

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 17<sup>TH</sup> DAY OF MAY 2018 AT 8:30 A.M.**  
**MEETING ROOM DEPARTMENT OF PUBLIC SERVICES BUILDING**  
**4230 ELKHART ROAD, GOSHEN, INDIANA**

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Chris Godlewski, Plan Director; Matt Shively, Planner; Mae Kratzer, Planner; Duane Burrow; Planner, Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

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

**Absent:** Roger Miller.

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 19<sup>th</sup> day of April 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.

4. The application of ***D.R.S. Co., LLC (Buyer/Landowner) & Elkhart County Gravel, Inc. (Seller)*** for a 10 ft. Developmental Variance to allow for the construction of an addition to a manufacturing building 5 ft. from the East rear property line (Ordinance requires 15 ft.), for a 5 ft. Developmental Variance to allow for parking 10 ft. from the South side property line (Ordinance requires 15 ft.), and for a 10 ft. Developmental Variance to allow for parking 5 ft. from the East rear property line (Ordinance requires 15 ft.) on property located on the East side of SR 15, 1,000 ft. North of CR 46, common address of 68279 SR 15 in Jackson Township, zoned M-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0172-2018*.

There were four neighboring property owners notified of this request.

Andy Nesbitt, Nuway Construction, 2119 Carmen Ct., Goshen, was present representing the petitioners and explained the proposed building addition will not meet the required rear setback. He pointed out where the addition was originally planned, and they then found that the GIS property lines were inaccurate. He continued saying when the property was surveyed they found the addition was too close to the property line and shifted it over about 25 ft. He stated the request is for a 10 ft. Developmental Variance, but the building should only be 3 ft. closer to the property line than allowed. He stressed a Variance is needed in order to place the columns in the correct location. He stated the parking setback is to allow room for two additional rows of parking, because they currently park anywhere available. Mr. Hesser clarified the shaded area on the site plan is the new parking lot, and all of the setback variances are to be closer to the railroad not the road. Mr. Nesbitt mentioned drainage should not be an issue, because the railroad property is wider in this area than it is down the road. He added Brad Mosness from Abonmarche is also available to answer any of the Board's questions.

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 10 ft. Developmental Variance to allow for the construction of an addition to a manufacturing building 5 ft. from the East rear property line (Ordinance requires 15 ft.), for a 5 ft. Developmental Variance to allow for parking 10 ft. from the South side property line (Ordinance requires 15 ft.), and for a 10 ft. Developmental Variance to allow for parking 5 ft. from the East rear property line (Ordinance requires 15 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 submitted (dated 3/26/18) and as represented in the Developmental Variance application.

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

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

5. The application of **Timothy Roy & Cheryl A. Martin** for an Amendment to an existing Special Use for a home workshop/business for the sale of dairy products to revise the site plan on property located on the Southeast corner of Ash Rd. & CR 26, common address of 60020 Ash Rd. 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 #SUP-0171-2018*.

There were five neighboring property owners notified of this request.

Timothy Martin, 60020 Ash Rd., Osceola, was present for this request and stated he would like to construct a small addition to his milk processing plant. Mr. Hesser clarified the addition will be for the storage of bottles only and will not be refrigerated.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the site plan is not very detailed, but the petition was probably originally approved based on the same site plan. He asked if staff is satisfied with the site plan. Mr. Godlewski responded yes, but the Board can request a revised site plan if they deem it necessary. He continued saying it could be crisper. Mr. Campanello stated he believes this business will continue to grow, and a better site plan can be submitted at that point.

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 an Amendment to an existing Special Use for a home

workshop/business for the sale of dairy products to revise the site plan be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 3/28/18) 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.

6. The application of *Darriann N. Hanson* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres on property located on the South side of CR 28, 515 ft. West of CR 17, common address of 22094 CR 28 in Harrison 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-0218-2018*.

There were 16 neighboring property owners notified of this request.

Darriann Hanson, 22094 CR 28, Goshen, came on for this petition and request permission to keep roosters, chickens, and miniature horses. She continued saying for over a year they have owned chickens and roosters, which she stressed are miniature not full sized. She added the male horse was purchased six months ago and the female about three months. She stressed both horses were unkept and temperamental when they were brought home, and both are now thriving. She mentioned they feed, water, brush, and care for them daily. She stated their shelter is kept clean, and they rotate between the corral, fenced in yard, and unfenced yard. She explained the horses are kept on a 40 ft. lead when outside of the fence to graze. She stressed they do not breed the horses, because they are pets. Mrs. Hanson mentioned she has shelter/corral dimensions, horse heights, chicken coop dimensions, pictures, and a petition in favor of this request. She then submitted the petition [*Attached to file as Petitioner Exhibit #1*] and pictures [*Attached to file as Petitioner Exhibit #2*] for review by the Board. Mr. Campanello asked if miniature roosters crow quieter. Mrs. Hanson responded miniature roosters are very quiet, and she can hardly hear them inside her house. She stressed they will not get any bigger. Mr. Lyon clarified the adjacent property owners are okay with this request, and she responded one of the neighbors is present with a few questions. She went on to say they have not received any complaints from the neighbors. Mr. Atha asked how often the horses graze the yard. Mrs. Hanson responded the horses are rotated every day, and their neighbor to the East also allows them to use his yard for grazing. Mr. Atha asked about muddy spots in the yard, and she responded there is only one. She explained the horses were kept in that area when it first started raining, but they have since been moved. Mr. Hesser questioned the dimensions she mentioned. Mrs. Hanson then read off the following dimensions; the shelter ó 14~~6~~øx8ø, the corral ó 30~~2~~øx13~~5~~ø, the male horse ó 35ø tall, the female horse ó 43ø tall, the chicken coop 4~~6~~øx8ø. Mr. Hesser asked the size of the fenced in yard, and she responded she is not sure. She then pointed out their fence on the aerial. Mr. Atha clarified the size of the corral.

Betty Miller, 22128 CR 28, the neighbor directly west of the petitioner came on with some questions. She stated one of the neighbors spent over an hour chasing down the horses after they broke out of the corral. She continued saying the sheriff had to be called to catch them, because they ran through her yard into the neighbors' property. She added the horses left droppings on their property when they were tied to the trees. She asked if the petitioners plan to install a taller fence to prevent the horses from breaking out again. She explained the barn was originally constructed too close to their property line, but it was moved after she voiced her concern. Mrs. Miller then questioned manure disposal, and Mr. Campanello asked if the petitioners have a garden.

Mrs. Hanson came back on and stated they are aware of the horses breaking out of the corral. She continued saying she does not believe they broke out on their own, because she has never had problems while they were home. She added the neighbor who caught their female horse admitted to taking the male out to help catch her. She explained she went to the store for around an hour and came home to find her horses in the neighbors' yard. Mr. Hesser asked about the horses leaving droppings on the neighbors' property. She explained she was not aware they could reach their yard, and she stressed when they are tied up the lead should not be long enough for them to reach their yard. She stated it will not happen again, and she pointed out they tie them to the trees on a 40 ft. lead. Mrs. Hanson went on to say they spoke to the neighbors when they built their barn, and it was moved when they felt it was too close to the property line. She stressed it was moved Saturday and is no longer close to the property line. Mr. Lyon questioned waste disposal. Mrs. Hanson responded it is spread over the yard/mowed into the grass, and she stressed they do not produce very much. Mr. Atha asked the height of the fence. She responded it is currently just skids tied together. She continued saying they planned to install a fence, but they did not want to spend the money yet in case their request was denied. She then pointed out the approximate height of the skids around 4 to 4.5 ft. She explained the fence comes up to the neck area of their taller horse. Mr. Atha asked if the permanent fence will be taller, and she responded they plan to buy 4.5 ft. fencing. Mr. Campanello asked if she received any complaints from the neighbors, and she responded no. She explained they were not aware of a problem until the Planning and Development office sent them a letter stating their property is too small for chickens and horses. She continued saying they postponed installing a fence at that point and sent around a petition to the neighbors. She added they were told the barn needed to be moved farther from the property line so they moved it. Mr. Campanello stated the Board always denies roosters, and he does not know if miniature roosters can be approved. He added he is leaning towards approval, but he asked the Board's opinion. Mrs. Hanson stressed she specifically asked for roosters and all of the neighbors are okay with them.

The public hearing was closed at this time.

Mr. Atha stated he likes that the horses are rotated around the yard to avoid muddy pastures. Mr. Hesser stressed he believes the number of animals being requested is too high for this parcel. Mr. Campanello disagreed and stated the property is well kept with a lot of room. Attorney Kolbus suggested adding a time period, if the Board is inclined to approve this request, since the animals have only been on the property for six months to a year. Mr. Hesser mentioned he does not know, if horses should be kept on leads, but that does not affect land use. He stressed he still feels it is a lot of animals, but he added the owners are responsible for keeping the animals contained. He then stated he is against approving roosters, because he does not

know where the line should be drawn. He went on to say the Board denies roosters 100% of the time, and he believes it is up to the county councilors or commissioners to change that if they deem necessary. He explained he is not sure where the cut off should be based on a roosters' size and noise. He added he does not see a need for a time limit. Mr. Campanello suggested approving the roosters with a time limit, and Mr. Hesser stressed he does not want to set a precedence for approving roosters. Mr. Campanello mentioned she is asking for miniature roosters, and he used the example that some dogs bark louder than others. Mr. Hesser stressed he would prefer to continue denying all roosters.

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 an agricultural use for the keeping of animals on a tract of land containing less than three acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 4/16/18) and as represented in the Special Use application.
2. Limited to a maximum of twelve (12) chickens and two (2) adult miniature ponies at any one time; no roosters.

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

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

7. The application of *Muir Real Estate Holdings, LLC* for a Special Use for a winery on property located on the West side of SR 15, 60 ft. South of CR 112, common address of 55503 SR 15 in Jefferson 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-0150-2018*.

There were six neighboring property owners notified of this request.

David Muir, 55503 SR 15, Bristol, was present for this request. Mr. Lyon asked if the driveway can service both the house and winery. Mr. Muir responded state approved the driveway when the winery opened.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if an easement is needed for the winery. Attorney Kolbus explained the property was set up this way when the winery was originally approved. Mr. Hesser mentioned the petition is changing from a home workshop/business to a winery. Attorney Kolbus stated an easement will be needed when Mr. Muir no longer has an interest in both properties, because a second commercial curb cut will not be approved that close to the existing drive.

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 winery be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 3/19/18) 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.

8. The application of *Galen W. & Betty Miller* for a Special Use for a home workshop/business for the assembling of fence parts 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 North side of CR 36, 1,485 ft. East of CR 35, common address of 13723 CR 36 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-0210-2018*.

There were six neighboring property owners notified of this request.

Rob Yoder, 815 Waterbury Park Dr., Elkhart, was present representing Mr. Miller. He stated the request is to continue running a small manufacturing business on the property. He stressed the proposed business will not cause any substantial or permanent injury to the neighboring property, because it is a large 15 acre parcel in a low density, residential/agricultural area. He added the proposed building will be located far enough off of the road to provide safe entrance and exit to/from the property. He continued saying the petitioner will follow the proper procedure to obtain driveway and building permits. He explained they will also seek a state CDR for the building to ensure the health and safety of the people occupying the building and the community. He stressed Mr. Miller's property is nice and well-maintained, and the proposed building will be consistent with that. He went on to say the curb appeal of the surrounding property should not be affected by this request, because Mr. Miller strives to have an attractive property. He stressed the use and value of neighboring properties will not be affected by this request. Mr. Yoder mentioned a Variance is needed because of the business use on an A-1 property. He added the business is Mr. Miller's primary source of income, and it would be financially detrimental to find an alternate location for this business. He continued saying the business is family oriented. He stressed denial of this request would make it difficult for this business to move forward. He stated he does not believe this request will interfere substantially with the Elkhart County Comprehensive Plan. He added the goal is to promote small businesses in the community, and provide local fencing product. He added this falls within the spirit, purpose, and intent of the Zoning Ordinance, because home workshop/businesses are allowed by Special Use in this zone. He reiterated this is a family business, with only one outside employee. He added there will be no outside storage. Mr. Lyon questioned a drainage ditch on the property, and Mr. Yoder responded he does not have any information on the ditch. Mr. Lyon suggested he

speak with the Surveyors Office to verify it is not a county regulated drain. Mr. Hesser clarified the property has enough room for the semi to turn around. Mr. Yoder stated the turn-around is about 85 to 90 ft., which is adequate for a semi. He added the majority of the traffic is flat-bed trailers. Mr. Hesser questioned the loading dock, and Mr. Yoder responded it is for semis. Mr. Campanello asked if it is inside or outside, and it was found to be outside.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Denny Lyon, **Seconded by** 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 home workshop/business for the assembling of fence parts be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 4/12/18) and as represented in the Special Use application.
2. No outdoor storage related to the home workshop/business is permitted.

Further, the motion 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 taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the Building Permit (where required).
2. Approved in accordance with the site plan submitted (dated 4/12/18) 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.

9. As a staff item, Mr. Godlewski presented the minor change request for **Joe Bailey** (UV-0092-2016). He stated planning staff is requesting the second Commitment be changed from review by the Board of Zoning Appeals every two years until the termination of the life lease to review by staff. He added staff recommends approval as a minor change. Attorney Kolbus clarified this petition if changed will be reviewed every two years by staff instead of the Board. Mr. Hesser questioned the life lease, and Mr. Godlewski responded it is for a mobile home. Mrs. Kratzer explained the request was for a mobile home, and staff typically reviews them every few years to ensure they meet the county standard. Mr. Hesser asked why they required renewal before the Board every two years, and Mrs. Kratzer responded she did not find a reason in the minutes. Attorney Kolbus reiterated Staff reviews mobile homes every couple years. Mr. Campanello asked if staff has received any complaints on this property. Mr. Hesser asked if the

commitment was added to the original request, and Mrs. Kratzer responded it was first approved May of 2016. Mr. Hesser stated he does not remember this request, and he is curious as to why the Board added a reoccurring two year renewal before them. He mentioned he would like to review the minutes before acting on this request. Mr. Campanello stated the request can be tabled until more information is available. Mr. Hesser explained the Board may not have had a reason for renewal, but he would like to know.

Mrs. Kratzer came on and read the minutes from the previous hearing.

Mr. Hesser stated he assumes the commitment was added due to having multiple residences on the property. He clarified once a new residence was constructed the old one was to be torn down leaving two residences. He then asked if a residence or mobile home is to be torn down/removed when the life lease is terminated. Mrs. Kratzer explained one of the residences was in poor condition and replaced by a new residence leaving the new home and mobile home. Mr. Hesser asked which one will be removed when the lease is up. Mr. Campanello stated he understood the mobile home would be removed at the termination of the life lease. Attorney Kolbus clarified the request is being monitored to ensure that happens. Mrs. Kratzer explained staff will inspect to make sure the mobile home is removed. Mr. Atha mentioned this request is confusing since it involves three homes on one property.

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 approve this 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.

***\*\*It should be noted that the mobile home referred to during the Joe Bailey request was found to be a stick built home\*\****

10. The application of *Jamestown United Methodist Church* for an Amendment to an existing Special Use for a church to change the sign size, for a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence, for a 24 sq. ft. Developmental Variance to allow for the placement of a 56 sq. ft. sign (Ordinance allows 32 sq. ft.), and for a 6 ft. Developmental Variance to allow for the placement of a sign 49 ft. from the center line of CR 3 (Ordinance requires 55 ft.) on property located on the Southeast corner of CR 3 & CR 22, common address of 59218 CR 3 in Baugo 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-0152-2018*.

There were 18 neighboring property owners notified of this request.

Jim Eggleston, 59218 CR 3, Elkhart, was present representing Jamestown United Methodist Church. Mr. Eggleston explained the church's current sign has to be manually changed, and it is hard to keep it up to date. He continued saying they would like to upgrade to an electronic sign. He mentioned they spoke to the neighbors and did not receive any complaints. Mr. Atha stated the new sign appears to be slightly larger than the existing one. He also asked if the sign will be too bright at night, and Mr. Eggleston stressed they will take the



neighbors into consideration. He continued saying it can be turned off at night, and he pointed out the school's sign is only on from 5 a.m. to 11 p.m. Mr. Hesser asked if the intersection of CR 22 and CR 3 is a four-way stop, and Mr. Eggleston responded only CR 22 stops. Mr. Hesser reiterated CR 3 traffic does not stop. Mr. Lyon noted a jog in the right-of-way, and Mr. Eggleston stated he is not sure why the property is shaped that way. Mr. Lyon clarified the new sign will not be in that area, and it was found the new sign will be placed in the same location as the old one.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he has no problem with this request, and Mr. Atha added it should not affect visibility on CR 22. Mr. Hesser mentioned none of the neighbors are here to object to this request, and traffic should not be an issue in this area. He questioned the language in finding #3 of the Developmental Variance where it says the church would be unable to have efficient exterior communication. He requests it be changed to the church would have less efficient exterior communication.

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

**Motion: Action:** Approve, **Moved by** Joe Atha, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a church to change the sign size be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 3/20/18) and as represented in the Special Use Amendment application.

Further, the motion also included that a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence, for a 24 sq. ft. Developmental Variance to allow for the placement of a 56 sq. ft. sign (Ordinance allows 32 sq. ft.), and for a 6 ft. Developmental Variance to allow for the placement of a sign 49 ft. from the center line of CR 3 (Ordinance requires 55 ft.) be approved based on the following Findings and Conclusions as amended by the Board:

1. Approval of the request will not be injurious to public health, safety, morals or general welfare. Electronic message boards are allowed by Special Use in the R-1 zoning district.
2. Approval of the request will not cause substantial adverse effect on the neighboring property. This is a 1.91 acre parcel in a moderately dense residential area.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property. The church would have less efficient exterior communication.

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the

grant and construction work completed within one year from the date of the issuance of the Building Permit (where required).

2. Approved in accordance with the site plan submitted (dated 3/20/18) 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.

11. The application of *AMMF Trustee Corporation as Trustee for Amish Mutual Mortgage Fund (Land Contract Holder) & Gerald & Ida Borkholder (Land Contract Purchaser)* for a Special Use for a home workshop/business for a woodworking business 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 7, 1,700 ft. North of CR 52, common address of 71200 CR 7 in Union 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-0197-2018*.

There were eight neighboring property owners notified of this request.

Gerald Borkholder, 71200 CR 7, Nappanee, was present for this request and stated he would like permission to have a woodworking business on his property and more storage space than he is allowed. Mr. Lyon clarified the proposed building will be 75 ft. from the center of the road. Mr. Atha questioned the use of the building, and he responded it is for storage. He went on to say he currently uses his barn for woodworking. Mr. Atha asked about customers coming to the property, and he responded they do not. Mr. Borkholder explained RV companies send him orders, and he delivers them once completed. Mr. Hesser mentioned the questionnaire states pick-up trucks will be used for material drop-offs and deliveries, and he questioned box trucks and semis. Mr. Borkholder responded a semi may deliver to the property once a week. Mr. Hesser asked if the property has room for a semi turn-around, and he responded they typically stop and unload off of the road. Mr. Atha stressed the Board does not generally allow semis to park on or back into/off of county roads, and a semi turn-around is typically required. He asked if it is possible to create one on the property. Mr. Borkholder clarified semis are not allowed to drive in or back out of his drive. He stated he believes a semi turn-around is possible. Mr. Campanello stressed a turn-around is required almost 100% of the time. Mr. Godlewski suggested an updated site plan be submitted showing the turn-around, and Mr. Campanello added it can be approved by staff. He also asked if both flat bed trucks and semis come to the property, and Mr. Borkholder responded yes. Mr. Hesser suggested no backing onto/off of the road by semis be added as a commitment. Attorney Kolbus explained requesting a revised site plan is a condition and no backing onto/off of the road is a commitment. Mr. Atha clarified there will be no outside storage.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he would prefer the square footage variance be approved to prevent outside storage.

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 a home workshop/business for a woodworking business 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 for approval by staff showing a semi turn-around.

The following commitments were imposed:

1. Approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.
2. Backing in or backing out of vehicles from/onto CR 7 is prohibited.

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 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. The petitioner must provide a revised site plan for approval by staff showing a semi turn-around.

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

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

12. The application of *M & H Rentals, LLC (Lessor) & Trevor Cole Riegsecker (Lessee)* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and for a 25 ft. Developmental Variance to allow for the construction of an accessory structure 50 ft. from the center line of CR 121 (Ordinance requires 75 ft.) on property located on the Northwest corner of CR 121 & SR 15, common address of 19047 CR 121 in Elkhart Township, zoned B-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0220-2018*.

There were six neighboring property owners notified of this request.

Trevor Cole Riegsecker, 19047 CR 121 Apt. D., New Paris, was present for this request. Mr. Riegsecker explained his son is starting his second year in 4-H on tract to become a 10 year member, and he stressed it has helped teach him responsibility. He explained last year their animals were kept at a family farm, and it prevented them from working with them as much as they needed to. He stressed his request will not affect the neighbors, because this is an agricultural area with very few residences. He continued saying a setback variance is needed for his proposed building to avoid tearing down an existing shed is preventing the building from meeting the required setback. Mr. Lyon asked if he has been in contact with the neighbors. Mr.

Riegsecker responded he has been unable to contact the one next to him, and the other neighbor has 300 acres of woods/farmland. Mr. Atha asked how many animals he would like permission for of each type. Mr. Riegsecker stated he has one son in 4-H and another who is two, and he anticipates having two to three hogs for 4-H each year from April to August. He added he may try feeder calves next year, but he would only have one or two. Mr. Atha asked about chickens, and Mr. Hesser stated the request lists four hogs, two feeder calves, chickens, ducks, and goats. He stressed that is a lot of animals on one acre in addition to a multifamily use. Mr. Atha asked the petitioner to either clarify how many chickens, ducks, and goats he would like or remove them from the request. Mr. Riegsecker responded he would like permission for ten chickens to be kept in a coop or barn, two ducks, and two goats. Mr. Atha pointed out a fenced in area on the site plan. He then clarified the request is for two to four hogs, two feeder calves, ten chickens, two ducks, and two goats kept in a fenced in area. Mr. Riegsecker stressed the hogs will be kept inside the pole barn, and will only be outside to walk and train. He estimated them being inside the barn 90% of the time, because he does not trust the wildlife surrounding his property. He explained he saw a bobcat on his neighbors' property last night. Mr. Atha asked what animals he plans to keep in the fenced in area. Mr. Riegsecker stated the feeder calves will also be kept in the barn except for grazing, because they cannot defend themselves. Mr. Atha stressed he likes to avoid muddy pastures, and he asked why a Special Use is required in an agricultural zone. Mr. Riegsecker responded he owns less than three acres, and it is in the process of being rezoned. Mr. Campanello clarified last month's rezoning brought the property into conformity due to the multifamily use. Mr. Hesser asked if the property has already been rezoned from A-1 to B-2, and Attorney Kolbus stressed the Commissioners have not approved it yet. Mr. Riegsecker stated the rezoning will go before the Commissioners on Monday. Attorney Kolbus explained if the Board approves this request, it will remain valid after the rezoning. Mr. Hesser asked the procedure if the request was processed under the B-2 zoning, and Attorney Kolbus stated a Use Variance would be required. Mr. Atha asked if the chickens, ducks, and goats will all be kept inside. Mr. Riegsecker stated the chickens and ducks will be kept in a fenced in coop, and he stressed he does not want a huge farm. He explained the animals are used for 4-H, learning, and eggs. He added the goats would be later on, if he decides to raise them for 4-H. He continued saying he plans to have feeder calves next year and possibly goats the year after, if the calves do not work out.

Roland Hilty, 19061 CR 121, the neighbor west of the subject property came on against this petition. Mr. Hilty submitted a floor plan of his residence to the Board *[Attached to file as Remonstrator Exhibit #1]*. He then explained the solid line represents his existing residence, and the dotted lines represent the proposed additions. Mr. Hilty explained he worked in the construction industry for 42 years, but he has not been able to work on this project due to his schedule. He went on to say he has been out of state or overseas, but he plans to start this project in the fall. He stated he is against this request, because he invested \$5,000 in landscaping along the east side of the residence. He stressed he would have to move his landscaping, if the storage building is constructed. He added he grew up on a farm, and he does not want the animal smell in his house. Mr. Hesser clarified Mr. Hilty is the owner of the adjacent property. Mr. Hilty stated he believes the proposed steel building will negatively impact his property value, and he does not want that building next to his property. He went on to say he believes it will bring a city feel to his property, and he stated a 50x32 building is huge. He stressed it will devalue his property

since no one will purchase it with a pole building next door. He added Mr. Schmucker owns property on CR 19, where the building could be constructed. Mr. Campanello stated the proposed building meets the county's required setback from Mr. Hilty's property. Mr. Hesser clarified a Developmental Variance is only needed to be closer to the road than allowed. Mr. Campanello stressed the petitioner's building meets the required side yard setback, and he has the right as a property owner to construct it there. He continued saying the pole building will be setback 15 ft. from the neighbors property, and the variance is only needed to be 50 ft. from the center line of the road. He stressed Mr. Hilty's property value and ability to sell the property will not be affected by this request. Mr. Hilty stated he believes his property value will be affected, because he worked in construction for 42 years. Mr. Hesser requests Mr. Hilty address the proposed agricultural use. Mr. Hilty stressed he does not want animals on the neighboring property. Mr. Lyon asked if Mr. Hilty has made the submitted improvements to his property yet, and he responded no.

Doug Pyle, Vinyl by Designs, 67002 SR 15, New Paris came on with questions about this petition. He stated his business is catty-corner from the subject property, which is in the process of being rezoned from A-1 to B-2. Mr. Campanello clarified the zoning change was required to bring the property into conformity with the current Zoning Ordinance. Mr. Pyle mentioned the petitioner is now requesting permission to keep animals on the property. He asked as a business owner, who has appeared before the Board, how much they will allow the petitioner to vary from the B-2 standards. He stressed his company had to meet some substantial requirements. He added the property across the road has chicken barns, and he questioned manure disposal. Mr. Campanello mentioned behind the subject property is several acres of woods and farmland. Mr. Pyle stressed the petitioner would need permission to dispose of his manure on that property, because he does not own it. He then mentioned a time when the chicken farm across the street spread chicken manure during 35 mph winds, that blew all over their product and building. He stressed he does not want that happening again. He stated he understands the petitioner is not asking for a large amount of animals, but it still raises a concern for his family and company. He stated he does not have a problem with this request, if the petitioner can assure him proper disposal of the manure will take place. Mr. Pyle asked how this Special Use request could evolve down the road, and if the GPU D B-3 across the road can also receive a Special Use. Mr. Campanello clarified the Board has granted a Special Use and outside storage for Mr. Pyle's property, and he stressed he has met every requirement. He then mentioned he was not allowed to rezone from A-1 to B-2, and the petitioner was just granted that. Mr. Campanello stressed the petitioner was granted a rezoning, because the apartments were not allowed in the previous zoning. Mr. Pyle asked if he could also have animals on his property, and he stressed his concern is consistency. He added he is not opposed to this request, but he is concerned about what it could turn into in the future. Mr. Campanello asked if he would be more comfortable, if a commitment was added limiting how long the Special Use is valid, for example the animals must be removed once the 4-H use is done. Mr. Pyle responded the Board can add a time limit, but he understands it could be extended later on. He stressed he also would like someone to follow up on the Special Use request to ensure the imposed rules are followed. He added the request is not what he thought it was, and it should improve the property. He stressed his concern is consistency with these requests.

Michael Schmucker, M & H Rentals, 64570 CR 19, Goshen, was present for this request as the current property owner. Mr. Schmucker stated he purchased the property in July of 1996, and he found it did not conform to the A-1 zoning when Mr. Riegsecker approached him to purchase the property. He continued saying they then took steps to correct the zoning. He stressed Mr. Riegsecker has been living on and maintaining the property, and he believes a pole barn will increase its value. He added he has known him for years, and even employed him at one time. He stressed Mr. Riegsecker will do the right thing.

Carol Chupp, 67267 SR 15, New Paris, Chupp Piano Service, came on with some concerns about this request. She stated she supports 4-H, and her daughter was involved in it growing up. She stressed her biggest concern is enforcement of the conditions and commitments imposed because of the manure incident. She continued saying when that happened they called the police, but chicken manure still ended up in their vents. She added it is easy to say now that it will be a small/inconspicuous operation, but she is worried about what could happen later on. She again mentioned the manure operation and stated they are still not sure the correct permits were ever pulled. She explained she understands chicken barns are required to have contracts for where the manure can be spread, and they have yet to hear if they had any. She asked how any problems will be dealt with. Mr. Campanello stated a complaint should be filed when problems arise. She asked where she can file a complaint, and he responded code enforcement. She stated she wanted to be aware of the process, and she did not receive notice of this request due to being too far away. She also stated she is concerned about the smell.

Mr. Riegsecker came back on and submitted pictures of his neighbors' property *[Attached to file as Petitioner Exhibit #1]*. He stated Mr. Hilty who is against the accessory building has a pole barn on his property along with several junk cars, a semi trailer, and a junk trailer. He stressed the vehicles are not plated and have not been moved recently. He pointed out the 2015 aerial shows the vehicles proving they have been there for at least three years. He then addressed the animal smell, and he stressed his property is in the country surrounded by farmland with large chicken barns across the road. He added animal smells are part of country living. Mr. Riegsecker stated he is not sure how a pole barn will be detrimental to the neighboring property, and he stressed he does not see \$5,000 worth of landscaping over there. He added the residence has been vacant for a while, and he has yet to see any improvements to the property. Mr. Atha asked how he plans to dispose of manure, and he responded he has permission to spread it on the 370 acres of woods behind his property. He continued saying he also has permission to keep his animals there, if his request is denied, but he would prefer to keep them inside his proposed building. He added he tried to purchase property from that neighbor, but he is not ready to sell. Mr. Lyon clarified Mr. Riegsecker asked to purchase land north of the subject property. He then asked if the proposed building could be smaller, and Mr. Riegsecker responded 50x30 is not a very big building. Mr. Atha asked if any streams run through the woods behind his property, and he responded only the river. He stressed it is a ways north, and he pointed it out on the aerial. He stated he meets the required setback from the neighbors' property, and the variance is only to be closer to the road than allowed. He stressed he will build a nice pole barn. He explained he has worked in the construction industry for 10 to 12 years, and he will make sure it is built properly. He stressed he does not believe his request is outrageous.

The public hearing was closed at this time.

Mr. Atha stated he is okay approving this request, because the animals will be kept inside the barn. He added he believes a lot of the concerns raised are due to the chicken manure that was spread during 30 mph wind, and he stressed that does not pertain to this property or the Board. Mr. Hesser mentioned the property is in the process of being rezoned to B-2, but this request is being pushed through under its current A-1 zoning. He continued saying after the property is rezoned to B-2 a Use Variance is required instead of a Special Use, and a higher standard must be met. Mr. Campanello stressed he does not see it that way, because staff required the petitioner rezone his property to bring it into compliance. Mr. Hesser responded, if the property had been zoned properly, it would require a Use Variance, and he does not believe the Board should act on this request under the A-1 zoning, when it is set to change in a month. He stressed even under the Special Use standards the petitioner is requesting too many animals. He explained his children were involved in 4-H, and he loves the program. He continued saying he hopes the petitioner can find a place to keep his animals to continue in 4-H, but he believes the use is too intense. He stated Mr. Schmucker vouched for Mr. Riegsecker, and he believes he could keep this intense of a use clean. However, the Board's approval cannot be limited to someone who will keep the property clean. He stressed approval runs with the land, and someone else down the road could legally have just as many animals as Mr. Riegsecker. He stated four pigs, two feeder calves, chickens, ducks, goats, and five families on one acre is too intense of a use. Attorney Kolbus suggested the animals be itemized, if the Board grants this petition. Mr. Campanello asked if a time limit should be imposed, and Attorney Kolbus stated that is an option. Mr. Campanello suggested possibly three to four years for the Board to see how it works out. He added Mr. Riegsecker may end up moving to a property where agricultural animals are allowed by right. He stated he understands the concerns raised, but he believes this is in the middle of nowhere surrounded by woods/farmland. He went on to say he understands this is an intense use due to the number of families and animals on the property. Mr. Lyon mentioned it would be a better situation, if property to the north could be purchased.

Mr. Riegsecker came on and clarified the apartment building consists of three one-bedroom apartments and one four-bedroom apartment. He stressed it does not house four families, because one apartment has one tenant and the other two have two tenants each. He explained the smaller apartments are on the east side of the property, and his family resides on the west side. He again mentioned his children are the only ones on the property, because the other apartments only have one bedroom.

Mr. Atha stated he believes too many animals are being requested, and he suggested bringing the number down. Mr. Lyon asked if the petitioner is okay with that, and Attorney Kolbus stressed the Board sets the standard. Mr. Hesser asked how many animals are currently kept on the property, and Mr. Riegsecker responded three pigs. He explained his son can show two at the fair, but they have three in case one falls ill. Mr. Hesser stated a lot of the Board members were involved in 4-H and understands keeping an extra animal just in case. He added he is not opposed to allowing him three months to remove the hogs from the property. Mr. Campanello asked about chickens, and Mr. Lyon mentioned the Board has allowed chickens on smaller pieces of property. Mr. Campanello added chickens are approved in the middle of subdivisions. Mr. Hesser stated he does not agree with picking and choosing, which animals should be allowed. He went on to say he would deny the petition as presented but give the petitioner six months to remove the pigs already on the property.

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

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

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 4/16/18) and as represented in the Special Use application.
2. Number and type of animals limited to: three (3) hogs, ten (10) chickens, no roosters, two (2) ducks, and two (2) feeder calves or two (2) goats.

Further, the motion also included that a 25 ft. Developmental Variance to allow for the construction of an accessory structure 50 ft. from the center line of CR 121 (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 submitted (dated 4/16/18) and as represented in the Developmental Variance application.

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

**Yes:** Joe Atha, Tony Campanello.

**No:** Denny Lyon, Randy Hesser.

Mr. Hesser stated since only four Board members are present a different motion is needed to make a decision today. Attorney Kolbus asked Mr. Lyon if he is completely opposed to allowing animals on this property, or if he would change the number being requested. Mr. Lyon responded he is against the amount of animals. Attorney Kolbus asked what he proposes. Mr. Lyon stated he would remove either goats or calves, but he is okay allowing chickens and ducks. He added he would also allow the hogs for a period of six months. Mr. Campanello mentioned the previous motion did not include a time restriction for the hogs. Attorney Kolbus asked if Mr. Lyon would like calves and goats completely removed from the request. Mr. Lyon responded he is okay with calves or goats, but not both at the same time. Mr. Atha asked if he would be okay with three to four hogs. Mr. Lyon stated yes but with the time limit of six months. Attorney Kolbus then asked about chickens and ducks. Mr. Lyon responded he is okay approving both chickens and ducks. Mr. Atha clarified the six month time limit is until 4-H is over, and Mr. Campanello added it only applies to the hogs. Mr. Lyon suggested the petitioner be allowed to have calves or goats after the hogs are gone. Mr. Hesser reiterated the time limit only applies to the hogs. Attorney Kolbus suggested a commitment of three hogs up to six months, thereafter



either two feeder calves or two goats; ten chickens; and two ducks. Mr. Atha asked if the petitioner can have hogs up to six months each year for 4-H, but it was determined the hogs should be permanently removed after six months. Mr. Godlewski asked if the petitioner can have hogs again next year for six months, and Attorney Kolbus responded no. He added the petitioner can have either two feeder calves or two goats next year, no hogs. Mr. Lyon stated he needs to come back before the Board, if he wants hogs.

**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 an agricultural use for the keeping of animals on a tract of land containing less than three acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 4/16/18) and as represented in the Special Use application.
2. Number and type of animals limited to: (a) three (3) hogs for a period of six (6) months only from 5/17/18, thereafter either two (2) feeder calves or two (2) goats; (b) ten (10) chickens (no roosters); and (c) two (2) ducks.

Further, the motion also included that a 25 ft. Developmental Variance to allow for the construction of an accessory structure 50 ft. from the center line of CR 121 (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 submitted (dated 4/16/18) and as represented in the Developmental Variance application.

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

**Yes:** Joe Atha, Tony Campanello Denny Lyon.

**No:** Randy Hesser.

Mr. Riegsecker asked if the hogs were approved. Mr. Campanello explained hogs are not allowed on the property after 4-H is completed this year. Attorney Kolbus suggested the petitioner speak to staff in the hall.

13. The application of **Richard A. & Rosetta F. Mast** for an amendment to an existing Special Use for a home workshop/business for a general store to include a bakery and for a Developmental Variance to allow for three employees (Ordinance allows two outside employees) on property located on the West side of SR 13, 1,280 ft. North of CR 40, common address of 65730 SR 13 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-0212-2018*.

There were six neighboring property owners notified of this request.

Mr. Hesser noted the Staff Report history states action was taken in November of 2018. Mr. Campanello mentioned he believes the request was approved in 2017. Mr. Godlewski stated the year will be corrected.

Richard Mast, 65730 SR 13, came on for this request and stated he would like to add a bakery inside his grocery store with an employee to operate it. Mr. Campanello asked if any of the current employees are family members. Mr. Mast responded one is a family member but the other two are not, and the requested employee would make three outside employees. Mr. Campanello asked about a semi turn-around, and Mr. Mast responded he has plenty of room for a turn-around. Mr. Hesser clarified a building addition is not needed for the bakery. Mr. Godlewski clarified the previously mentioned history should read November of 2013.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if a Developmental Variance is the proper way to address a larger number of outside employees than allowed, because he does not remember this in the past. Mrs. Kratzer explained the Zoning Ordinance standard is two outside employees, and anything over that is technically a Developmental Variance. Mr. Hesser also stated he does not see how the condition requiring a building permit be pulled within 180 days applies to this request. Mr. Godlewski pointed out the condition states where required.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a home workshop/business for a general store to include a bakery be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/12/18) and as represented in the Special Use Amendment application.

Further, the motion also included that a Developmental Variance to allow for three employees (Ordinance allows two outside employees) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is taken out within 180 calendar days from the date of the grant and construction work completed within one year from the date of the issuance of the building permit (where required).
2. Approved in accordance with the site plan submitted (dated 4/12/18) 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.

14. The application of *Jodeena Thomas & Janet L. Bartley Joint Tennants with Rights of Survivorship* for a Use Variance to allow for an existing residence, for a 9 ft. Developmental Variance to allow for the construction of a garage addition 66 ft. from the center line of CR 7 (Ordinance requires 75 ft.), for an 11 ft. Developmental Variance to allow for the construction of said addition 39 ft. from the center line of Nelson Dr. (Ordinance requires 50 ft.), and for a 4 ft. Developmental Variance to allow for an existing residence 6 ft. from the north side property line (Ordinance requires 10 ft.) located on the West side of CR 7, 7,323 ft. South of CR 20, common address of 57995 CR 7 in Concord Township, zoned B-3, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #UV-0217-2018.

There were 14 neighboring property owners notified of this request.

Bernard Feeney, a registered land surveyor, 715 S. Michigan St., South Bend came on representing Janet Bartley. Mr. Feeney stated it was read that the property is located 7,323 ft. south of CR 20, and he clarified it is only about 350 ft. south of CR 20. He explained the residence was constructed in 1952, and it was built to the standards at that time. He continued saying Mrs. Bartley has a family member with special needs, and the garage's current configuration cannot accommodate them. He pointed out the garage is located at the northeast corner of the house and measures 20'x22'. He stressed garages are now built much larger, and Mrs. Bartley needs to expand her garage to accommodate her special needs vehicle. He explained she currently pulls the vehicle out of the garage for everyone to pile in, and it is an inconvenience especially in the rain. He went on to say the addition to the east will provide plenty of room to move around the vehicle inside the garage. Mr. Lyon clarified the request is for a garage addition. Mr. Feeney added the south face of the garage will now line up with the house. Mr. Hesser asked when the zoning changed to B-3. Mr. Godlewski clarified the zoning did not change, but the Zoning Ordinance changed to prohibit single family residences in B-3 zones. Mr. Hesser asked if the setback requirements also changed, and Mr. Godlewski responded that is not likely. Attorney Kolbus stressed the Zoning Ordinance changed to prohibit single family residences in a B-3 zone, but the setbacks did not change. Mr. Hesser clarified a setback Developmental Variance is required regardless of the Ordinance at the time. Mr. Feeney pointed out the subdivision's recorded plat was set up for single family residences.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated his concern is that the Board is typically hesitant to change a grand fathered use, but this is only a small addition. He confirmed the addition will be square with the house on one side and only six feet closer to the road on the other. He added he does not believe visibility will be a problem.

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 Use Variance to allow for an existing residence be approved with the following condition imposed:

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

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/13/18) and as represented in the Use Variance application.

Further, the motion also included that a 9 ft. Developmental Variance to allow for the construction of a garage addition 66 ft. from the center line of CR 7 (Ordinance requires 75 ft.), for an 11 ft. Developmental Variance to allow for the construction of said addition 39 ft. from the center line of Nelson Dr. (Ordinance requires 50 ft.), and for a 4 ft. Developmental Variance to allow for an existing residence 6 ft. from the north side property line (Ordinance requires 10 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 submitted (dated 4/13/18) 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.

15. The application of **Thomas L. Kurtz** for a Use Variance to allow for the construction of a second dwelling on a parcel located on the East side of Ash Rd., 1,500 ft. North of CR 26, common address of 59622 Ash Rd. 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 #UV-0169-2018*.

There were two neighboring property owners notified of this request.

Craig Pawling, Silver Creek Homes, 2260 Cassopolis St., Elkhart, was present representing the Kurtz family. Mr. Pawling explained multiple outbuildings are located on the property, and the petitioner would like to stay there while the new residence is constructed to help prevent theft and vandalism. He added without approval of this request the family would be displaced during construction. He mentioned the Board has added protection that the old residence will be torn down, because it is under construction loan financing. He explained he does not receive full funding until the second residence is demolished. Mr. Hesser asked his expected time line. Mr. Pawling responded the new residence is a modular home, and it is already completed waiting to be placed on site. He explained he was unable to pull the building permits due to needing Board approval, but everything is ready. He continued saying it should be around a three month project. He mentioned he has a contract in place allowing the property owners to move their belongings into the new residence once the certificate of occupancy has been issued, but they cannot occupy it until the existing one has been demolished.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked Mr. Godlewski if staff is working to change the Ordinance to allow these requests by right. Mr. Godlewski responded it is one of about thirty minor changes that staff will start reviewing soon in house. He stressed it will take a while to review the changes, and the Plan Commission may also assemble a committee to review them. He explained the changes are only tweaks not sweeping changes to the ordinance, but logistics are still involved.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel 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 existing residence must be removed within six (6) months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 3/28/18) 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.

16. The application of *Kevin J. & LaVerda K. Yoder* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the West side of SR 13, 2,125 ft. North of CR 44, common address of 67483 SR 13 in Benton Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0173-2018*.

There were nine neighboring property owners notified of this request.

Kevin Yoder, 67483 SR 13, came on for this request and stated he would like to construct a new residence. He explained the existing one was constructed in 1972, and a large investment would be needed to bring it up to today's standards. Mr. Hesser confirmed it is more economical to build a new residence than to fix the existing one.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel 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 existing residence must be removed within six (6) months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/29/18) 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.

17. The application of *Velda Schmucker & Leland Yoder Joint Tenants with Full Rights of Survivorship* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the Southeast corner of CR 146 & CR 29, 96 ft. East of CR 127, in Jackson Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0201-2018*.

There were 14 neighboring property owners notified of this request.

Tony Glentz, Shipshewana Homes, 613 Colorado St., Goshen, was present on behalf of Leland Yoder. Mr. Glentz stated this request is the same as the last two. He continued saying the petitioners would like to reside in the current residence, while the new one is constructed. Mr. Hesser clarified the existing residence will be demolished after completion of the new one.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** 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 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 existing residence must be removed within six (6) months of completion of the new residence.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 4/10/18) 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 staff item for Joe W. Bailey (UV-0092-2016) was previously heard as item #9 on page 8.

19. The meeting was adjourned at 11:02 p.m.

Respectfully submitted,

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Laura Gilbert, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary