

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF MARCH 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 Vice-Chairperson, Roger Miller. Staff members present were: Chris Godlewski, Plan Director; Matt Shively, Planner; Mae Kratzer, Planner; Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Roger Miller, Denny Lyon.

Absent: Tony Campanello, 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 February 2018 be approved as read. The motion was carried with a unanimous roll call vote.

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

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

4. The application of ***Dennis J. & Ruth A. Bontrager*** for a 17 ft. Developmental Variance to allow for the construction of a residence 58 ft. from the center line of CR 35 (Ordinance requires 75 ft.) on property located on the East side of CR 35, 2,900 ft. North of CR 28, common address of 59980 CR 35 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0056-2018*.

There were six neighboring property owners notified of this request.

Kenny Bontrager, AllStar Construction, 5410 W. 450 N., Shipshewana, was present representing the petitioners. Mr. Bontrager explained the petitioners plan to tear down their existing residence except for the family room, and build a new residence attached to the remaining room. He continued saying the existing residence is 54 ft. from the center line of the road, and the new one will be set back 4 ft. farther. He reiterated the new residence will be 58 ft. from the center line of the road. He stressed they considered shifting the house back to avoid needing a Developmental Variance, but that affected the back yard, kitchen layout, and septic location. Mr. Bontrager mentioned a row of pine trees along the North side of the property, which will restrict the line of sight more than the new residence. He added the residence will be rebuilt in the same location and more attractive than the existing one with five bedrooms. Mr. Hesser asked the square footage of the new residence, and Mr. Bontrager responded around 3,500 sq. ft. Mr. Lyon then asked the number of stories, and he responded two. Mr. Miller asked if he has any problems with the proposed conditions, and he responded no. He continued saying he is currently working on the septic system. Mr. Lyon asked if the current system can be

used. Mr. Bontrager responded it is not likely, because the Environmental Health Department cannot find record of the current septic system.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 17 ft. Developmental Variance to allow for the construction of a residence 58 ft. from the center line of CR 35 (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 site plan dated (2/7/2018) and as represented in the Developmental Variance application.

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

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

5. The application of *Rachel Holland* for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the residence on property located on the West side of CR 15, 3,125 ft. North of CR 4, common address of 51371 CR 15 in Osolo Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0063-2018*.

There were two neighboring property owners notified of this request.

Rachel Holland, 51371 CR 15, was present for this request. Mrs. Holland explained she purchased the property three years ago, and both structures were in place at that time. She continued saying her father-in-law rented the accessory structure from them as a residence, but he vacated the property on February 25, 2018, and took the appliances with him. She added they also removed the sink in order to take out the kitchen, classifying it as an accessory structure rather than a residence. She stressed they would like approval of this request to avoid tearing the structure down, because the property is for sale. Mr. Atha questioned the art studio previously approved by the Board, and Mrs. Holland responded it has not operated since she purchased the property. She continued saying she does not know anything about the art studio, and that building is used as a garage/storage building. She stressed the previous owner illegally converted the structure into a residence, and she was not aware of the problem when she purchased the property.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage in the residence be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan dated (2/8/2018) and as represented in the Developmental Variance application.

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

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

6. The application of *D. S. Bontrager & Son, Inc.* for a Special Use for a ground mounted solar array on property located on the North side of CR 34, West of CR 37, common address of 13367 CR 34 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-0052-2018*.

There were 20 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present representing the petitioners. She stated the proposed solar array will be placed in front of the barn and will not affect the line of sight.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a ground mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan dated (2/6/2018) and as represented in the Special Use application.

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

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

7. As a staff item, Mr. Godlewski presented the request for *Evan & Natalie Stutzman* (SUP-0293-2016). He explained this request is for a major/minor change to amend Commitment #2, which imposed a one year probation period that ended July 21, 2017. He clarified the facility is not yet operational due to a longer set up time than expected. He continued saying the

requested probationary period would begin May 1, 2018, and run thru May 1, 2019. He added the request is attached to the Board's packets, and staff recommends approval as a minor change with a revised Commitment showing the revised probationary period. Mr. Hesser asked if the time limit was imposed with initial approval of this request, because he believes this petition has already been extended. Mrs. Britton stated the file shows the petition was approved July 22, 2016. Mr. Godlewski stressed the operation has taken time to become established. Mr. Hesser mentioned he does not have a problem approving this request; he just thought the Board had already extended it. He went on to say he remembers concerns about smell at the original hearing, which prompted the one year renewal. Mr. Miller stated he does not remember having any remonstrators present for this petition. Mr. Hesser responded he recalls a few at the first hearing. Mrs. Britton clarified the request first came before the Board in May of 2015, and it was approved for a period of one year due to the neighbors' concerns. She went on to say the petition was then renewed in July of 2016 for an additional period of one year. Attorney Kolbus stated he does not believe the Board can act on this request, because it lapsed after one year. Mr. Hesser asked if the petition was extended last year. Mrs. Britton responded no, but the petitioner was sent renewal letters. Mr. Hesser mentioned he remembers renewing this petition multiple times. Mrs. Britton noted a letter was sent this February stating the petition needs to be renewed, and no record of a renewal was found. Mr. Hesser clarified the petitioners need to re-file for this request when they are prepared to begin operations. Attorney Kolbus stressed the Board cannot extend the time period, because the petition has expired. Mr. Miller reiterated it is neither a minor nor a major change, because it expired. Mr. Godlewski clarified the Board has no action to take, and Attorney Kolbus responded yes.

8. The application of ***Hipolito Avila & Hilda Salazar*** for a Special Use for an agricultural use for the keeping of miniature goats, miniature horses, and chickens on a tract of land containing less than three acres on property located on the Southwest corner of CR 11 & CR 24, common address of 59515 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-0045-2018*.

There were nine neighboring property owners notified of this request.

Hipolito Avila, 59515 CR 11, came on for this petition requesting approval to keep their animals. He explained his son and he enjoy spending time with the animals. Mr. Atha asked how long the animals have been on the property, and he responded about three to four months. He also questioned the state of the pasture, and Mr. Avila responded it is not muddy. Mr. Miller asked about disposal of manure, and he responded it is spread on the lawn.

Randy Wilson, precinct committee member for Concord twenty-two, 59725 CR 9, was present in opposition to this request. Mr. Wilson then submitted photos of the area where the animals are kept [Attached to file as Remonstrator Exhibit #1]. He stated the neighbors are aware that agricultural animals are allowed by Special Use on less than three acres under article five of the Zoning Ordinance. However, he continued the neighbors are concerned about the size of the lot in relation to the number of animals. He stressed three fourths of an acre is too small for all of the animals. He noted the Ordinance does not say how small of a parcel on which animals can be kept. He also mentioned a discrepancy he found concerning buildings. He explained the Staff Report says no additional buildings will be constructed, but the questionnaire states one is

planned for the animals. Mr. Wilson then pointed out the pictures submitted show Grand View Subdivision across the road, and he was surprised the subject property is zoned agricultural. He added another concern is the sale of eggs due to having chickens, because this road is already heavily traveled. He stressed the Ordinance states the adjacent areas should not be affected in an adverse manner by a Special Use, and the neighbors are worried this will negatively affect their property values. He stated the neighbors request the Board deny this petition.

Jon Jantzi, 59559 CR 11, came on in remonstrance and pointed out his property directly south of the petitioner. Mr. Jantzi explained his neighbors at first had a few chickens, and then added goats and miniature ponies. He continued saying at one time they had four goats, two miniature horses, and chickens all in a small pen. He added one pony was mean to the other animals so they kept it on a lead rope, but it is no longer there. He added the pen is very muddy, and the animals have no grass. Mr. Jantzi stated his wife walks their dogs past the property and can smell the animals. He stressed their concern is that the smell will worsen during the summertime from the heat. He then mentioned a situation this weekend, when one of the petitioner's dogs broke inside of the pen and killed some chickens. He went on to say his wife tried to help, but a child from the residence came out and started hitting the dog. He mentioned it was not the dogs fault since it is a very confined area for so many animals. Mr. Jantzi stressed he has nothing against the petitioners, but this is not a good situation for the animals. He went on to say he loves animals, and he does not feel this is humane. Mr. Hesser asked if he also owns the two lots west of the petitioners' property. Mr. Jantzi responded yes and explained he owns five acres total. Mr. Hesser then asked if he sold the petitioners their property, and he responded no. He then asked when Mr. Jantzi purchased the lots, and he stated three years ago. Mr. Hesser also asked if all three parcels were once one, and Mr. Jantzi responded he is not sure. He then pointed out the property he owns. Mr. Miller asked where Mr. Jantzi keeps his horses, and he pointed out their location on the aerial. Attorney Kolbus asked how many animals he would recommend for the neighbors size property. Mr. Jantzi stressed their back yard is small, and he personally would not keep that many animals on the property. He explained when he was looking for property to keep his horses, he looked for an acre a horse. Mr. Miller asked if he knows how the animals are fed, and he responded no.

Suzie Adkins, 60127 Surrey Ln., came on in remonstrance and stated she has friends down the road from the petitioners. She mentioned she discovered the county has restrictions on where agricultural animals can be kept, and she believes this property is too small for all of the animals. She mentioned she was concerned and filed a complaint with the Zoning Department. She added she heard about the incident this weekend, and she feels it could have been avoided, if they had the proper acreage. Mrs. Adkins stated she drove by the property this winter, and she could not tell if the animals had hay. She stressed their shelter is not large enough for all of them. She explained she was told one of their shelters is a converted pump house from the previous owners' pool. She again stressed the space is not adequate for the number of animals.

Betty Mann, 59607 CR 11, the property owner south of Jon Jantzi came on in remonstrance. Mrs. Mann stated she spotted the dog attacking the chickens this weekend and tried to stop it. She stressed it was not the dogs fault, and she is against this request. She explained she believes it is too small of an area for the animals.

Mr. Avila came back on for this request and stated the dog that attacked his animals this weekend belongs to his sister. He explained she came to stay with him when her house flooded.

He continued saying her dog is not used to animals. Mr. Avila stated he purchases grain and hay to feed his animals. Mr. Lyon asked if the out buildings are used to store feed, and he responded yes.

The public hearing was closed at this time.

Mr. Miller stated the Board has approved chickens on smaller pieces of property. Mr. Godlewski explained Attorney Kolbus mentioned the property may be large enough for chickens but unfit for larger animals. He suggested separating the types of animals in the motion. Mr. Atha stressed his concern is having goats and horses on this size property. He explained a full size horse needs an acre of land, and he would give a miniature horse half an acre. He went on to say this property does not have the needed acreage for the horses not including the goats. Mr. Miller mentioned the Board cannot control the dog incident. Mr. Hesser added he believes it was a random event due to having the dog in a strange place and situation. He suggested approving the chickens but imposing a time limit to remove the other animals from the property. Attorney Kolbus mentioned adding a Commitment restricting the sale of eggs, because that was one of the neighbors' concerns. Mr. Miller explained he does not believe twelve chickens will produce enough eggs to sell. He went on to say he is okay with approval of the chickens, and he mentioned a miniature horse is similar to the size of a dog. Mr. Atha asked the Board's opinion of the goats. Mr. Miller stated four is a lot of goats for this size property. Mr. Hesser suggested approving this request for chickens only, with a time period to remove the other animals. Mr. Atha suggested a six month time period.

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 a Special Use for an agricultural use for the keeping of chickens on a tract of land containing less than three acres be approved with the following 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 has six (6) months to remove the miniature horse and goats from the property.

The following commitment was imposed:

1. Approved in accordance with the site plan dated (1/30/2018) and as represented in the Special Use application.
2. Limited to twelve (12) chickens at any one time, no roosters.
3. Miniature horses and goats are prohibited.

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

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

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

9. The application of *Association for the Disabled of Elkhart County, Inc.* for an amendment to an existing Special Use for a social service establishment to allow for the construction of an addition and placement of a wall-mounted sign on property located on the

South side of SR 120, 1,600 ft. East of CR 21, common address of 19670 SR 120 in Washington Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0071-2018.

There were 14 neighboring property owners notified of this request.

Donna Belusar, President and CEO of ADEC, 19670 SR 120, Bristol, came on for this request. Mrs. Belusar stated ADEC serves nearly 1,000 individuals from Elkhart and St. Joe County, and almost 800 individuals with intellectual and developmental disabilities in just Elkhart County. She then explained their plan to enhance the campus by adding a 5,700 sq. ft. addition for meeting rooms and a summer program area. She added their facilities will be enhanced with technology to fit ADEC's needs. She stressed the addition will be the main entrance into the facility, and their clients artwork will be displayed for sale. Mrs. Belusar stated the sign they plan to install pays heritage to the organization, which is sixty-five years old. She explained their branding is a triangle with a lighted flame, which describes their mission of offering choice and possibility. She went on to say they would like to place it on the front of their building and commence construction of the addition to have the facility up and running later this year. Mr. Miller mentioned the questionnaire states the new addition will include a coffee shop. Mrs. Belusar responded they currently have two coffee shops, called ADEC's Gaining Grounds. She explained one shop is located in Goshen and open to the public. She went on to say it is an outstanding example of reverse integration, because the public interacts with people who have disabilities on a daily basis. She added their other shop is in Middlebury, not far from the Essenhaus. She continued saying the new addition will include a coffee shop run and manned by people with disabilities. Mr. Atha clarified the previously mentioned sign will be on the building, and Mr. Miller mentioned it is one-sided.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a social service establishment to allow for the construction of an addition and placement of a wall-mounted sign 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 dated (2/12/2018) and as represented in the Special Use Amendment application.

Vote: Motion passed (**summary:** Yes = 3, No = 0, Abstain = 1).

Yes: Joe Atha, Denny Lyon, Roger Miller.

Abstain: Randy Hesser.

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

10. 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. Godlewski mention staff received a letter from the petitioner requesting this matter be tabled until next month's meeting. He suggested the Board see if anyone is present for the request. Mr. Hesser asked if anyone was present for the request, and there were none. Mr. Godlewski explained the petitioner is out of town on business and request this petition be heard in April. He asked if re-notification should be sent out, but Mr. Hesser did not believe it was necessary since no remonstrators were present. It was then found that a few remonstrators came in to the Planning and Development Department and were told the request would likely be tabled. Attorney Kolbus suggested re-notice be sent for this request. Mr. Miller stressed he would like to see a better site plan than the one submitted, and Mr. Godlewski mentioned that is part of Staff's recommendation.

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: Table, **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 warehousing and storing RVs be tabled until the April 19, 2018 Advisory Board of Zoning Appeals Meeting at the request of the petitioner with re-notification and a revised site plan to be submitted.

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

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

11. The application of *Aaron L. & Rachel Schrock* for a Special Use for a home workshop/business for a woodworking shop, for a Developmental Variance to allow for five outside employees (Ordinance allows two), and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage of the residence on property located on the South side of CR 28, 1,350 ft. East of CR 33, common address of 15006 CR 28 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 #SUP-0046-2018*.

There were nine neighboring property owners notified of this request.

David Bontrager, 10054 CR 18, Middlebury, was present representing the petitioner. Mr. Bontrager stated Aaron Schrock does a great job, and the employees include his father-in-law and two neighbor girls. He stressed they run a nice, clean operation. He added all of the employees travel by bike, but a truck and trailer comes to the property about once a day to pick up the finished product. He explained they construct cabinets for a local RV company. Mr. Hesser asked if the building is existing, and Mr. Bontrager responded it is proposed. He

continued saying they currently operate out of a significantly smaller shop on the property, and he pointed it out on the aerial. Mr. Hesser clarified once the new shop is complete, the current one will be converted into personal storage. He also mentioned five employees is a large number for a home workshop/business, and he asked if he plans to expand the business. Mr. Bontrager explained he currently has three employees, and he believes he asked for five in case the business grows. Mr. Hesser also voiced his concern about having room for a semi turn-around. Mr. Bontrager stated Mr. Schrock will have to make provisions for one. Mr. Hesser stressed the petition states two semis come to the property a week creating the need for a turn-around. Mr. Godlewski mentioned Staff does not typically prohibit backing off of/onto a county road, but the Board can impose that commitment. Mr. Miller stated he understands the concern about the number of employees, and he clarified the four current employees include the owner, his father-in-law, and two neighbor girls. Mr. Hesser reiterated he currently has three employees, but the request is for up to five. Mr. Bontrager stressed at this point he does not need five employees, but he may in the future. Mr. Lyon asked if both properties should be on one deed. Mr. Godlewski responded a building currently straddles the property line tying the lots together. He clarified it is technically two parcels, but considered one zoning lot. Mr. Hesser added the request includes both parcels.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he is concerned the operation is growing too large to be considered a home workshop, and he sees it continuing to grow. He continued saying he believes the Board should require a semi turn-around. Mr. Godlewski suggested adding a one or two year renewal to the petition. Mr. Miller mentioned the petitioner will probably need to request more room in a few years. Mr. Godlewski explained the renewal will give the Board a chance to revisit the petition. Mr. Miller stressed he does not believe the property has room for a semi turn-around. He added he is concerned about traffic on CR 28, because it is a heavily traveled road. He suggested adding a condition requiring a turn-around. Mr. Hesser agreed that is his only problem with the site plan, and he believes a revised one showing the turn-around could be submitted for approval by staff. Attorney Kolbus suggested a commitment be added prohibiting backing onto or off of CR 28 by semis. Mr. Miller stated he is not concerned about the number of parking spaces.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a woodworking shop 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 semi turn-around for approval by staff.

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 and Developmental Variance applications.
2. Backing in or backing out of vehicles from/onto CR 28 is prohibited.

Further, the motion also included that a Developmental Variance to allow for five outside employees (Ordinance allows two) and that a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage of the residence be approved with the following condition 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).

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

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

12. The application of *Rosalea M. Knapp* for a Special Use to allow for an agricultural use for the keeping of animals on property containing less than three acres and for a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage of the residence located on the South side of SR 120, East of CR 19, common address of 20932 SR 120 in Washington Township, zoned R-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0060-2018*.

There were 13 neighboring property owners notified of this request.

Megan Knapp, 20932 SR 120, was present for this petition with her land lord's blessing to request a Special Use/Developmental Variance. She explained she is asking permission to have an agricultural use in a residential area in order to keep all of her animals currently on the property including two full-sized horses and four goats. She continued saying she would like permission to keep six goats, because one may be pregnant. She stated she is requesting a Developmental Variance to allow for the total square footage of accessory structures to exceed the total square footage of the residence. Mr. Miller asked how many animals she would like permission to keep, and she responded six goats and two full-sized horses. He mentioned the Staff Report states the request is for two miniature horses, and she responded it must be a typo. Attorney Kolbus clarified Staff has confirmed the property is 2.49 acres, not the 1.45 mentioned in the Staff Report. Mr. Atha asked if that is the size of the pasture or the entire property, and she responded the entire property. He then asked the size of the pasture. She responded she is not sure, and then pointed out the pasture on the aerial. She explained she has a small holding pen, and the rest is pasture. Mr. Atha asked the condition of the pasture. Mrs. Knapp responded it is well grazed, and she feeds the animals hay year round to compensate it. Mr. Hesser asked how she handles the waste. She explained they use a grater to spread it around the pasture and use some as fertilizer for her garden. Mr. Atha clarified that is common practice. Mr. Miller mentioned this is not a densely populated area.

William Knapp, 51551 CR 133, Bristol, the petitioner's brother, came on in favor of this request. Mr. Knapp explained he helped his sister install the fence for the animals, and he requests the Board approve this petition.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he believes this property is large enough for the animals. Mr. Atha mentioned that is a lot of animals for the pasture. He continued saying he would guess the pasture is maybe two acres at most. Mr. Hesser stressed from the site plan it appears less than half of the property is pasture. He continued saying the pasture is at least one acre with two horses, and six goats. He added no remonstrators were present for this request, and he suggested adding a time limit in case problems arise. Mr. Atha suggested a two year time period. Mr. Hesser then asked if the accessory structures were on the property when she purchased it. Mrs. Knapp explained one shed was on the property, and the other buildings are shelters she built for her animals.

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 to allow for an agricultural use for the keeping of animals on property containing less than three acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan dated (2/8/2018) and as represented in the Special Use and Developmental Variance applications.
2. Limited to six (6) adult goats and two (2) horses at any one time.
3. Approved for a period of two (2) years with renewal before the Elkhart County Advisory Board of Zoning Appeals.

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 of the residence be approved with the following condition 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).

Vote: Motion passed (**summary:** Yes = 3, No = 0, Abstain = 1).

Yes: Joe Atha, Roger Miller, Randy Hesser.

Abstain: Denny Lyon.

13. The application of *John J. & Gail F. Bergan* for a 10 ft. Developmental Variance to allow for an existing residence 0 ft. from the North property line (Ordinance requires 10 ft.) located on the West side of CR 3, 2,630 ft. South of CR 26, common address of 60473 CR 3 in Baugo Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0660-2017*.

Mr. Hesser asked if anyone was present to speak in favor of or against this request besides to Loren Sloat, and one remonstrator was present. Mr. Hesser explained back in December of 2017 the Board heard an extensive presentation from Mr. Sloat, and the matter was tabled. He continued saying he remembers the Board hoped this could be resolved between the neighbors. He requests that Mr. Sloat pick up his presentation from that point and tell the Board what has happened.

Attorney Loren Sloat, 102 Heritage Pkwy., Nappanee, was present representing the prior owner Mr. Bergan. He stated at the last hearing he gave an extensive power point presentation, and it is still their intent to work this out amongst the neighbors. However, he explained that has not been accomplished at this point. He continued saying he had an agreement between Mr. Harter, Mr. Coughenour, and Mr. Sanchez to buy and trade property. He clarified Mr. Bergan would purchase 10 ft. along the back of Mr. Coughenour and Mr. Sanchez's property that he would then trade with Mr. Harter for the strip his residence is encroaching. He added Mr. Harter would then own a 10 ft. strip just north of his existing property. He stated the neighbors were in agreement, but their lenders were not on board. Mr. Sloat then suggested that Mr. Harter and Mr. Bergan work out an easement to alleviate the encroachment, but Mr. Harter would not agree to that. He stressed Mr. Harter wants to keep ownership of the property. He stressed he is now back trying to work out the original agreement. He stated he needs to explain to the bank that taking 10 ft. from the back of each property will not affect its value. He mentioned the line of possession was always believed to be the row of trees, and the neighbors did not realize they owned additional property. He added he has been unable to contact Mr. Sanchez. He went on to say Mr. Bergan has not seen him lately, and he should probably pursue him more. Mr. Sloat stressed he believes he can convince the banks to support the property transfer. Mr. Hesser asked if he would like more time to work it out, and Mr. Sloat responded yes. He request it either be approved with a review or tabled again. Mr. Hesser stressed he would prefer the neighbors work out a solution to this problem. He then questioned the Developmental Variance from the South property line. Mr. Sloat explained he submitted a survey at the previous meeting, which showed the building met the required setback. Mr. Godlewski clarified the aerial is not accurate, and the building does not require a Variance. Mr. Hesser stressed the request is only for a setback variance from the North property line. Mr. Miller asked what would be easier for Mr. Sloat. Mr. Hesser suggested hearing the remonstrator before making a decision.

Mona Harter, 29050 Hillary Ln., Elkhart, was present against this request. Mrs. Harter stated her husband has been in contact with Mr. Sloat regarding the property swap. She explained they are against this request, because they own a garage in the back and would like to install a driveway to it. She continued saying around the time they decided to install a drive; Mr. Bergan decided to sell his property. She added her husband received emails from a county employee stating they would be fined and required to tear up any driveway installed on the property. She stressed they need access to their garage. Mr. Miller asked where they wanted to place the drive, and she responded off of CR 3. She continued saying the survey shows the Bergan's drive and residence a few feet onto their property, but she does not believe he has been fined or asked to tear down the structure. She stressed she feels the county holds a double standard. Mrs. Harter stated they will still agree to the original solution, if the mortgage

companies approve it. She added she did not receive notice of this hearing, and her husband found out from calling the office. Mr. Hesser asked how wide the property is on CR 3, and she responded 10 ft. He then clarified the Bergan residence encroaches that strip, and Mrs. Harter stressed his driveway and residence are three feet onto their property. She continued saying she does not understand how the county can approve a request that encroaches onto her property. Mr. Miller mentioned the request was tabled at the last hearing due to the encroachment. Mr. Hesser responded he believes the property owners should come to a resolution. He went on to say if the lenders will not agree to the property swap, an easement will be required. Mr. Lyon stressed the Harters made it clear they will not agree to an easement. Mr. Godlewski explained the Highway Department denied the Harters request for a driveway, because they do not have the required road frontage. Mrs. Harter questioned Mr. Bergan's ability to keep his driveway that is partially on their property. She again mentioned the County told them they would be fined and the drive torn up, if they proceeded. Mr. Hesser stressed he does not know how the Board can approve an encroachment on a neighboring property. Attorney Kolbus clarified the request is for a zero lot line Developmental Variance, and that is all the Board can approve. He stressed the encroachment onto the neighbors' property is not under the Board's jurisdiction. Mr. Sloat explained the encroachment is a civil matter and separate from the Variance. He stressed he would like to resolve it without involving the courts. Mr. Hesser stated approval of the zero lot line Variance should not affect the encroachment, because it is a separate matter. He reiterated Board approval of this request will not undermine the Harters' rights as property owners. Mr. Atha clarified the Board only has authority to the property line, and they cannot rule on issues beyond that. He stressed this is a civil case. Mrs. Harter asked why the Board would approve a structure built up to the lot line despite the encroachment, because that allows the building and driveway to remain. Mr. Miller asked when the Harters purchased their property. Mrs. Harter responded the residence was purchased in 2002, and the gap area was sold to them by the developer several years later. Mr. Miller mentioned the Bergan residence was constructed before they purchased the property. Mrs. Harter stated at that time they were not aware of the encroachment, because they did not know the property line's location. She continued saying she talked to the Building Department last year, and they were unable to find a building permit for the garage addition. She added they found out less than a year ago that the structure was built onto their property.

Mr. Hesser asked Mr. Sloat how much time he needs to work out an agreement between the neighbors and their lenders. Mr. Sloat responded he hopes ninety days is enough, but he is not sure due to the banks involvement. He added he can report back in 30 days, if the Board prefers. Mr. Miller asked how Mr. Sloat plans to rectify the situation, if the Harters refuse to sell. Mr. Sloat stressed he already has plans to fix the situation. He pointed out the Harters original lot line and referenced the slide show from the previous hearing. He then explained the reasoning for the gap area between the Bergans' property and the subdivision, which was later sold to the Harters. He continued saying the developer sold the gap area to the Harters without asking the Bergans to purchase it. He stressed the garage addition was built ten feet from what was at the time believed to be the property line. He clarified this situation is before the Board now, because the Harters want to put in a driveway to their garage. He explained, if the Bergans purchase ten feet from the two neighbors bordering the North and trade it with the Harters, they would still have ten feet for access. He stated the encroachment will be rectified, and only a

setback Variance would be required. Mr. Hesser stressed the property trade must be negotiated between the interested parties. He then suggested this petition be tabled until the June 21, 2018, Board of Zoning Appeals Meeting to give the neighbors time to agree on a resolution to reduce or eliminate the Board's involvement.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request be tabled until the June 21, 2018, Elkhart County Advisory Board of Zoning Appeals meeting, to allow the petitioner time to come to a legal agreement with the neighboring property owners.

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

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

Mr. Godlewski mentioned proper notice was made throughout the Bergan petition.

14. The staff item for Evan & Natalie Stutzman (SUP-0293-2016) was previously heard as item #7 on page 3.

15. The meeting was adjourned at 10:18 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary