

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 19th DAY OF DECEMBER 2019 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: Jason Auvil, Zoning Administrator; Mae Kratzer, Planner; Doug Powers, 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 (*Campanello/Lyon*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21th day of November 2019 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 ***Felicia F. Grabill*** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the East side of Kimberly Dr., 335 ft. North of Gregory Dr., West of Meadow Glen Dr. (Tower Rd.), North of Old US 33, common address of 56932 Kimberly Dr. in Baugo Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0805-2019*.

There were 27 neighboring property owners notified of this request.

Bill Cole, 56932 Kimberly Dr., Elkhart, was present for this request and stated he would like permission to have chickens. Mr. Lyon pointed out the chicken coop is located next to the shed on the site plan, and he questioned if its location is too close to the property line. Mr. Cole responded no, because his property line extends out past the fence. Mr. Lyon also asked if he spoke to the neighboring property owners. Mr. Cole responded the neighbors were okay with his request as long as he does not have ducks. Mr. Atha questioned waste disposal, and Mr. Cole responded they compost it.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted the lot is small. He then questioned the use of the term low-density in Finding #2. He stated the Board frequently approves chickens, and he is not opposed to this request. However, he suggested the term low-density be removed from finding #2, due to the number of houses in the area.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Joe Atha that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved based on the following findings and conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance. Keeping of animals on a tract of land containing less than 3 acres is allowed by Special Use.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a 0.34-acre parcel in a residential and agricultural area, and the parcel will remain residential in character.
3. The Special Use will substantially serve the public convenience and welfare by providing recreational opportunities and local food.

The following condition was imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 10/30/19) and as represented in the Special Use application.
2. Limited to a maximum of twelve (12) chickens at any one time and no roosters.

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

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

5. The application of *Raymundo C. Rodriguez & Elizabeth G. Rodriguez, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the West side of Homer Ave., 2,700 ft. South of Hively Ave., common address of 58029 Homer Ave. in Concord Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0821-2019*.

There were 23 neighboring property owners notified of this request.

Nick Zientarski, 11517 Van Lopik Ave., Grand Haven, was present for this request representing Power Home Solar and the petitioners. He explained they complete 600+ solar installs every month, but this one required a Special Use. Mr. Miller noted the request is for a large instillation. Mr. Zientarski stated each panel is 3'x5', and they have completed larger solar arrays. He continued saying he would consider it a medium sized array.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** 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 11/6/19) 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.

6. The application of *Merle J. Yutzy & Megan E. Yutzy (Buyers) & Herbert L. Miller & Mary H. Miller, Husband & Wife (Sellers)* for a Special Use for a home workshop/business for a wood finishing business on property located on the West side of CR 3, 1,600 ft. North of CR 44, common address of 67619 CR 3 in Locke Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0849-2019*.

There were five neighboring property owners notified of this request.

Merle Yutzy, 11083 N. 900 W., Nappanee, was present for this request. Mr. Yutzy stated he would like to operate a wood finishing business, and he plans to operate it after his typical work day. He explained the business is currently just a hobby, but he hopes it grows into more. Mr. Lyon clarified there will be no outside employees. Mr. Atha questioned disposal of toxic chemical. Mr. Yutzy responded they collect and label the chemicals for a company to pick up. Mr. Miller asked staff the need for this request, since it was previously approved by the Board. Mrs. Kratzer responded approval is needed due to a change in ownership. Mr. Hesser noted Special Use requests in the past were frequently granted to a specific owner, which is no longer common practice

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a wood finishing 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 commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 11/18/19) and as represented in the Special Use application.

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

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

7. The staff item for the 2020 Agreement for legal services for Attorney Kolbus was presented by Mr. Auvil. He stated he believes the agreement is in line with past ones, and he presented the legal contract to Mr. Hesser.

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 approve the 2020 agreement for legal services for Attorney Kolbus as presented by staff.

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

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

8. Mr. Auvil noted the amendments to the Zoning Ordinance received a favorable recommendation to the Commissioners at the December Plan Commission Hearing. He continued saying the amendments are scheduled to go before the Commissioners on January 21, 2020 for a February 1, 2020 approval date. Mr. Hesser asked for a few highlights of the amendments. Mr. Auvil stated most of the changes will make the Ordinance more concise/clear. However, he continued one of the biggest changes will allow two dwellings on a parcel, so the owners can reside in the old residence until the new one is completed. Mr. Miller clarified that situation will no longer require a Use Variance, and Mr. Hesser noted approval will instead be granted by the Planning and Development Staff. Mr. Auvil explained a demolition permit will be required for the old house when the new residence permit is pulled, and the Certificate of Occupancy will not be issued until the old house has been removed. He added another change to the Zoning Ordinance will allow an RV to be used as temporary housing, if a residence is destroyed by a fire or flood, providing the Environmental Health Department approves. He explained temporary housing situations happen on average five times a year, and this change will eliminated administrative headaches. Attorney Kolbus added an RV or mobile home will only be allowed on site for a maximum of 180 days. Mr. Hesser pointed out requiring Board approval for temporary housing causes a long delay. Mr. Lyon clarified the maximum time allowed is 180 days. Mr. Auvil responded Board action would be required if the temporary housing remained on the property past 180 days. He stressed the changes are meant to improve the processes.

9. The application of *Melvin J. Bontrager & Linda L. Bontrager, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the South side of US 20, 460 ft. West of CR 33, common address of 15336 US 20 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0827-2019*.

There were eight neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, Middlebury, was present for this request representing Mel & Linda Bontrager. He stated the building shown on the aerial is a temporary hoop building that was permitted. He explained they would like to replace the hoop building with a permanent structure. He added the petitioner plans to reside on a neighboring property, and he pointed it out on the aerial. He noted the subject property will hold the barn and pasture for his horses. Mr. Atha clarified the strip of land between the subject property and the road is relatively flat. Mr. Hesser asked if a limitation to the number of animals should have been included in the Staff Report. Mrs. Kratzer responded the number of animals should be limited in accordance with the petitioners' request. Mr. Hesser noted the petitioner request two horses, and Mr. Hochstetler responded they typically request two.

Shelby Weeks, 57207 CR 33, Middlebury, was present in favor of this request. She reiterated the request is for two horses on approximately one acre of land. She noted the subject property is located directly behind hers, and she is in favor of this request. She continued saying the petitioners keep their fence and pasture tidy. She noted she would like the request to be limited to two horses, because several duck barns are in the area.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 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 11/8/19) and as represented in the Special Use application.
2. Limited to a maximum of two (2) 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 *Keith Yoder & Kimberly Yoder, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the West side of CR 37, 1,580 ft. South of CR 137, common address of 72803 CR 37 in Benton Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0850-2019*.

There were eight neighboring property owners notified of this request.

Isaac Reed, PV Solutions, 800 Heritage Dr., Middlebury, was present for this request along with Keith Yoder, 72803 CR 37, Syracuse. Mr. Miller clarified this request is for a standard solar array. Mr. Reed explained it will be a 30 panel, ground-mounted array at about 50 ft. long. Mr. Miller questioned the location of the proposed array, and Mr. Reed pointed it out on the aerial. He explained the location is currently a hay field. He added it will be difficult to see the array from the road, because that area is lower ground. Mr. Campanello asked if the array could be placed at a different location on the property. Mr. Yoder explained the proposed location was chosen because of its proximity to the electric service. Mr. Reed added a long trench would have been needed to locate it in the back.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further

moved that this request for a Special Use for a ground-mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 11/18/19) 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 *Michael Bird & Jamie L. Bird, Husband & Wife* for a Special Use for a home workshop/business for a reflexology business on property located on the North side of Briarhill Dr., 1,760 ft. West of Old CR 17, North of CR 26, common address of 22581 Briarhill Dr. in Concord Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0843-2019*.

There were 21 neighboring property owners notified of this request.

Jamie Bird, 22581 Briarhill Dr., Goshen, was present to request a renewal of a Special Use for a home workshop/business for a reflexology business. She explained her request was approved last year for a period of one year, because the neighbors had a few concerns. She request it now be approved indefinitely. Mr. Lyon asked if they received any complaints from their neighbors, and she responded no. Mr. Atha questioned the average number of clients a day. Mrs. Bird responded she would like approval for a maximum of eight client a day, but she does not currently see that many. Mr. Atha clarified the driveway does not fill up with cars. Mrs. Bird responded one car is the most in the driveway at a time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he remembers a few neighbors were concerned at the last hearing prompting a one year time restriction, but the neighbors no longer appear to be concerned. Mr. Atha asked if the request should be connected to the owner/occupant of the residence, and Mr. Hesser responded a home workshop/business already implies that association. He added older Special Use requests were tied to a single owner, but the Board no longer imposes that.

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 a reflexology 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 commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 11/15/19) and as represented in the Special Use application.

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

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

12. The application of *Michael Wass & Juanita Wass, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the West side of CR 115, 2,020 ft. South of CR 18, common address of 57833 CR 115 in Concord Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0834-2019*.

There were 17 neighboring property owners notified of this request.

Nick Zientarski, 11517 Van Lopik Ave., Grand Haven, came on for this request as the district manager for Power Home Solar representing the petitioners. He stated he has held his position for two years, helping people gain energy independence. He explained he spoke to the petitioners yesterday, and they intend to plant shrubs to help block the neighbor's view of the array. He added the array will be south facing, and it will angle down. He stressed solar arrays actually increase property values contrary to popular belief. He also noted the panels are anti-glare. Mr. Lyon asked the height of the solar array. Mr. Zientarski responded height depends on the pitch of the ground, but it typically begins at knee-high and ends at about 10 ft. tall. He continued saying trees once fully grown will easily hide the array. Mr. Lyon then questioned rotation of the array. Mr. Zientarski stressed the array will be fixed-mounted and it will not pivot throughout the year. He added it will remain at a 30% tilt with the panels angled downward. He noted the north side will be the back of the panels, so there will be no glare. Mr. Lyon asked if the array could be moved farther to the south, and Mr. Zientarski responded yes. He explained they need to be mindful of shading, but the array can typically be moved about 10 ft. He added a few neighbors to the north are concerned about its proximity to their property. Mr. Zientarski responded the petitioners are open to moving the array and planting trees. Mr. Atha clarified the proposed location appears to be the only place to install an array on the property. Mr. Zientarski stated they explored the option of a roof-mounted array, but it was not economical. He responded he personally prefers the ground-mount arrays that are made locally in Albion, MI. He added all of their materials are made in the United States. He noted the petitioners decided this location was the best option for them. Mr. Atha clarified a roof-mounted array was not an option. Mr. Zientarski responded they explored that option, but a ground-mounted array made more sense.

Mr. Powers submitted a letter in remonstrance from Tina Sharkey [*Attached to petition as Staff Exhibit #1*].

Darryl Reigsecker, 704 Reliance Rd., Goshen, a real estate broker for RE/MAX Results, was present opposed to this request. He stated he listed the vacant lot neighboring the subject property for sale, and he may construct a speck house on it next spring. He added ground-mounted arrays are typically placed on properties that run parallel to each other, but this one will be in the neighbors' back yards. He noted the 10 ft. tall back side of the panels will face the neighbors instead of the vacant field. He stressed a solar panel array will make it more difficult to sell the property. He added he would not be against this request, if the panels were moved farther from the neighbors or a roof-mounted array was installed. He noted he understands a roof-mounted array is more expensive, but he does not believe that is the neighbors' problem. He mentioned mature trees should be planted to hide the array, because smaller trees could take ten years or more to block the view. He suggested they either move the panels closer to the petitioners' residence or plant mature trees. Mr. Atha clarified Mr. Reigsecker would view the request favorably, if a

significant buffer was installed. Mr. Hesser pointed out the vacant lot and the proposed location of the panels on the aerial. Mr. Reigsecker noted a residence on the vacant lot would need to be placed farther back, making the proposed array close to their backyard. He also pointed out Tina Sharkey's residence on the aerial. Mr. Miller clarified Mr. Reigsecker is opposed to this request even though the solar array is not located behind the vacant lot. Mr. Reigsecker stressed the array is 10 ft. tall, and it will be visible from that property. Mr. Hesser noted the remonstrator believes planting mature trees will create a sufficient buffer.

