

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20TH DAY OF SEPTEMBER 2018 AT 8:30 A.M.
MEETING ROOM DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

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

Roll Call.

Present: Joe Atha, Denny Lyon, Roger Miller.

Absent: Tony Campanello, Randy Hesser.

2. A motion was made and seconded (*Lyon/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of August 2018 be approved as read. The motion was carried with a unanimous roll call vote.

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

4. The application of **Chaz C. Martinez & Piper D. Holmgren** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres and for a Special Use for a roadside stand located on the West side of Garver Ave., 540 ft. North of Forestview Ave., West of CR 113, South of US 33, common address of 59431 Garver Ave. in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0550-2018*.

There were 22 neighboring property owners notified of this request.

Chaz Martinez and Piper Holmgren, 59431 Garver Ave., Elkhart, were present for this request. Mr. Miller asked if the chickens are already on the property, and Miss Holmgren responded yes. When asked how many chickens are currently on the property, she responded eight. Mr. Lyon clarified the petitioners are okay with a limit of twelve chickens. He also mentioned the site plan shows a fence, and he asked how far it is off of the property line. Mr. Martinez responded it is directly on the south property line and about eight to ten feet off of the north one. Mr. Miller questioned waste disposal. Miss Holmgren stated they use a compost pile that was on the property when they purchased it. Mr. Martinez explained its location on the back, west corner of the property, and he added it typically remains relatively small. Mr. Atha asked how long they have owned chickens, and Miss Holmgren responded since late last year.

Mr. Auvil stated staff received a letter from Wesley Crabb, 59383 Garber Ave., who is currently away on military duty. He explained the letter outlines Mr. Crabb's concerns with this request. He mentioned one concern is that the chickens will draw predators to the area and add to the existing raccoon problem. He added the other concerns addressed are smell and the roadside stand, because he does not believe it meets any safe-food guidelines. Mr. Auvil then submitted the letter for the record [*Attached to file as Staff Exhibit #1*]. Attorney Kolbus pointed out Mr.

Crabb's residence three houses north of the subject property. Mr. Auvil added he is located approximately 250 ft. away from the petitioners. Mr. Miller asked if both the animals and road side stand can be addressed with one motion, and Attorney Kolbus responded yes.

Mr. Miller asked the petitioners if they had seen the remonstrance letter, and he added Mr. Auvil covered everything mentioned in the letter. He questioned predators in the area, and he asked if they have lost any chickens. Miss Holmgren stressed no chickens have been harmed by predators. She continued saying they have caught a few predators in their yard. She added most of her neighbors have dogs so they do not worry very much about predators. Mr. Miller pointed out one of the pictures submitted with the application shows a dog in with the chickens. Miss Holmgren mentioned their dog protects the chickens. Mr. Miller then questioned the road side stand, and he asked if it is only used for eggs. Miss Holmgren responded they mostly sell eggs and any extra produce she has left over from their garden. Mr. Miller asked if the stand is self-service, and she responded it is an honor box system. She added she is not concerned about making a profit, because she just wants to share the extra she has left over. Mr. Martinez explained in order to keep the eggs fresh Miss Holmgren places ice packs in with them that she checks daily, and she also float tests them every other day. Mr. Lyon asked if any of the neighbors have complained, and Miss Holmgren responded no one has voiced any concerns to her. Mr. Martinez added they spoke to their neighbors directly to the north and south, and neither of them had any problems with noise, smell, ect. He stressed they only have eight chickens, that they keep clean to decrease the smell.

Joe Bowyer, 51763 CR 23, Bristol, came on in favor of this request and mentioned he does not personally know the petitioners. However, he stated his neighbors also raise chickens, and he does not have any problems with raccoons or other predators. He added he cannot smell his neighbors' chickens, and they frequently give him free eggs. He stressed the petitioners are providing a small service to the community.

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 for a Special Use for a roadside stand be approved with the following conditions imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 8/10/18) and as represented in the Special Use application.
2. Limited to a maximum of twelve (12) chickens, no roosters.

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

Yes: Joe Atha, Denny Lyon, Roger Miller.

5. The application of **Lisa L. Delp** for a Special Use for a home workshop/business for an aquatics store on property located on the Northwest corner of Lake Dr. & CR 109, North of CR 4, common address of 25573 Lake Dr. in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0526-2018*.

There were 26 neighboring property owners notified of this request.

Lisa Delp Weinley and Randall Weinley, 25573 Lake Dr., Elkhart, were both present for this request. Mr. Miller stated he is not familiar with aquatic stores, and he asked for more information about the operation. Mr. Weinley explained they sell salt and fresh water fish, aquariums, and supplies. He continued saying they started the store, because they caught a 13 in. goldfish when fishing on Simonton Lake. He added they then heard about a month later that someone on Simonton Lake caught an enormous Oscar, an indigenous South American fish. He explained soon after he began to consider starting a fish rescue, to keep evasive species out of our local lakes, ponds, ect. He went on to say they then started purchasing tanks and heaters for the fish. He added they began advertising on Facebook and Craigs Lists. He stressed since opening the rescue they have saved and re-homed thousands of fish. Mr. Weinley stated their electric bill before the rescue was only \$85 a month, but it has now grown to \$500+ a month in addition to the cost of food and water for the fish. He stressed he needed to find a way to fund the rescue without going bankrupt. He continued saying they started selling fish and supplies in addition to educating people on how to care for their fish without releasing them into the wild to fund their operation. He added they relocated fish from this area to several locations, including Sheds Aquarium in Chicago. Mr. Miller asked about traffic caused by customers coming to the property. Mr. Weinley responded the majority of their sales take place through the internet, but they could have up to fifteen customers a day. He continued saying most of their sales take place on Thursdays and Fridays, but customers typically only stay for fifteen to twenty minutes. Mr. Lyon mentioned the parking on the site plan, and he asked if the Highway Department has been contacted. Mr. Weinley responded yes. Mrs. Weinley then submitted a packet of information to the Board *[Attached to file as Petitioner Exhibit #1]*. Mr. Atha asked if the petitioners have considered moving to a store front. Mr. Weinley stated he believes their business is the last remaining mom and pop aquatics store in the county, because most small businesses cannot afford to pay the lease for a store front. He stressed extra insurance is the only added expense, since they operate off of their own property. He added the business would not be possible, if they had to pay a lease. Mrs. Weinley stated they currently do not make a profit to pay towards a lease. She also explained fifteen customers a day is the maximum number, and several days they do not have any. Mr. Atha asked about signs, and Mrs. Weinley responded they would like a sign but do not currently have one.

Joe Boyer, 51763 CR 23, Bristol, was present in favor of this request. Mr. Boyer stated he started shopping here, because it is local. He continued saying he believes the fish rescue and aquatics store is great. He added he purchases supplies and fish from them, and they take his extra fish so he does not have to flush them.

Dan Gregory, 51446 Forest Rd., Elkhart, the owner of the property directly across the street from the petitioners was present in remonstrance. He then submitted pictures of the subject property *[Attached to file as Remonstrator Exhibit #1]*. He stated his problem with the request is that it is in a residential area not zoned for business. He added the subject property is one of the

messiest on the street due to junk cars ect. He pointed out a Cadillac that has been on the property for over a year with either flat tires or tires that have sunk into the ground. He continued saying two junk jeeps, an old lawn mower, and other vehicles are also parked in the yard. He stressed the cars parked in the yard block people's view when turning off of Lake Dr. onto CR 109. He went on to say semis frequently park on the road for deliveries. He mentioned a Quonset hut in the back of the property that is all over grown. He stressed CR 109 has several un-kept properties, and this is one of the worst.

Patrick Rosenogle, 51408 Forest Rd., Elkhart, was present against this petition and stated he shares Mr. Gregory's concerns. He then presented some pictures to the Board *[Attached to file as Remonstrator Exhibit #2]*. He stressed one picture shows a semi blocking the road. He stated he is self-employed and is not opposed to someone running their own business, but the subject property has been a mess since the petitioners moved in. He added he would view this request more favorably, if the cars were scrapped and the property cleaned up. Mr. Miller asked if the concern is the property's condition or the aquatic business. Mr. Rosenogle stressed he does not believe this is a proper place for a business. Mr. Auvil asked the location of his residence, and Mr. Rosenogle pointed it out on the aerial, along with the property he owns that extends to the subject property. He stressed three of the neighbors are present in opposition and a forth was unable to make it. He again mentioned he does not believe this location is good for a business. He brought up CR 109 produces a lot of traffic from the boat launch, and one of the pictures submitted shows a semi parked on the road unloading.

Mr. Miller asked for a raise of hands from those present in opposition, and four hands were raised.

Mr. Weinley came back on and stated semi trucks are common in this area. He went on to say four properties in the neighborhood are owned by semi drivers who have parked their semis here for at least nine years. He stressed delivery trucks are only parked on the road for 10 to 15 minutes. He added he requested to be the last stop the trucks make so they will come in light. He then addressed the mentioned vehicles that are unrelated to the business. He explained every vehicle starts and moves the required 20 ft. He stated a complaint was filed about the vehicles, and they all moved. He also stressed the vehicles were moved back off of the road to provide better visibility. Mrs. Weinley came on to say they typically have up to two semis a week that are parked on the road for a maximum of fifteen minutes each. She also pointed out semis deliver to other businesses in this area, and an owner/operator parks his truck in the road overnight while he sleeps. She stressed semi traffic is not unusual for this area. Mr. Weinley mentioned food service trucks are also prevalent on this road, and they come in much heavier than the semis that deliver to his property. He added people frequently move in and out of the duplexes around the lake, and moving trucks are parked on the road for hours at a time. He again stressed truck traffic is not uncommon in this area. Mr. Weinley stated CR 109 is typically only busy on holidays and weekends. Mrs. Weinley explained their trucks deliver on either Tuesday, Wednesday, or Thursday, around 10:00 or 11:00 a.m., when most people are at work. Mr. Atha asked which road the boat ramp is on, and Mr. Weinley responded CR 109. He then asked if trucks unload off of CR 109, and Mr. Weinley responded yes. He continued saying he does not allow semis to turn around on CR 109, instead he has them back up onto CR 102 and exit on CR 109. Mr. Atha stressed the Board requires a semi turn-around on the property to prevent semis from backing onto county roads. However, he continued CR 109 is not as busy as

a typical county road. Mr. Miller stressed a semi turn-around is one of their requirements. Mrs. Weinley pointed out the boat launch has a turn-around, and Mr. Weinley added the semis could take CR 102 to CR 9 to turn around. Mr. Atha asked the location of CR 102, and Mr. Weinley pointed it out on the aerial. He added he asked the drivers to avoid CR 102 to keep truck traffic away from residential areas. Mr. Lyon asked if the neighbors are in favor of this request, and Mr. Weinley responded letters from each of his surrounding neighbors in favor of this request were attached to the application. He added they service many of their neighbors.

Richard Dirmyer, 25647 Applewood Ct., the owner of the duplex located at 25533 and 25535 Baker St., was present in remonstrance. He stated his concern is increased traffic and parking as this business progresses. He stated he understands a lot of the business is currently through the internet, but he believes a sign will expand the number of people stopping by their property. He stressed this is on a corner, and he believes the future of this operation should also be considered. He asked if blacktop or stone will be put down for parking. He also voiced his concern about what waste this operation will dump into the Simonton Lake Conservancy. He stressed it is more than just an internet business.

Mr. and Mrs. Weinley came back on again. Mr. Lyon asked what they plan to use for parking, and he responded crushed concrete. He then pointed out on the displayed picture the proposed parking area, and he stressed it meets the required depth and width. Mrs. Weinley mentioned their goal is to have a store front, if they become profitable enough to afford rent. She stressed they currently operate in the negative, without adding the cost of rent. Mr. Auvil suggested the Board add a one to two year time limit to hear any remaining concerns. Mr. Weinley explained their main goal is to rescue fish, and the store is to support the rescue. He continued saying the DNR website has information on the influx of invasive species such as piranhas, oscars, pacus, goldfish, and kois. He stressed he is trying to avoid a take-over of our water systems by invasive species. Mr. Miller stated he understands their intentions for the fish rescue, but the Board's concern is whether this is a good environment for this business. He stressed his concern is not the operation but the location. He added he appreciates his efforts in fish rescue as a fisherman.

The public hearing was closed at this time.

Mr. Miller mentioned most of the neighbors located next to the petitioners submitted letters with the application in favor of this request. Mr. Lyon suggested approving this request for a period of two years. Mr. Atha stated he agrees with approving this request for two years, with the goal of the petitioners building enough equity to move into a store front. He stressed he does not want this property permanently approved for a business. He added this is a dense residential area, and Mr. Lyon brought up the boat ramp located down the road. Attorney Kolbus clarified commitment #2 should specify approval of the request for a period of two years. Mr. Atha stated he does not want semis parked on county roads, and Mr. Lyon pointed out it happens frequently. Mr. Miller stressed the Board does not typically allow semis to park on the road. Mr. Atha suggested they may be able to park on the gravel once it is placed. Mr. Lyon brought up a concern that it may not fit there with the gas tank. Mr. Atha added gravel is not appealing for a residential area, but it may keep semis off of the road. He continued saying CR 102 may be a better road for semis to park on.

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 aquatics 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. Approved in accordance with the site plan submitted (dated 7/31/18) and as represented in the Special Use application.
2. Approved for a period of two (2) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

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

Yes: Joe Atha, Denny Lyon, Roger Miller.

6. The application of **Trevor P. Martin** for a Use Variance for the sale of livestock and 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 East side of Outer Dr., 520 ft. South of Middlebury St., common address of 56088 Outer Dr. in Concord Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0501-2018*.

There were 17 neighboring property owners notified of this request.

Trevor Martin and Shy Martin, 56088 Outer Dr., Elkhart, were present for this request. Mr. Miller asked if animals are already on the property, and if they have any concerns with staff's limitation of twelve chickens and no roosters. Mr. Martin responded no, and he added they do own one rooster, but someone is lined up to take him. Mrs. Martin explained she took several classes on animals in high school and learned the pros and cons to flocks and roosters. She continued saying their hens were getting attacked by feral cats in the neighborhood so they purchased a rooster to protect them. She added their rooster has chased feral cats out of the yard to protect the chickens. She stated they also considered hatching a few chicks to sell with their eggs, but that is not possible without a rooster. She stressed they do not plan to keep any additional chickens than what is currently on the property, unless they needed to replace older chickens. Mr. Miller stated he does not remember the Board ever approving roosters, because their noise disturbs the neighbors. He added he understands her concerns and reason for having a rooster. He stressed noise is the reason the Board denies roosters. Mrs. Martin stated her uncle's rooster was terrible and acted like the typical rooster. Mr. Lyon asked if the entire back yard is fenced in, and she responded yes. She continued saying the fence was installed before they received notice of the complaint. Mr. Lyon also clarified a little addition to the shed houses the chickens. Mr. Martin explained the chickens are currently kept in the shed addition, but they plan to fence off a larger part of the shed, if this request is approved. Mr. Miller asked what they plan to sell. Mr. Martin stated they sold a few live chickens, and Mrs. Martin explained they sold about eight. She went on to say they sold hens to accumulate the funds to pay for the Special Use. She explained if she sells two dozen eggs for \$2 a week the chickens become self sustainable. Mr. Miller asked if they regularly sell animals. Mr. Martin responded they sold

chickens twice to fund this request. Mr. Miller also asked if they would be opposed to denying the request for the sale of livestock, and Mr. Martin responded no. He continued saying twelve hens is their limit, and they will only sell eggs. Mrs. Martin stressed they only sold chickens to fund their request. Mr. Atha mentioned the original request asks permission to sell up to forty chickens, ducks, goats, pigs, and geese. Mr. Martin responded when he applied for the request he was told to ask for anything he may want in the future. He continued saying they would like to keep the chickens and their dogs. Mrs. Martin mentioned some of the neighboring property owners were in favor of this request, but they were unable to attend due to work. She explained Tyson Watkins, the neighbor directly across from their property, is in favor of this request. She also pointed out the resident of the property to the north has told them he enjoys watching the birds and hearing the rooster crow. She continued saying one neighbor spoke to them after he received the letter for the hearing, and they told him their intention to sell a few chickens and eggs. She added he was okay with the request after hearing their plans. She also mentioned a woman two doors north of their property told them she loves hearing the rooster, because it brings a country feel to the neighborhood. Mrs. Martin stressed other residents on the road also have chickens. Mr. Atha asked how they dispose of manure, and Mrs. Martin responded they compost it to use as fertilizer on their garden. Mr. Atha asked where the compost pile is kept. Mr. Martin pointed out its location in the woods behind their yard, and he mentioned some of their neighbors dump brush and leaves in the woods. Mrs. Martin stressed they keep it away from the chickens to allow it to compost naturally. Mr. Atha asked if it is contained, and Mr. Martin responded currently it is just a pile. Mrs. Martin stated she has started landscaping, and they plan to build a square, cement block or brick structure right outside of their gate for it. She continued saying it will be located directly behind where she plans to plant a garden for easy access to spread it.

Jerry Matthews, a trustee for the church that owns, 56076 Outer Dr., the residence directly north of the subject property was present in remonstrance. He submitted pictures of the property to the Board *[Attached to Petition as Remonstrator Exhibit #1]*. Mr. Matthews stated he believes the chickens present a health concern, because holes are dug up on the yard over the septic system. He continued saying chickens in this area will decrease their property values, because it is not conducive to the neighborhood. He also pointed out the woods the petitioner mentioned is actually on city property, and the chicken waste is being dumped on property they do not own. Mr. Auvil asked if Mr. Matthews lives in the neighboring residence. Mr. Matthews responded he is the CEO of the church who owns the property, but he does not live there. Mr. Auvil pointed out the City of Goshen and Elkhart allow chickens by right without a Special Use. Mr. Matthews stated he understands, but he believes the location of the compost pile creates a health issue. He added he believes the petitioners should have request a Special Use before raising chickens. Mr. Miller asked if he is aware of any other chickens in the area. Mr. Matthews responded no, and he stressed it is a beautiful area. He stressed the houses sell quickly, because it is a popular area.

Lavon Comer, 56119 Outer Dr., came on in remonstrance and submitted a letter to the Board from another neighbor Thom Kiendl *[Attached to file as Remonstrator Exhibit #2]*. He asked how approval of this request will affect his property value and if the Board will lower his taxes. Mr. Atha pointed out the Board cannot change property taxes. Mr. Comer also asked if the Board will enforce the restriction on the number of chickens allowed on the property. Mr. Atha

explained the neighbors need to file a complaint with the county, if the petitioners have more than twelve chickens. Attorney Kolbus reiterated the neighbors can help enforce the number of chickens on the property by informing staff when more chickens than allowed are present. Mr. Comer asked if approval of twelve chickens will also allow the petitioner to have twelve ducks or geese. Mr. Miller stressed the Board will only approve this request for chickens; no other fowl is permitted. Mr. Atha added the Board approves specific types of animal. Mr. Comer pointed out the petitioners currently have four geese, two ducks, and four dogs. Mr. Atha clarified dogs are allowed by right. Mr. Comer pointed out livestock is a broad range of animals. Attorney Kolbus reiterated approval of this request will be specific to chickens. He continued saying dogs do not require approval by the Board, and any other livestock on the property will need to be removed within thirty days.

Sandy Kilmer, 56122 Outer Dr., came on opposed to this request, and pointed out her residence on the aerial. She stated the petitioners only fenced in their property after she had repeatedly request the chickens be kept off of her yard. She explained the petitioners left the gate open while they worked, and she frequently had chickens in her yard for a month and a half. She added the fence is directly on the property line, and it ends right under her bedroom windows. She stressed this area is residential, and she does not want chickens to be allowed. Mrs. Kilmer also mentioned she has a few feral cats left, but the rooster has scared the cats in her yard. She continued saying the chickens are noisy, and they have lost the quiet atmosphere. She stated she can hear the rooster in the morning even when he is in the pen. Mr. Miller explained the Board will not allow a rooster. Mrs. Kilmer also mentioned the chickens have started jumping the fence and end up back in her yard.

Zoe Martin, 56119 Outer Dr., was present against this request and stated she is Mr. Comer's caretaker. She stressed she has noticed a significant decrease in his ability to breathe since the animals were brought onto the neighboring property. She stressed he is coughing and changing his filter more often. She explained she has cared for him for three years, and he did not have this problem prior to the animals. She stated it is a major concern to her that Mr. Comer cannot breathe in his own yard.

Mr. and Mrs. Martin came back on and stated the only concern they received was fencing. He continued saying they were approached about a fence three times, but when they attempted to install it a wire on their property line caused a delay. He mentioned they considered moving back from the line. He explained they were approached by their neighbor and told that the fence had to be a foot or two off of the property line. However, he went on to say when he asked the Planning and Development staff he was told the fence could be placed right on the property line. He stated they then installed the fence at that point. He mentioned chickens do sometimes jump the fence. Mr. Miller asked the location of the chicken coop, and Mr. Martin pointed it out on the aerial. He also pointed to the spot where the chickens sometimes jump the fence, and he stressed they typically go into the woods behind their yard. Mr. Atha asked if their wings have been clipped, and Mr. Martin responded no. He continued saying they researched it but did not want to move forward until this request was approved. Mrs. Martin stressed they stopped all plans for the chickens when they received the notice of violation. She explained they purchased a residence in the county, because they believed regulations would be more relaxed. She went on to say they started raising chickens, because her husband was in a car accident in January that resulted with him in a neck brace for three months. She added raising chicks kept

him active, since he could not lift more than five pounds during that time. Mr. Miller asked if they have other animals besides chickens. Mrs. Martin responded they also have four ducks and a goose. Mr. Miller stressed if this request is approved, it will be limited to chickens only. Mrs. Martin stated they have prepared to find homes for the other fowl, and the rooster already has a home lined up. She then explained the coop is a temporary setup, because they plan to use a shed in the backyard for the chickens. She continued saying the chickens will then have more space to roam. Mr. Miller suggested they consider installing a fence further from the neighbor's bedroom window, and he added the chickens' wings need to be clipped. He stressed that should help them get along with their neighbors. Mr. Atha added the compost pile should be moved out of the woods and contained. Mr. Martin responded they already planned on most of the suggestions but put them on hold until a decision was made. Mrs. Martin explained they own a double lot and since the residence to the south is very close to the property line, anything on the property is out the neighbor's bedroom window. She stated the neighbor has also mentioned that her gas and power lines cross over onto their property.

The public hearing was closed at this time.

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

Motion: Action: Deny, 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 Use Variance for the sale of livestock be denied.

Further, the motion also included that a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than three acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. Approved in accordance with the site plan submitted (dated 7/26/18) and as represented in the Special Use application.
2. Limited to a maximum of twelve (12) chickens only, no roosters or any other agricultural animals.

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

Yes: Joe Atha, Denny Lyon, Roger Miller.

The petitioner has thirty (30) days to remove all other agricultural animals from the property.

7. The application of *Wendy L. Silver & John L. Curtis* for a Special Use for a kennel on property located on the Southeast side of CR 29, 490 ft. West of CR 33, common address of 51078 CR 29 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0484-2018*.

Wendy Silver, 51078 CR 29, was present for this request. Mr. Miller clarified this request was tabled last meeting due to some concerns with the neighbors. Mrs. Silver apologized

for not being prepared at the last hearing, since she did not believe anyone would be opposed to her request. She noted no remonstrators are present at this hearing, and she decided to send her prepared letter to one of her neighbors to ease his concerns. She explained two years ago she began working with vocational rehab, due to her MS symptoms. She continued saying she groomed dogs for twelve years, but her hands have recently become crippled making it extremely difficult. She added with the help of vocational rehab and the social security plan she has been able to work towards constructing a wheel-chair accessible kennel attached to her residence. She stressed her goal is to support herself without being on disability. Mrs. Silver explained she improved her residence by adding a garage, back patio, and 900 sq. ft. living area in addition to widening the driveway and landscaping. She went on to say she has substantially raised the value of her property. She added she was surprised last month when her neighbors showed up against the request, but she now realizes all they knew was that she was going to construct a kennel full of barking dogs. She stated she believes, if she can explain the details of her plan the neighbors will be more at ease. She stressed barking was the main issue with the neighbors, and she has plans to alleviate that. She mentioned she does not want to hear barking dogs, and she plans to control barking by placing the kennel where the dogs cannot see the road, driveway, or the neighbors' yards. She explained the outside kennels will be surrounded by trees to block their view, and a row of mature tree and brush already exists along the property line. She added the indoor kennels will all be insulated and sound proof, and any dogs that keep barking will be forced to stay inside. She continued saying the kennel will only have six runs, and the dogs will only be allowed in the outside runs between 7 a.m. and 7 p.m. Attorney Kolbus asked if she plans to change the location of the runs from the site plan submitted back in July. Mrs. Silver responded the original plan was to build off of the back of the garage, but she has also considered building out the back door of her residence. However, she continued she is not sure moving the kennel will affect the noise. Attorney Kolbus stressed his concern is, if she decides to construct something different than shown on the site plan, a revised site plan is required. He explained she cannot pull a permit until staff approves the revised site plan. Mr. Lyon clarified her plan currently matches the submitted site plan. Mr. Miller stated the Board approves requests in accordance with the site plan, and she will need to resubmit a site plan, if she moves the kennel. Mr. Auvil suggested a revised site plan be submitted and reviewed by staff. Attorney Kolbus explained she needs to be aware that any changes in the layout require a revised site plan. Mrs. Silver stated she will not construct the kennel for at least a year, and she is only at the beginning of the process. She added she needs to save money for construction. Mr. Lyon suggested approving the petition, allowing a revised site plan to be approved by Staff later. Mr. Miller added staff can approve the revised site plan, but that can be part of the motion. Mr. Auvil stated the Board or staff can approve this site plan, and Attorney Kolbus added that will be addressed in the motion. Mrs. Silver explained she is currently looking for a contractor and writing out her business plan, and once that is completed she will need to save the funds for this project. She continued saying she will discuss the kennel location with her contractor, but she could not move forward in her business plan without having the Special Use approved. Mr. Atha stated it appears she spoke to her neighbors after the last hearing. Mrs. Silver pointed out the neighbors on the aerial who were present at the last hearing, and she understands the major problem was the neighbors enjoy sitting outside in the quiet. She stressed she understands keeping the area quiet, and she added she will share her plan to keep the noise down with them.

Mr. Atha stated he believes they would be present, if they still had concerns with this request. Mrs. Silver also pointed out the location of several other kennels in the area, including three breeders. She went on to say she was a groomer for twelve years. She continued saying she stopped working with another groomer, because she could not handle the constant barking. She explained she opened her own shop so she could take one dog at a time to prevent barking. She again stressed she is also concerned about barking.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he believes all concerns with this request were addressed. He explained approval is in accordance with the site plan she submitted, but a revised site plan can be approved by staff, if she decides to move the building. Mr. Miller asked if a time frame for the revised site plan to be submitted should be added, and Mr. Auvil responded it is needed before a building permit is issued.

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 kennel be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. A revised site plan must be submitted for approval by staff, if the petitioner changes the location of the proposed kennel.

The following commitment was imposed:

1. Approved in accordance with the site plan submitted (dated 7/13/18) and as represented in the Special Use application.

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

Yes: Joe Atha, Denny Lyon, Roger Miller.

8. The application of *William A. & Carrie Clark* for a Developmental Variance to allow for the construction of a residence on property with no road frontage served by an access easement on property located on the West end of the easement, West side of CR 43, 2,000 ft. South of CR 10, in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0491-2018*.

Mr. Auvil stated the appellant left a voicemail on his phone this morning requesting his appeal be withdrawn. He explained he is the father-in-law of the petitioner, and he had an issue with an easement on an adjacent property that was not related to this request. He reiterated the appellant has requested an official withdraw. Attorney Kolbus clarified the Board needs to make a motion to accept the withdraw and reinstate the Hearing Officer's decision.

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: Withdraw, **Moved by** Joe Atha, **Seconded by** Roger Miller that an appeal from the Hearing Officer's decision for a Developmental Variance to allow for the construction of a residence on property with no road frontage served by an access easement be withdrawn at the request of the appellant.

Further, the motion also included that the Hearing Officer's decision be reinstated.

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

Yes: Joe Atha, Denny Lyon, Roger Miller.

9. Mr. Auvil presented the staff item for a minor change request for Michelle Steigmeyer (SUP-0274-2018). He explained the request is for a site plan amendment to add a covered pavilion to a Special Use for dog kennel. He continued saying the pavilion size is around 1,100 or 1,300 sq. ft. He stressed the property is well kept, and the addition is to a brand new facility. He continued saying staff recommends approval of this request as a minor change.

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 approve the request as a minor change.

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

Yes: Joe Atha, Denny Lyon, Roger Miller.

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

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary