

**MINUTES**  
**ELKHART COUNTY BOARD OF ZONING APPEALS MEETING**  
**HELD ON THE 21<sup>st</sup> DAY OF MARCH 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; Matt Shively, Planner; Mae Kratzer, Planner; Duane Burrow; Planner, Deb Britton, Administrative Manager; and James W. Kolbus, Attorney for the Board.

**Roll Call.**

**Present:** Tony Campanello, Denny Lyon, Randy Hesser.

**Absent:** Joe Atha, Roger Miller.

2. A motion was made and seconded (*Lyon/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 21<sup>th</sup> day of February 2019 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/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 *Tony Wydajewski & Mark Zuchowski (Land Contract Holders) & Elkhart County Feral Cat Coalition, Inc. (Land Contract Purchaser)* for a Special Use for building supplies (pet shelters) on property located on the Southeast corner of CR 10 & CR 1, in Cleveland Township, zoned A-1, came on to be heard.

There were 13 neighboring property owners notified of this request.

Mr. Hesser asked if anyone was present for this petition, and two people were present. He then explained he will need to recuse himself from this petition. He explained the Board must have a quorum of three members to act on a petition, and due to the absence of two other Board members a quorum will not be reached. He suggested the petition be tabled until the April 18, 2019, Board of Zoning Appeals Meeting.

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

**Motion: Action:** Table, **Moved by** Denny Lyon, **Seconded by** Tony Campanello that this request for a Special Use for building supplies (pet shelters) be tabled until the April 18, 2019, Elkhart County Advisory Board of Zoning Appeals meeting, due to the lack of a quorum.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

Mr. Hesser clarified the petition will be heard at the April 18, 2019, Board of Zoning Appeals Meeting, and he asked if re-notice will be sent. Attorney Kolbus responded re-notice is typically not sent unless the Board specifies it.

5. The application of *Edd Banks & Lena F. Banks, Husband & Wife* for a Special Use for warehousing and storage of tree service trucks, garbage truck, and semi tractor and trailer on property located on the South side of CR 26, 1,508 ft. East of CR 1, common address of 29730 CR 26 in Baugo Township, zoned A-1, came on to be heard.

There were nine neighboring property owners notified of this request.

Mr. Auvil stated the Planning and Development Department received a fax from Donald Berger, the petitioners' attorney, on March 14<sup>th</sup> requesting this matter be tabled [Attached to file as Staff Exhibit #1]. He continued saying he believes this is the third time they received a request to table the petition. Mr. Lyon asked if the request to continue tabling the petition is due to Staff's recommendation for denial. Attorney Kolbus responded the petitioners' attorney had a conflict with a speedy trial.

Mr. Hesser asked if anyone was present for this matter, and it was found that the petitioner was present. He then stated he understands an enforcement case is currently opened against this property, and tabling their request will not affect that case. He asked how long Attorney Berger request the item be tabled, and it was found that he request the matter be tabled until the April Board of Zoning Appeals Meeting.

There were no remonstrators present.

Mr. Hesser again mentioned tabling the matter will have no affect on the code enforcement case. Mr. Campanello suggested the matter be tabled, again at the request of the petitioners' legal counsel.

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

**Motion: Action:** Table, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that this request for a Special Use for warehousing and storage of tree service trucks, garbage truck, and semi tractor and trailer be tabled until the April 18, 2019, Elkhart County Advisory Board of Zoning Appeals meeting, at the request of the petitioners' legal counsel.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

6. The application of *Tony Wydajewski & Mark Zuchowski (Land Contract Holders) & Elkhart County Feral Cat Coalition, Inc. (Land Contract Purchaser)* for a Special Use for building supplies (pet shelters) on property located on the Southeast corner of CR 10 & CR 1, in Cleveland Township, zoned A-1, came on to be heard.

Due to the lack of a quorum for this case, this petition was heard first.

See item #4 on Page 1.

7. The application of *Griner Mennonite Church* for an amendment to an existing Special Use for a church to add a sign on property located on the Southeast corner of CR 20 & SR 13, common address of 12418 CR 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 #SUP-0078-2019*.

There were 11 neighboring property owners notified of this request.

Gary Potts, Professional Permits, 58171 Dragonfly Ct., Osceola, was present representing Griner Conservative Mennonite Church of Elkhart County and Premier Signs. Mr. Potts stated

the petitioner requests an amendment to the existing Special Use to allow for the installation of a double-faced, internally-illuminated, free-standing, 24 sq. ft., 8.5 ft. tall, full-color electronic message center. He explained the church was previously granted a Special Use, but signs were not included in that application. He continued saying he believes the Special Use is consistent with the spirit, purpose, and intent of the Zoning Ordinance, because it allows for Special Uses to be granted. He added their request will allow for the minimum amount of relief to the petitioner while being harmonious with the neighboring properties. He mentioned the Special Use will not substantially or permanently injure the appropriate use of the neighboring property, because this sign will inform the general public of ongoing events on the property. He added the Special Use will substantially serve the public convenience and welfare by serving the public as a ministry and full-filling the spiritual needs of its congregation. Mr. Potts stated they respectfully request approval of the Special Use amendment.

Mr. Hesser clarified the proposed sign complies with county standards, and a Developmental Variances is not required.

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** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a church to add a sign 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 2/7/19) and as represented in the Special Use amendment application.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

8. The application of *Deitrick Behrens & Mary Ann Behrens, 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 Northeast corner of CR 22 & Dawn Jo Lene Ave., 2,075 ft. Southeast of CR 1, common address of 29675 CR 22 in Baugo 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-0058-2019*.

There were 25 neighboring property owners notified of this request.

Mary Ann Behrens, 29675 CR 22, Elkhart, was present for this request. Mr. Lyon asked the number of chickens currently on the property, and she responded four. He asked if they plan to acquire more chickens. Mrs. Behrens responded they would like a few more, because their chickens are getting older. She added their children also need more for their 4-H project. Mr. Lyon asked if she is opposed to staff's recommended limitation of twelve chickens, and she responded no.

Kay Wise, 29758 CR 22, Elkhart, owner of the property across the street from the petitioner was present with some questions. She asked what type and how many animals the petitioner is requesting. Mr. Lyon stressed the recommendation is for twelve chickens. She also asked their plans for the chickens.

Marcia Behm, 29745 CR 22, Elkhart, was present with some concerns. She asked if other agricultural animals will also be allowed once the chickens are approved, and Mr. Lyon responded no. Attorney Kolbus clarified the petitioners would need to reapply for any agricultural animals other than chickens. He continued saying the Board specifies the type and number of animals allowed, and nothing additional is permitted. Mrs. Behm clarified this request is for a maximum of twelve chickens.

Mrs. Behrens came back on and explained her children show the birds for 4-H. She added they also use their eggs and share some with their neighbors. She explained their intent is for their children to gain a better understanding of the animals and society. She stated one of their chickens visited the high school, and another school is currently working out an arrangement with them. She went on to say the school children will raise the chicks, and then their family will take them to show at the fair.

The public hearing was closed at this time.

Mr. Auvil pointed out a typo in the Staff Analysis; Finding #1 should read zoned A-1 rather than R-1.

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

**Motion: Action:** Approve, **Moved by** Denny Lyon, **Seconded by** Randy Hesser 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 1/28/19) and as represented in the Special Use application.
2. The agricultural use is limited to a maximum of twelve (12) chickens and no roosters.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

9. The application of *Wayne L. Bontrager & Sherrill Bontrager, Husband & Wife* for an amendment to an existing Special Use for a home workshop/business for buggy manufacturing and repair to allow for an addition to the shop building on property located on the East side of CR 43, 700 ft. South of CR 46, common address of 68630 CR 43 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-0102-2019*.

There were eight neighboring property owners notified of this request.

Harley Bontrager, HD Bontrager Construction, 57342 CR 116, Middlebury, was present representing the petitioners as the general contractor. He explained their business is expanding. Mr. Hesser asked if the request is for a new building, and Mr. Bontrager responded it is an addition. He added the petitioner works on buggies in the existing building. Mr. Hesser pointed out the proposed addition is on the east side of the building, and Attorney Kolbus mentioned it is 32x40.

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** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an amendment to an existing Special Use for a home workshop/business for buggy manufacturing and repair to allow for an addition to the shop 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 2/18/19) and as represented in the Special Use application.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

10. The application of *Richard L. & J. Sue Snider, Husband & Wife (Land Contract Holders) & Larry Schwartz & Nancy Schwartz, Husband & Wife (Land Contract Purchasers)* for a Special Use for retail sales and service for appliance repairs and for a Developmental Variance to allow for the construction of a pole barn on property with no road frontage served by an access easement located on the 411 ft. East off of CR 23, 1,216 ft. North of CR 146, 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-0106-2019*.

There were nine neighboring property owners notified of this request.

Larry Schwartz, 69784 CR 23, and Richard Snider, the land contract holder, 2110 Westoria Dr., were present for this request. Mr. Schwartz stated he would like permission to operate a small appliance repair shop. He explained very few customers come to the property, because his business mostly consists of service calls. Mr. Hesser clarified Mr. Schwartz owns parcel #1 on the site plan, and he is purchasing parcel #2. He asked when the sale of parcel #2 will be completed, and Mr. Schwartz responded by the end of the year. Mr. Lyon asked why the building cannot be constructed on parcel #1, and Mr. Schwartz responded that property does not have enough room. Mr. Lyon also asked about an access easement to the back parcel, and Mr. Snider responded he is not aware of any. Mr. Lyon mentioned staff recommended requiring an access easement and maintenance agreement, and he suggested they hire an attorney or surveyor to create one. Mr. Snider asked the need for an easement. Mr. Lyon explained the purchase of parcel #2 will not be completed until the end of the year, and an easement is required to build on

a parcel without road frontage. Mr. Hesser asked if the request should be granted for a time period, and Mr. Campanello mentioned a building is permanent. Attorney Kolbus responded the Board can grant a use for a certain time period. Mr. Hesser explained he would prefer parcel #1 & parcel #2 be tied together once the sale is finalized. He asked the best way to approve the request with a condition that the properties not be sold separately. Attorney Kolbus stated he believes a condition could be added with approval, prohibiting the sale of the properties separately. Mr. Hesser asked if that is allowed even though the petitioner does not own the property, and Attorney Kolbus mentioned the petitioner has equitable interest. He also mentioned the land contract holder and purchaser are both present. Mr. Hesser asked if the land contract is close to being paid off. Mr. Schwartz responded it started last fall in August or September.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus stated the Board has imposed a condition that required both parcels be sold together. Mr. Hesser questioned if the same person owned both parcels in those cases, and Attorney Kolbus clarified both land owners should sign the commitment in this situation. Mr. Hesser clarified the condition should state that the parcels cannot be sold separately, and if the land contract falls through they need to come back before the Board. Attorney Kolbus explained parcel #2 should not be sold to a third party.

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 retail sales and service for appliance repairs 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 2/18/19) and as represented in the Special Use application.

Further, the motion included that a Developmental Variance to allow for the construction of a pole barn on property with no road frontage served by an access easement be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 2/18/19) and as represented in the Developmental Variance application.
3. An access easement and maintenance agreement must be prepared and recorded.

The following commitment was imposed:

1. The real estate and grantor's parcel, commonly known as 69784 CR 23, may not be sold separately to third parties.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

11. The application of *Nancy Umbaugh Trustee of the Nancy Umbaugh Living Trust* for a Special Use for a home workshop/business for an auto repair business, for a 2 ft. Developmental Variance to allow for an existing accessory structure 3 ft. from the north side property line (Ordinance requires 5 ft.), for a 7 ft. Developmental Variance to allow for an existing residence 3 ft. from the north side property line (Ordinance requires 10 ft.), and for a 13 ft. Developmental Variance to allow for an existing residence 62 ft. from the centerline of the right-of-way (Ordinance requires 75 ft.) on property located on the East side of CR 15, 830 ft. North of US 20, common address of 56414 CR 15 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-0097-2019*.

There were 16 neighboring property owners notified of this request.

Adam Lamunion, 56414 CR 15, Elkhart, was present for this request. Mr. Hesser asked if Mr. Lamunion rents or owns the property. Mr. Lamunion responded the property is under a trust, and he lives in the residence. Mr. Hesser clarified he is related to the trust holder, not a renter. He then stated he does not believe the Developmental Variances are an issue, and he request the petitioner focus on the home workshop/business. Mr. Lamunion explained he would like to construct a 140 sq. ft. storage shed. He continued saying he buys, repairs, and sells a maximum of eleven vehicles a year that were totaled in a collision. He added he is currently working full-time, and he is not sure he will have time to fix that many in a year. However, he would like the option since that is the maximum number of vehicles he can sell a year without a dealer's license. Mr. Hesser asked if all work will take place inside his garage. Mr. Lamunion responded yes and stated the vehicles will be stored inside. Mr. Hesser clarified he will only keep his personal vehicles outside. Mr. Lamunion then submitted material on a paint booth, explosion proof lights, and chemical containment products that he plans to purchase for his operation [Attached to file as *Petitioner Exhibit #1*]. He also submitted a copy of his mechanics degree [Attached to file as *Petitioner Exhibit #2*]. Mr. Lyon mentioned the driveway is shared with the neighbor to the south, and he asked if they have a recorded easement. Mr. Lamunion responded he has not received any complaints from the neighbors. He went on to say he discussed the proposed business with his neighbors to the north and south, and they were okay as long as it is property operated.

Sherry Moore, 56419 CR 15, Elkhart, the neighbor directly across the street from the subject property, was present in remonstrance. Mrs. Moore stressed traffic on CR 15 is terrible, and her daughter was involved in a severe accident a week ago that totaled her car. She stressed semis frequently travel this road, and cars from the previously mentioned accident ended up right outside her window. She continued saying traffic is a problem, and the proposed operation will increase it. She mentioned the area is residential, and she is concerned a car will end up inside her residence. Mr. Hesser pointed out the petitioner plans to repair a maximum of eleven cars a year, and he questioned how that will increase traffic. She responded an additional car entering and exiting the driveway will increase the existing traffic hazard. Mr. Hesser stressed one additional car using the driveway a month is not a significant increase. Mrs. Moore stated the subject property is directly across the street from her, and she typically sees up to four cars parked in the driveway and yard. She stressed this operation will increase traffic.

Judy Christophel, 56441 CR 15, Elkhart, a neighbor across the street from the petitioner, was present with some questions. She asked if signage will be placed in the front yard and if tow trucks will come to the property. She stated the subject property shares a driveway with their neighbor, and she does not believe they have room for a tow truck. She continued saying she assumes a tow truck will transport the wrecked cars. She stressed their road is narrow, and heavily traveled by semis. She went on to say tow trucks pulling out of the driveway could become a problem. She added she has full-view of their garage from her front window, and her concern is signage. Mr. Hesser pointed out the petition does not mention any signs. Mrs. Christophel also asked if they plan to park a tow truck on the property, and where one would be parked. She again stressed she has a full-view of his property from hers. She added young children live in the neighborhood, and serious accidents have occurred there.

Lillian Ward, 22930 Elm Dr., the owner of three properties in the area came on in remonstrance. She explained her residence is on Elm Dr., and her daughter resides at her property on the corner of US 20 & CR 15. She stressed traffic and trash on CR 15 are horrible, and the road is not well maintained. She continued saying it is almost impossible to pull onto the road for forty minutes around 2:30 p.m. She explained vehicles frequently use CR 15 instead of Middlebury St., because it is a convenient access onto US 20. She stated her daughter has witnessed terrible accidents, and she does not believe semis should be using CR 15. Mr. Campanello pointed out the petitioner would only have one additional car on the property every few months, not a constant flow of traffic. He request the remonstrators focus on the subject property, not traffic on CR 15. Mrs. Ward then asked if approval of this request will prompt others in the area. Mr. Hesser stated anyone can apply for a Special Use, but each case is considered separately. Mrs. Ward explained a property owner on CR 15 & Elm Dr. tried to start a home workshop/business, and people lined up on Saturdays for oil changes ect. She continued saying another person on the end of Elm Dr. started a tow truck business without permission.

Mr. Lamunion came back on, and Attorney Kolbus request he address tow truck parking, signage, and traffic. Mr. Hesser stated the petitioner mentioned he will have no outside storage, and he asked the number of personal vehicles he will park outside. Mr. Lamunion stated he temporarily had three personal vehicles, and one or two of them were stored in his garage. He went on to say he currently only owns two vehicles. He also pointed out a spot in the yard where he temporarily parks vehicles while moving them around. Mr. Hesser asked if anyone else parks on the property, and he responded he occasionally has company. Mr. Hesser then asked if he will store a tow truck on the property, and Mr. Lamunion responded no. He continued saying he typically hires someone to tow the vehicles to his property. He then mentioned he does not want a sign, and he will not have any auto body work customers. He stressed he will only work on the vehicles he purchases. He also clarified the fixed vehicles will not be sold in the front yard; instead he will keep them inside until he has sold them. He added he can also store them at the auto shop where he works if needed. Mr. Campanello stated the paint booth he plans to purchase seems very high-tech on a low-scale. Mr. Lamunion responded it is collapsible, and a fixed metal booth would take up his entire garage.

Mr. Lyon suggested the neighbors take their traffic concerns to the Commissioners.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the petitioner is requesting permission to work on one vehicle at a time. He continued saying he understands the situation could get out of control with cars parked everywhere, but that will not be permitted. He stressed Mr. Lamunion will only store and work on one vehicle at a time inside the garage. He added he travels CR 15, and he understands the traffic concerns. However, he does not believe approval of the request will increase that problem. Mr. Campanello suggested adding a time restriction to the petition, and Mr. Hesser agreed in case problems arise. He then suggested approval of the request for two years.

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 2 ft. Developmental Variance to allow for an existing accessory structure 3 ft. from the north side property line (Ordinance requires 5 ft.), for a 7 ft. Developmental Variance to allow for an existing residence 3 ft. from the north side property line (Ordinance requires 10 ft.), and for a 13 ft. Developmental Variance to allow for an existing residence 62 ft. from the centerline of the right-of-way (Ordinance requires 75 ft.) be approved with the following condition imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/15/19) and as represented in the Developmental Variance application.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser

Mr. Auvil request a commitment be added prohibiting outside storage on the property.

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Denny Lyon that this request for a Special Use for a home workshop/business for an auto repair business be approved based on the findings and conclusions of the Board:

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

The following 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 2/15/19) and as represented in the Special Use application.
2. Approved for a period of two (2) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.
3. No outside storage related to the home workshop/business is permitted.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

12. The application of *Clinton Brick Mennonite Church* for a Special Use for an existing church and cemetery, for a 10 ft. Developmental Variance to allow for an existing church to be 5 ft. from the future rear property line (Ordinance requires 15 ft.), and for a 65 ft. Developmental Variance to allow for an existing church 55 ft. from the centerline of the right-of-way (Ordinance requires 120 ft.) on property located on the West side of SR 13, 2,605 ft. North of CR 34, common address of 62499 SR 13 in Clinton 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-0104-2019*.

There were seven neighboring property owners notified of this request.

Chris Marbach, Marbach, Brady, and Weaver, 3220 Southview Dr., Elkhart, was present representing the Clinton Brick Mennonite Church and the Clinton Mennonite Cemetery. Mr. Marbach stated the church purchased the property on which it stands in 1856. He stated the church has operated since that year, but a Special Use was not found for the property. He clarified this request is to bring the property into compliance. He added since the original purchase, five additional parcels have been purchased by the Clinton Mennonite Cemetery or Clinton Brick Mennonite Church. He explained over time all six parcels were combined into one. He went on to say they would now like to clean up their records and separate the church from the cemetery. Mr. Hesser asked if it is common for cemeteries and churches to be separate entities. Mr. Marbach responded cemeteries are often operated by an association or the township. Mr. Hesser questioned whether the Trustees of the Clinton Mennonite Cemetery is a trust or corporation. Mr. Marbach responded he is unsure, but two church elders are present who may be able to answer that. He then explained a new property line needed to be established at the edge of the existing graves in order to separate the cemetery association and church group. Mr. Hesser clarified the requested Developmental Variances are needed to bring the property into compliance. Mr. Marbach responded yes, because the back property line cannot be moved to meet the required setback without including gravesites on the church property. He added the church also needs a setback variance from the road, because it existed before the current standards were put into place.

Jim Ingold, 1012 N. Indiana Ave., Goshen, a member of Clinton Brick Mennonite Church since 1954, was present for this request. He stated he believes Clinton Brick Mennonite Church started in 1854, according to their anniversary celebrations. He explained the cemetery was started behind the church in 1924, and a fellowship hall was added to the north end of the church in 1965. He continued saying they attempted to clean up the situation with an affidavit, that resulted in the property all being placed under the church. He mentioned they would now like to change the name of the church, and the cemetery was made into a corporation. Mr. Hesser asked if the church is in a separate corporation from the cemetery, and Mr. Ingold responded the church is not a corporation. He went on to say they plan to draw up quick claim deeds to clear up the church and cemetery situation, and put easements in place for the cemetery.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon

these, further moved that this request for a Special Use for an existing church and cemetery 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 2/18/19) and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for a 10 ft. Developmental Variance to allow for an existing church to be 5 ft. from the future rear property line (Ordinance requires 15 ft.) and for a 65 ft. Developmental Variance to allow for an existing church 55 ft. from the centerline of the right-of-way (Ordinance requires 120 ft.) be approved with the following condition imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/18/19) and as represented in the Developmental Variance application.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

13. The application of *Tri-county Land Trustee Corp. (Land Contract Holder) & John A. Miller & Sue Miller, Husband & Wife (Land Contract Purchasers)* for an amendment to an existing Special Use for a home workshop/business for equine supplies to allow for a new building and for 4 outside employees, and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the South side of CR 18, 2,047 ft. West of East County Line Rd., common address of 10348 CR 18 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-0101-2019*.

There were five neighboring property owners notified of this request.

John Miller, 10348 CR 18, Middlebury, was present for this request and stated he would like to construct a larger shop. He explained he now has seven children, and he needs more storage for buggies and bikes. Mr. Lyon mentioned parking shown in front of the new building. He then asked what material he will put down, and Mr. Miller responded stone. Mr. Hesser stated the questionnaire mentions increasing the number of outside employees to four. Mr. Miller explained he currently has two outside employees, and he would like to have two additional ones. Mr. Hesser also pointed out the questionnaire mentions semi deliveries, and he asked if they have enough room to turn around on the property. Mr. Miller responded they plan to make room in front of the new shop for a turn-around. Mr. Hesser clarified no semis will park on the street or back into/off of the property.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon

these, further moved that this request for an amendment to an existing Special Use for a home workshop/business for equine supplies to allow for a new building and for 4 outside employees 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. Any further development will require a submittal for a DPUD.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/18/19) and as represented in the Special Use amendment application.

Further, the motion also included that a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 2/18/19) and as represented in the Developmental Variance application.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

14. The application of *Traco, LLC* for a Use Variance to allow for an existing sign for an existing off site home workshop/business on property located on the Southwest corner of CR 26 & SR 19, in Baugo 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-0099-2019*.

There were 18 neighboring property owners notified of this request.

Tim Martin, 60020 Ash Rd., Osceola, was present for this request. Mr. Martin stated he installed a sign on the corner of SR 19 & CR 26, and he would like permission to keep it there. Mr. Hesser asked if Mr. Martin has a lease with the property owner, and he responded just an agreement, since the owner is a friend. Mr. Hesser clarified the sign is temporary. He then asked if a home workshop/business can advertise on a bill board, and Attorney Kolbus responded that does not violate the Special Use. He continued saying that sign would need to meet county standards. Mr. Hesser stated he does not believe this request is related to the home workshop/business Special Use, since it is on a separate property. He stressed he believes the request should simply be to have a sign on this property. He continued saying advertisements do not violate home workshop/business Special Uses. He added he understands staff received a complaint in January, but he is not sure this was the best approach to rectify it. Attorney Kolbus responded an off-site sign on the property requires Board approval. Mr. Hesser stated he does not believe the sign is related to the home workshop/business, and Attorney Kolbus agreed. However, he continued the property owner still needs permission for an off-site sign. Mr. Auvil pointed out the request is for a Use Variance to allow for an off-site sign that happens to be for a home workshop/business. He stressed it is not part of the home workshop/business Special Use,

and he added it would be an amendment, if that was the case. Mr. Hesser clarified the Use Variance is to allow for a sign on this property. He stated since this request is being acted upon separate from the home workshop, it is not an issue, if the sign size exceeds that typically allowed.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Auvil request that a commitment be added requiring a permit be pulled for the existing sign. He added he is not sure if it meets the Zoning Ordinance standards, since they do not have a permit to review. He continued saying he does not have a problem with the sign size, but it may fall outside what is allowed. Mr. Campanello stated larger signs are allowed as long as they meet the setback, and he stressed it is not associated with the home workshop/business Special Use. Mr. Auvil responded the Zoning Ordinance still restricts sign size. Mr. Campanello asked if the size allowed depends on its proximity to the road. Mr. Auvil explained sign size is dependent on road frontage and the zoning district, and the sign may not fit within the standards. He continued saying that would trigger the need for a Developmental Variance, or he suggested the Board approve the request for the existing sign based on the site plan. Attorney Kolbus added the sign could be modified to meet the Zoning Ordinance restrictions. Mr. Auvil stated a permit is needed to know the size/dimensions of the sign. Mr. Hesser suggested that the second sentence of Findings #3 & #4 be deleted, because they allude to the home workshop/business. He continued saying it is irrelevant that the petitioner is not the property owner, because the owner is aware of the situation and consented to it. He stressed the Use Variance is for the subject property not the home workshop. He added number four is also not an issue, because he does not believe it matters what the sign advertises. Mr. Auvil then request that a revised site plan be submitted showing the sign location and dimensions.

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

**Motion: Action:** Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Use Variance to allow for an existing sign for an existing off site home workshop/business 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. The sign does not restrict traffic sight distance.
2. The use and value of the area adjacent to the subject property will be not affected in a substantially adverse manner. This is a large 84.39-acre parcel in a low-density agricultural area and it will remain agricultural in character.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
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 conditions were imposed:

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

2. The applicant must provide a revised site plan showing the location and dimensions of the sign.
3. The applicant must apply for a sign permit.

The following commitments were imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Use Variance application.
2. Approved for the existing sign as it stands.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

15. The application of *Brian Mast & Sara Mast, Husband & Wife* for a Use Variance to allow for the construction of a second dwelling on a parcel located on the North side of US 20, 2,780 ft. West of CR 43, common address of 11529 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-0100-2019*.

There were seven neighboring property owners notified of this request.

Harley Bontrager, HD Bontrager Construction, 57342 CR 116, Middlebury, was present as the contractor representing the petitioners. Mr. Bontrager explained the petitioners would like permission to live in their existing residence until the new one is constructed, and they will then demolish the old residence. Attorney Kolbus request he point out the approximate location of the new residence on the aerial. Mr. Bontrager then pointed out the proposed location for the new residence and driveway.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 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 old residence must be demolished within six (6) months of the issuance of the certificate of occupancy for the new residence.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/18/19) and as represented in the Use Variance application.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

16. The application of *Tod W. DeBolt & Stephanie S. DeBolt, Husband & Wife (Buyers) & Bruce A. Showalter, Steven G. Showalter, Michael K. Showalter Tenants in Common (Rose Ann Showalter Life Estate) (Sellers)* for a Use Variance to allow for the construction of a

second dwelling on a parcel located on the South side of CR 46, 2,460 ft. East of CR 37, common address of 12516 CR 46 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 #UV-0107-2019*.

There were five neighboring property owners notified of this request.

Stephanie DeBolt, 12516 CR 46, Millersburg, was present for this request. Mrs. DeBolt stated they would like permission to construct a new residence directly south of the existing one. She continued saying the existing one will be removed once construction is complete. Mr. Campanello asked if they have a problem with the six month time limit to demolish the old residence. Mrs. DeBolt explained building trades will construct the residence, and it will take an entire school year. Attorney Kolbus clarified they have six months to demolish the existing residence once the new one is completed, and she responded that will not be a problem.

There were no remonstrators present.

The public hearing was closed at this time.

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

**Motion: Action:** Approve, **Moved by** Tony Campanello, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a 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 old residence must be demolished within six (6) months of the issuance of the certificate of occupancy for the new residence.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/18/19) and as represented in the Use Variance application.

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

**Yes:** Tony Campanello, Denny Lyon, Randy Hesser.

17. The meeting was adjourned at 10:36 a.m.

Respectfully submitted,

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Laura Gilbert, Recording Secretary

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Randy Hesser, Chairman

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Tony Campanello, Secretary