Dennis Sharkey, the father of Tina Sharkey, was present against this request and pointed out his daughter's residence on the aerial, 23630 River Dr. He stated the proposed solar array will be 36 ft. long, and he asked if it could be cut in half to create two 18 ft. rows. He noted the array could then be placed to the south, which he believes is a better option. He request the array be placed as far south as possible. Mr. Atha clarified Mr. Sharkey would prefer the array be a double-row rather than 36 ft. long. Mr. Campanello suggested constructing a mound around the array with trees planted on top. Mr. Sharkey noted they could plant 6 ft. tall blue spruce trees. Mr. Lyon asked if he would like the trees closer to the north property line, and Mr. Sharkey suggested they be planted in between the property line and the array. He stressed he has nothing against the petitioner, but they would like something put in place to protect their property. Mr. Hesser clarified the aerials are sometimes older, but there do not appear to be many trees in the area surrounding the proposed array.

Mr. Zientarski came back on to address the concerns. He stated often times people are curious about solar energy and, the proposed 22 panels will offset 4/5s of the petitioners' power bill. He stressed the petitioners want to work with the neighbors, and he request they meet in the middle. He noted mature trees are more expensive than ones in between, and he is sure the petitioner would be open to working with the neighbors. He added he cannot address installing a mound, but it is common practice to plant something to provide screening. Mr. Miller stated one concern is that young pine trees are not very tall and take a while to mature. He asked if something taller could be planted, and he noted one neighbor suggested blue spruce. Mr. Atha questioned if the cost of mature shrubs would make the ground-mounted array more expensive than a roof-mounted system. Mr. Hesser pointed out a roof-mounted array does not require Board approval. Mr. Zientarski explained the petitioner does not have a south facing roof, which would cause a drop in production. Attorney Kolbus asked if the array could be split to make a double-row, and Mr. Zientarski responded yes. He went on to say it would require a change order, but they do want to work with the neighbors. He mentioned several people are going solar now that it is affordable. Mr. Miller asked if something taller can be planted that will cover the system faster than immature pine trees. Mr. Campanello suggested a 6 ft. mound be constructed with trees planted on top. Mr. Atha asked if Mr. Zientarski is willing to work with the neighbors to produce a site plan that everyone agrees on. Mr. Zientarski questioned which neighbors he should work with, and Attorney Kolbus responded Mr. Reigsecker and Mr. Sharkey. Mr. Atha pointed out a few properties that will not see the array due to existing trees. Mr. Zientarski clarified the two concerned neighbors' properties on the aerial. Mr. Atha noted the site plan does not show any buffering. Mr. Zientarski then pointed out a location on the aerial where the array could be partially placed behind an existing tree. Mr. Hesser mentioned the neighbor does not want to see the array, but he believes they can leave it up to the petitioner and neighbors to work it out. He continued saying the only similar situation he remembers denying was a cell tower, where the

petitioners placed it as far from their residence as possible and put it close to the neighbors, but he does not believe that is the case with this request. However, he added he does believe the proposed location is an issue, and it is reasonable to require screening. He also suggested adding a minimum height restriction of 6 ft., but he does not believe the Board should specify the type of trees/vegetation that need to be planted. Attorney Kolbus questioned requiring the double-row of panels, since the contractor stated it was possible. He noted it would result in two 18 ft. arrays as opposed to a single 36 ft. one. Mr. Miller responded the neighbors will not see the array once a buffer is installed. Mr. Hesser stressed he does not believe it is the Board's responsibility to redesign the array, but he is okay allowing them to split it as long as a revised site plan is submitted. Mr. Zientarski clarified a revised site plan is required showing 6 ft. screening. Mr. Hesser asked if the double-row is feasible. Mr. Zientarski responded it is an added cost, but it is possible. Mr. Hesser asked when the panels would be installed, if this request was approved today. Mr. Zientarski stated post driven ground-mount arrays will be installed until the ground freezes. He stressed the petitioner is open to planting vegetation to screen the array, and a 6 ft. tall screen seems reasonable. Attorney Kolbus recommended the petitioner meet with Mr. Sharkey and Mr. Reigsecker to reach an agreement to prevent this from coming back before the Board. He continued saying the revised site plan showing the agreed upon screen will then need to be submitted for staff approval. Mr. Atha asked if the request should be tabled until a revised site plan has been submitted. Mr. Hesser responded that is one option, or staff could approve the new site plan. Mr. Atha stressed the Board should make sure all neighbors are in agreement, and questioned if Board or staff approval would be the better option. Mr. Miller suggested staff approval, because the Board's main concern is a 6 ft. screen.

The public hearing was closed at this time.

Mr. Hesser stated his concern with staff approval is that the site plan could be vetoed by the neighbors. He suggested staff approval of the revised site plan, if the neighbors agree on it, or Board approval, if the neighbors do not agree. He stressed the site plan does not need to come back before the Board as long as the neighbors agree to it. He noted a revised site plan is needed showing 6 ft. screening, and he suggested the array be moved as far from the property line as possible without interfering with the existing trees.

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 ground-mounted solar array be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The petitioner must provide a revised site plan for staff approval, if the neighbors agree, or Elkhart County Advisory Board of Zoning Appeals approval, if the neighbors do not agree, showing 6 ft. screening around the solar array and the panels moved as far from the property line as possible.

The following commitment was imposed:

1. The request is approved in accordance with the site plan to be submitted for staff or Elkhart County Advisory Board of Zoning Appeals approval and as represented in the Special Use application.

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

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

No: Tony Campanello.

*****It should be noted that Mr. Hesser recused himself and was replaced by Ron Norman.*****

13. The application of *Fairfield School Building Corporation* for an Amendment to an existing Special Use for a school to allow for a new electronic message center on property located on the Northeast corner of US 33 & CR 31, common address of 67530 US 33 in Benton Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0846-2019*.

There were 23 neighboring property owners notified of this request.

Tim Leer, 67240 CR 31, was present for this request. He explained they plan to remove an existing sign that is mounted onto the side of the building and replace it with a single, pedestal-mounted post-sign by the road. Mr. Campanello asked if the proposed sign will be in the same location as the one approved in 2012, and Mr. Leer responded no. He noted the signed approved in 2012 is mounted to the side of their building. He explained that one will be removed due to its limited visibility. He then pointed out the approximate location of the proposed double-sided sign that will be visible from all angles. He stressed the new sign will not impede the line of site, and it will be place outside of the State Highway right-of-way and retention pond. Mr. Campanello noted the proposed sign is tall at around 18 ft. Mr. Leer responded they wanted to make the sign tall enough to maintain a clear line of site for traffic. Mr. Norman clarified the sign is electronic and can be controlled by a computer. Mr. Leer noted it can be controlled by a computer or cell phone. Mr. Campanello asked how bright the sign will get. Mr. Leer responded it will dim after a certain time. He added they will purchase it from SignTech, and they know all of the rules/regulations.

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** 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 an Amendment to an existing Special Use for a school to allow for a new electronic message center 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 11/18/19) and as represented in the Special Use Amendment application.

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

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

*****It should be noted that Mr. Norman stepped down, and Mr. Hesser returned to the board at this time.*****

14. The application of ***David R. Kuhns & Marlene J. Miller, Joint Tenants with Rights of Survivorship & Brian P. Stutzman & Alane D. Stutzman, Husband & Wife*** for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the North side of CR 46, 2,880 ft. West of CR 31, common address of 16541 CR 46 & 16509 CR 46 in Jackson Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0837-2019*.

There were seven neighboring property owners notified of this request.

David Kuhns, 16541 CR 46, New Paris, & Alane Stutzman, 16509 CR 46, New Paris, were both present for this request. Mr. Kuhns explained he would like to keep a horse on the property for transportation along with a few steers for meat, chickens for eggs, and pigs for 4-H. Mr. Atha asked if the fence and pasture are existing. Mr. Kuhns responded yes, and he pointed them out on the aerial. He added the pasture is around 1 to 1 ½ acres. Mr. Atha asked the number of animals on the property, and Mr. Kuhns responded he currently owns one horse and one steer. Mr. Atha noted the site plan shows a larger pasture than described. Mr. Kuhns responded that area has a deep hole, and he is in the process of filling it with dirt to make the ground level. Mr. Miller pointed out the petition lists three horses, two steers, six chickens, and six hogs. Mr. Kuhns responded the chickens will be kept in a different area, but the pasture animals will be grain and hay fed. Mr. Atha asked if a ditch runs along the front of the property, and Mr. Kuhns responded no. Mr. Atha clarified that area between the road and residence is simply a grass buffer. Mr. Hesser asked if this request covers one parcel or multiple parcels. Mr. Kuhns responded it covers two, and he pointed out the two parcels he owns and the Stutzman's parcel on the aerial. Mr. Hesser noted the fence and pasture cover both petitioners' properties, and he asked if that is allowed. Attorney Kolbus responded yes, because all petitioners are listed on the application. Mr. Hesser asked if the property combined, totals 2.85 acres, and Mr. Kuhns responded yes. Mr. Atha asked if the existing or proposed pasture totals an acre, and Mr. Kuhns stated the proposed. Mr. Atha then asked how wide of a buffer would be left between the pasture and the road, and it was found to be 50 ft. Mr. Kuhns pointed out the corner of the residence is 75 ft. from the centerline of the road.

James Garber, 16355 CR 46, New Paris, was present opposed to this request and submitted a packet to the Board *[Attached to file as Remonstrator Exhibit #1]*. He stated he does not believe the Elkhart County Rules allow residential buildings or agricultural animals on less than three acres in an agricultural zone, which protects the builder, environment, and adjoining land owners. He continued saying one residence was allowed on the subject property, because it went through the Minor Subdivision process. He noted three parcels are included in this request, and he listed their sizes as .424, 1.197, and 1.229 acres. He stressed he does not believe a minor subdivision should have the same advantages as larger properties, especially when the property owners are not related. He stated this Special Use petition includes two unrelated property owners requesting multiple

large animals, and he noted all parcels combined make less than three acres. He questioned what happens when one owner moves or passes away and if one owner is then allowed to have all of the animals on just their property. He also asked who will monitor the situation. He suggested each property owner request their own, separate, Special Use permit. Mr. Graber noted Mr. Kuhns stated he has approximately 1 ½ acres of pasture on his property, but his combined property totals 1.653 acres including the house, septic field, front/back yard, drive, and shed. He continued saying the fenced in area totals approximately .33 acres. He stressed the petitioner proposed filling in a pond, wetland, and ditch for additional pasture, and the Indiana Department of Environmental Management (IDEM), the Army Corps of Engineers, and the Indiana Department of Natural Resources (DNR) are investigating the dumping/burning of asphalt, scrap metal, and other items that impact the environment. He stressed this is a serious issue. He then noted the fenced in area on the Stutzman's property is approximately .35 acres, and their total property is 1.197 acres including the house, shed, driveway, septic area, and front/back yards. He added they have no additional area for pasture on the property. Mr. Graber stated the horse was brought to the property around October 15, 2019, and the property owners were then advised that they were not in compliance with the Zoning Ordinance. He continued saying the beef steer was brought to the property after the Special Use was filed, approximately November 16, 2019, and it is not a 4-H animal. He explained his submitted packet includes pictures of the fence, pond, dumping location, wetlands, ditch leading to the Elkhart River, pasture condition after a light rain, and the slope of the land, which drops 14 ft. inside the fenced in areas. He went on to say the slope allows manure to drain onto his property and into the ditch, which leads to the Elkhart River. He request the Special Use be denied, and the Kuhns be required to refile for a Special Use on their land for one horse with a fenced in 20 ft. filter strip planted with approved grasses on the north side of any pasture. He went on to say only one horse should be approved without any additional overnight or weekend horses. He also request the manure be placed in a water-tight container, instead of piled outside, to prevent manure from spreading down the slope. He then asked the plan for manure disposal. He stated he would not be opposed to a Special Use with the conditions he previously mentioned as long as it is approved for the Kuhns only, and any future occupants not be permitted to have animals on such a small piece of property. Mr. Graber then went on to address the packet he submitted. He explained the first page shows an aerial of the properties with their acreage. He continued saying the second page points out the approximate location and acreage of the existing fenced in pasture. He noted off to the left side are the pond and wetlands the petitioner is filling in. He pointed out the third page shows a topographic of the site reflecting the pond, wetlands, and open ditch leading to the Elkhart River. The fourth page then shows a topographic of the 14 ft. fall inside the fenced in areas, followed by pictures of the property after a few inches of rain, causing run-off onto his property. He went on to say pictures were also included that show mud formed after only a month of having animals. He stated the next picture shows their beef steer that is not a 4-H animal, because it was 2/3 grown when it came to the property. He noted the next page shows a hand drawn depiction of the properties, pasture, pond, and ditch, and the bottom left hand corner is another aerial of the subdivision including acreage. He went on to say the bottom right corner shows that electrical is still in use. He stressed the petitioner hires transportation every day. He then pointed out the next page shows burning asphalt, the dump areas, and the pond on the property that the petitioner is trying to fill in. He explained the last page shows the open ditch that travels from the pond to the Elkhart River. He again request this Special

Use permit be denied, requiring Mr. Kuhns to refile for a Special Use for himself with the stipulations previously mentioned. He continued saying he believes approving a Special Use for multiple, unrelated owners will produce problems down the road. He added the Army Corps. and IDEM have active investigations on this property, and DNR has come out to take pictures. He stressed the petitioner will not be able to fill in much on the northwest corner of his property. He stated he is willing to work with Mr. Kuhns to have one horse, because he believes the petitioner was misled when he purchased the property due to the slope, etc. Mr. Hesser asked the location of Mr. Garber's property, and he pointed out his residence and property on the aerial. He also pointed out the ditch and Elkhart River, and he again stressed his concern that manure will run off of the property due to the slope. Mr. Atha questioned the current buffer between the pasture and open ditch. Mr. Garber responded there is no buffer, and he pointed that area out on the aerial. Mr. Lyon clarified the pond and ditch that the petitioner is trying to fill in are on the subject property. Mr. Atha pointed out the current pasture on the aerial, and Mr. Garber clarified its location. Mr. Atha noted a buffer is currently exists between the pasture and ditch. Mr. Garber explained the natural flow of water from the property to the river and pointed out the location where he believes a buffer is needed.

Heidi Kauffman, 16580 CR 46, was present opposed to this request and pointed out her property on the aerial. Mrs. Kauffman stated her concern is the number of animals proposed for this property, because it is very small. She added her concern is waste disposal, because they have no place to spread it. She pointed out the livestock will be right up to the neighbors' property, and the manure will run down the slope onto adjoining properties. She stressed her main concern is the number of animals the petitioners request permission to keep. She noted she owns three acres, and she cannot imagine having that many animals on her property. She went on to say the pasture will be dirt and mud, because the animals will not have enough room. She mentioned a property in town that has five horses on only .25 acres, and the pasture is all mud, manure, and run-off. She questioned where the mess will go.

Mr. Kuhns and Mrs. Stutzman returned to the Board to address the neighbors' concerns. Mrs. Stutzman explained they do not plan to place all the animals listed on the property at the same time, but they were told to list everything they may want in the application. She noted the steer will be butchered, and pigs would be for 4-H, if her grandchildren are interested in that. She then addressed the concern about the owners being unrelated. She explained the pasture area was just weeds, and have no problem letting their neighbor use it. She again stressed they do not plan to have all of the requested animals on the property at one time. Mr. Hesser asked if chickens are already on the property, and Mr. Kuhns responded he has four. Mr. Hesser then questioned the number of horses he owns, and Mr. Kuhns responded one horse and one steer. He continued saying he does not plan to have more than one horse. Mr. Lyon asked if he is aware of DNR's involvement, and he responded yes. Mr. Hesser clarified no hogs are on the property. Mr. Atha asked if a buffer strip can be developed between the pasture and open ditch. Mr. Kuhns reiterated his fence cannot be placed over the ditch. Mr. Atha explained a 15 ft. slope without grass allows run-off to make its way to the ditch, and a buffer is needed to slow it down. Mr. Hesser stated he is inclined to allow one horse, six chickens, and maybe a steer, but no additional animals. Mr. Atha mentioned he agrees with Mr. Garber that the request should only be limited to one horse. He added he is inclined to deny the request and require the petitioner reapply for one horse. Mr. Hesser stated he believes the Board can approve this request now without making the petitioner

reapply, and he is not opposed to also allowing chickens. Mr. Atha stated the site plan shows the pasture located in the wetland and open ditch. Mr. Hesser suggested a revised site plan addressing the mentioned concerns come back before the Board for approval.

The public hearing was closed at this time.

Mr. Miller stated he is not opposed to allowing two horses, but he is against allowing additional pigs and steers. He went on to say a large amount of waste will be produced by the animals, and he suggested commitments be added requiring a buffer and limiting the number of animals. Mr. Atha stated his concern is where the run-off from the pasture ends up, and it appears to end up near a water source in this case, which is unique to this location. Mr. Hesser mentioned the petitioner stated he only needs one horse, and he is impartial to approving or denying the steer and chickens based on what the other Board members decide. Mr. Atha asked if staff feels comfortable approving a revised site plan showing 20 to 30 ft. buffer strips. Mr. Hesser asked if Mr. Atha would prefer the site plan be approved by the Board, and Mr. Atha responded yes. Mr. Auvil suggested providing the petitioner the flexibility to have two large animals whether it be two horses or one horse and one steer.

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 an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The petitioner must provide a revised site plan for approval by the Elkhart County Advisory Board of Zoning Appeals showing a 20' to 30' buffer between the pasture and any open water source.

The following commitments were imposed:

1. The request is approved in accordance with the site plan to be submitted for Elkhart County Advisory Board of Zoning Appeals approval and as represented in the Special Use application.
2. Limited to a maximum of two (2) large animals and six (6) chickens at any one time, no roosters.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Joe Atha, Roger Miller, Randy Hesser.

No: Tony Campanello, Denny Lyon.

****It should be noted that Mr. Campanello stepped down and was replaced by Mr. Norman.****

15. The application of *The Maple House, LLC* for a Use Variance to allow for two existing dwellings on a zoning lot, for a 25 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for an existing accessory dwelling up to the right-of-way of Brown St., for a 5 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing attached garage 5 ft. from the north side property line, for a 7 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing accessory dwelling 3 ft. from the south side property line, for a 77 ft. Developmental

Variance (Ordinance requires 120 ft.) to allow for an existing primary dwelling 43 ft. from the centerline of the right-of-way of Main St. (SR 13), and for an 8 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing primary dwelling 2 ft. from the north side property line located on the West side of Main St. (SR 13), East side of Brown St., 200 ft. South of Lawrence St., common address of 307 S. Main St. in Middlebury Township, zoned R-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0848-2019*.

There were 34 neighboring property owners notified of this request.

Mr. Hesser clarified both dwellings are existing, making them legal nonconforming, and the second residence will remain under 1,000 sq. ft. He questioned why it does not meet the accessory dwelling requirements. Mrs. Kratzer responded the property is not an acre or properly zoned for an accessory dwelling. Mr. Hesser then asked if staff received a recommendation from the Town of Middlebury. Mrs. Kratzer submitted a letter from the Town of Middlebury [*Attached to file as Staff Exhibit #1*].

Alex Gonzalez, 307 S. Main St., Middlebury, was present for this request. He stated he owns the Maple House, and the 480 sq. ft. guest suite, that is grandfathered in. He added the previous owners remodeled the inside, making it very nice. He explained they plan to have his in-laws live in the smaller residence, but 480 sq. ft. is too small. He went on to say it is currently a one-room open concept living area. He clarified they want to join the guest house to an existing three car garage. He continued saying the stall closest to the guest house is separate from the other two stalls, and they plan to convert it into an extra bedroom or craft room. He noted the total residence would be just shy of 1,000 sq. ft. at around 975 sq. ft. He mentioned they will also install new siding, and this project will allow for a larger living area.

Mr. Hesser stated the Town of Middlebury sent a recommendation in support of this request with the stipulation that the property owner be required to connect to the water main once it is run down Brown Street. He asked if the petitioner agrees to that condition, and Mr. Gonzalez responded yes. Mr. Hesser then asked if a relationship requirement exists for an accessory dwelling, or if it can be a rental. Mrs. Kratzer responded the property owner is required to live in one of the two residences. Mr. Hesser asked if staff is in favor of imposing a similar restriction on this request, and Mrs. Kratzer responded yes. Mr. Hesser suggested a commitment be added requiring one of the residences be owner occupied. Mr. Atha pointed out the owner occupied restriction is part of the accessory dwelling rules, but the second residence is not classified as an accessory dwelling. Mr. Norman noted the submitted letter addressed water hook-up, but he questioned sewer hook-up. Mr. Gonzalez responded he believes the second dwelling already has its own electric meter, gas meter, and sewer hook-up. Mr. Norman clarified the smaller residence has a separate hook-up to the sewer, and it is not tied into the main house's line. Attorney Kolbus pointed out the second bullet point in the submitted letter indicates it has its own. Mr. Miller read the second bullet point stating, "308 N. Brown St. is served with sanitary sewer off of Brown Street, which is completely acceptable."

Daniel Hill, 312 S. Brown St., Middlebury, came on with some questions and pointed out his property on the aerial. He stated he was informed that the property was an Airbnb, and he wanted to ensure the property owner lives in one of the residences. He stressed he is not opposed to the request; he just had a question. Mr. Hesser stated Mr. Gonzalez will come back on and

answer any questions. He reiterated his only question is if the property is used as an Airbnb or as family dwellings.

Mr. Gonzalez came back on and stated the property is currently used as an Airbnb. He explained they live in a log home on three acres, but it became too much to take care of their property, the Airbnb, and work full-time jobs. He continued saying they plan to sell their log home to fund the renovations on this property. Mr. Hesser clarified they will reside in the primary dwelling, meeting the commitment that requires one of the residences be owner occupied. Mr. Gonzalez stressed they have two little girls, and the Airbnb has proven to be too much.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he does not have a problem approving the Developmental Variances, because the subject property is located in town where it is tight. He suggested a commitment be added requiring one of the residences be owner occupied. Attorney Kolbus mentioned a commitment requiring the secondary residence be hooked up to water when it becomes available as requested by the Town of Middlebury should also be added. Mr. Miller asked if this request also needs approval from the Town of Middlebury, and Mr. Hesser pointed out the Board has jurisdiction over the town.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for two existing dwellings on a zoning lot 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 11/18/19) and as represented in the Use Variance application.
2. One of the residences must be owner occupied.
3. When the Town of Middlebury constructs a water main along Brown Street the property owner is required to connect to the new water main at the time of the water main construction, pay the connection fee, and install a new water meter.

Further, the motion also included that a 25 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for an existing accessory dwelling up to the right-of-way of Brown St., for a 5 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing attached garage 5 ft. from the north side property line, for a 7 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing accessory dwelling 3 ft. from the south side property line, for a 77 ft. Developmental Variance (Ordinance requires 120 ft.) to allow for an existing primary dwelling 43 ft. from the centerline of the right-of-way of Main St. (SR 13), and for an 8 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing primary dwelling 2 ft. from the north side property line be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are 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 requests are approved in accordance with the site plan submitted (dated 11/18/19) and as represented in the Developmental Variance application.

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

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

16. The application of **Rebecca S. Swihart** for a Use Variance to allow for the construction of an accessory structure without a residence on proposed lot 1 located on the South side of CR 28, 1,700 ft. West of CR 22, common address of 18190 CR 28 in Elkhart Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0819-2019*.

There were six neighboring property owners notified of this request.

Alicia Bame, Progressive Engineering, 58640 SR 15, Goshen, was present for this request representing the petitioner. She explained the property owners reside on a neighboring lot, and the building is used for lawn care storage. Mr. Hesser questioned why the owner decided to proceed with a subdivision at this time, without a buyer lined up for the lot in question, and Miss Bame responded it is for family members. Mr. Hesser then pointed out the parcel owned by the petitioner, and he clarified it will be subdivided. Mr. Atha noted the subdivision appears to have been completed. Mr. Hesser questioned why the subdivision was completed prior to having a plan for construction of a residence on the lot.

Rob Swihart, 18280 Buckridge Court, came on for this request and pointed out his residence on the aerial. He explained they purchased the subject property for their children to build on, but they have no need for the existing house. He then pointed out the four proposed lots on the aerial for their children to build and possibly their retirement home. He stressed he needs a building to store equipment, because he takes care of the field and woods. He went on to say he is not allowed to construct an accessory structure on the parcel with his residence due to the subdivision rules. He noted two buildings were constructed on the subject property. He explained one is for their use, and their friends who plan to purchase the existing residence will use the other building. He mentioned the property is being subdivided now to allow their friends to purchase part of it. Mr. Hesser pointed out a strip for access to the back parcel, and Attorney Kolbus noted the other side of the property also has a strip for access. Mr. Swihart stressed they know a house needs to be constructed on the lot, but they do not have a time frame for construction of one. Mr. Atha clarified the petitioner needs the barn before a residence is constructed. Mr. Hesser stated the barn is existing. Attorney Kolbus clarified approval is needed, because the barn will be on a lot without a residence once the subdivision is finalized.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he is concerned approval could result in a perpetual lot with an accessory structure but no residence. He continued saying if the petitioner lived on the adjacent property, the parcels could be combined, and a residence would be required to separate them. However, that is not the case. He questioned if the language in the commitments is acceptable, and Attorney Kolbus responded yes. Mr. Miller clarified a Use Variance is required to construct a storage building on a vacant piece of property. Attorney Kolbus explained an accessory structure cannot

be constructed on a parcel without a primary structure. Mr. Hesser added the Board rarely approves these requests. Mr. Norman asked the size of the existing building. Mr. Swihart came back on and stated they constructed a 2,900 sq. ft. accessory structure. Mr. Norman then pointed out an accessory structure cannot exceed the square footage of the primary dwelling, and he asked if a residence will be constructed large enough to accommodate the existing building's size. Mr. Auvil explained an accessory structure can be constructed up to 200% of the living area of the residence on property over three acres, meaning the primary structure will need to be at least 1,450 sq. ft. Mr. Swihart added the building was constructed knowing the storage restriction.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of an accessory structure without a residence on proposed lot 1 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 11/05/19) and as represented in the Use Variance application.
2. The existing accessory structure on Lot 1 may be utilized by the current owner (Rebecca Swihart).
3. Any future owner of Lot 1 must construct a single-family residence on Lot 1 to utilize the accessory structure.

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

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

17. The application of **Ranulfo Mejia** for a Special Use for a ground-mounted solar array on property located on the East side of CR 25, 1,800 ft. South of CR 46, common address of 68810 CR 25 in Jackson 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-0725-2019*.

There were seven neighboring property owners notified of this request.

Nick Zientarski, 11517 Van Lopik Ave., Grand Haven, was present for this request representing the contractor, Power Home Solar, along with the petitioner. He stated this array will be ground-mounted and located on the south side of the residence facing south. He noted they explored the option of a roof-mounted array, but a ground-mounted array made more sense economically. He explained the ground-mounted array will not be any closer to the road than the residence. Mr. Hesser questioned the location of the residence, and Attorney Kolbus pointed it out. Mr. Norman clarified the green dot on the site plan represents the proposed location of the array.

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 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 9/27/19) and as represented in the Special Use application.

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

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

18. The application of *LEJN, LLC* for a Use Variance to allow for the sale of construction equipment and pre-built storage buildings and for a Special Use for warehousing and storage of RVs, construction equipment, and pre-built storage buildings on property located on the Southwest corner of SR 13 (Main St.) & CR 12, common address of 55065 SR 13 in Middlebury Township, zoned A-1, came on to be heard.

There were six neighboring property owners notified of this request.

Mr. Hesser stated this request was tabled last month due to insufficient notice, but the public hearing was left open. Mr. Auvil noted staff received an email this morning from Clara Morse-Fry, 54895 SR 13, Middlebury, in remonstrance, and he submitted it for the record *[Attached to file as Staff Exhibit #1]*. He continued saying the email states she is opposed to the request for multiple reasons and believes the property should remain agricultural. Attorney Kolbus pointed out Mrs. Morse-Fry was present in remonstrance at the previous hearing.

Loren Beachy, 54911 SR 13, was present for this request and pointed out his residence on the aerial. He stated the subject property is almost completely surrounded by manufacturing zones, and they plan to sell storage units and park their excess equipment here. He explained no one will staff the property. He continued saying the storage buildings will have a sign with a contact number, or their office is located across the street, if anyone needs help. Mr. Hesser asked the location of their office, and Mr. Beachy pointed it out on the aerial. Mr. Atha questioned traffic between their existing office and the subject property. Mr. Beachy responded traffic will be minimal between the two properties, and the subject property will simply be used to store excess equipment. He stated they have an auction scheduled for the end of the year, and they stored two pieces of equipment on that property. He again stressed the property will not be staffed, because it will only be used for display and storage. He added they would eventually like to rezone the property, but staff advised them that a Use Variance/Special Use would be the best option at this time. He went on to say their proposal is similar in use to the surrounding neighborhood, but they also have an existing residence with great tenants. He added they do not need the house for their business, but approval of this request will allow the tenants to continue residing in the house. Mr. Miller stated the Board had some concerns that the site plan did not reflect both parcels included in this request. Mr. Beachy responded the submitted site plan is a survey, and it was drawn to scale including the second parcel. He stressed the request/site plan includes both parcels. Mr. Atha clarified the petitioner was involved with rezoning their parcel to the north to M-1 zoning.

He asked if rezoning the subject property was discussed at that time. Mr. Beachy responded no, because they did not own it then. Mr. Atha questioned why the property is not being rezoned to M-1, and he feels this request is a catalyst between the current zoning and the rezoning. Mr. Hesser added he shares that concern with Mr. Atha. He then asked if Mr. Norman had a chance to review the minutes from the last hearing, and Mr. Norman responded he was present at the hearing. Mr. Miller stated the only concern he remembers from the last hearing was proper notification. Mr. Atha mentioned Mr. Campanello was inclined to require the property be rezoned. He then noted the remonstrator at the last hearing raised a concern about increased traffic due to the subject property's close proximity to the little league, but they already established traffic will be minimal between the two properties. Mr. Beachy pointed out an RV factory is located to the west, and an RV storage lot is located on the adjoining property. He added Coachmen located to the west already generates a lot of traffic, and the impact of this operation will be minimal if any. Mr. Miller clarified the little league is located across the street from Coachmen, approximately a mile down the road.

Clara Morse-Fry, 54895 SR 13, Middlebury, came on opposed to this request, and Attorney Kolbus pointed out her residence on the aerial. Mrs. Morse-Fry stated they have lived on their property 25 ½ years, and they purchased it due to the agricultural area. Attorney Kolbus asked Mrs. Morse-Fry if she had any new information to add from the last hearing. She responded she still wants the area to remain rural, and local residents have asked her what is happening on the subject property. She added she has been told that it looks like a junk yard, and it is an eyesore. She went on to say an auction will be held on December 31, 2019, but items have been on the northern property all summer long. She stressed the subject property will appear the same as the northern property. She stated this operation is not attractive, and she believes it is harmful advertising for Middlebury. Mrs. Morse-Fry stated she attached pictures to the email she sent staff, and Mr. Hesser noted the pictures were included in the staff exhibit. Mrs. Morse-Fry pointed out the pictures show what is taking place on the property. She mentioned they burned brush on the property yesterday, and she is unsure, if that is allowed. She went on to say they also took down quite a few trees on the northern property. She stressed this area is high-traffic, and she believes this operation will increase traffic. She questioned if vehicles will slow down or stop to look at the items for sale on the property. She then stated when she looked up the owner LEJN, LLC, she found a towing and transport company located in a different area. She then looked up SE Showcase Equipment, which she saw on their sign, and she found they liquidate logging equipment, etc. by either auctions or daily sales. She went on to say she believes this operation will increase the traffic and unattractive items on the property. She added the residents in the surrounding area are also against this request. She then stated the property to the north was rezoned to M-1, and she does not want more properties in the area to be rezoned.

Mr. Beachy came back on and stated the property to the north was zoned agricultural, but they rezoned it to M-1. Mr. Norman questioned the mentioned northern property, and Mr. Beachy pointed it out on the aerial. He continued saying the property was a trash pile when they purchased it with a barn that was falling down. He noted after a lot of cleanup their equipment is now in straight rows, and they strive to keep a professional, clean image for their sake and Middlebury's sake. Mr. Atha asked if the house is abandoned, and Mr. Beachy responded no. Mr. Hesser asked their plan for rezoning the property. Mr. Beachy explained it was his intent to rezone the property when he came into the office, but staff informed him a rezoning would prohibit a residential use.

He continued saying they recommended he file for a Use Variance/Special Use to allow them use of the residence, until they decided to demolish it or convert it into an office. He added they agree with staff's recommendation.

The public hearing was closed at this time.

Mr. Norman stated a main concern is the removal of trees, and he asked if they have a plan for a natural barrier to hide what appears to be a junk yard from people entering the town. Mr. Beachy responded they did not remove all of the trees, but some needed to be taken down. He added some trees remain around the office, because they left the attractive ones. He stressed they plan to leave a 20 ft. buffer of existing trees. Mr. Norman questioned the proposed use of the subject property. Mr. Beachy responded their proposal is to sell storage buildings and park equipment. Mr. Norman asked if they will construct the portable buildings on site. Mr. Beachy explained they do not make them, instead they will establish a contract with a builder. Mr. Norman clarified the storage buildings will be for sale on the property. Mr. Hesser asked if the office on their neighboring property will sell the buildings. Mr. Beachy responded no, and he explained the office is for their auction/real estate business. Mr. Hesser clarified customers will need to call the number on the sign to purchase the sheds, and he then pointed out an area where customers can park. Mr. Miller stated Mr. Campanello believed the property should be rezoned, but he understands the reason for a Use Variance/Special Use. Mr. Atha noted the proposed use is not manufacturing, and he asked if the lot would be rezoned to a business zone. Mr. Miller explained he believes it would be zoned M-1 to match the surrounding properties. Attorney Kolbus added outside storage falls under an M-1 zoning. Mr. Hesser stated he understands the remonstrator's concerns. He continued saying he does not like mixing multiple uses, but he also does not believe that is a reason for denial.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the sale of construction equipment and pre-built storage buildings 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 requests are approved in accordance with the site plan submitted (dated 10/10/19) and as represented in the Use Variance application.

Further, the motion also included that a Special Use for warehousing and storage of RVs, construction equipment, and pre-built storage buildings 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 requests are approved in accordance with the site plan submitted (dated 10/10/19) and as represented in the Special Use application.

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

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

19. The application of *Dana & Lori Bontrager* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the West side of CR 33, 2,000 ft. South of CR 20, common address of 59285 CR 33 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil stated proper notice was given, including certified letters, and staff recommends the request be rescinded, if they did not hear from the petitioners. Attorney Kolbus explained the Board can rescind approval of a Special Use, if the petitioner failed to meet the condition requiring the Commitment form be returned. Mr. Atha asked if the petitioners are allowed to refile for their request, and Attorney Kolbus responded yes. Mr. Miller asked if staff checked to ensure nothing was done to the property. Mr. Auvil responded staff has not heard from the property owners at all. He stressed staff sent certified letters trying to reach the property owners. He explained they started with about 20 petitions where the commitments were not returned from the last year or earlier, and several people returned them after receiving notice. He added a few also informed staff that the property was under a different owner, or they decided to not follow through with their request. He reiterated no response was received for the requests before the Board.

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 requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

20. The application of *Alyssa M. Williams* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the West side of Frances Ave., South of Hively, common address of 57705 Frances Ave. in Concord Township, zoned R-1, came on to be heard.

Mr. Hesser clarified notice was sent, and no response was received.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that this request for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

21. The application of *Brenda Kaye Fraschetti* for a requested rescission of a Use Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the North side of Lakeview Dr., 1,055 ft. West of Cassopolis St. (SR 19), common address of 26603 Lakeview Dr. in Osolo Township, zoned R-2, came on to be heard.

Mr. Hesser clarified notice was sent, and no response was received.

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 requested rescission of a Use Variance for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

22. The application of *Richard A. & Rosetta F. Mast* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the West side of SR 13, 1,280 ft. North of CR 40, common address of 65730 SR 13 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil stated the commitment form was received yesterday, and the request for rescission can be dismissed.

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

Motion: Dismiss, Action: Moved by Randy Hesser, **Seconded by** Joe Atha that this request for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be dismissed.

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

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

23. The staff item for the 2020 Agreement for legal services for Attorney Kolbus was previously heard as item #7 on page 3.

24. The meeting was adjourned at 11:28 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary