

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15TH DAY OF NOVEMBER 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 Secretary, Tony Campanello. Staff members present were: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Matt Shively, Planner; Mae Kratzer, Planner; Duane Burrow; Planner, Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

Present: Joe Atha, Tony Campanello, Denny Lyon.

Absent: Roger Miller, Randy Hesser.

2. A motion was made and seconded (*Lyon/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of October 2018 be approved as read. The motion was carried with a unanimous roll call vote.

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

****It should be noted that Roger Miller arrived at this time****

4. The application of **Richard W. Pehnec** for a 5 ft. Developmental Variance to allow for the placement of an accessory building 0 ft. from the East side property line (Ordinance requires 5 ft.) on property located on the South side of Bel-Ridge Dr., 954 ft. West of Middleton Run Rd., common address of 23666 Bel-Ridge Dr. in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0698-2018*.

There were six neighboring property owners notified of this request.

The petitioner was not present; hearing continued until later in the meeting to allow the petitioner time to appear.

See item #7 on page 3.

5. The application of **Stephanie K. Little** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district located on the South side of 4th St., 490 ft. East of Division St., common address of 18908 4th St. in Jackson Township, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0680-2018*.

There were 28 neighboring property owners notified of this request.

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

Stephanie Little, 18908 4th St., New Paris, and Calvin Atkinson, 11732 Lincoln Way W., Osceola, were present for this request. Mr. Miller asked if the animals are already on the property, and Mr. Atkinson responded yes. However, he continued they have never owned goats, and he believes that complaint was part of a neighbor dispute. Mr. Miller questioned housing for the ducks. Mr. Atkinson stated the property is fenced in, and the ducks also have an enclosed shelter with water. He continued saying he owns a concrete business, and he does not have a problem with the appearance of the property as a business owner. Mr. Atha asked about manure disposal, and Mr. Atkinson responded he uses it as fertilizer at his work sites. Mrs. Little added she also has a few other people who use it as fertilizer on their gardens. Mr. Miller asked if they own both ducks and chickens, and she responded just ducks. He then stressed she would need to come back for permission, if she decides to have chickens. Mr. Atkinson stressed Mrs. Little would like the ducks to pass naturally, because she was given them by a former neighbor.

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 an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/04/18) and as represented in the Special Use Application.
2. The use is limited to a maximum of twelve (12) ducks at any one time.

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

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

6. The application of *John D. Swartzendruber & Kathryn A. Swartzendruber as Trustees of the Swartzendruber Living Trust* for a Special Use for a ground-mounted solar array on property located on the West side of CR 113, 1,665 ft. South of CR 26, common address of 60325 CR 113 in Concord Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0700-2018*.

There were 21 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W 1350 N., was present representing the Swartzendrubers. She stated the solar array will be located approximately 38 ft. from the property line, and she pointed out the petitioners own the surrounding properties.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a 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. The request is approved in accordance with the site plan submitted (dated 10/15/18) and as represented in the Special Use application.

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

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

7. The application of **Richard W. Pehne**c for a 5 ft. Developmental Variance to allow for the placement of an accessory building 0 ft. from the East side property line (Ordinance requires 5 ft.) previously heard as item #4 on Page 1 was recalled at this time.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0698-2018*.

There were six neighboring property owners notified of this request.

Richard Pehne, 23666 Bel-Ridge Dr., was present for this request. Mr. Miller asked the purpose of the proposed structure, and Mr. Pehne responded storage. Mr. Lyon questioned the need for a Developmental Variance. Mr. Pehne stated placing the building to meet the required setback would cause it to overlap with the field system, since it is 10x20. He continued saying a man-made pond is located on the other side of the field system along with a cement ramp for his travel trailer. He added moving the building away from the property line would also place it in front of his bedroom window. Mr. Atha clarified the building is pre-fab, and he asked if it will be placed on a cement slab. Mr. Pehne responded the fence will be taken down, the building placed, and the fence put back up. Mr. Miller asked the petitioner if he understands the reason for Staff's recommendation of denial, and he stressed placing a structure directly on the property line can cause problems in the future. He went on to say the current neighbor may be okay with the situation, but the next neighbor may not be in favor of it. He added the petitioner would be trespassing, if he crossed onto the other side of the proposed building. Mr. Pehne pointed out the proposed building location is 50 ft. from the neighbors' residence. Mr. Hesser clarified the petitioner's fence is on the property line, and Mr. Atha added the building will be inside the fence. Mr. Pehne mentioned one of his neighbors also has a storage building. He continued saying he does not believe the neighbors will complain, because his property is well-maintained. Mr. Lyon asked about utilities in that area, and Mr. Pehne responded only cable.

Kim Coates, 23638 Bel-Ridge Dr., the neighbor immediately to the east of the subject property was present against this request. He stated the only access to the back of the petitioner's property is where he plans to place the building. He stressed, if the shed is placed at that location, access to the back of the property will be cut off, and the petitioner would have to cross over onto his yard. He stressed approval of this request will expose his property to potential lawn, landscaping, and sprinkler system damage. He added the petitioner recently cut down some trees, and the equipment was able to stay on his property. However, placing the

building at the proposed location presents a risk, because large equipment will no longer have access to the back of his property. He continued saying he believes the rear of the property has sufficient room for a building. He request that the Board deny this petition. Mr. Lyon asked about utility easements. Mr. Coates responded easements are located along the back and adjoining side to Mr. Peh nec, but completely on his property.

Mr. Auvil submitted a letter in remonstrance to the Board from Mr. Coates [*Attached to the file as Staff Exhibit #1*].

Mr. Peh nec came back on and pointed out a four foot wide gate is located on the west side of his property. He continued saying the posts could be moved, if he needed access for larger vehicles. He added he also installed a cement ramp on that of his property back to the yard. Mr. Miller clarified Mr. Peh nec can maintain access to his property without using the neighbors yard. Mr. Peh nec added a travel trailer is parked on the slab, but it can be moved for access to the backyard. He also mentioned the building is pre-fab, and he believes it could be moved, if needed. He stated he could order a slightly smaller building, but it will not provide him enough storage, if it is much smaller. Mr. Auvil pointed out any structure 200 sq. ft. or larger requires a permanent foundation. Mr. Lyon mentioned the site plan shows 11.5 ft. between the residence and the property line, but the building is only 10 ft. wide. He asked where he plans to leave the extra 1.5 ft., and Mr. Peh nec responded between the house and shed. Mr. Atha asked if a maintenance vehicle will have access to the property from the West side with the posts taken out. Mr. Peh nec responded the gate is 4 ft. wide, and the posts could easily be taken out to provide an additional 4 ft. However, he continued only about 4 ft. exists between the fence and his pond, but a vehicle could drive across his deck.

The public hearing was closed at this time.

Mr. Miller stated he believes the subject property is too full, and he would recommend denial of this request. Mr. Campanello stressed the petitioner created his own problem when he made a pond.

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

Motion: Action: Deny, Moved by Roger Miller, Seconded by Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 5 ft. Developmental Variance to allow for the placement of an accessory building 0 ft. from the East side property line (Ordinance requires 5 ft.) be denied.

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

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

8. The application of **Matthew L. Loucks** for a Special Use for a home workshop/business for an automotive repair business on property located on the East side of CR 5, 650 ft. South of CR 2, common address of 51108 CR 5 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0679-2018*.

There were 24 neighboring property owners notified of this request.

Matthew Loucks, 51108 CR 5, Elkhart, was present for this request. Mr. Miller asked how long the business operated at this property, and he responded since 2011. Mr. Miller also asked about the business operations. Mr. Loucks explained they mainly work on diesel pick-up trucks, and he stated he has never received a noise complaint. Mr. Miller questioned the number

of outside employees, and Mr. Loucks responded one part-time employee. He went on to ask about traffic in the area. Mr. Loucks stressed the business is very low volume, and they typically only have a few customers. He stated he purchases enough from Amazon that the UPS truck is at his house more frequently than customers. He stressed it is a low-traffic operation. Mr. Miller asked about deliveries, and Mr. Loucks responded only UPS trucks deliver to the property. He stressed they do not have semi access and do not want it. Mr. Hesser pointed out the questionnaire stated hours of operation as three to four days a week but also Monday through Friday. Mr. Loucks responded they work three to four days Monday through Friday, but it is not always the same days since they also operate a different business off site. He continued saying the days they work depends on that week's schedule. Mr. Hesser clarified he would like permission to operate Monday through Friday, and Mr. Loucks pointed out they will not work every day. Mr. Hesser request the new addition being constructed without a permit be addressed. Mr. Loucks responded he will pull the building permit once the Special Use is approved. He continued saying he was told a complaint was filed, but he was not given much information. He stressed one of his neighbors planned to come today in favor of the request, because he could not see anyone complaining about the subject property since it is the nicest in the area. Mr. Lyon asked if the parking area is paved, and Mr. Loucks responded it is stone. Mr. Lyon then clarified the proposed addition will be at least 25 ft. from the North property line.

Craig Nelson, 29458 CR 2, the property west of the easement from CR 2, came on with some concerns. He stressed he did not file the complaint, but he believes it did bring the issue forward. He continued saying he is not opposed to the business, but the pictures in the Staff Report were taken along CR 5 where the business is not visible. He continued it is very visible from CR 2. He then submitted pictures taken from his property of the operation *[Attached to file as Remonstrator Exhibit #1]*. Mr. Hesser request he point out his residence on the aerial, and he also showed the location where he took the submitted pictures. He stated he did not realize a business was being operated off of the property, but he has some concerns with the visible appearance. He stressed fifteen trucks and trailers are parked in the back yard with only about three or four in the area designated on the site plan. He explained he had a bad renter, and he is now trying to clean up the property. He pointed out the pictures submitted show his view. He stressed outside storage of vehicles is his only concern. He continued saying he cannot tell which vehicles are associated with the business, but it is an eyesore from CR 2. Mr. Miller pointed out the area where the vehicles are parked on the aerial. Mr. Nelson stated the vehicles total around thirteen or fourteen, including a tractor and trailers. He stressed his concern is that they will permanently stay at this location. He asked if trees could be installed to block the view from CR 2. Mr. Atha asked if the Board can limit the number of vehicles stored outside. Attorney Kolbus explained that can be done, or the Board has also limited outside storage to a specific area. Mr. Hesser asked at what point a large number of personal, licensed vehicles becomes outside storage, and Attorney Kolbus responded that is for the Board to decide. He continued saying it is especially important when personal and business vehicles are used interchangeably, but the Board can decide. Mr. Lyon asked Mr. Nelson, if a fence around the storage area would alleviate his concerns. Mr. Nelson stressed he does not want to place a hardship on the petitioners, but he also needs to protect his property value. He added a row of trees planted in between the two properties would alleviate the problem. Mr. Lyon clarified the parking lot is on the opposite side of the building, and Mr. Nelson stated it is visible in the submitted pictures. He went on to say

the parking lot is far enough away that he does not mind vehicles kept there, but the ones parked on the other side are excessive. He stressed he is not opposed to the business, because he did not even realize it was there. However, he is concerned about the ascetics.

Mr. Auvil submitted a remonstrance letter from George & Nancy Rambow, 51105 Woodhaven Dr. *[Attached to file as Remonstrator Exhibit #2]*. He explained their first concern is how a business will affect their property value. He added they also have some environmental concerns due to the oil, fuel, anti-freeze, ect. involved in an automotive repair business.

Mr. Loucks came back on to address the concerns. He request to see the submitted pictures and stated most of the vehicles are his. Mr. Lyon stated the remonstrator mentioned fourteen vehicles, and he does not believe they can all be personal vehicles. Mr. Loucks responded he has never had that many on the property, and he owns five trucks. He then asked if trailers count as vehicles. Mr. Hesser clarified the proposed addition cannot hold all of the vehicles currently parked outside. Mr. Loucks stated a large amount can be moved inside, but not all of them. Mr. Lyon questioned fencing around the parking area, and Mr. Loucks responded they do not have a problem planting trees as a buffer. Attorney Kolbus pointed out where buffering is needed along the north property line, and Mr. Loucks stated he has no problem planting trees in that area. Mr. Miller mentioned he believes trees should be planted along the entire north boundary line, and Mr. Loucks pointed out some of it is already wooded. He stressed only a small spot is visible, and he would need to remove several trees in order to plant new ones along the entire property line. Mr. Lyon clarified he is willing to fill in the gaps. Mr. Miller then asked him to address the soil contamination concern. Mr. Loucks explained all waste is kept in a storage container to be disposed. He continued saying none of their drains dump onto the property. He added all work takes place in the shop so any spills happen on the concrete, not the ground. He also pointed out he drinks water from the well on his property, and he asked why he would dump grease and fuel near his water supply. Mr. Miller questioned the vehicles pictured in the submitted photos. Mr. Loucks explained three of the vehicles are his, and one is his employee's. He stressed fourteen vehicles are not kept at the shop at a time. He mentioned he also owns a dump trailer, a few gooseneck trailers, and two enclosed trailers that he uses to help family and friends move. Mr. Campanello asked how many vehicles he can work on at a time inside the shop, and he responded three or four. Mr. Campanello clarified a few are typically in the shop and others are kept outside. Mr. Loucks stated sometimes they do have more vehicles, but he can park them on the other side of the shop, out of view. He stressed the spot mentioned by the remonstrator is the only visible location during the summertime, and he does not have a problem blocking that view.

The public hearing was closed at this time.

Mr. Miller asked if it is reasonable to set a number of vehicles, allowed on the property at one time. Attorney Kolbus responded that has been done, but the Board instead typically designates an outside storage area. He continued saying a commitment can also be added requiring the empty spaces along the north property line be filled in with a buffer. Mr. Hesser stated he does not believe the Board should to specify the type of plant for the buffer. Mr. Campanello asked if the buffer should be worked out between the two neighbors, and Attorney Kolbus suggested it also be added as a commitment. Mr. Miller clarified the hours of operation should be approved for Monday through Friday 8:30 a.m. to 5:30 p.m., which is listed on the petition. Mr. Hesser stated the multiple vehicle problem is difficult in an agricultural zone, and

he is concerned with the number of vehicles. He continued saying outside storage is prohibited with a home workshop/business. Mr. Miller stressed this is a large parcel, and the petitioner is willing to add a buffer. Attorney Kolbus explained vehicles can be stored inside the building, but any outside need to be kept in the parking area designated on the site plan.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for an automotive repair business be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/4/18) and as represented in the Special Use application.
2. A visual buffer must be installed along the north property line with either live trees or a fence.
3. All parking is limited to the parking lot shown on the site plan.

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

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

No: Randy Hesser.

9. The application of *Volodia Dolzan & Cheryle A. Dolzan, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district on the North side of Glenmore St., 475 ft. West of CR 11, common address of 25099 Glenmore St. in Osolo Township, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0694-2018*.

There were 30 neighboring property owners notified of this request.

Steve Royce, 25099 Glenmoore St., Elkhart, was present for this request along with his daughter Emma Royce. Mr. Miller clarified the animals have been kept on this property for a while, and Mr. Royce responded they have 4-H animals. Miss Royce stated they have owned the animals since March 28, 2018, and she presented a plaque for each goat. A photocopy of each plaque was submitted for the record *[Attached to file as Petitioner Exhibit #1 & #2]*. Mr. Miller asked if all of the animals are for 4-H and if they plan to keep them. Mr. Royce responded it was not their intent to keep them after 4-H, but his daughters fell in love with them. Mr. Miller stated the request is for two adult goats and two ducks, and he stressed that is all they will be allowed to keep with approval. He continued saying they cannot decide to have three goats, and he stressed quantities need to be changed now, if they plan to have any more animals. Mr. Hesser pointed out the questionnaire mentions rabbits. Mr. Royce responded Staff informed him rabbits are considered domestic animals, and Staff confirmed that. Mr. Lyon asked how many rabbits they own, and he responded currently ten. He went on to say they plan downsize to six. He explained they started with three rabbits that they believed were all females, but they ended up with fifteen. Mr. Miller asked about waste disposal. Mr. Royce responded they spread some on their garden,

and the rest is taken to his father's farm. Mr. Miller clarified the petitioner is okay with approval of only two ducks and two goats. Miss Royce asked if her goat is allowed to have a kid for her to sell at 4-H next year. Attorney Kolbus pointed out the commitment reads two adult goats to allow for offspring, but they then need to be removed from the property once they reach adulthood. Mr. Hesser stated the Board also does not count puppies towards the number of dogs allowed with a kennel. Mr. Miller clarified kids are permitted, but they cannot stay permanently.

Lori Royce, 30273 CR 10, Granger, Emma Royce's aunt was present in favor of this request. Mrs. Royce stated she purchased the goats for the girls to participate in 4-H. She continued saying they planned to sell them at the fair, but the girls love them. She added if the goat is bred, its off-spring will be sold at the fair this year. She stressed the goats are good with the girls, and Mr. Royce built a nice shelter for them. She went on to say they take good care of their animals, and they do not make a lot of noise. She request the Board to approve this request and allow the girls to keep their goats.

Gina Dietl, 30121 CR 12, Elkhart, was present in favor of this request. Mrs. Dietl stressed she believes it is good for the girls to be involved in 4-H, instead of other activities.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted a petition signed by the surrounding property owners in favor of this request was included in the file.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and in an R-2 district be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/15/18) and as represented in the Special Use application.
2. The use is limited to a maximum of two (2) adult goats and two (2) ducks at any one time.

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

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

10. The application of **John B. Rosheck Jr. & Julia Ann Malott Jt Ten (Lf Est Judith K. Rosheck)** for a Special Use for an overnight campground (one unit) on property located on the West side of East County Line Rd., 2,252 ft. North of CR 38, 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-0683-2018*.

There were five neighboring property owners notified of this request.

Judy Rosheck, 17365 Willowbrook Dr., South Bend, was present for this request. Mrs. Rosheck stated her children own the property under her life estate. She explained they plan to move a pre-built cabin into the woods to use during spring and fall. She continued saying this property was part of her grandfather's farm, and they always enjoy spending time there. She mentioned approval of this request will give them a place to meet and enjoy the property. Mr. Campanello asked if the cabin will be placed on skids, and she responded on rails. He clarified it will be movable/temporary not permanent. Mr. Hesser asked if the petitioner owns the parcels to the north and south of the subject property. Mrs. Rosheck responded her niece owns the property to the north, and a non-related party owns the property to the south. Mr. Atha mentioned the farmer has three different land lords for that field. Mr. Miller asked the need for this request. Attorney Kolbus stressed the cabin is not a permanent residence. Mr. Hesser clarified the cabin will not be rented out, and it is for family use only.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he is also confused about the need for this request. Mr. Auvil explained the proposed cabin does not qualify as a primary dwelling, and accessory dwellings are not permitted by themselves. He went on to say a campground is the route staff took to allow this use within the Zoning Ordinance. Mr. Hesser stated he believes the Board has approved similar requests.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an overnight campground (one unit) be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/8/18) and as represented in the Special Use application.

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

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

11. The application of *Indiana Wood Products, Inc.* for a Special Use for a wireless communications facility on property located on the East side of CR 43, 1,180 ft. South of US 20, common address of 58228 CR 43 in Middlebury Township, zoned M-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0697-2018.

There were seven neighboring property owners notified of this request.

Pat McCauley, MapleNet Wireless, 4561 Pine Creek Rd., Elkhart, was present representing the petitioners. Mr. McCauley explained this business needs broadband internet, and constructing a tower is the only way they can provide it to the property. He continued saying they plan to build it bigger than the company needs to one day also provide broadband to

the community. He stressed that was not their initial plan, but they do have some interests in this area. Mr. Campanello clarified the new tower will be collapsible.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the proposed tower location is in the middle of the property, and it should not be in the way.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **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 wireless communications facility be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (Dated 10/15/18) and as represented in the Special Use application.

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

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

12. The application of *Paul Dietl & Gina Dietl, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres located on the North side of CR 12, 733 ft. East of CR 1, common address of 30121 CR 12 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0686-2018*.

There were 12 neighboring property owners notified of this request.

Gina Dietl, 30121 CR 12, was present for this request and stated she has kept horses on her property for fourteen years. She stated she spoke to the Zoning Department when she moved to this property, and she was told it was grandfathered since the previous owner also had horses. Mr. Campanello asked how the horses are doing, and she responded awesome. He then pointed out she is only a half-acre shy of the required acreage. Mrs. Dietl stated her sister lost the place where she kept her horses causing her to have eight horses on her property at one point. She stressed she supplementary fed them, and none of them starved. Mr. Hesser clarified she was told by the Planning and Development Department that her property was grandfathered, and she responded yes fourteen years ago. Mr. Hesser clarified she was told that by the county office not her realtor. She mentioned she was informed as long as a 30 day lapse did not occur between horses she was fine. Mr. Lyon asked if she gets along with the neighboring property owners, and she responded yes. Mr. Atha questioned the pasture's condition. She stated it is mud with no grass, because she had a horse that coliced on the grass. She stressed they removed the grass and started feeding hay, because she had too many problems with them colicing. Mr. Atha asked about putting in paddocks, and she responded she does not want grass to grow. She stressed it cost \$400 to \$500 dollars for the vet to care for horses that colics. Mr. Atha asked for clarification on colic, and Mrs. Dietl explained horses can get a stomach ache from eating too

much grass. She continued saying her sister's horses were given to a woman with a pasture, and one went lame from colicing and foundering. She stressed some horses are touchy, and she would prefer to not have grass due to the problems she has experienced in the past. She went on to say she spent thousands of dollars on a horse that coliced, foundered, and then had to be put down, because he could not walk. She added the horses have shelter, and they take good care of them. Mr. Lyon clarified the back of the property is fenced in. Mr. Hesser mentioned a round pen on the site plan, and she explained she moves it around the front yard instead of mowing. Attorney Kolbus pointed out the fence location on the aerial.

Hany and Amy Habib, the owners of 30097 CR 12, a rental property directly east of the subject property were present in remonstrance. Mr. Habib expressed his concern about land erosion on the subject property. He also mentioned the petitioner no longer lives at the residence, and he asked who will care for the animals. He stated he spoke to Paul Dietl who told him he does not care for the animals, because one of the horses bit him. He continued saying the horses do not have stables, and they stay in a semi trailer. He stressed he is not aware of a specific area that holds multiple horses. He added his tenant informed him the horses have gotten loose before. He also stated they often cut onto the neighboring properties when being ridden. He stressed he is opposed to the request at this time. He asked where the horses will be kept and how the manure will be disposed. Mr. Hesser asked on which side of the subject property he is located, and how long he has owned it. He responded the east side, and they purchased the property 8/10/04. Mr. Hesser questioned how he was not aware horses were on the property until now. Mr. Habib explained they knew she owned horses, but they assumed she met the acreage requirement. He stressed they did not want to get involved with something that is allowed by right, but he believes the need for a Special Use gives them the opportunity to speak. He continued saying he is not opposed to the animals, but he is concerned for them. He mentioned it cost anywhere from \$4,000 to \$7,000 to care for a horse, and he questioned the petitioner's job. Mr. Atha stressed the Board only considers land use. Mrs. Habib asked if the petitioner plans to make improvements to the fence to hold the horses, and she is okay with this request as long as they take care of the horses. She explained they do not want any liability issues with their renters, because new renters are moving in today and had questions about the animals. Mr. Habib mentioned the horse fence is not very sturdy, and Mrs. Habib asked if the fence is electric.

Mrs. Dietl came back on and stated the fence is fine. However, Mr. Habib's trees fall onto it, and they are left to repair the damage. She explained she is separated from her husband, but she only lives two minutes down the street. She stated she has lupus and degenerative disk disease, and her husband will continue to care for the horses. She mentioned the horses are kept in a barn, not the semi trailer mentioned earlier. She explained they put car ports together with room for nine stalls, and that is where they stay when the temperature is below zero. Mr. Atha pointed out the Board is only considering approval for up to three horses. Mrs. Dietl stated she kept her sister's horses until she found a home for them. She stressed only two horses are currently on the property, because the third one is away at training. She explained the horses come and go, because she takes in starved horses, rehabilitates them, and then finds them homes. She continued saying she is down to three, because her health is declining. Mr. Atha asked what she considers adequate acreage for a horse. Mrs. Dietl responded it depends on if the horses are supplementary fed, and she has seen horses on a lot of acreage starve to death from not being

fed. She stressed her horses are fed and kept healthy, and one of her horses could even be kept in the house. Mr. Miller questioned fencing around the pasture, and she responded it is currently cow fencing. Mr. Hesser asked about electric fence, and she responded it is not electric. She continued saying the electric fence kept grounding out, and the horses then went through the barbed wire. Mr. Campanello also mentioned the erosion concern, and he asked if an elevation difference exists between the two properties. She responded she is not sure what he was referring to, but she would assume the mud. Attorney Kolbus asked if the mud washes onto the neighboring property, and she responded no. Mr. Atha stressed it is not good for the mud to wash anywhere, and Mrs. Dietl responded the mud stays on their property. She also mentioned Mr. Habib's former renters rode her horses, and their children fed them. She stressed she has not had any problem with his renters. Mr. Miller asked the long term plan for the horses, and Mrs. Dietl responded she will keep them even if she is in a wheel chair. She continued saying she raised one of her horses, Sky, the one who bit her husband, from four days old, and she has even been inside the house.

The public hearing was closed at this time.

Mr. Atha stated he used an app to map out the area of the pasture, and he found it to be approximately 1.24 acres. He then submitted a copy of the outline to the Board *[Attached to file as Staff Exhibit #1]*. He continued saying he does not have any research on how much acreage is needed per supplementary fed horse, but an acre per horses is needed when pasture fed. He added he was not aware colic could develop from eating too much grass. Mr. Campanello stated he believes the Board has approved two horses on less than an acre before for transportation purposes. Mr. Hesser stressed the petitioner specifically mentioned she does not rely on the pasture for food, and horses have been kept in cities in stalls. He continued saying he does not believe acreage is an issue based on the petitioner's testimony. Attorney Kolbus reminded the Board that a time limit could be placed on this request, if they feel it will alleviate some concerns. Mr. Hesser stated he does not see the need for a time limit, since the horses have been on this property for fourteen years.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for 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. The request is approved in accordance with the site plan submitted (dated 10/10/18) and as represented in the Special Use application.
2. The use is limited to a maximum of three (3) adult horses at any one time.

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

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

No: Joe Atha.

13. The application of *Trent & Katrina Miller (Buyers) & Jayme R. Yoder & Carlin J. Yoder, Husband & Wife* for a Special Use for a beauty shop on property located on the East side of SR 13, 1,500 ft. South of CR 24, common address of 59304 SR 13 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-0696-2018*.

There were seven neighboring property owners notified of this request.

Mr. Hesser clarified this petition came before the Board last month and was approved as a Minor Change with the condition that it be presented as a Special Use.

Katrina Miller, 14578 SR 4, Goshen, was present for this request and stated they would like permission to move her salon down the road to this location. Mr. Campanello stated he does not have any questions, and Mr. Hesser stated he believes the public hearing was needed to give any remonstrators a chance to speak.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a beauty shop be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/15/18) and as represented in the Special Use application.

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

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

14. The application of *Jayne Real Estate, LLC* for a Use Variance to allow for a martial arts studio and for a 14 ft. Developmental Variance to allow for the construction of a commercial addition 11 ft. from the East side property line (Ordinance requires 25 ft.) located on the Southeast corner of CR 9 & North Park Ave., 487 ft. North of Country Club Dr., common address of 53894 CR 9 in Osolo Township, zoned M-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0699-2018*.

There were 14 neighboring property owners notified of this request.

David Steed, 53894 CR 9, the owner of Taylor Floor Covering, the existing building on the property was present for this request. Mr. Steed stated their original plan was to add onto the building for additional warehouse space, but it is not currently needed. He continued saying his son-in-law decided to start a business. He explained they wanted to construct a detached building, but the soil did not test property for a septic and well. He stated they then decided to attached the studio to his existing building and utilize the bathroom for both businesses. He mentioned he only has four employees who work on a daily basis, and about ten people attend

his son-in-laws classes during the evening. He stressed as far as septic and water usage this is low volume. He added they do not drink the water, since it is in the saw mill district, and they bring bottled water to the property. Mr. Steed explained the addition will not have any plumbing, and the students will use the existing bathroom. He stated even if the property is not used as a martial arts studio, he will still need the addition for his business in the future. He pointed out glass windows around the front of his building that benefit his floor covering store. He went on to say, if the addition is constructed to meet the required setbacks, it would cover the existing windows. He explained at the requested setback, the addition will not interfere with the windows. Mr. Miller asked if the addition is on the north side of the existing building, and it was found to be on the south. Mr. Steed pointed out the proposed location for the addition on the aerial. Mr. Hesser questioned the use of the existing building, and Mr. Steed responded it is a floor covering store. He also clarified the business to the east is a manufacture for aluminum extruded parts that he does not own. Mr. Hesser pointed out a structure close to or straddling the property line, and it was found to be a lean-to that he shares with the neighboring company for storage. Mr. Hesser reiterated the existing building is a retail use. Mr. Steed also pointed out their parking lot, and the area they will clear to construct a basic pole structure.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha stated he does not have a problem with the Developmental Variance since it is only moving closer to a factory parking lot. Mr. Hesser asked if the floor covering shop has a Special Use or Use Variance, and Mr. Auvil responded it is allowed by right in an M-2 zone. Mr. Hesser stated his problem with Use Variances is always Finding #3, and he is not comfortable with the property being peculiar due to the M-2 zoning. He continued saying he would add to it that the property is already used for a retail business. Mr. Miller pointed out the area appears to be industrial.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Use Variance to allow for a martial arts studio be approved based on the following findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community. This is a less intense use in an M-2 zoning district.
2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner. The size of the proposed structure is common in industrial areas.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The property is currently zoned M-2, that is being used for a retail business.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the subject property. The proposed structure will be able to be utilized for future M-2 uses.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/15/18) and as represented in the Use Variance application.

Further, the motion also included that a 14 ft. Developmental Variance to allow for the construction of a commercial addition 11 ft. from the East side property line (Ordinance requires 25 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 issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).
2. The request is approved in accordance with the site plan submitted (date 10/15/18) and as represented in the Developmental Variance application.

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

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

15. The application of ***Brenda Kaye Fraschetti*** for a Use Variance for a temporary mobile home due to fire on property located on the North side of Lakeview Dr., 1,055 ft. West of Cassopolis St., common address of 26603 Lakeview Dr. in Osolo Township, zoned R-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0690-2018*.

There were 23 neighboring property owners notified of this request.

Mr. Miller asked for a limit on the amount of time the mobile home should be kept on site, and Mr. Hesser stated he did not see one on the Staff Report. Mr. Auvil responded staff did not include a time frame, but it would be appropriate for the Board to add one.

Brenda Fraschetti, 26603 Lakeview Dr., Elkhart, was present for this request. Mrs. Fraschetti stated her residence burnt down, and they temporarily placed a mobile home on site to live in. She explained they lived in their camper for almost a month before the mobile home was placed. Mr. Hesser asked if she plans to rebuild the residence, and she responded yes. She continued saying they have not had a lot of time to consider it between cleaning out the residence, working full-time, and medical problems, but they do plan to rebuild at this time. Mr. Hesser asked about a time line, and she responded she is not sure. Attorney Kolbus asked if she has been in contact with the insurance company, and she responded not recently. She explained she hired a public adjuster to assist her with the insurance company. Attorney Kolbus asked if he gave her a time line for resolving the claim, and she responded they hope by the beginning of the year. Mr. Hesser asked when the fire took place, and Mrs. Fraschetti stated September 23rd. Attorney Kolbus suggested a time period of a year since the request is for a temporary mobile home, and they need to come back before the Board to make it permanent, if they decide not to rebuild the residence. Mr. Hesser stated he was considering approval of the request for two years, and Mr. Lyon agreed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he is concerned about the wording of Finding #3 since this request is a Use Variance. He continued saying he believes the condition peculiar to the property is the fact that the residence burnt down, not that the petitioners need a place to live. He then asked if that classifies as a peculiarity, and Attorney Kolbus responded a residence destroyed by fire is peculiar to the property. Mr. Miller asked if the request interferes with the comprehensive plan, and Attorney Kolbus responded no since it is for a residential use.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Use Variance for a temporary mobile home due to fire be approved based on the following findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community. This will be a temporary situation.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. This is a 1.04-acre parcel in a dense residential area and will remain residential in character.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The existing residence is uninhabitable due to a fire, and the property owners plan to rebuild.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property. The petitioners would not be allowed to reside onsite while the new residence is being built.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/11/18) and as represented in the Use Variance application.
2. Approved for a period of two (2) years or until the Certificate of Occupancy has been issued on the new residence, whichever is earlier.

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

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

Mr. Hesser stated the mobile home needs to be removed from the property once the new residence is constructed, and Mrs. Frascchetti will need to bring the request back before the Board, if it is not completed within two years. Attorney Kolbus added if they decide to maintain the mobile home as their permanent residence, they will also need to come back. Mrs. Frascchetti responded she will not be able to keep the mobile home since it is temporary housing, and she does not own it.

16. The meeting was adjourned at 10:23 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary