

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 18th DAY OF JULY 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: Chris Godlewski, Plan Director; 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, Roger Miller, Denny Lyon, Randy Hesser.

Absent: Tony Campanello.

2. A motion was made and seconded (*Hesser/Lyon*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of June 2019 be approved with the following correction: on page 19 the condition requiring the existing residence be removed within 60 days of the issuance of the Certificate of Occupancy should read within 6 months. 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 *Avery L. Aragona & Samuel J. Burns* for a Special Use renewal for warehousing and storage on property located on the South side of CR 20, 400 ft. West of CR 31, common address of 16084 CR 20 in Jefferson 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-0414-2019*.

There were 13 neighboring property owners notified of this request.

Avery Burns, 16084 CR 20, Goshen, was present for this request along with her husband, Sam Burns. Mrs. Burns stated they own Jazzy Jumpers, an entertainment company that serves the Michiana community and surrounding areas. She request that their Special Use be renewed permanently, so they can continue operating the business from their property. Mr. Lyon clarified this request is simply for a renewal.

Mrs. Kratzer submitted a remonstrance letter from Richard & Linda Mayberry, 58034 Crystal Springs Dr., Goshen [Attached to File as Staff Exhibit #1]. She stated it appears the neighbors are opposed to increasing the size of the operation, and they probably did not understand that this request is only for a renewal. Mr. Hesser clarified the warehouse will not change size, and the concern addressed in the letter was increasing size. He added any change to the site plan would require Board approval. Mr. Atha asked the reason for a time restriction, and Mr. Hesser pointed out one was not included with renewal. He went on to say he has no problem making approval permanent, since it was previously approved for a period of one year and then three. He reminded the petitioners to complete their Commitment form.

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 renewal for warehousing and storage 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 6/14/19) and as represented in the Special Use application.

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

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

5. The application of *James J. Cronin & Peggy L. Cronin, Husband & Wife* for a Special Use for a ground-mounted solar array on property located on the Southwest corner of CR 146 & CR 33, common address of 15028 CR 146 in Benton 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-0416-2019*.

There were six neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present representing the petitioners. Mrs. Salyer stated they would like to place a solar system behind the row of trees, south of their residence, and she then pointed out the proposed location on the aerial. She continued saying trees will block the neighbors' view of the panels. Mr. Lyon questioned the solar arrays shown on the site plan. Mrs. Salyer explained the property owner preferred two rows of panels instead of a single long one, to prevent it from blocking their view.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Denny Lyon, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a 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 6/14/19) and as represented in the Special Use application.

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

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

6. The application of **Richard A. Hoover, Sandra S. Hoover, & Gregory R. Hoover, Joint Tenants** for a Special Use renewal for a home workshop/business for a small tractor and automotive shop on property located on the Southeast corner of SR 13 & CR 24, 345 ft. North of Stoney Dr., common address of 59534 SR 13 in Middlebury 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-0423-2019*.

There were 18 neighboring property owners notified of this request.

Richard Hoover, 59534 SR 13, Middlebury, was present for this request to renew his Special Use to make it permanent. Mr. Atha asked about his business, and Mr. Hoover responded it is going well. Mr. Hesser questioned the code complaint's effect on this request. Mrs. Kratzer responded the petitioner applied for a permit after the complaint was filed. Mr. Hoover added he is working with Bill Hartsuff from the Environmental Health Department, because the contractor he hired did not obtain the proper permits. Mr. Hesser clarified it should not affect the Board's decision, and the petitioner will need to comply with what is required to rectify the complaint. Mr. Atha asked if the original approval included a commitment limiting outside storage. Mr. Hesser questioned outside storage on the property, and Mr. Hoover responded everything is inside. Mr. Hesser pointed out a home workshop/business Special Use does not allow outside storage. Mr. Hoover mentioned the aerial was taken prior to construction of the new building, and cars frequent the property. Mr. Atha mentioned he often drives past this property, and he has not noticed any outside storage. Mr. Hoover added they strive to keep the property looking nice.

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 renewal for a home workshop/business for a small tractor and automotive shop be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/17/19) and as represented in the Special Use application.

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

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

Mr. Hoover asked if approval is permanent, and Mr. Hesser responded no time limit was imposed.

7. As a staff item, Mrs. Kratzer presented the request for a minor change to a site plan for an existing Use Variance for **Tod A. & Debra J. Hartman** (61162CR 11-131018-1). She explained the request is to allow for the construction a 972 sq. ft. building addition. She added the site plan

is attached, and staff recommends approval as a minor change. Mr. Hesser questioned the location of the proposed addition on the submitted site plan, and it was found to be represented by the dashed lines on the east side of the property. Attorney Kolbus pointed out the addition is 36'x27'. Mr. Lyon noted that Phil Barker allowed the setback of 60 ft. from the top of the bank of the ditch.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that this request be approved as a minor change.

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

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

8. The application of **Rogelio Salas** for a Special Use for warehousing and storage of RVs on property located on the South side of CR 40, 2,658. ft. West of CR 21, common address of 20480 CR 40 in Elkhart 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-0386-2019*.

There were six neighboring property owners notified of this request.

Itsia Salas, 67509 CR 23, New Paris, was present for this request. Mr. Miller asked if RVs are currently stored on the property, and she responded no. She went on to say the residence is vacant, and they would like to use the property to start a small RV business. She added CR 40 is heavily traveled, and only two neighbors are located in close proximity to the subject property. She stressed most of the surrounding property is agricultural, and large semis frequently use CR 40. She stated their request is to store RVs on part of their property. She added they would like to install a new driveway, but Special Use approval was required for Highway to issue a permit. Mr. Miller asked if the residence is abandoned, and Mrs. Salas responded it is not usable. Mr. Hesser pointed out the property is fenced, and he asked its current use. Mrs. Salas responded it is currently vacant, and this was their first step in finding a use for the property. Mr. Hesser asked their reason for the fence, and she responded they installed it to mark their property line. Mr. Lyon asked if the lights will shine in towards the property. Mrs. Salas stated the property has lights, but they would like to add more. Mr. Lyon also asked if they spoke to their neighbors, and Mrs. Salas responded they were okay with the request.

Dave Salman, 66045 CR 21, was present opposed to this request and pointed out his property to the southeast. He stated his property is agricultural, and he would like to see the subject property remain that. He stressed approval of this request would result in several 40 to 50 ft. rigs using CR 40, which has an S curve only 50 yds. from the subject property. He mentioned a blind spot in that area, and he believes an increase in RVs will cause traffic to back up in that area. He continued saying rigs will have to wait to pull onto the property, because CR 40 is a busy road resulting in cars backed up into the S curve. He stressed the CR 40 & CR 21 intersection is already deadly, and approval of this request will only increase it unless a turn-lane is installed. He stressed he would like the property to remain residential.

Angela Ponce, 20452 CR 40, the adjoining property to the east, came on in remonstrance. She stressed they moved here due to the quiet area, because their daughter is autistic. She stated

they poured a lot of time and money into the property to convert it into a lawn from a cornfield, and they also built their residence. She went on to say they invested a lot of time and money, and one of their concerns is the effect on property values. She added another concern is increased traffic. Mrs. Ponce explained the subject property has been vacant, and their residence was broken into during the previous ownership. She went on to say they believe squatters lived in the vacant residence that timed their coming and goings, and the residence remaining unoccupied is also a concern. She added commercial activity and big lights are a cause for concern. She stressed they hoped the property would remain residential/agricultural with the new owners.

Mrs. Salas came back on and stated they do not want to operate a large business on the property, just something small. She added CR 40 is already heavily traveled and noisy. She continued saying they plan to remodel the residence to live in and want the area to remain quiet. She mentioned they do not want the property to remain dark and welcoming to strangers. She stressed she would prefer someone be on the property at all times. Mr. Miller clarified the petitioners plan to fix the residence and live there. Mr. Hesser pointed out Mrs. Salas informed the Board that the neighbors were okay with her request, and he asked to which neighbors she was referring. Mrs. Salas mentioned the neighbor to the east and one located farther away, and they did not believe it would be a problem. Mr. Hesser mentioned the adjoining neighbor to the east spoke against their request, and Mrs. Salas she responded that is their closest neighbor. Mr. Miller questioned the number of units they plan to store on the property, and she responded 15 to 20. Mr. Miller pointed out the application stated 50 RVs. Mrs. Salas responded they have room for that many, but they do not know how well the business will take off.

The public hearing was closed at this time.

Mr. Miller stated he does not have a problem using the property for RV storage, but CR 40 is heavily traveled. He continued saying before approving an operation on this road he would need to see a plan for safe entrance/exit to/from the property and the operation's size. Mr. Hesser stated he would be in favor of this request, if it was surrounded by agricultural fields, but a residence is located next door and towards the east. He added some neighborhoods have patchy commercial uses, but this one does not appear that way. He stressed he is inclined to uphold staff's recommendation, because a residence is located on the adjoining property. Mr. Miller mentioned RV lots are not generally approved next to a residential use. Attorney Kolbus pointed out the Board has denied the last few RV lots located near residences, including one close to Fairfield High School.

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

Motion: Action: Denied, **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 warehousing and storage of RVs be denied.

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

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

9. The application of *Elkhart Faith United Methodist Church, Inc.* for an Amendment to an existing Special Use for a church and related activities to allow for two electronic message

centers on property located on the Northwest corner of CR 18 & CR 17, 500 ft. East of Old CR 17, common address of 22045 CR 18 in Concord Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0390-2019*.

There were eight neighboring property owners notified of this request.

Todd Lehman, Signtech Sign Services, 1508 Bashor Rd., Goshen, was present for this request representing the church. He stated the church would like to get more information out into the community. He added the existing signage will also be freshened. He explained the existing signs require someone physically change them, but the new message centers can be changed using a smart phone. He stressed the electronic message centers are very appealing. Mr. Hesser asked the location of the signs on the site plan, and Mr. Atha pointed them out. Mr. Hesser clarified the signs are located off of CR 17 & CR 18 by the entrance. Mr. Lehman explained the church had an entrance next to the CR 17 sign, but it was closed when the truck stop was constructed down the road. Mr. Atha questioned the need for this request since the signs are existing, and Mr. Miller pointed out the change to an electronic message center requires Board approval. He added the electronic signs are sometimes a problem in neighborhoods. Mr. Lehman explained the government mandates electronic message centers automatically dim at night.

Dale McDowell, a trustee of Elkhart Faith United Methodist Church was present along with Larry Bellamy, 22045 CR 18, in favor of this request. He stated both signs have been on the property for 25 years since the church was constructed, and they would like to update them. He added Signtech will use the existing planters but switch out the signs with electronic message centers.

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 an Amendment to an existing Special Use for a church and related activities to allow for two electronic message centers 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 6/5/19) and as represented in the Special Use Amendment application.

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

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

10. The application of **Daniel R. Eash** 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 Southeast corner of CR 46 & CR 25, common address of 18238 CR 46 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-0426-2019*.

There were eight neighboring property owners notified of this request.

Wayne Eash, the son of Daniel Eash, 18238 CR 46, New Paris, came on as the occupant of the residence. He stated horses are their form of transportation, and he would like permission to keep them on the property along with a pony for his children. Mr. Atha asked the number of horses he plans to keep on the property. Mr. Eash responded he currently owns three horses and two ponies, and Mr. Hesser pointed out the petition lists four horses and two ponies. Mr. Atha noted the pasture is roughly an acre. Mr. Eash explained he would like to construct a new building, because the existing barn's foundation is failing. He went on to say the barn is currently on the lowest part of the property, and he would like to move it up higher to keep it dry. He added the pasture will then be located where the current barn stands. Mr. Atha reiterated the existing barn will be removed once the new one is completed. Mr. Hesser asked if the new agricultural building has been completed, and Mr. Eash responded no. He then clarified that the 24'x24' building is the existing one. Mr. Atha questioned his plans to keep the pasture clean, and Mr. Eash responded he will construct a dry lot in case the pasture is muddy. He went on to say he will use the pasture for the horses to eat grass when it is dry. Mr. Hesser asked his plan to dispose of the waste. Mr. Eash explained the existing barn has a lean-to on the south side with a 16'x36' cement slab that he plans to place bunkers around for waste storage. He continued saying the waste will then be hauled off of the property, and Mr. Hesser responded that amount of horses will produce a lot of waste. Mr. Eash explained they typically travel around eight to fourteen miles, and he does not want to overuse his horses. He explained he likes to have enough horses to trade them off.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the Staff Analysis does not include a commitment limiting the number of animals allowed on the property. He clarified the limit is four horses and two ponies since that was listed in the questionnaire, and any additional agricultural animals are not allowed without Board approval.

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 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 commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/17/19) and as represented in the Special Use application.

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

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

*****It should be noted that Mr. Hesser recused himself and stepped down*****

11. The application of *Middlebury Community Schools* for an Amendment to an existing Special Use for a school to allow for a new sports facility and athletic fields on property located on the Northeast corner of US 20 & CR 35, common address of 56779 Northridge Dr. in Middlebury 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-0445-2019*.

There were 48 neighboring property owners notified of this request.

Andy Bearman, Commonwealth Engineers, 9604 Coldwater Rd., Fort Wayne, was present for this request representing the school. He explained the intent of this project is to replace aging athletic facilities currently located north of the middle school. He continued saying the athletic facilities will be constructed in close proximity to the high school for regular use by the students. He stressed the new facilities will replicate a use currently on the property. He then stated the new construction includes a football stadium/multi-use facility, baseball stadium, softball stadium, concessions, restrooms, and locker rooms. He continued saying a new parking lot will also be added along with pedestrian pathways to the existing parking lots. He went on to say ticket facilities will also be constructed at two locations. Mr. Bearman stressed utilities are available on-site, and drainage will be directed back to the area it currently flows, which is a number of depressions on the property to the east and north of the project. He went on to say the submitted drainage reports show that area is capable of handling back to back to back 100 year storms. He explained the water infiltration quickly due to the sandy soil, and it has no outlet. He stressed there will be no down-stream drainage impact, and it has the capacity to handle multiple large-storm events. He added a wetlands study was also completed, and they will disturb less than a tenth of an acre leaving about three acres of wetlands. He mentioned they also completed a Phase 1 Environmental Study, and it did not show any environmental conditions that would prohibit development of the property. He stated geotechnical investigations, soil borings, and infiltration testing have all been completed. He stressed they evaluated the property for a long time to ensure the project was feasible, before beginning budgeting, funding, and public awareness. He added they feel this project is a continuation of an existing use without any drainage impacts, and the environmental conditions are suitable for this. He then stated the school superintendent, Jane Allen, is present along with the assistant superintendent, Robby Goodman. Mr. Lyon asked if the facilities at the Junior High will be abandoned, and Mr. Bearman responded they will continue to be used as athletic facilities for the Junior High. Mr. Atha clarified Mr. Bearman does not have any environmental concerns. Mr. Bearman explained they plan to use a geo-pier system, and they have completed all the needed testing. He continued saying their designs take everything into account, and most of the impact/construction will take place in the agricultural field. He explained the geotechnical company will monitor any filling of the wetlands, and they will be onsite during construction to complete testing.

Jane Allen, superintendent of Middlebury Community Schools, 56853 Northridge Dr., was present for this request. She explained once their feasibility study was completed they discussed financing for the project. She continued saying talking points were released through newspapers, social media, and TV for public comment in August in 2018. She went on say a public hearing was held in December that was not properly advertised, prompting another

hearing in 1/4/19. She explained the 1/4/19 meeting was the first preliminary determination public hearing, and no one attended to give comment for or against the project. She then stated another public hearing was held 1/8/19 for the second public determination hearing also with no public comment. She went on to say the School Board then determined this project to be a need, and they waited 30 days for anyone to submit a petition in remonstrance to the county Auditor. She explained at the end of that 30 days on 2/11/19, they received notice from Patricia Pickens, the Elkhart County Auditor, that no remonstrance petition was filed. Mrs. Allen stated the resolution for the preliminary plans was approved at the March School Board meeting. She continued saying two more public hearings were held in April for the lease hearing and additional appropriation, which were both approved. She stated they held their bid hearings in June, and the need for the facilities was based on the fact that none were constructed with the high school. She pointed out the last athletic facility constructed for the Middlebury Schools was in 1988. She stressed they have not overbuilt fields, and the last one constructed was a softball field next to the football stadium. She explained the purpose of this request is to allow the high school to have their own fields, because they currently transport them to the middle school fields for practice and games. She went on to say it is too far for students to walk, and the Physical Education classes also utilize those fields. She added their band currently practices in the parking lot, and they would also be able to use the proposed fields. She stressed the new facilities will provide a place for the students and athletes close enough to the high school that they can walk instead of being transported. She explained they feel this facility is necessary, because it affects over 700 children a year. Mr. Lyon questioned if the school owns the gravel pit, and she responded no. Mr. Atha asked if a gravel pit near the facilities is a concern. Mrs. Allen responded Orchard View to the east is closer to the pit, and they have not had any problems.

Ron Troyer, 56741 CR 35, Middlebury, the owner of a farm across the road from the subject property was present and stressed he is not opposed to the request. He mentioned the petitioner stated this development will have no drainage impact. However, he continued since the school was constructed 15 to 20 years ago the pond adjoining his property has risen 6 ft. Mr. Atha request he point out his property on the aerial. Mr. Troyer stated the pond previously was not on his property, and it now covers one to two acres of it. He continued saying he believes drainage from the school does make its way to the pond that does not have an outlet. He stressed he is not opposed to this request, and he is just concerned about the impact of this development on the water level. He added his neighbor, Lyle Miller, has risen his pier twice in the last five years, because the water table has risen that much. Mr. Atha asked if the subdivision to the north is newer, and Mr. Troyer responded water from Evergreen Subdivision also ends up on their property. He stressed he does not want to stop the development, but he wanted everyone to be aware that it will have ramifications on the neighboring properties.

Mr. Bearman came back on and stated he is not aware of the drainage details from when the high school was constructed. He continued saying he is aware of a creek in the area, but he is unsure where it feeds. He stressed this project does not affect the amount of rainfall or groundwater conditions. Mr. Lyon asked if the parking lot will be paved, and he responded yes. However, he continued the run-off will still infiltrate as if it was not paved, because there is no direct discharge to an open waterway. Mr. Atha questioned the infiltration of the parking lots/driveway. Mr. Bearman explained run-off will be infiltrated into the same area as before it

was paved. Mr. Lyon clarified the access road will connect the buildings but not add access off of CR 14. Mr. Bearman explained the drive will connect around the back of the middle school for use by buses to improve traffic safety between buses and parents. Mr. Lyon also asked if a future gymnasium is included in the proposal, and Mr. Bearman responded he is not aware of any.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha stated he believes in regards to water the Board needs to lean on the research that was completed. He clarified the research shows it can handle three to four back to back 100 year floods. Mr. Miller explained he is not sure how water flows in this area, but every pond and lake he lives near has risen in the last few years. Mr. Atha added it appears a lot of thought and research has gone into this project.

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 an Amendment to an existing Special Use for a school to allow for a new sports facility and athletic fields 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 6/20/19) and as represented in the Special Use amendment application.

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

Yes: Joe Atha, Roger Miller, Denny Lyon.

Abstain: Randy Hesser.

*****It should be noted that Mr. Hesser returned to the Board at this time*****

12. The application of ***Joseph L. Plank & Rachel J. Plank, Husband & Wife*** for an Amendment to an existing Special Use for an agri-business for a welding operation to allow for a new building on property located on the Northwest corner of CR 50 & CR 7, common address of 27097 CR 50 in Union 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-0424-2019*.

There were seven neighboring property owners notified of this request.

Ben Hershberger, IBM Construction, 66886 CR 3, Wakarusa, was present for this request representing the petitioners. He stated they would like to add a 44'x60' garage/shop addition to the residence just north of the existing attached garage to be used for family gatherings. Mr. Miller clarified the addition is unrelated to the welding operation. Mr. Hershberger pointed out the welding shop in a large detached building towards the back of the property. Attorney Kolbus explained this request is necessary, because the Special Use was approved in accordance with the site plan submitted for the entire parcel.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser commented this request is only before the Board due to a change in the site plan, and the one submitted is not to scale. He asked if staff has any concerns with the site plan. Mr. Auvil responded it is difficult to receive good site plans, and the dimensions/setbacks are the important factors to staff. Mr. Hesser pointed out the site plan has measurements, and it would be difficult to draw it to scale due to the size of the parcel. Mr. Atha added he would like to see a better site plan, but he is okay approving it for this request. Mr. Auvil suggested a site plan of the entire property along with one showing the developed area blown up would be a better option for a large property.

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 an Amendment to an existing Special Use for an agri-business for a welding operation to allow for a new building 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 6/17/19) and as represented in the Special Use Amendment application.

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

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

13. The application of *Edward R. Miller & Nancy E. Miller, Husband & Wife* for an Amendment to an existing Special Use for an agribusiness to allow for a new building and sign, for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres, and for a 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing accessory structure/agricultural building 0 ft. from the west property line located on the North side of CR 56, 1,200 ft. East of CR 100, common address of 30237 CR 56 in Locke 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-0406-2019*.

There were 10 neighboring property owners notified of this request.

Mr. Auvil submitted the revised site plan received 7/16/19 to the Board *[Attached to file as Staff Exhibit #1]*.

Edward Miller, 30237 CR 56, Nappanee, came on for this request. Mr. Hesser asked what business he is operating on the property. Mr. Edward Miller explained the building labeled buggy shop is only for storage of his personal buggies, and staff may have thought it was a business. He clarified the only business he operates is for engine/tractor repair. He stressed he believes the building labeled buggy storage was probably the reason for the confusion. He then stated the engine/tractor shop is overcrowded, and too much equipment is sitting outside. He continued saying they would like to construct a 30'x40' pole building without any water or floor drains. He then pointed out its proposed location on the aerial. Mr. Edward Miller addressed the

agricultural use. He explained the property is currently two acres with an addition acre parcel to the west, which he noted will always be owned by the same person. He continued saying his parents purchased the two acre property in 1968, and the one acre piece a few years later as a buffer between them and the neighbors to the west. He added in 1984 they needed a retirement home and obtained a permit to place a mobile home on the one acre parcel, where they lived for the remainder of their lives. He went on to say after they passed he went through the hearings to keep the mobile home and installed a mound septic system. He stated in 2012 they removed the mobile home and constructed a single story residence, and the one acre parcel transferred ownership to his son-in-law at that time. He mentioned he still owns the two acre parcel, but they plan to sell it to his son-in-law later this year. He explained he will continue to own the repair business after the property is sold. He then pointed out both parcels use a combined pasture. He stated keeping horses on two acres was not mentioned at his previous hearings. Mr. Hesser clarified the horses are their means of transportation. Mr. Atha asked the number of horses in the pasture, and Mr. Edward Miller responded four horses and a pony. He then addressed the building constructed up to the property line. He explained a lean-to was added onto the building back in 1981 before he purchased the property, and it was constructed up to the property line that now needs to be addressed. Mr. Lyon pointed out the proposed building will be 10 ft. from the property line, and Mr. Edward Miller responded it will not be any closer than 10 ft. Mr. Atha clarified the son-in-law will eventually own both parcels. Mr. Hesser questioned in which residence the owner currently resides, and it was found that Mr. Edward Miller lives in the residence on the smaller parcel. He explained his son-in-law's family outgrew the house on the one acre parcel, and they switched residences two years ago. He continued saying they will sell the subject property to his son-in-law soon through land contract. He explained they would like to construct the building to move everything inside and clean up the property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha asked if the semi turn-around appears large enough, and Mr. Hesser responded the site plan is not drawn to scale. He continued saying they will take the petitioner at his word that there is room for a semi to turn-around. Mr. Auvil suggested Finding #3 for the agribusiness be changed to read engine/tractor repair. Attorney Kolbus noted the new site plan is dated 7/16/29, and that date should be referenced in the conditions/commitments.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that this request for an Amendment to an existing Special Use for an agribusiness to allow for a new building and sign be approved based on the findings and conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance. This is an existing Special Use for an agribusiness in an A-1 zoning district.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a 2-acre parcel in a residential and agricultural area, and the property will remain residential and agricultural in character.
3. The Special Use will substantially serve the public convenience and welfare by providing for local small engine & tractor repair services.

The following condition was imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 7/16/19) and as represented in the Special Use Amendment application.

Further, the motion included that 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 7/16/19) and as represented in the Special Use application.
2. The use is limited to a maximum of four (4) adult horses and one (1) adult pony at any one time.

The motion also included that a 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing accessory structure/agricultural building 0 ft. from the west property line be approved with the following condition imposed:

1. The request is approved in accordance with the site plan submitted (dated 7/16/19) and as represented in the Developmental Variance application.

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

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

14. The application of *James A. Goldsborough & Tina L. Goldsborough, Husband & Wife* for a Use Variance to allow for an existing residence and for a Special Use for an agricultural use for the keeping of animals on property located on the South side of CR 12, South end of CR 1, common address of 30266 CR 12 in Cleveland Township, zoned M-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0429-2019*.

There were 12 neighboring property owners notified of this request.

James Goldsborough, 30266 CR 12, Elkhart, was present for this request. He explained his children raise animals for 4-H. Mr. Atha asked what animals they show, and Mr. Goldsborough responded two goats and two cows. He continued saying he spoke to his neighbors, and they signed a petition in favor of his request [Attached to file as *Petitioner Exhibit #1*]. Mr. Atha asked the size of his property, and he responded just shy of 3.5 acres. He added he also owns the parcel west of his residence, and he pointed out the proposed location for the animals. Mr. Hesser questioned the use of the surrounding properties. Mr. Goldsborough clarified Forest River owns the vacant residence next door, and some of the buildings near-by were recently sold for storage. He also pointed out a neighboring business that signed the petition in favor, along with his neighbor and Grub Septic just past them. He then noted Forest River was okay with his request. Mr. Miller clarified they only use the animals for 4-H, and it would be a temporary situation. Mr. Goldsborough mentioned he purchased the property in April and thought he could

have animals, since it is 3.5 acres. However, he continued he did not check the zoning. Mr. Atha stated a Special Use would not be required, if the property was zoned agricultural. He then asked if the petitioner would be opposed to a restriction on the number of animals allowed. He clarified they currently have two cows and two goats, and Mr. Goldsborough added he would like to have another cow to raise himself. Mr. Atha asked the size of the pasture, and he responded it is just shy of two acres. Mr. Hesser noted the petitioner owns a total of 3.5 acres, and he asked if both parcels were advertised for the Special Use. Attorney Kolbus explained the map is incorrect, and both properties were advertised.

Christine Goldsborough, 29413 CR 10, Elkhart, the petitioner's mother, was present in favor of this request. She stated the animals have been kept on her property at CR 10 for the last five years. She continued saying she no longer wants animals at her house, since her husband passed away. She mentioned they have had chickens, goats, and feeder calves from the fair for the past 15 years, but it would be more manageable for her, if the animals were at her son's house. She added it would also allow her granddaughter to be more hands on with the animals.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he does not have any problems allowing animals on this property, and he suggested adding a time restriction. Mr. Hesser mentioned he understands staff's concern with this request, but the surrounding properties are of mixed uses. Mr. Miller pointed out this property is not in the middle of a strictly residential area, and Mr. Hesser added a Special Use would not be needed, if the property was on the other side of the road. He continued saying he has no problem approving the residence, and he is also in favor of the animals based on the current situation. He explained the manufacturing buildings are not currently operated that way, but that could change. He suggested approving the animals for a period of five years with renewal before the Board. Mr. Atha added approval should be for two cows and two goats. Mr. Auvil suggested the word adult be added to a commitment restricting the number of animals allowed. However, Mr. Hesser pointed out the petitioner plans to have feeder calves. He then stated the petitioner's testimony is part of the record, and approval is restricted to two feeder calves. He noted the number of animals allowed does not need to be specified as a commitment, since it is listed in the application. Attorney Kolbus added a five year time restriction should be added as a commitment. Mr. Atha asked if five years is long enough for the 4-H animals. Mr. Hesser explained he feels five years is reasonable, because the area could change. He continued saying the petitioners' children may lose interest in five years, or he could also request more animals at that time.

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 Use Variance to allow for an existing residence be approved based on the findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community. This is an existing residential and agricultural use.
2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner. This is a 3.45-acre parcel in a mixed-use area (residential, commercial, and industrial).

3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The property was zoned M-2 as part of the original October 30, 1959, zoning.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the subject property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/17/19) and as represented in the Use Variance application.

Further, the motion also included that a Special Use for an agricultural use for the keeping of animals be approved based on the findings and conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance. A Special Use for an agricultural use is allowed in the M-2 zone.
2. The Special Use will not cause substantial and permanent injury to the appropriate use of neighboring property. This is a 3.45-acre parcel in a mixed-use area (residential, commercial, and industrial), and having an agricultural use would be compatible.
3. The Special Use will substantially serve the public convenience and welfare.

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 6/17/19) and as represented in the Special Use application.
2. Approved for a period of five (5) years: any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

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

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

15. The application of *Jacob C. Hochstetler & Inez Hochstetler, Husband & Wife* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the South side of US 20, 445 ft. West of CR 33, common address of 15070 US 20 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0400-2019*.

There were five neighboring property owners notified of this request.

Marlin Hochstetler, Freedom Builders, 65436 CR 43, Millersburg, was present representing the petitioners. Mr. Hochstetler explained the petitioners would like to construct a new residence, because the US 20 widening project will take the existing one. He added they would like to live in the existing residence until the new one is completed. Mr. Miller asked if six months will be long enough to tear the old one down once the new is completed. Mr.

Hochstetler responded he is unsure since the state will purchase the property and demolish it. He continued saying he is not sure how much the state is purchasing, but they will take care of the demolition since it includes the residence.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he believes this request falls within the category of ones that will no longer require Board approval once the Zoning Ordinance is revised. Mr. Auvil explained staff met with the Zoning Ordinance committee, who were in favor of allowing this situation by right. He continued saying he was given permission to allow these requests administratively until the changes take effect.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of a second dwelling on a parcel be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The existing house must be removed within six (6) months of issuance of the certificate of occupancy of the proposed house.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/7/19) and as represented in the Use Variance application.

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

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

16. The application of *Redbud Holdings, LLC (Buyer) & Lewis-Wingard 4, LLC (Seller)* for a Use Variance for an office building on property located on the West side of CR 23, 985 ft. North of CR 146, common address of 69295 CR 23 in Jackson Township, zoned R-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0411-2019*.

There were 10 neighboring property owners notified of this request.

Phil Bontrager, 11061 W. 300 N., Cromwell, was present along with his wife Diane. Mr. Bontrager stated they would like to purchase this property to use as their office/warehouse for Bontrager Security Solutions. He continued saying this location is central to their coverage area. He added the building has been vacant for 2.5 years, and their purchase of the property is contingent on approval of this request. Mr. Lyon asked if the property was subdivided, and Mr. Bontrager responded it was split from the residence. Mr. Miller clarified the residence and store were on the same property, and it was split to sell the residence separately. Mr. Hesser pointed out the building was constructed as a home workshop/business. Mr. Bontrager noted Lewis-Wingard 4, LLC purchased this property in 2015. Mr. Lyon asked if the existing building was granted a Variance from the required 75 ft. from the top of the bank of the ditch. He continued

saying, the petitioner will need to obtain a Variance from the Drainage Board, if that has not been completed. Mr. Bontrager asked if approval of this request is contingent on receiving a Variance from the Drainage Board. Mr. Hesser clarified this Board does not have jurisdiction over the needed Variance. Mr. Bontrager added the ditch runs along the property line. Mr. Lyon pointed out the site plan shows the building 60 ft. from the ditch, and it should be 75 ft. Mr. Bontrager asked if approval from the Drainage Board is required, and Mr. Lyon responded he should look into it before purchasing the property. Mr. Miller stressed the building is existing. Mr. Lyon responded he is aware it is existing, but the new owners should know the restrictions. Mr. Miller clarified the ditch does not affect this request. Mr. Atha stated the building was previously a grocery store. Mr. Hesser asked the need for quarterly semi deliveries. Mr. Bontrager responded a pallet of wire is delivered by a freight truck about once a quarter. Mr. Hesser asked if the semi parks on the street, and he questioned if the property has room for a semi to turn-around. Mr. Lyon pointed out a spot on the site plan labeled semi turn-around. Mr. Bontrager explained semis need to come in from the north, and he pointed out the open areas around the building. Mr. Hesser mentioned the questionnaire states the change in operation took place 3/2/17, but the Staff Report has it as 5/19/16. He continued saying he is unsure which date is accurate. Mr. Miller pointed out a Use Variance was granted for a bulk food store, and he asked if approval is needed since the property is changing hands. Mr. Hesser clarified the food store was approved as a home workshop, then as a standalone store in 2015. He explained this request is needed, because the use is changing. He went on to say the property could be used as a bulk food store, but the use is changing to office space.

Deb Lewis, 67070 Brentwood Dr., Goshen, part owner of Lewis-Wingard 4 LLC was present with her daughter, Kim in favor of this request. She addressed the ditch issue and noted it was not a concern at previous hearings. She continued saying they mow up to the ditch, and they continue to keep the property up even though it has been vacant for 2.5 years. She mentioned weeds are growing in the ditch, and they have monitored that. She added they considered requesting permission to convert the shop into a residence. She stressed several people have contacted them about the property, and they have turned them down to ensure the use of the property is good for the Town of New Paris. Mrs. Lewis stated the ditch is covered in weeds, but the water still flows well. She went on to say they did not have issues with water on their side of the ditch, but it has overflowed on the other side. She then explained 52 ft. semis previously came to the property at 4 a.m. for deliveries, and some customers even parked their trucks on the lot. She continued saying they typically backed onto the property. She stressed the building has sat empty for 2.5 years, and they would like to see this request approved. She stated having the building occupied would benefit the neighbors, and an office building will generate less traffic than a bulk food store. She added they had semi deliveries weekly, and once a quarter is a significant decrease in semi traffic.

Joe Yoder, 69283 CR 23, was present in favor of this request, and pointed out his property adjoining the subject parcel. He explained they purchased the residence when the property was subdivided. He continued saying they knew a bulk food store was next door when they purchased it, and the traffic was never an issue for them. He stressed the building has been sitting empty for 2.5 years. He mentioned it is a beautiful, well-built building, and it is a shame to see it sit empty. He added he does not know Mr. Bontrager very well, but he has heard of him. He continued saying he is aware Mr. Bontrager is a reputable person in the community, and

he has no concerns with this request. He urged the Board to approve the request, and he does not anticipate any negative impacts.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated an office is less disruptive than a retail food store. He added the building was approved as a home workshop/business and then later as a standalone store. He stressed the separation from the residence was already approved. Mr. Atha mentioned the owner who shares a drive with the subject property was present in favor of this request. Mr. Miller stated he understands staff's reason for denial, but he is not opposed to the use of this building as an office. He went on to say the building cannot change uses again without Board approval. Mr. Hesser mentioned he has no concerns about the shared driveway.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for a Use Variance for an office building be approved based on the findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community. A Quasi-commercial use was previously approved on this property in 2009, and a commercial use in 2015.
2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner. The proposed use is less intense than the previous retail use (bulk food store).
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved. The current situation is the result of a subdivision that was previously approved and the property has not been residential since 2015.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the subject property. This is an existing structure, which was part of an approved Use Variance.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/13/19) and as represented in the Use Variance application.

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

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

17. The application of *Devon E. Miller & Emily Miller, Husband & Wife* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the North side of CR 28, 1,590 ft. West of CR 35, common address of 14263 CR 28 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0419-2019*.

There were 14 neighboring property owners notified of this request.

Kenny Bontrager, 4510 W. 450 N., Shipshewana, was present representing the petitioners. He explained the existing residence is older and starting to leak. He continued saying the petitioners would like to construct a new residence instead of fixing the existing one. He added they take care of their grandfather who has Parkinson's, so they would like to remain in the existing dwelling. He went on to say once the new residence is completed the existing one will be demolished.

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** 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 a second dwelling on a parcel be approved with the following conditions imposed:

1. The Elkhart County Advisory Board of Zoning Appeals approval shall not be effective until the Commitment form has been executed, recorded, and returned to the Elkhart County Advisory Board of Zoning Appeals staff for placement in the petition file.
2. The existing house must be removed within six (6) months of issuance of the certificate of occupancy of the proposed house.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 6/14/19) and as represented in the Use Variance application.

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

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

18. The application of *AMMF Trustee Corporation, Trustee for Amish Mutual Mortgage Fund, an Indiana Land Trust (Land Contract Holder) & Karl D. Yutzy & Ruth Ann Schmucker (Land Contract Purchasers)* for a Special Use for a home workshop/business for a firearms business on property located on the North side of CR 46, 750 ft. East of West County Line Rd., common address of 30863 CR 46 in Locke 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-0343-2019*.

There were three neighboring property owners notified of this request.

Karl Yutzy, 30863 CR 46, Wakarusa, was present for this request. He stated he would like to apply for a license to sell firearms and ammunition out of the north end of his existing shop, and he is here for the Special Use. Mr. Hesser pointed out the questionnaire refers to a 12'x32' shop, but he does not see a building matching those dimensions on the site plan. Mr. Yutzy explained he constructed a wall that split the existing building, so the 12'x32' shop is part of a larger building. Mr. Hesser asked the use of the 50'x32' building, and Mr. Miller pointed out a 12'x26' future addition on the residence. Mr. Yutzy responded the 12'x32' shop area is within the 50'x32' building, and they plan to add onto the residence within the next two years. Mr. Hesser clarified the addition to the residence is unrelated to the home workshop/business. Mr. Yutzy explained he was told any future development should be on the site plan. Attorney

Kolbus pointed out requests are typically approved in accordance with the site plan submitted. Mr. Hesser also noted that the 16'x32' portion for the business is part of the 50'x32' building. Mr. Atha asked if the petitioner will have security rules/regulations to follow for his license. Mr. Yutzy responded he checked into obtaining the license, but he needed a Special Use before filing. He continued saying he will send in his application after this request is approved. Mr. Atha clarified Mr. Yutzy will be required to comply with any rules and regulations imposed with licensing. Mr. Hesser asked if his inventory will be stored in a gun safe, when the business is not in operation, and Mr. Yutzy responded yes. Mr. Atha stated he would assume the licensing agency will have their own 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** 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 Special Use for a home workshop/business for a firearms 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 5/10/19) and as represented in the Special Use application.

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

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

19. The application of *Charles D. Hoiem* 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 Southwest end of Chelsielee Ct., 200 ft. South of Springriver Dr., East of CR 13, Northeast of CR 45, common address of 58877 Chelsielee Ct. in Concord Township, zoned R-1, R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0431-2019*.

There were 32 neighboring property owners notified of this request.

Charles Hoiem, 58877 Chelsielee Ct., Elkhart, was present for this request. He stated they tried to have chickens when they lived in another state, but unfortunately they were always killed by raccoons. He continued saying the chickens are their pets, and they do not sell their eggs or butcher them. He added the chickens all have names, and he built them a small chicken coop within their fenced in yard. He continued saying the chickens provide emotional support, and they love them. He mentioned he is unsure who complained. He addressed the trash pit mentioned in the complaint and stated all they have is a typical fire pit. Mr. Atha asked how he disposes of the chickens' waste, and Mr. Hoiem responded they bag it and dispose of it at his work.

Mary Hoiem, 58877 Chelsielee Ct., Elkhart, came on in favor of this request. Mrs. Hoiem stressed they have never burnt garbage. Mr. Hoiem stated he has smelled garbage in the neighborhood, but he is unsure who burns it. Mr. Hesser pointed out a fenced in area around the

chicken coop shown on the site plan, and Mr. Hoiien stated it is 6'x8'. He continued saying he also fenced in a 15'x12' section for the chickens to run. Mr. Lyon asked if the neighbors have any problems with this request. Mr. Hoiien responded he spoke to all of the neighbors, and they did not have a problem with it. He continued saying most of the neighbors are looking forward to free eggs. Mr. Hesser asked if the subdivision has any restrictive covenants, and Mr. Hoiien responded no.

Mr. Powers submitted letters in remonstrance that staff received; one was from Brett & Robin Middleton, 58876 Crystal Ct., Elkhart *[Attached to file as Staff Exhibit #1]*. The other letter was from Dan Greenawalt, 58846 Chelsielee Ct., Elkhart *[Attached to file as Staff Exhibit #2]*. Attorney Kolbus pointed out the location of the remonstrators' residences on the aerial. Mr. Atha mentioned both letters seem to note a concern about having a farm on the property.

Mr. Hesser stated the petition only refers to six chickens, and he clarified they do not plan to breed the chickens. Mr. Hoiien responded they only have six chickens.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated he has no concerns with this request, and the neighbors seem to think a hog barn is going up on the property. Mr. Hesser added he believes the petition should only be approved for six chickens, since that is all they requested.

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 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 6/18/19) and as represented in the Special Use application.
2. The use is limited to a maximum of six (6) chickens at any one time and no roosters.

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

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

20. The staff item for Tod A. & Debra J. Hartman (61162CR 11-131018-1) was previously heard as item #7 on page 3.

21. The meeting was adjourned at 11:16 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary