified of this request.

Amber Graddy, 806 N. Division St., Bristol, was present for this request. Mr. Campanello stated it has been a year since original approval, and he asked how the business is going. Mrs. Graddy responded well, and she has acquired more than 100 clients over the past year in addition to her 25 to 30 that travel from her previous practice in LaGrange County. Mr. Campanello asked if she anticipates outgrowing the residence and moving into a store front. Mrs. Graddy stated she does not know. Mr. Campanello stated no complaints have been filed. Mrs. Graddy stated she is grateful to be in business, and she looks forward to providing more healthcare options to Bristol. He also asked if she has any parking problems due to the number of clients. Mrs. Graddy responded she is the only therapist, and she can only massage one person at a time. She stressed only one car is parked there at one time, and four spaces are available with her car parked in the garage.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked if the renewal commitment should be eliminated on this request, since no one is present in remonstrance. Mr. Hesser pointed out the Staff Analysis does not include a renewal. He also stated he remembers remonstrators were present at the last hearing with some concerns, but no one is here with further complaints.

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 renewal of an existing Special Use for a home workshop/business for a massage studio 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. The request is approved in accordance with the site plan submitted (dated 11/12/18) and as represented in the Special Use application.

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

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

12. The application of *Edd Banks & Lena F. Banks, Husband & Wife* for a Special Use for warehousing and storage of tree service trucks, garbage truck, and semi tractor and trailer in an A-1 zone on property located on the South side of CR 26, 1,508 ft. East of CR 1, common address of 29730 CR 26 in Baugo Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0723-2018*.

There were nine neighboring property owners notified of this request.

Mr. Auvil stated he has a motion for continuance from the attorney representing the petitioners. He explained it appears he received late notice of the meeting from his client and due to a prior commitment he was unable to attend this hearing. He request the matter be tabled since he cannot be present today. Mr. Auvil pointed out the history/general notes for this petition are also unusual. He explained on October 18, 2012, the Board of Zoning Appeals denied a Special Use request for warehousing and storage of three trash trucks and a semi trailer. He continued saying on May 23, 2018, a code complaint was received for running a tree service business along with storing tree service trucks and a semi on the property. He stated it appears the Board denied the Special Use for warehousing and storage, but the petitioners have continued to store the vehicles on the property since 2012. He stated the Board can table this request. However, he continued staff is in the process of beginning enforcement action, and the petitioners will be receiving a ticket for the trash/debris and associated violations. He stated it is up to the Board to continue the public hearing and seeing if any neighbors are present for this request. Mr. Hesser suggested the request be tabled, and anyone present given a chance to speak, if they choose. He clarified continuing this hearing does not give the petitioners permission to continue this use, and enforcement action will not be hindered.

Lena Banks, 29730 CR 26, was found to be present for this request, since their attorney was unable to attend the meeting. Mr. Atha asked if she would like to speak, and she responded she would prefer to wait for her attorney.

There were no remonstrators present.

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

Motion: Action: Table, **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 warehousing and storage of tree service trucks, garbage truck, and semi tractor and trailer in an A-1 zone be tabled until the January 17, 2019, Advisory Board of Zoning Appeals Meeting at the request of the petitioners' legal counsel.

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

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

Mr. Lyon suggested the Board members visit the subject property before the next meeting.

13. The application of *Joas Yoder & Lillian Yoder, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for a steel fabrication shop to increase the number of outside employees on property located on the East side of CR 43, 1,400 ft. South of CR 14, common address of 56006 CR 43 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0747-2018*.

There were five neighboring property owners notified of this request.

Joas Yoder, 56006 CR 43, Middlebury, was present for this request and stated he came before the Board in 2004. Mr. Yoder stated he is present to request an amendment to his existing Special Use, which allowed him to have a maximum of two employees not residing on the

property. He asked that the number be increased to seven outside employees. He explained his employees consist of his sons, and many have married and moved off-site since original approval. He stressed his family situation has change from only two outside employees and four of his sons to almost all employees living off-site. He added nothing has changed in the scope of the business, the employees simply moved off-site. Mr. Hesser pointed out a proposed building on the site plan, and it was determined the site plan was original to the 2004 petition. He clarified no changes or further expansion will take place.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated increasing the total number of employees from two to seven appears to be a major change, but the scope/size of the operation is not changing. Mr. Atha added even if the sons are replaced by non-relatives, the number of employees will not change.

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

Motion: Action: Approve, **Moved by** Joe Atha, **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 an Amendment to an existing Special Use for a home workshop/business for a steel fabrication shop to increase the number of outside employees 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. The request is approved in accordance with the site plan submitted (dated 11/12/18) and as represented in the Special Use Amendment application.

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

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

14. As a staff item, Mr. Auvil presented the request for a minor change to extend the condition that required the Improvement Location Permit be pulled within 180 calendar days of the date of the grant. He explained the original request was for a Developmental Variance for a property with no road frontage served by an access easement for *William & Carrie Clark* (DV-0491-2018). He continued saying they would like to extend the ILP deadline to August of 2019, an additional six months. He stated staff recommends approval of this request. Mr. Hesser asked if the petitioners are stalling for time, and Mr. Auvil responded no.

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

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

15. The staff item for 2019 Agreement for legal services for Attorney Kolbus was presented by Mr. Godlewski.

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 approve the 2019 Agreement for Legal Services for Attorney Kolbus as presented by Staff.

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

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

16. The application of *Noah A. Miller & Rebecca C. Miller, Husband & Wife* for a Special Use for a home workshop/business for a farmersø market and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right on property located on the East side of CR 43, 960 ft. South of CR 10, common address of 54738 CR 43 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0746-2018*.

There were six neighboring property owners notified of this request.

Harley Bontrager, HD Bontrager Construction, 57342 CR 116, Middlebury, was present as the contractor representing the petitioners. He stated a few smaller farms around the subject property raise produce, bring it there, box it, and sell it at whole-sale. He continued saying the request is also for a retail use, but he does not believe that will happen right away. Mr. Campanello asked if it is similar to the operation in Wakarusa on CR 7. Mr. Atha asked if their produce is sold to grocery stores, and Mr. Bontrager responded he is not sure. Mr. Hesser clarified the proposed building for this operation is closest to the road on the site plan. Mr. Bontrager added he spoke to the Highway Department about the driveway, and they had no problems with it. Mr. Campanello asked if the produce will be sold by auction, and Mr. Bontrager responded no.

David Yoder, 54751 CR 43, the neighbor across the street was present for this request. He explained this operation began in 2010 when a few of the neighbors consolidated their efforts in order to sell to different markets. He continued saying the market and number of farmers involved has since grown. He stated they currently sell to a few stores, farmers markets, and Beacon Health System. He added the facility is not large enough to handle all of the produce coming through, and they would like to construct a larger facility to handle more volume. He then mentioned retail customers have started stopping by to purchase produce so they considered opening a retail operation. Mr. Lyon asked when he believes the retail operation will start. Mr. Yoder responded it could happen right away or in a few years; he is not sure.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a farmersø market 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. The request is approved in accordance with the site plan submitted (dated 12/4/18) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage allowed by right 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 issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 12/4/18) and as represented in the Developmental Variance application.

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

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

17. The application of *Lamar D. Troyer & Naomi H. Troyer, Husband & Wife* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 20, 1,470 ft. East of SR 13, common address of 12186 CR 20 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0735-2018*.

There were 12 neighboring property owners notified of this request.

Harley Bontrager, HD Bontrager Construction, 57342 CR 116, Middlebury, was present as the contractor representing the petitioners. He stated the petitioners are looking to construct a new residence. He explained they would like to live in their current residence, until the new one is completed. He continued saying he believes Mr. Auvil plans to change the Zoning Ordinance to allow a second dwelling by right during construction. He also mentioned a dawdy house is on this parcel, and it will remain. Mr. Hesser clarified the accessory dwelling is allowed by right under the Zoning Ordinance, since it is 1,000 sq. ft. or less. He continued saying the request is not for three residences, and no approval is needed for the dawdy house.

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 the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following 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. The request is approved in accordance with the site plan submitted (dated 11/9/18) and as represented in the Use Variance application.

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

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

18. The application of *C. Blough Holdings, LLC* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the West side of CR 31, 800 ft. North of CR 18, common address of 57643 CR 31 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0745-2018*.

There were 20 neighboring property owners notified of this request.

Craig Blough, 57643 CR 31, Goshen, was present for this request as the owner and sole member of C. Blough Holdings, LLC. Mr. Blough then submitted an aerial copy of the entire property to the Board *[Attached to file as Petitioner Exhibit #1]*. He explained the new residence will be placed behind the existing one, and Mr. Hesser clarified the existing residence will be demolished once the new one is completed.

Barb Luebek, the neighbor across the street, 57590 CR 31, Goshen, was present to support Mr. Blough. She stressed they have no problems with this request.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 dwelling 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. The request is approved in accordance with the site plan submitted (dated 11/9/18) and as represented in the Use Variance application.

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

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

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

19. The application of *Brett Vail & Amy Vail (Buyers) & Mark W. Johnson & Betty S. Johnson, Husband & Wife (Sellers)* for a Developmental Variance to allow for the construction of a residence on property with no road frontage served by an access easement located on the South side of CR 26, 765 ft. East of CR 3, common address of 28884 CR 26 in Baugo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0755-2018*.

There were eight neighboring property owners notified of this request.

Brad Cramer, Progressive Engineering, 58640 SR 15, Goshen, was present for this request representing the petitioners. He explained the parcels without road frontage are all served by an access easement. He continued saying the Planning Department had him research the property to find proof of the easement, and he found a maintenance agreement document from 1986 that was submitted to Staff. He stated the request is to rebuild a burnt residence on this property.

Mr. Auvil stated the history/general notes states the request is for re-approval of the Developmental Variance to allow for the accessory structure, and it should read as re-approval for the primary structure.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha clarified the request is to rebuild a residence that burnt. Mr. Lyon asked Mr. Cramer if he found an easement to this property, and he responded he found a maintenance agreement between the four property owners.

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 Developmental Variance to allow for the construction of a residence 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 issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 11/12/18) and as represented in the Developmental Variance application.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Joe Atha, Tony Campanello, Denny Lyon.

20. The meeting was adjourned at 10:52 p.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary