

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18TH DAY OF OCTOBER 2018 AT 8:30 A.M.
MEETING ROOM DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

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

Roll Call.

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

2. A motion was made and seconded (*Miller/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of September 2018 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Miller/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 ***Kenneth A. Story Jr. & Katherine E. Story, Husband & Wife*** for a Special Use for warehousing and storage on property located on the North side of CR 102, 650 ft. East of CR 23, common address of 18391 CR 102 in Washington Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0622-2018*.

There were 16 neighboring property owners notified of this request.

Kenneth Story, 18391 CR 102, Bristol, was present for this petition. Mr. Miller asked, if the request is for an existing business. Mr. Story responded the business was started twenty-six or twenty-seven years ago, and it was based at 2630 Old US 20 W., Elkhart. However, he continued saying their building burnt to the ground at the beginning of this year. He explained they still lease that property, but the owner has not pushed re-building. He stated the equipment was moved to the subject property, because they needed a place to store their vehicles inside. He pointed out that the Staff Report refers to their operation as an excavating company, and that is not true. He stressed they operate a business that transports and services manufactured homes, but the residences are not brought to the property. He continued explaining the homes are picked up at the factory and taken straight to their destination. He clarified only the vehicles used to transport the homes come to the property. Mr. Story noted this request is only temporary until their Elkhart location is rebuilt. He added a few of his neighbors signed his petition in favor of the request. He went on to say one neighbor informed him she signed a petition against this request, because she was told this would be an RV lot. He stated the neighbors were told he was requesting to park RVs on the property, and that is not their intention. He added one neighbor left a note on his petition stating she would not have signed the one against his request, if she had known the details of their operation. He then submitted a copy of the petition in favor of his

request to the Board *[Attached to file as Petitioner Exhibit #1]*. Mr. Story mentioned his neighbors were also under the impression that his business would be based at this location, but he clarified their office is actually located in downtown Bristol. He noted his family moved to the subject property around January 14th, and their company burnt down the next Tuesday. He continued saying after the fire they held a staff meeting to decide how to proceed, and it was a unanimous decision to rebuild the company. He added the company had five single-axel trucks before the fire and only one survived. He went on to say they have now built back up to two trucks. He stated the trucks are stored in an existing barn on the subject property to protect them from bad weather. He mentioned in addition to the trucks they also store set trailers that carry their equipment to the site, and the F-250s that pull the trailers. He explained one truck is his personal vehicle that he would keep on his property without this operation. Mr. Miller asked about the pictures submitted with the request, and Mr. Story responded they depict their commercial property before it burnt down. Mr. Miller then clarified the site plan shows their plans for the subject property. Mr. Story pointed out the red slashes on the site plan represent changes they made this spring, including a crushed asphalt drive they installed to prevent his truck from sinking into the ground. He continued saying a small area on the east side of the property was added to give their employees a place to park. He mentioned they purchased supplies to install a fence, but they halted plans to construct it due to the complaint. He stressed the fence will help shield their neighbors from lights and noises. Mr. Miller noted a lot of improvements are proposed for a temporary location. Mr. Story explained the location is temporary for storing their vehicles until the building in Elkhart is reconstructed. Mr. Miller asked the time frame for the building's reconstruction, and Mr. Story responded their land lord has not given them a date for rebuilding. He continued saying clean-up was set to start a month ago, but to his knowledge it has not begun. He stated they hope to move back to that property by next summer or fall. Mr. Miller asked if they plan to utilize the subject property for storage, after the new building is completed, and Mr. Story responded only his personal vehicles will be kept there. Mr. Hesser noted Mr. Story mentioned two trucks and a few trailers in his testimony, but the questionnaire asks for thirteen vehicles. Mr. Story responded thirteen is correct, because it includes trailers, his vehicle, his father's vehicle, his mother's vehicle, two single-axel semis, three Ford Focus Escort vehicles, an F-250 for their set trailer, and another F-250 for their axel trailer. He clarified when they set modular homes the tires and axel must be removed and brought back to Superior in Elkhart. Mr. Miller asked if the picture submitted shows the current or past vehicles, and Mr. Story responded their past vehicles. He pointed out the only one that survived the fire was his personal vehicle. Mr. Campanello clarified the petitioners are still leasing the property where the fire took place. He then asked if the property is clear, and Mr. Story responded it has not been cleaned up. Mr. Campanello asked if the insurance company is the reason for the delay, and he responded yes. Mr. Campanello then suggested placing an office trailer on the property once it is clear for operations. Mr. Story mentioned that is their plan once the property is cleaned up, and they only need to run power to it. He again stressed it is not their intention to permanently move the operation on the subject property. Mr. Miller asked for a time frame, and Mr. Story responded he thought they would be back at the Elkhart property by now. He continued saying he was told it could take one to two years to rebuild after the fire, and it has almost been a year. Mr. Hesser questioned the property to the North, and Mr. Story explained the owners' grandchildren and family use it as a track.

Mr. Hesser asked for a show of hands for those present in favor of this request, and one hand was raised. Several hands were then raised opposed to the request.

Brenda Story, 18391 CR 102, Bristol, was present in favor of this request. Mrs. Story explained their company has been in business since 1994, when her father-in-law, Bill Story purchased it. She continued saying when he passed away in September of 2012 she purchased the company with her husband. She added her son Kenny Jr. just presented their plans for this property, and she would like to give the Board some back-ground on the company. She clarified they currently use two short-bed, wheel based, semi-trailers that have been specially modified to only transport manufactured housing. She added the law requires that one to two escort vehicles accompany the manufactured homes based on its size, and they have three ford focuses and her husband's truck for that purpose. Mrs. Story then explained they also set up the modular homes, and the two F-250s and trailers are used to transport the tools and supplies needed to set the houses. She mentioned they work in Indiana, Michigan, and Illinois in addition to being HUD licensed. She stated at the time of the fire Tri-state had twenty-seven employees, and they currently have eighteen. She continued saying of their eighteen employees, who are like family, four are over seventy, four are over sixty, eight are over forty, and two are in their twenties. She stressed six of their employees came with the company when they purchased it. She went on to say it would have been easy to shut down after the fire, but they decided that their employees still needed jobs. Mrs. Story stressed they decided to rebuild the business, but they needed a place to store their vehicles during the process. She mentioned they lost hundreds of thousands of dollars worth of vehicles in the fire. She pointed out their vehicle asset amount before the fire was \$546,820, and they lost \$369,206 of that. She added according to the insurance company they also lost \$214,174 worth of interior assets, such as tools, supplies, and equipment. Mr. Miller stated he realizes the company information is important, but the Board needs to make a decision based on land use. He continued saying the Board only needs to hear how storing the vehicles here will affect the subject property. Mrs. Story stated their landlord at the Elkhart property informed them that the excavating company handling the demo has obtained all of the required permits, and it should begin soon. She continued saying she believes clean-up will take about two to three weeks, and the land lord has decided to construct a pole barn on the property. She added the office unit previously mentioned by her son will be attached to the pole building. She stressed operating the business off of their residential property is very short term, and they have retained their business property as their mailing address. She stated they do not intend to permanently use their residential property for the business.

Mark Krzyzanowski, 17994 CR 102, came on against this request, and stressed temporary is only temporary until it is no longer temporary. He stated the Zoning Ordinance mandates a home workshop/business be carried on within the primary structure or one accessory to it. He explained prior to the Story's moving to CR 102, the commercial vehicles were parked at their headquarters in Bristol. He asked why the equipment is now being parked at their residence in an R-1/A-1 zoned area. He continued saying the Zoning Ordinance also mentions a home workshop/business can only be operated by the occupants of the residence and a maximum of two employees, without a Developmental Variance. Mr. Krzyzanowski also pointed out the photo mentioned earlier shows tractors, pick-ups, trailer, and pull cars that are still in use along with an industrial sized dumpster. Mr. Miller stressed the request is to temporarily operate his business from this property, and the Board is familiar with the rules/regulations of a home

workshop/business. Mr. Krzyzanowski responded he believes the petitioners are investing a large amount of money for a temporary operation. He then stressed the petitioners' lights illuminate his entire property and the neighbors. He continued saying he does not believe this operation falls within the regulations for a home workshop/business, and he added at night it mimics an industrial park. He added the employees cause an increase in traffic on a chip-n-seal road, which he stressed is not made for the extra traffic. He again stressed the subject property is industrial amongst agricultural and residential uses. Mr. Campanello explained the Board can add a commitment approving the request for a limited amount of time, until the Elkhart location is rebuilt. He asked if he would be opposed to approval of this request for a short period of time, and he suggested allowing it until spring time. Mr. Krzyzanowski responded he could agree to approval for a specified amount of time. However, he added he cannot answer for his neighbors. Mr. Hesser asked for clarification, because Mr. Krzyzanowski and the application refer to this request as a home workshop/business. However, the Staff Report classifies it as warehousing and storage. Mr. Auvil responded the petition is for warehousing and storage, and Mr. Hesser reiterated it is not being considered as a home workshop/business. Mr. Auvil explained the request does not meet the home workshop/business definition due to the number of employees, and a Developmental Variance would be required if that route was chosen.

Daniel Danan, 17936 CR 102, was present in remonstrance and stated he is frustrated, because the petitioners moved their business to this property without obtaining the proper permits. He continued saying the number of vehicles stored is evident when driving past this property during the day, and he stressed they have more employees than residences on CR 102. Mr. Danan stated he is handicap and legally blind. He continued saying he frequently walks down CR 102 with some of his neighbors, and they noticed an increase in trash along the road. He explained he took a petition in remonstrance around to the neighborhood, and he understands the request is for a transport company. However, he is concerned that any guidelines set with approval will not be followed, since the request is just now coming before the Board for an operation that began this spring. He also asked if an environmental impact statement is needed for this business to operate here, and he stressed he is not sure what they do since the business just appeared. He then mentioned a concern about the business growing before it is moved back to the Elkhart location. He then questioned how safe it is to walk on the road since the increase in truck traffic. He stressed he is blind, and other elderly neighbors are also concerned about their safety. Mr. Danan questioned if the company is Department of Transportation compliant, since they moved to this property without approval. He continued saying he did not tell the neighbors that modular homes would be brought to the property, but he is concerned since their equipment is set up to haul them. He stated the neighbors do not want the operation here, and he questioned how long it will stay here with all of the money invested in improving the property. Mr. Campanello explained in this situation the petitioners made a quick decision to move here, and they made a mistake. He continued saying a complaint was filed, and this request is now before the Board. He then asked if Mr. Danan is opposed to approval of this request for a set period of time, until the operation is moved back to the commercial property. Mr. Danan responded he is only okay with it, if the equipment must be removed by a set time. He then brought up an empty industrial building that is sitting empty in the area that he believes would be a better location while they wait. He asked if the petitioners looked for other properties to store

their equipment. He stated he is sorry for their loss, but he believes their insurance should cover that loss. He then added he is okay with approval of this request for less than eight months. Steve Myers, 18333 CR 102, came on in opposition to this request and stated he lives immediately east of the subject property. He continued saying the operation begins in the morning and it is then quiet until the evening when the employees leave. He stressed they start between 4:30 and 5 a.m., and his bedroom is at the west end of his residence. He mentioned when the semis are started in the morning their bedroom walls rattle, and it is very loud. He added another set of employees start a little later that are not as loud, and they all come back in the evening. He stressed his main concern is noise and lighting. He went on to say the lights from the subject property come in through their shades, and their entire front and back yards are illuminated. Mr. Myers stated the operation is not visually appealing due to the vehicles, semis, trailers, and dumpsters on the property. He stated he can see the equipment from anywhere he stands on his property. He then explained he took the petition around to the neighbors, but they never stated that it was for an excavating company or RV storage. He went on to say they were asked by a neighbor, if RV storage could take place on this property, and he told them he was not sure what they can do with approval. He again stressed he is the closest neighbor to the subject property. Mr. Myers then addressed the suggested time frame. He stated the petitioners installed a crushed asphalt driveway and gutted their barn to make room for the semis. He continued saying Mr. Story Sr. informed him, it cost \$20,000 to install the driveway, and he questioned if the operation will become permanent at this location. Mr. Miller clarified imposing a time frame on the request does not give the petitioners an option to stay on the property. He added he understands the frustration with being woken up early in the morning. Mr. Myers stated he would be okay with a time limit of three to four months. He also mentioned he agrees with Mr. Danan, and he questioned why the petitioners cannot find a commercial property to store the equipment.

Jennifer Baldwin, 18406 CR 102, came on and pointed out her residence on the aerial. Mrs. Baldwin stated she came to hear the plans for the operation, and she stated she does not hear the semis in the morning. She explained when they first moved to the neighborhood their neighbor had a semi that she heard, and she understands the Myers are right next door to the subject property. She again stressed the noise has not been a problem for them. She also added they have dealt with the lighting issues. Mr. Miller questioned the lighting, and she responded the lights are located on the house, garage, and barn. She continued saying the lights appear as bright as a street light.

Kathy Myers, 18333 CR 102, came on against this request. Mrs. Myers clarified Mrs. Baldwin lives on the west side of the subject property. She stressed the petitioners have three industrial lights on the east side.

Mr. Story came back on, and Mr. Miller request he address the lighting concern. Mr. Story stated he only installed one light when they purchased the property, and replaced the light bulbs in the existing lights. He stressed it is not industrial lighting, and he purchased flood light bulbs. Mr. Miller stated lighting is a major concern to the neighbors, and he asked if he can address the issue. Mr. Story responded he could replace the bulbs with less laminate ones. Mr. Lyon asked if the lighting is for insurance purposes, and Mr. Story responded he likes to have his property well-lit. He then addressed the issue with permits, and he explained the improvements made to the property did not require permits. He continued saying his company receives permits

every day for their trucks that go out, and he can verify it if needed. He added they also pull building permits when they set houses, and they do their best to ensure everything goes through the proper channels. He stressed he had a lot on his plate with the business burning down, and his daughter graduating from high school. He went on to say they did what they thought was best at the time, and they want to make the situation tolerable to their neighbors until they can move it back to their property in Elkhart. Mr. Miller asked him to address the noise concern in the morning. Mr. Story stated it may be due to the direction of the wind, but he does not hear the trucks inside his residence. Mr. Miller stressed the neighbor to the east hears the noise. Mr. Story also mentioned they purchased material to install a privacy fence, which he believes will help alleviate the noise and light concerns. He explained he invested a lot of money into the property, because he needed a driveway for his residence anyways. He added he has not installed the fence yet, because denial of this request could dissolve the company and result in the loss of his property. He stressed he does not want to continue to invest money into a property he may lose. Mr. Lyon asked how long the petitioner believes would be a fair for him to move back onto the commercial property. Mr. Story responded he has never constructed a pole building before, but he was told it would take two to three weeks to demo the destroyed building. He continued saying depending on the weather this winter, he believes the property could be ready this summer. Mr. Campanello asked if the lights on the subject property are stationary, and Mr. Story responded he purchased typical flood lights. Mr. Campanello mentioned they should be adjustable, and he asked how he spotted them. Mr. Hesser pointed out the petitioner only added one light. Mr. Story clarified he spotted it on the in-law sweet. Mr. Miller asked if the lights to the east are necessary, and he responded yes in order to see people coming and going from the property. He continued saying he can angle them down today, if needed. He stressed he is willing to do anything that will help him coexist with his neighbors and keep his company in business. Mr. Story then addressed the question about finding a different location to stay. He explained they still lease the commercial property to keep the same address, and they do not have the extra money to lease an additional property.

The public hearing was closed at this time.

Mr. Campanello stated he believes Mr. Story has integrity, and this company will vacate the subject property in six months. He stressed six months is enough time to construct a pole building, and he sees the company moving back to this property as soon as possible with the office trailer. He added the petitioners appear to be doing everything they can to be good neighbors. Mr. Hesser asked when the fence should be constructed, and Mr. Campanello responded installation should start immediately. Mr. Miller clarified all equipment must be removed from the property and business activity halted at the conclusion of the six months. Mr. Campanello agreed, but he believes Mr. Story should have the right to do paper work at home. Mr. Hesser stressed approval of the request terminates at six months. He stated the use of the property is different, and it does not meet the criteria of a home workshop/business. He continued saying this operation is a large deviation from the surrounding use, but he does understand the extenuating circumstances. He added he believes approval of the request for six months is a reasonable solution to the situation. He suggest they look for a different location in case the insurance company or the land lord stall on construction of the pole building. He went on to say he understands keeping the same address and location, and he believes they have made strides to accommodate and keep the peace with the neighbors.

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

Motion: Action: Approve, Moved by Tony Campanello, **Seconded by** Denny Lyon that this request for a Special Use for warehousing and storage be approved based on the Findings and Conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring property. This use is approved only for a period of six months.
3. The Special Use will substantially serve the public convenience and welfare. Approval of this request will allow a company that has been in business for thirty years to stay in business.

The following conditions were 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 fence shown on the site plan must be installed immediately.

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 9/17/18) and as represented in the Special Use application.
2. All security lighting must be directed onto the Real Estate.
3. Approved for a period of six (6) months.

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

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

Mr. Miller stated the request was approved for six months, but the fence must be installed immediately and the lights dimmed/redirected. He stressed all equipment must be removed from the property after six months.

5. The application of **Joseph & Irina Khailo, 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 Northeast side of Ox Bow Ct., 1,891 ft. East of CR 13, common address of 58654 Ox Bow Ct. in Concord 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-0620-2018*.

There were 31 neighboring property owners notified of this request.

Joseph Khailo, 58654 Ox Bow Ct., was present for this request. Mr. Miller asked if the animals are currently on the property, and Mr. Khailo responded he owned chickens for around ten years without any complaints. Mr. Lyon asked the number of chickens he owns, and he responded five. Mr. Miller asked about roosters, and Mr. Khailo stated he has one small rooster. Mr. Miller asked if the rooster makes noise, and Mr. Khailo explained he makes some noise in the morning. He continued saying he keeps the chickens for his grandchildren to enjoy. Mr. Miller asked if the chickens are kept inside a coop with a fenced in property, and Mr. Khailo responded yes. Mr. Atha questioned waste disposal. Mr. Khailo explained they do not produce much waste, but it is spread over the garden.

Mr. Auvil stated he received an email in remonstrance from Christopher and Romy Swartout, 58679 Broadway Blvd. He explained the remonstrators are both teachers and could not attend the hearing today. He continued saying this property is on the cul-de-sac that diagonally abuts the subject property due to a bend in the street. He stressed the petitioners have had chickens and roosters for several years, and the remonstrators are annoyed. He explained their main complaint is noise, because the rooster crows at all hours of the day and night. He went on to say due to the noise, the Swartouts cannot keep their windows open. He stated the second complaint is odor from the feces, which is especially annoying when they grill or eat outside. He added the remonstrators are also worried that the petitioners will then bring livestock onto their property, if this request is approved. He also mentioned one of the chickens was loose in their yard last week and caused problems with their dog. The remonstrance letter stresses farm animals do not belong in a residential neighborhood. Mr. Miller asked for clarification on the location of the remonstrators' property. Mr. Hesser then pointed out the location on the aerial. Mr. Lyon pointed out staff's recommendation for no roosters.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked how many neighboring property owners were notified of this request, and Mrs. Britton responded thirty-one. He pointed out no remonstrators are present.

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 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 9/14/18) and as represented in the Special Use application.
2. The use is limited to a maximum of twelve (12) chickens at any one time, no roosters.

Vote: Motion 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 A. & Christine Miller (Buyers) & Tyler Bewley (Seller)* for a Special Use for a beauty shop on property located on the South side of US 20, 300 ft. East of CR 43, common address of 10928 US 20 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-0630-2018*.

There were seven neighboring property owners notified of this request.

Christine Miller, 604 Heritage Dr., was present for this request as the purchaser. She continued saying the sale of their residence closes this afternoon, and the current owners of this property signed a letter giving them permission to apply for this request. Mr. Miller asked if the new residence has an existing hair salon area, and Mrs. Miller responded no. She explained they plan to use the attached garage for the hair salon. Mr. Miller mentioned the aerial shows room

for parking. Mrs. Miller also pointed out room where she can park on the side of the residence, and her husband can even park behind her, to leave space in front of the garage for clients to park. Mr. Atha asked if the customers have room to turn around without backing onto the road. Mrs. Miller explained they share the driveway with the neighbors, and it has a section where vehicles can turn around.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not see any issues with this request. Mr. Atha questioned a sign. Mrs. Miller responded she has an existing sign on her salon in White Pigeon that is 4x8 double-sided. She continued saying Staff explained to her it is too large, and she plans to have it cut down to the size allowed. Mr. Miller asked if the sign limit should be added as a commitment. Mr. Hesser asked the sign size limit for this request, since it is not a home workshop/business. Mrs. Miller stated she was told she could have 8 sq. ft. total 4 sq. ft. per side.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a 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 commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 9/17/18) and as represented in the Special Use application.
2. Limited to one (1) double-sided sign four (4) square feet per side.

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

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

7. The application of *Darren R. Sevy Living Trust* for a Special Use for a ground-mounted solar array on property located on the North side of CR 38, 290 ft. West of SR 119, common address of 23555 CR 38 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-0610-2018*.

There were six neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present representing the petitioners. Mrs. Salyer stated the solar array will be located 25 ft. from the side property line, along the fence. Mr. Lyon pointed out the site plan shows the street as CR 28, and it should read CR 38.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for 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 9/13/18) 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.

8. The application of *Jerry E. & Susie E. Miller* for a Special Use for a home workshop/business for a feed store on property located on the East side of CR 43, 2,600 ft. South of CR 10, common address of 54998 CR 43 in York Township, zoned A-1, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0623-2018*.

There were 13 neighboring property owners notified of this request.

Clarence Miller, 54896 CR 43, Middlebury, the son of Jerry & Susie Miller was present representing the petitioners. Mr. Clarence Miller stated his father sold produce in Elkhart County for several years, before moving to Spencer, Indiana. He continued saying they now plan to move back, and construction has started on their residence. He explained his father would like permission to sell feed and fertilizer, and he clarified the fertilizer is bagged, similar to the feed. He stated he would like to operate a small feed store. Mr. Roger Miller asked if selling fertilizer will increase the number of semi deliveries to the property. Mr. Clarence Miller responded ten semis per year includes the fertilizer and feed, and fed-ex also occasionally drops off products. Mr. Hesser pointed out the site plan shows room for a semi to turn-around on the property. Mr. Clarence Miller explained the driveway has not been installed yet, because the house is currently in the early stages of construction. However, he continued the plan is to have room for a semi to turn-around in accordance with the site plan. Mr. Hesser mentioned the proposed sign exceeds the home workshop/business limit of 4 sq. ft. Mr. Clarence Miller responded they would like to work with the county, and he asked if a request can be filed to exceed the square footage allowed. Mr. Auvil clarified exceeding the sign size allowed is under approval of a home workshop/business. Mr. Hesser suggested a 4 sq. ft. per side sign, and Mr. Clarence Miller stated the request was for a 30x40 sign. Mr. Hesser pointed out the requested sign is over 8 sq. ft. per side, and Mr. Clarence Miller stated they would like to know what the Board will approve. Mr. Hesser mentioned 4 sq. ft. per side is double the allowed square footage, and he suggested approval for that size to stay consistent. Mr. Hesser explained the Board is leaning towards approving a sign for 4 sq. ft. per side, which equals a 2x2 or a 1x4 double-sided sign.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus clarified the sign size restriction should be added as a commitment.

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 feed store 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 9/17/18) and as represented in the Special Use application.
2. Limited to one (1) double-sided sign four (4) square feet per side.

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

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

9. The application of ***Richard D. Miller & Betty S. Miller Joint Revocable Trust*** 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 South side of CR 126, 620 ft. West of CR 26, common address of 15100 CR 126 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-0629-2018*.

There were four neighboring property owners notified of this request.

Marlin Bontrager, 59700 CR 43, the contractor, was present representing the petitioners. Mr. Bontrager explained the petitioner would like to construct a new storage building, but it was discovered that he never received a Special Use for horses on less than three acres. Mr. Campanello asked if the horses are the petitioner's main form of transportation, and Mr. Bontrager responded yes. Mr. Campanello then questioned the use of the storage building, and Mr. Bontrager stated it will be used for boats, buggies, and lawn equipment. Mr. Atha clarified the location of the pasture on the aerial, and he asked if it becomes muddy. Mr. Bontrager responded he does not believe it is muddy. Mr. Atha asked the number of horses on the property, and he responded two or three.

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 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 9/17/18) 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 carried by unanimous roll call vote (**summary:** Yes = 5).

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

10. The application of *Larry L. Stalter & Dana S. Stalter as Trustees of the Stalter Living Trust* for a Special Use for a salvage yard on property located on the West side of SR 19, 2,800 ft. South of CR 40, common address of 66485 SR 19 in Olive Township, zoned M-2, came on to be heard.

Mr. Godlewski presented the Staff Report/Staff Analysis, which is attached for review as Case #SUP-0627-2018.

There were 10 neighboring property owners notified of this request.

Mr. Auvil stated he received information from the Town of Wakarusa, and they had some concerns about this request. He continued saying the town would like a fence installed. Mr. Hesser questioned Article 5 Section 5.3.22 that was mentioned.

Mark Becker, 66485 SR 19, was present representing the petitioners. Mr. Becker explained an auto repair shop operates off of the property, and they mainly sell parts and rebuild cars. He continued saying everything was stored indoors. However, he stated since they started RV repair the inside was needed for work space, and the salvage aspect of the operation moved outside. He stressed they want to stay compliant, but they need to move their salvage storage outside. He went on to say they do not want a huge salvage yard. He explained they currently have fifty vehicles, and they will not have over one hundred. Mr. Campanello asked if he has received any complaints from the Town of Wakarusa regarding a fence. Mr. Becker stated they currently have an 8 ft. tall chain-link fence, but it does not block visibility. He continued saying this is the first complaint they have received, and the business has operated here since 2010. Mr. Campanello suggested putting slats in the fence. Mr. Becker responded he can install the slats, and he was informed at a town meeting that they do not want a steel, junk-yard style, fence installed. Attorney Kolbus explained a solid 8 ft. tall fence is required for this operation, and a cyclone fence with slats would qualify. Mr. Hesser clarified the existing fence is 8 ft. tall. Mr. Becker asked if netting would be acceptable or if slats are required. Mr. Campanello responded Mr. Becker needs to discuss that with the town.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he believes a representative from Wakarusa would be present, if this request was still an issue. Mr. Hesser clarified approval of this request does not relieve the Zoning Ordinance requirement. Mr. Miller asked if a commitment needs to be added addressing the fence, and Attorney Kolbus responded the fence is required based on the use and zoning.

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 salvage yard 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 9/17/18) 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 *Dustan & Wanda Swartzentruber* for a Special Use for a home workshop/business for an accounting business, for a 94 ft. Developmental Variance to allow for the placement of a solar panel array 26 ft. from the South side property line (Ordinance requires 120 ft.), and for a 45 ft. Developmental Variance to allow for the placement of a solar panel array 75 ft. from the right-of-way line (Ordinance requires 120 ft.) on property located on the West side of East County Line Rd., 1,850 ft. South of CR 42, common address of 67355 E. County Line Rd. 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 #SUP-0598-2018*.

There were two neighboring property owners notified of this request.

Dustan Swartzentruber, 67355 East County Line Rd., Ligonier, was present for this request. Mr. Swartzentruber explained their intention is to cover the south facing roof of their shop with solar panels and place a ground-mounted solar array next to the building. He then explained he owns an accounting business that he started at a different location as a home workshop/business Special Use, and he would now like permission to move the business to this location. He continued saying a 20x20 room attached to their residence with a separate entrance is used for an office, and he believes plenty of room is available in the driveway for clients to park and turn around. He added they currently have one full-time employee in addition to his wife and him. Mr. Campanello asked if the property is strictly used for the business, and Mr. Swartzentruber clarified he also lives there. Mr. Campanello also asked about deliveries, and Mr. Swartzentruber responded only UPS type trucks deliver to the property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted the proposed sign is 20x20 double-sided, and he suggested the sign size be added as a commitment.

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 home workshop/business for an accounting 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 9/5/18) and as represented in the Special Use application.
2. Limited to one (1) double-sided sign four (4) square feet per side.

Further the motion included that a 94 ft. Developmental Variance to allow for the placement of a solar panel array 26 ft. from the South side property line (Ordinance requires 120 ft.), and for a 45 ft. Developmental Variance to allow for the placement of a solar panel array 75 ft. from the right-of-way line (Ordinance requires 120 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 (dated 9/5/18) 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.

12. The application of *Town of Bristol* for a Special Use for a government building (Police Station & Town Hall), for a 5 parking spaces Developmental Variance to allow for 31 parking spaces (Ordinance requires 36), for a 10 ft. Developmental Variance to allow for parking 5 ft. from the South property line (Ordinance requires 15 ft.), for a 7 ft. Developmental Variance to allow for parking 8 ft. from the West property line (Ordinance requires 15 ft.), for a 5 ft. Developmental Variance to allow for a 5 ft. landscaping buffer (Ordinance requires 10 ft.), and for a 2 ft. Developmental Variance to allow for an 8 ft. landscaping buffer (Ordinance requires 10 ft.) on property located on the Southeast corner of Vistula St. & Arnold St., 745 ft. East of Division St., common address of 303 E. Vistula St. in Washington 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-0611-2018*.

There were 29 neighboring property owners notified of this request.

Bob Heiden, a consultant for Jones Petrie Rafinski, 325 S. Lafayette Blvd., South Bend, and Michael Mitchell, the Town Manager for Bristol, 303 E. Vistula St., temporarily at 405 Elkhart St., the Bristol Fire Station, were present for this request. Mr. Mitchell stated this project has been in the works since 1991, and the town has discussed it at several different times. He continued saying this is the closest they have come to constructing the new building. He stressed it is greatly needed, because the current building is not ADA accessible. He explained his office is in the basement, and the council chamber is on the second story with only stairs for access. He added the police portion of the building is in different tiers and not ADA accessible. Mr. Miller stated one of the recommended conditions is that construction of this building be completed within one year of the issuance of the building permit, and Mr. Mitchell stated those terms were passed onto the contractor. Mr. Hesser asked if they anticipate a shortage in parking for all of the employees and customers. Mr. Mitchell responded they easily have enough room to park their employees, and the employees will not be working at the same time as Town Council Meetings. Mr. Heiden explained they accounted for twelve to fifteen total employees between

the Police Station and Town Hall. Mr. Campanello clarified the parallel parking on Vistula St. was not included in the total. Mr. Heiden stated they maximized the lot in order to fit parking, and the south half of Apollo St. is in the process of being vacated and turned into a parking lot. He continued saying this is the closest they can come to reaching the number of parking spaces required by the Zoning Ordinance. He mentioned Apollo St. is expected to be vacated early next month, and the Developmental Variances are in coordination with the vacation. Mr. Hesser noted Apollo St. is not a very busy street. Mr. Campanello asked if they spoke to the neighboring property owners. Mr. Heiden responded they spoke to the neighbor to the west when the plan design was being drawn up, because she was concerned her driveway may be blocked off. He explained the north half of Apollo St. will remain to maintain public access to her property. He went on to say the vacated section will become Town property, and variances for parking and landscape buffers are needed to maximize the parking area. He stressed they will still have landscaping buffers, but only five and seven feet rather than the required ten to fifteen feet.

Dennis Schwartz, the Bristol Fire Department Assistant Chief was present with some questions. Mr. Schwartz stressed he is not opposed to this request. However, the Bristol Fire Department was not consulted about this plan, and they need to ensure access to all four sides of the building. He continued saying he needs access to south and west sides of the property since part of Apollo St. is being vacated. He added he understands the north section of the street will remain open, but he has not seen the parking lot layout. He stressed he does not remember having thirty-six cars at a town function, except for homecoming, but he is concerned they may not have access to all sides of the building in case of an emergency. He added he is not sure if approving the Developmental Variances will make a difference, because he has yet to see the plans. He stated he is okay with this request as long as he has access to all sides of the building. He explained he has concerns, but he is not opposed to this. Mr. Campanello asked if the Fire Department needs to sign off on the building permit, and Mr. Auvil responded no.

Sanford Slagel, the owner of 305 E. Vistula, the property directly to the east, was present against this request. Mr. Slagel asked if the driveway off of Elkhart St. through the subject property will be shut off. He added the existing building encroaches onto his property line, and he asked if the new addition will increase the encroachment. He stressed he is concerned, because he uses the mentioned drive off of Elkhart St. for access to his property. Mr. Campanello asked if the overhang encroachment affects access to their drive, and Mr. Slagel responded he is not sure how far it encroaches. He added the county used his driveway to the north for years and even parked on his property. He stressed his main concern is access.

Mr. Heiden came back on and addressed the concern of access for the fire trucks. He explained the existing building along Vistula St. will remain with access from Vistula St. and the north half of Apollo St. He pointed out two drives off of Elkhart St. that allow for access to the south side of the property. He then addressed the overhang. He stated the façade on the existing building will remain the same, and it is five to six feet from the property line. He stressed the new addition will not be any closer to the property line than what is existing. Mr. Heiden then addressed the concern about the Southeast drive, and he pointed out it is on town property. He continued saying he is not familiar with its previous use, but the connection to the neighboring property will be cut off. He pointed out the neighboring property has access off of Vistula St., but access through town property will be eliminated. He clarified he did not find an access

agreement or easement, and the drive was probably used by the neighbors without any legal documentation. Mr. Lyon asked if he understands the remonstrator's concern, and Mr. Heiden responded yes. Mr. Lyon mentioned this plan will cut off access to that property. Attorney Kolbus pointed out the remonstrator's legal access is off of Vistula St., and he stressed the property will not be land locked.

Mr. Slagel came back on and stated he believes his deed shows access through the mentioned drive. Mr. Hesser clarified the Board cannot take away legal access, and the petitioners need to ensure there is no legal access before cutting off the drive. Attorney Kolbus stressed the Board's decision does not supersede the property owners' rights. Mr. Slagel asked why the Board would allow an addition to be constructed, when the existing building already encroaches onto his property. Mr. Auvil stated Mr. Heiden informed the Board that the building is 5 to 6 ft. away from the property line with a 2 ft. overhang, which leaves 2 to 3 ft. to the property line. He stressed the building does not encroach onto the neighboring property. Mr. Slagel responded the building does in fact encroach, and it is evident by the property stakes. Mr. Lyon stated a survey is needed, and Mr. Slagel stated the surveys he has seen show the overhang over the property line.

Mr. Schwartz came back on, and stated his only question is if they plan to close the west side drive. Mr. Heiden then showed him the plans and clarified a new drive will be added. Mr. Hesser clarified Mr. Schwartz no longer has an objection to the request.

Mr. Miller asked if the public has heard the plans for this building, and he questioned why the fire chief had not seen it. Mr. Hesser stated he believes meetings have taken place, and Mr. Miller questioned if any public meetings were held. Mr. Mitchell came on and stated no public meetings have been held during his tenure, but two different meetings were held prior. Mr. Lyon asked when the meetings were held, and Mr. Mitchell responded one this year and one last. Mr. Campanello stated he was present at a meeting about this project.

The public hearing was closed at this time.

Mr. Miller stated he is concerned about the discrepancy in the boundary lines, and he asked if a condition should be added requiring the boundary line be established. Mr. Hesser stressed the Town of Bristol should ensure the addition is completely on their property before construction. He continued saying the Board cannot rectify the situation, if the existing building does encroach on the neighboring property. Mr. Campanello stated Mr. Slagel would need to pursue it from a legal stand point, but he believes JPR has already surveyed the 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 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 government building (Police Station & Town Hall) 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 9/13/18) and as represented in the Special Use application.

Further the motion included that a 5 parking spaces Developmental Variance to allow for 31 parking spaces (Ordinance requires 36), for a 10 ft. Developmental Variance to allow for parking 5 ft. from the South property line (Ordinance requires 15 ft.), for a 7 ft. Developmental Variance to allow for parking 8 ft. from the West property line (Ordinance requires 15 ft.), for a 5 ft. Developmental Variance to allow for a 5 ft. landscaping buffer (Ordinance requires 10 ft.), and for a 2 ft. Developmental Variance to allow for an 8 ft. landscaping buffer (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 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. Approved in accordance with the site plan submitted (dated 9/13/18) and as represented in the Developmental Variance application.

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

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

No: Roger Miller.

13. The application of *Jason Michael & Vania Eva Brown* for a Special Use for a home workshop/business for a construction 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 West side of CR 29, 1,000 ft. South of CR 14, common address of 56189 CR 29 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-0632-2018*.

There were five neighboring property owners notified of this request.

Jason Brown, 56189 CR 29, came on for this request. Mr. Hesser clarified the request is for Mr. Brown's construction business, and he asked for details of the operation. Mr. Brown explained he owns a steel construction business for steel erection and minor fabrication. He continued saying he is currently operating out of a 16,000 sq. ft. building in White Pigeon, and he would like consolidate/move to this property and stop paying rent. He added the building will mostly be used for tool and vehicle storage, and his employees go there to pick up their work vehicles to then head out into the field. Mr. Hesser clarified all construction work takes place at the construction site, and Mr. Brown responded only minor repairs or truck maintenance would take place on the subject property. Mr. Campanello stated he will probably store a crane, boom lifts, and trucks here. Mr. Hesser asked if all of the equipment is stored inside, and he responded yes. Mr. Hesser also pointed out a mistake in the questionnaire that lists the hours of operation as dusk to 4:30 p.m., and it should read dawn to 4:30 p.m. Mr. Campanello questioned the number of employees, and the questionnaire states three full-time and one part-time. Mr. Campanello asked if the employees typically drive their personal vehicles to the job site. Mr. Brown stated he owns two service trucks, but most of them drive directly to the job site. However, he continued they may all meet at the shop and carpool for jobs that are a distance away. Mr. Miller asked where the steel is delivered, and he responded it is delivered directly to the job site. He went on to say he sometimes repairs parts at the shop, if it is raining. Mr. Hesser questioned deliveries to the property, and he responded Fed-Ex and UPS. He added he owns his

personal semi, and Mr. Hesser clarified there is plenty of room to turn around on the property. He went on to say the site plan does not show a semi turn-around. Mr. Miller asked if he spoke to the surrounding neighbors, and Mr. Brown responded yes. He continued saying no one had any objections to his request. Mr. Hesser then questioned the surrounding property, and it was found to pasture. Mr. Miller asked about noise, and he responded he has only spent the day working at his shop maybe five times this year.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller asked the condition of CR 29, and Mr. Hesser responded it is narrow asphalt. Mr. Campanello stated a lot of heavy farm equipment uses CR 29. Mr. Lyon questioned the legal drain on the property, and Mr. Brown responded it is Hildreth Ditch. Mr. Hesser asked how this request will affect the ditch, and Mr. Brown explained he needs to cross it. He continued saying CR 14 has a 24" culvert, and he plans to install two 20" culverts. Mr. Hesser stated this operation is not far from where he lives, and many low impact construction type businesses operate in the area. Mr. Miller added this does not appear to be a high volume operation, and he believes approval should terminate once Mr. Brown no longer lives on the property. Mr. Auvil stressed approval of the request runs with the land not the petitioner. Mr. Campanello suggested adding a commitment limiting approval to Mr. Brown as owner. Mr. Hesser stated a time limit could be imposed on the request. Attorney Kolbus clarified the Board can limit approval of this request for as long as Mr. Brown resides on the property. Mr. Hesser asked if a home workshop/business Special use is only approved for as long as the petitioner resides on the property, and Attorney Kolbus responded no. Mr. Miller asked for clarification on the proposed commitment. Attorney Kolbus stated the request can be approved with the petitioner as the owner/occupant. Mr. Hesser added a time limit can also be added to this request, but the petitioner is investing a significant amount of money in this building. Mr. Miller stressed he is concerned about how future owners could use this building. Attorney Kolbus mentioned the property is only approved as a home workshop/business for a construction business, and Board approval is required for any other business use. Mr. Hesser pointed out a home workshop/business is typically restricted to a 4 sq. ft. sign, and Mr. Brown responded he can work with that. Mr. Hesser clarified the sign is only needed to help delivery trucks find the property. He then request that a revised site plan be submitted showing the driveway to the shop and semi turn-around area.

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 Special Use for a home workshop/business for a construction business be approved based on the findings and conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property.
3. The Special Use will substantially serve the public convenience and welfare.

The following conditions were 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. A revised site plan must be submitted for approval by staff showing the driveway turn-around area.

The following commitments were imposed:

1. The request is approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.
2. The request is approved for Jason Michael Brown & Vania Eva Brown as the owners/occupants.
3. Limited to one (1) double-sided sign four (4) square feet per side.

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 based on the findings and conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals, or general welfare.
2. Approval of the request will not cause substantial adverse effect on the neighboring property.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were 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 to be submitted for staff approval and as represented in the Developmental Variance application.

Note: 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 *Lucas & Kayla Yoder* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of CR 42, 2,555 ft. East of CR 27, common address of 17264 CR 42 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-0624-2018.

There were five neighboring property owners notified of this request.

Jeremy Gingerich, 51153 CR 133, Bristol, was present as the contractor, representing the petitioners. Mr. Gingerich explained the petitioners would like to construct a new residence east of their existing one, and then demolish the existing residence once the new one is completed. Mr. Hesser asked how long the demolition will take, and Mr. Gingerich responded it should be complete within two months after the new residence is completed. Mr. Hesser pointed out a condition is normally placed on approval giving the petitioner a certain amount of time for the residence to be demolished. Attorney Kolbus clarified a commitment can be added allowing the

petitioner a few months to demolish the old residence, once the new one is complete. Mr. Hesser suggested a two month time frame to tear down the residence.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel was 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 9/17/18) and as represented in the Use Variance application.
2. The existing residence must be removed from the property within 60 days of the issuance of the Certificate of Occupancy for the new residence.

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

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

15. As a staff item, Mr. Auvil presented the request for a minor change to amend the site plan and commitment on a Use Variance for Jeremy & Linda Hoover (27802CR 38-130923-1). He stated Mr. & Mrs. Hoover received approval to have a residence in an M-1 zoning district. He explained the minor change request is to allow for planned and future additions to the commercial building that is allowed by right in an M-1 zone. He added staff recommends approval of this request as a minor change. Mr. Auvil clarified a Use Variance was approved for a residence in an M-1 zone and, that then tied the entire property to the approved site plan. He went on to say the commercial use is allowed by right, but the site plan needs to be amended to reflect the addition. He mentioned Staff is working on a condition that would allow changes to a use that is allowed by right in the vase zone. He stressed it should eliminate similar situations in the future. Mr. Hesser asked Mr. Sloat if any remonstrators were present when the request was originally approved, and he responded no. Mr. Campanello clarified the language change to the commitment will allow for future commercial expansion. Mr. Hesser asked if both the site plan and commitment changes can be considered as a minor change, and Attorney Kolbus responded yes.

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 the request as a minor change.

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

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

16. Mr. Auvil presented another staff item for Edward Bails (DV-0025-2018). He explained the minor change is to extend the condition on an approved Developmental Variance, which

required the Improvement Location Permit be pulled within 180 calendar days of approval. He continued saying Mr. Bails had some difficulties with the deed that affected his financing. He added he would like to extend the condition to allow a permit to be pulled before March of 2019. He stated the request was received on 10/9/18, and staff recommends approval as a minor change. Mr. Hesser clarified the petitioner is not stalling. Mr. Auvil responded the Auditor's Office shifted a boundary line that then caused the bank to hold the funds until the title was secure.

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

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

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

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

17. The staff item for Gary & Carolyn Riegsecker was presented by Mr. Auvil. He explained the request is to amend the site plan for a Special Use for warehousing and storing under the previous owners' name, Gregg & Nancy McIntosh (20061374). He continued saying the purpose of the amendment is to place the Special Use under the new owners name and to reduce the size of the property. He added the request was filed on 10/11/18, and staff recommends approval as a minor change. He clarified Mr. Riegsecker only purchased half of the property, and he would like the Special Use to only apply to the part he owns. Mr. Miller asked if the use will change, and Mr. Hesser stressed the only change is the size of the lot. Mr. Auvil pointed out no new buildings are proposed, and he mentioned the property was once part of a nursery. Mr. Hesser asked if anything on this property has changed, and Mr. Auvil explained it was part of the McIntosh Nursery. He went on to say a subdivision was recently filed on another section of this property, and Mr. Campanello noted it was also approved for RV storage. Mr. Hesser questioned the location of the subject property, and Mr. Auvil explained Mr. Riegsecker purchased part of the property to the west. He also mentioned all storage will be kept inside the existing building, and the greenhouses crossing the property line have been removed. Mr. Hesser reiterated all storage will be inside. Mr. Campanello stated this minor change will clean up the previous Special Use.

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 approve the request as a minor change.

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

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

18. Mr. Auvil presented the final Staff Item for Carlin & Jayme Yoder (UV-0501-2016). He stated the minor change request approval of a Use Variance from a dance studio to a hair salon for a proposed new buyer. He continued saying the timing of this request is important due to a pending real estate transaction. He added under the current Zoning Ordinance hair salons are allowed by Special Use in an A-1 zoning district, and the proposed new buyer already submitted a petition for the November hearing. He explained pending approval of the Special Use, the Use

Variance would be rescinded. He stressed due to the timing of the real estate transaction, the purchasers would like assurance that the dance studio can be converted into a hair salon. He added staff recommends approval as a minor change. He mentioned a Special Use for a hair salon was submitted, and the Use Variance will be rescinded after approval. Attorney Kolbus asked what action will be taken, if the Special Use is denied, and Mr. Auvil responded the Use Variance would still be in effect. Mr. Campanello pointed out a hair salon will generate less traffic than a dance studio. Mr. Miller stressed this is on a busy road, but he does not see a huge difference between the two uses. Mr. Hesser stated he remembers the original request was controversial. Mr. Auvil explained the dance studio was a home workshop/business, until the property was split to sell the residence, requiring a Use Variance for the business. He continued saying the Board approved the request for a standalone dance studio, and the new buyer would now like assurance that it can be converted into a hair salon. He stressed a hair salon is allowed by Special Use. He clarified he has an agreement with the purchasers that states this would be heard as a Staff Item, as long as the application for a Special Use was filed. Mr. Campanello asked if approval of a minor change bypasses the need for a Special Use. Mr. Auvil responded the minor change is separate, and the Special Use will be brought before the Board at the November hearing. He went on to say the Use Variance will be rescinded, if the Special Use is approved. He added he does not believe the Special Use will be a problem. Mr. Hesser agreed, but he is not sure a different use should be granted on this property without a public hearing. He continued saying he does not understand the necessity of the minor change, since the Special Use will be heard at the public hearing in November. Mr. Auvil stressed the request is to change approval of the Use Variance from one commercial use to another, that will produce less traffic, and it is needed due to the bank's timing with financing. Mr. Hesser then asked why a Special Use is needed, if the minor change is approved. Mr. Auvil responded he made an agreement with the purchasers to take this as a Staff Item due to their time restraints, but a Special Use is more fitting for a hair salon than a Use Variance. Mr. Miller stated the Yoders already paid for approval of the dance studio, and the Board agrees changing it to a hair salon is a minor change. He questioned why another public hearing is required. Mr. Campanello stressed the Zoning Ordinance allows hair salons by Special Use. Mr. Hesser asked what happens, if the Special Use is denied, after the buyers close on their real estate transaction. Mr. Auvil responded a hair salon would still be allowed due to the minor change. Mr. Miller stressed, if the Board approves the minor change request, no further action should be required, and Mr. Lyon agreed. Mr. Auvil stated the current buyer needed assurance that the Special use request would be approved. Mr. Lyon asked why the Board cannot approve the request as a minor change and eliminate the need for a major change. Mr. Miller pointed out this request basically ensures that the Board approves the Special Use. Mr. Auvil reiterated the request is going from one standalone commercial use to a less intense commercial use. He again stressed a hair salon falls under a Special Use not a Use Variance. Mr. Campanello clarified staff plans to recommend approval for the Special Use at the November meeting. Mr. Atha added the request will change from a Use Variance to a Special Use at that time. Mr. Auvil mentioned the change from a dance studio to a hair salon is not major in Staff's opinion, but the Board may feel differently. He stressed traffic will decrease from several cars at one time for class, to only a few clients at once. Mr. Hesser asked Attorney Kolbus if a condition can be imposed on a minor change, and Attorney Kolbus responded yes.

Mr. Hesser then suggested the request be approved as a minor change, contingent on approval of the Special Use for a hair salon.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board approve this request as a minor change with the following condition imposed:

1. Approval of the minor change is contingent on and subject to the buyer proceeding with an application for a Special Use for a hair salon.

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

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

19. The meeting was adjourned at 11:03 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary