

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF OCTOBER 2019 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

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

Roll Call.

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

2. A motion was made and seconded (*Lyon/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 19th day of September 2019 be approved with the following correction: Mr. Hesser stated on page 4 the agency listed as the FFA should read FAA.

3. A motion was made and seconded (*Atha/Campanello*) 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 *Edward L. Miller, and his successors, as Trustee of the Edward L. Miller Trust dated January 15, 2001 & Darla J. Miller, and her successors, as Trustee of the Darla J. Miller Trust dated January 15, 2001* for a Special Use for a ground-mounted solar array on property located on the East side of CR 27, 725 ft. North of CR 112, common address of 55348 CR 27 in Jefferson Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0667-2019*.

There were 11 neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present for this request representing the petitioners. She stated the petitioner would like to place the solar array next to an existing wind turbine on the property, and she pointed out its general location on the aerial.

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 9/10/19) and as represented in the Special Use application.

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

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

5. The application of *Success and Kingdom Advancement Life Center (Buyer) & Meadow Free Methodist Church (Seller)* for a Special Use for a place of worship on property located on the Southeast corner of Meadowood Dr. & US 20, 1,200 ft. East of CR 13 (Middleton Run Rd.), common address of 56538 Meadowood Dr. in Concord Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0695-2019*.

There were 20 neighboring property owners notified of this request.

Mrs. Kratzer stated the petitioner request this petition be withdrawn. Mr. Miller clarified the petitioner does not plan to reapply for the request.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Withdraw, **Moved by** Denny Lyon, **Seconded by** Roger Miller that this request for a Special Use for a place of worship be withdrawn at the request of the petitioner.

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

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

Mr. Hesser asked if staff is aware of the petitioner's reason for withdrawing the request. Mr. Auvil responded the real estate transaction fell through.

6. The application of *Jason W. Holmes & Jamee L. Holmes, Husband & Wife* for a Special Use Renewal for a private off road track on property located on the East side of SR 15, 1,445 ft. North of CR 24, common address of 59904 SR 15 in Jefferson Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0630-2019*.

There were nine neighboring property owners notified of this request.

Jason Holmes, 59904 SR 15, Goshen, was present for this request. Mr. Lyon asked if he spoke to any of his neighbors, and Mr. Holmes responded he speaks to them on a regular basis. Mr. Lyon clarified they do not have any concerns with the request. Mr. Holmes explained the neighbor who was against the original request gave him a case of beer the day after it was approved. Mr. Lyon then asked what vehicles they use on the track. Mr. Holmes responded his twin seven year olds use it to ride dirt bikes. Mr. Campanello pointed out the request was originally heard three years ago. He continued saying he frequently drives past this property, and it appears well maintained. Mr. Holmes noted the petition states the property is north of CR 24, and it is in fact south of CR 24. Mr. Hesser stated the questionnaire mentions attached letters, but no letters were included in the Board's packet. Mr. Holmes explained a letter from Mr. Holdeman was attached to the original petitioner, and he no longer resides on the neighboring property. He went on to say the letter request that the track not be used either the third or last Sunday of June, since he held an

annual family reunion on his property. He added his family typically race out of town on that weekend anyways. He then explained he used the existing application for this request, since nothing changed. However, he continued the letter must not have been copied with the application. He noted even though Mr. Holdeman no longer resides on the neighboring property, they still do not use the track on the last weekend of June.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha clarified staff's recommendation is for indefinite approval, and Mr. Hesser confirmed no time limit was included.

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 Renewal for a private off road track 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 8/30/19) and as represented in the Special Use application.

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

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

7. Mr. Auvil presented the staff item for *Stanley J. & Eldora A. Schrock* (SUP-0634-2017). He explained the request is for a minor change to a site plan for a home workshop/business Special Use. He continued saying the petitioners plan to construct a residential addition and move the attached garage to a different location on the property. He added the letter, original site plan, and proposed site plan were included in the Board's packet. He noted staff recommends approval of the request as a minor change. Mr. Hesser questioned the location of the existing garage, and Mr. Lyon pointed out it is attached to the residence. Mr. Hesser then clarified the existing garage will move to the building labeled barn on the proposed site plan. Mr. Auvil noted living area will be added onto the residence.

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

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

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

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

8. The application of *Grace Point Apostolic Church, Inc.* for an Amendment to an existing Special Use for a place of worship to allow for an addition on property located on the Southeast corner of Ash Rd. & Charla Ln., 1,825 ft. South of CR 8, common address of 54662 Ash Rd. in Cleveland Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0692-2019*.

There were 17 neighboring property owners notified of this request.

The petitioner was not present; hearing continued to the end of the time slot.

See item #22 on page 28.

9. The application of ***Daniel R. Mullet & Esther E. Mullet, Husband & Wife*** for a Special Use Renewal for an outdoor recreational use to allow for an RV campsite and picnic shelter on property located on the East side of CR 15, 3,200 ft. South of CR 32, common address of 63638 CR 15 in Harrison Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0668-2019*.

There were 10 neighboring property owners notified of this request.

Daniel Mullet, 64297 CR 15, Goshen, was present for this request, and he explained the address he gave is for his residence not the subject property. Mr. Miller asked if his residence is close to the subject property, and he responded it is approximately a mile away. Mr. Miller also asked if the campsite has been used, and he noted it was previously approved for a period of two years. Mr. Mullet request approval be permanent. Mr. Miller then asked if he talked to the neighboring property owners, and he responded he spoke to them this morning. He continued saying he assumed they were okay with the request, but they expressed concerns about traffic. He stressed he does not believe traffic increased significantly, but his family frequently visits the property to hunt, care for the pond, and check on the property. Mr. Mullet stated only four family groups have utilized the property in the two years since it was approved. He went on to say the property is mostly used for tent camping, but it also has room for a few RVs. He stressed they try to limit the use to family and church groups. Mr. Miller questioned if the property is rented to outside groups. Mr. Mullet responded he rents it to family oriented groups, and they want it to be a family-friendly place. He went on to say it is not his intent to have large crowds or parties on the property. He explained his children use the property when no one is there during the summer, and a large group was there in August. He went on to say only one group rented the property last year. Mr. Miller questioned if the property is used privately or rented to other groups. Mr. Mullet responded they rent it to friends, family, and church groups. Mr. Campanello asked how long they typically rent the property, and Mr. Mullet responded just for a weekend, 2 to 3 days at the most. Mr. Hesser questioned the maximum number of campers on the property at one time. Mr. Mullet stated a group of over 40 youth camped on the property this year. Mr. Atha questioned the number of RVs used on the property. Mr. Mullet responded he believes they have had four RVs on the property at one time, but there is room for more than four. He continued saying it is primarily a tent campsite, and the RVs are typically only used by families who do not want to sleep in a tent or as a support vehicle. Mr. Miller asked if the property has parking facilities for RVs. Mr. Mullet explained they currently have four spaces for RVs. Mr. Miller asked about any water and electric to the property. Mr. Mullet explained the property had water and electric before he purchased it. Mr. Miller asked Attorney Kolbus and staff the requirements for use of a facility by people other than family. Mrs. Kratzer responded public campgrounds are different than public ones, and the use should be specified in the application. Mr. Miller pointed out he understood the request was for a private campground, and Mrs. Kratzer added that was also staff's understanding. Mr. Miller

clarified a private campground does not allow rental of the facilities to outside groups, and he asked if the petitioner understands that determination. Mr. Mullet questioned if anyone can use the property besides family. Mr. Miller stressed a facility used by family is different than one rented to outside people such as church groups, etc. Mr. Mullet stressed the facility has been rented to groups for the last two years. He continued saying the campground is private, because they do not allow just anyone to camp on the property. He mentioned groups must call to reserve the property. Mr. Miller stressed renting to a group makes the campground public. Mr. Mullet stated he has been renting the campground to groups, and he does not understand the need for him to be before the Board, if that is no longer allowed. He went on to say he allows friends, family, and church groups to use the property, and he believed that was allowed with the previous approval. Mr. Miller stressed the previous application was for personal use. Mr. Mullet responded that is not what he requested, and Mr. Miller asked staff to clarify previous approval. Mrs. Kratzer stated staff will read the minutes from the last hearing. Mr. Mullet stressed they do not want to harm the neighborhood in any way, and they strive to be neighborly. He added they enjoy the property and want the ability for others to share in that enjoyment. He mentioned they plan to eventually construct a residence on the property, if they keep it. He stressed the use will not expand.

Beth White and James White, 63652 CR 15, were present opposed to this request and pointed out their property, the campground, and its driveway on the aerial. Mrs. White stated the campground's driveway is only 55 ft. from their residence. She stressed they do not have a problem with family and friends using the property. She explained the property is wooded, and it echoes when people have a good time back there. She continued saying it is her understanding that teens are on the property unsupervised, and a shooting range is also back there. She stressed they do not have a problem with shooting, but they do have concerns about young people shooting without supervision. Mrs. White questioned the limit to the number of campers, length of occupancy, noise, and traffic, if the property is rented. She stated the petitioners live a mile south of the campground and drive a gator between the two properties. She went on to say their son typically comes to the property six to eight times a day on the weekends. She noted they do not have a problem with the petitioners enjoying their property for personal use, but she is concerned about it being rented. She continued saying their concerns include supervision, security, parking, and waste disposal. Mr. Lyon asked if she is opposed to churches and family groups renting the property, and Mrs. White responded she is against large groups. She continued saying she is not opposed to their family having some friends back there, but she is against allowing multiple RVs and 40 people. Mr. Lyon asked what she would consider numerous RVs, and Mrs. White responded four RVs seems excessive. She noted the parking area is on high ground, but most of the property is swamp. She then pointed out a pond and swamp area on the aerial. She mentioned the driveway back to the property was fixed, because it would end up under water when it rained. She stressed she has not seen many RVs, but she does not want the operation to expand and become out of control. She also expressed her concern about the effect of this operation on their property value. Mr. Hesser asked if they have had any issues when large groups were present. Mrs. White responded they have a problem with noise, and the petitioner's children have very loud trucks that they sometimes hear at 1 a.m. She added they have an air conditioner in their bedroom window that helps with noise in the summer, but they hear the traffic when it is off.

Charlotte Mast, 63505 CR 15, the property owner across the road from the subject property was present in remonstrance. Mrs. Mast stressed she does not want this property turned into a

business. She went on to say an event center is located half a mile away and another business is located on the corner of CR 36 & CR 15. She again mentioned she does not want this operation to turn into a business that produces a lot of traffic. Mr. Miller asked if she has any problems with the petitioners using the property. Mrs. Mast stated she had concerns about the petitioners' children being careless on the road at the previous hearing, and she was worried someone would be killed due to the hills. Mr. Miller agreed CR 15 is a hilly road, and she again stressed her concern is safety. Mr. Hesser asked if she has any additional concerns with the use of the property, and she responded her concern is increased traffic.

Attorney Kolbus then read a few excerpts from the previous hearing's minutes. He stated Loren Sloat represented the petitioner at that time, and the minutes reflect that Mr. Sloat stated, "He agrees with the staff report, but he would like to add one condition. He stressed when talking to a few of the neighbors he became aware of an ad that was run in the paper advertising the site for commercial use prior to his involvement. Mr. Sloat stated he informed his client that this property can only be used as a private campground for him and his family." "He again stressed this will be used by the petitioner, his family, and church groups they participate in" "Loren Sloat suggested any groups using the property have at least one family member as a participant. Mr. Hesser clarified the property will not be rented out." "Mr. Sloat responded an RV is currently parked by the electric service, and Mr. Hesser stressed no additional RVs are allowed on the premises. Mr. Sloat clarified the petitioner has no intention of bringing any more RVs onto the property." Attorney Kolbus then proceeded to read a few of the commitments imposed on the request by the Board including approval for private camping only. Commitment #2 reads, "Limited to one existing RV on-site." He stated additional commitments were also imposed. Mr. Hesser clarified the Commitment form was signed by the petitioner and recorded. Mr. Miller asked Mr. Mullet, if he would like to read the minutes and commitments from the previous hearing.

Mr. Mullet came back on and stated he did not submit the same petition this time. He continued saying the Board can read the petition submitted for this request, and the previous petition pertained mostly to the building they constructed that required a building permit. Mr. Miller pointed out previous approval was limited to one RV. Mr. Mullet responded he would like a limit of four RVs. Mr. Miller stressed previous approval was only for one RV, and it was mentioned that no additional RVs would be added. Attorney Kolbus stressed the signed Commitment limits the property to private use and only one RV. He continued saying the petitioner would now like to change his request to allow for four RVs and rentals. He noted the petitioner's representation is that he would like approval to extend beyond family members. Mr. Mullet then addressed the remonstrators' comments, and he stressed they do not want to reduce the value of the neighboring properties. He stated they enjoy their property and would like the opportunity to also allow others to enjoy it. He added the property is large, and it is expensive to maintain. He went on to say they mow the large yard every week, and it cost a lot every month to maintain it. Mr. Hesser asked if the petitioner is disputing the commitment from two years ago. Mr. Mullet responded he understood the campground to be private, because they do not have an office or allow anyone off the street to camp there. He continued saying only groups that contact them are allowed to use the property. Mr. Miller asked if he would allow a group of Boy Scouts from Elkhart use the facility, and Mr. Mullet responded yes. Mr. Miller stressed allowing the Boy Scouts to use the property makes it a public facility. Mr. Atha clarified this request was previously approved for two years, for use by family or groups that included at least one family member, and

limited to one RV. Mr. Mullet stated he does not believe more than one RV has ever been on the property. Mr. Miller pointed out the petitioner previously stated the property had room for four RVs. Mr. Mullet responded one camper was existing, and he believes an additional one was allowed. However, he continued saying the existing one is no longer on the property. He added he believes he has the right to store an RV on the property. Mr. Miller suggested the request be approved for private use only, one camper, and one family member must be present with any group that uses the facility. Mr. Mullet responded he is completely against that. He stated a camper is hooked up on the property that was there before he purchased it, and an area is set up for an additional one or two RVs to be hooked up. Mr. Miller noted the previous minutes state that the petitioner advertised the property as a public campground, and Mr. Mullet responded he advertised it before he knew it was not allowed. Mr. Hesser asked Mr. Mullet, if he was present at the 2017 hearing, and Mr. Mullet responded yes. Mr. Atha clarified what the petitioner described is a public campground, but the application is for a private campground, which has not been represented. Mr. Mullet stressed the campground is not public, because they do not rent it to everyone. Mr. Miller responded the campground is public, because the petitioner is allowing outside groups to use the property. Mr. Hesser asked if the petitioner can apply for a public campground, if the request for a private one is denied. He continued saying the petitioner could not re-apply for a private campground again for 6 months, but he could apply for a public one. Attorney Kolbus agreed with Mr. Hesser's statement. Mr. Miller questioned if denial of this request would restrict the petitioner's use of the property privately. Attorney Kolbus responded the use would be restricted to immediate family. Mr. Miller then asked if it is illegal for Mr. Mullet's family to camp on the property without approval of this request. Attorney Kolbus stressed the property could only be used by immediate family, the members of his household. He pointed out the petitioner stated he has eight brothers and sisters who use the property, which makes it public. He clarified the petitioner could use the property with his wife and children, but when people outside of the household are added it becomes public. Mr. Atha asked why a Special Use was previously required for the property. Attorney Kolbus responded extended family used the property. Mr. Hesser clarified previous approval did not allow rentals, but it did permit siblings and church groups that include a family member. He stressed previous approval was very specific, and Mr. Mullet signed the Commitment restricting the use.

The public hearing was closed at this time.

Mr. Miller stated he does not want this property used as a public campground, but the petitioner could apply for a public campsite, if this request is denied. He continued saying denial of the request would still allow for use of the property privately by immediate family members. Mr. Campanello stated he believes the use becomes public when people pay the petitioner to use the property, but he does not believe use by family is public. Mr. Miller stressed the campground is public if outside groups are allowed to use it. Attorney Kolbus questioned where the line is drawn between charging rent and accepting donations from groups. Mr. Hesser pointed out previous approval did not allow for use of the property by the Boy Scouts, etc. Mr. Atha clarified groups were only allowed to use the property, if an immediate family member was part of it. Mr. Miller stressed the term family member in this situation describes anyone living in the petitioner's house. Attorney Kolbus noted previous approval allowed use by extended family and groups in which they participate. Mr. Atha clarified at least one member of the group must be a family member. Mr. Miller pointed out the petitioner did not follow those restrictions, and Attorney

Kolbus added the property is being rented by groups. Mr. Atha stated he has no problem with what the Board previously approved, and Mr. Miller stressed the petitioner is not following what was approved. Mr. Campanello mentioned he does not believe the petitioner purposefully broke the commitments, and he may not have understood them. Mr. Miller pointed out a representative was present who stated only one camper would be on the property, and they have had more than one. Mr. Hesser added the petitioner signed the Commitment in addition to hearing the conversation and questions at the previous hearing. Mr. Campanello suggested the petitioner may not have understood what he signed, and Mr. Miller noted that is not an excuse. He continued saying he is unsure if denial of the request is the best choice. Mr. Hesser stated he believes the neighbors had concerns when the petition went beyond what was approved, and he is unsure how the Board can address the traffic and children's safety concerns. He continued saying he is giving the petitioner the benefit of the doubt, which is a stretch, because the petitioner was present at the previous hearing when a specific conversation about not renting the property took place. He suggested approving the request for one year under the previous conditions and commitments. He continued saying it can be renewed for a longer term next year, if the petitioners follow the restrictions. He stressed the petitioner should know the restrictions, because the Board made them very clear. Attorney Kolbus noted the same commitments should be imposed as previous approval with an emphasis on private. Mr. Miller pointed out the petitioner is asking for more with this request, and Attorney Kolbus responded the Board can grant less than what is requested. Mr. Hesser stressed this petition is for renewal of a request not a new one. Mr. Atha noted the petitioner can apply for a new Special Use.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use Renewal for an outdoor recreational use to allow for an RV campsite and picnic shelter be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 9/11/19) and as represented in the Special Use application.
2. Approval is for primitive camping only (no on-site waste disposal).
3. Limited to the one existing RV on-site.
4. Any amendment, including building additional structures/facilities/amenities (including but not limited to electric meters), must receive approval from the Elkhart County Advisory Board of Zoning Appeals.
5. A driveway permit is required (if not already approved), and the driveway must meet Elkhart County Highway standards.
6. Approved for a period of one (1) year with renewal before the Elkhart County Advisory Board of Zoning Appeals.
7. Limited to private use only, no commercial use (no rental to non-family groups).

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

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

No: Denny Lyon.

Mr. Campanello stated he believes the petitioner's family can camp on the property with multiple RVs, if they construct a residence and live there. Mr. Miller stressed that is incorrect, and that still qualifies as a campground. Mr. Hesser noted the petition was approved for a period of one year.

10. The application of **Brian J. Chupp & Andremene R. Chupp, Husband & Wife** for a Special Use Renewal for an agricultural use for the keeping of animals on property located on the Southwest corner of Weymouth Ln. & Cambridge Ct., 1,860 ft. East of Pine Crest Dr., South of US 20, common address of 56909 Weymouth Ln. in Concord Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0648-2019*.

There were 26 neighboring property owners notified of this request.

Andremene Chupp, 56909 Weymouth Ln., was present for this request. Mr. Miller asked if they have had any problems, and she responded no. She then request the number of chickens allowed by increased, because she did not know how easily chicks and chickens die. She explained they lost some chickens from the stress of going to the fair. Mr. Hesser clarified juvenile animals do not count towards the total number allowed, and the restriction only applies to adult animals. Mrs. Kratzer reiterated chicks do not count towards the number of chickens allowed. Mr. Atha pointed out staff's recommendation is to allow up to twelve adult chickens. Mrs. Chupp stated she believes previous approval restricted the use to three chickens, and five is the minimum number of chicks that can be purchased. Mr. Hesser noted staff recommended approval of the request for twelve chickens, no roosters.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion Action: Approve, **Moved by** Roger Miller, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use Renewal for an agricultural use for the keeping of animals be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 9/4/19) and as represented in the Special Use application.
2. Limited to a maximum of twelve (12) chickens at any one time, no roosters.

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

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

Mrs. Chupp asked if approval of the request is permanent, and Mr. Hesser responded no time limit was imposed.

11. Mr. Hesser asked if anyone was present for the Grace Point Apostolic Church request, and no one came forward. Hearing continued to the end of the meeting.

See item #22 on page 28.

12. The application of *Maria Miranda* for a Special Use for a home workshop/business for a tire service business on property located on the South side CR 6, 1,500 ft. East of CR 10, common address of 29580 CR 6 in Cleveland Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0688-2019*.

There were 14 neighboring property owners notified of this request.

Jose Juarez, 29580 CR 6, Elkhart, was present for this request and stated he would like to operate a tire shop. Mr. Atha asked how long the tire shop has been operating, and Mr. Juarez responded about two months. Mr. Hesser questioned the use of the building prior to the tire operation. Mr. Juarez explained he purchased the property about two years ago, and the building has been used to store boats. Mr. Atha asked if he spoke to the neighbors, and he responded no. Mr. Miller then asked if they plan to change the property, and he responded no. He continued saying he does not plan to expand the use. Mr. Atha questioned if semis come to the property. Mr. Juarez responded the driveway has room for a semi but, they do not use them.

Mr. Powers addressed the mentioned complaint for a tire business and people living in the barn. He explained they found no evidence that anyone was living in the barn and closed the associated part of the complaint.

Ryan Epp, 29552 CR 6, came on against this petition and pointed out his property directly east of the petitioner. He stressed he is opposed to this request due to the amount of traffic that uses the driveway. He continued saying the petitioner also operates a lawn care business that already generates traffic. He added a tire repair shop will only increase the traffic. He mentioned the signage is unattractive. He agreed the business has been operating for about two months. Mr. Epp stated he hears the impact gun on Saturdays, and he does not want to listen to it. He explained the previous property owner used the building for storage, and the one before him operated an excavation business. He again stressed his concern is the traffic, which he does not want to increase.

Mr. Juarez came back on and stated he believes the neighbor's property is about four acres from the building. He continued saying he is unsure how the neighbor can hear noise from the operation. Mr. Miller pointed out the remonstrator's residence on the aerial. Mr. Juarez explained he only services one to three cars a day. Mr. Hesser asked if a lawn care business is also being operated on the property, and he responded yes. He explained the tire business does not open until he returns for the day from his lawn care business. Mr. Miller clarified the tire business is open on Saturdays and Sundays, and he asked if he would be opposed to closing on the weekends. Mr. Juarez questioned how he can tell a customer that he cannot fix their tire on the weekends. Mr. Miller responded he understands that.

The public hearing was closed at this time.

Mr. Miller stated he does not have any problems with the operation, but he is concerned about Saturday and Sunday hours. He went on to say he would not want to hear an air gun on the weekends. Attorney Kolbus suggested adding a Commitment setting the days and hours of operation. Mr. Campanello stated he believes they should be allowed to open on Saturdays and close early like a typical tire shop. Attorney Kolbus pointed out the subject property is not in a commercial zone, and most tire shops are located in commercial zones. Mr. Hesser noted the property is zoned agricultural. Mr. Campanello shared his concern that staff will receive a complaint the first time the petitioner tries to help someone on a weekend. Mr. Miller suggested the petitioner refrain from using an air gun on the weekends. Mr. Atha questioned the lawn care business mentioned by the petitioner and remonstrator, and Mr. Hesser responded that is an enforcement issue. Attorney Kolbus noted staff can choose to follow up on the lawn car business.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a tire service business be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 9/16/19) and as represented in the Special Use application.
2. Hours of operation 7 a.m. to 6 p.m. Monday through Friday, no Saturday or Sunday hours.

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

Yes: Joe Atha, Roger Miller.

No: Tony Campanello, Denny Lyon, Randy Hesser.

Mr. Hesser stated he believes a time limit should be imposed on the request. He then asked Mr. Campanello and Mr. Lyon their reason for denial. Mr. Lyon responded he agrees with Mr. Campanello, and it is difficult to determine when someone will need a tire repaired. Mr. Campanello suggested the tire shop be open from 8 a.m. to 12 p.m. on Saturdays, and Mr. Lyon agreed. Mr. Miller disagreed and stated tire shops in commercial zones are open on Saturdays. Attorney Kolbus questioned what time limit the Board would suggest be imposed. Mr. Hesser responded he is concerned, because the business has been operating without approval. He continued saying he would suggest a shorter time period to see if he follows the conditions. Mr. Campanello mentioned he does not believe the petitioner broke the rules on purpose. Mr. Atha suggested adding a one year time restriction and allowing the hours of operation to include from 8 a.m. to 12 p.m. on Saturdays. Attorney Kolbus stated he does not believe allowing Saturday morning hours will solve the concerns about the operation opening for emergencies. Mr. Hesser noted he is not opposed to setting some Saturday hours, and he believes the year time limit will help to show if any screening etc. is needed. He continued saying he understands operating outside of general business hours for emergencies. Mr. Miller pointed out the only objection was the air gun, and a speed wrench could be used instead on the weekends.

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a tire service business be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 9/16/19) and as represented in the Special Use application.
2. Hours of operation 7 a.m. to 6 p.m. Monday through Friday, no Saturday or Sunday hours.
3. Approved for a period of one (1) year; any renewal shall be before the Elkhart County Advisory board of Zoning Appeals.

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

Yes: Joe Atha, Roger Miller, Randy Hesser.

No: Tony Campanello, Denny Lyon.

Mr. Hesser noted the petition is approved for one year with no Saturday or Sunday hours of operation.

13. The application of *Tyler A. Sloat & Nicole J. Sloat, Husband & Wife (Buyers) & Ross L. Sloat & Linda S. Sloat, Husband & Wife (Sellers)* for a Special Use for warehousing and storage of trucks, trailers, and tractors on property located on the Northeast corner of CR 30 & CR 9, in Harrison Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0631-2019*.

There were six neighboring property owners notified of this request.

Tyler Sloat, 25821 CR 30, was present for this request. Mr. Miller asked if this business has been operating, and he responded yes. Mr. Atha questioned the number of semis and trailers stored on the property. Mr. Sloat responded he stores box trucks and typically around ten at a time. He explained the box trucks are waiting to be repaired or picked up. Mr. Lyon clarified the stored vehicles are ones he plans to repair, and Mr. Atha asked if work is done onsite. Mr. Sloat responded their operation is mobile and depending on the schedule they may not be at the shop. He continued saying their work is somedays all on the road and other days all in the shop depending on the situation and weather. Mr. Hesser questioned if the vehicles being stored on the property need repaired, and Mr. Sloat responded a few of them are waiting for repairs. He added a semi-trailer with a crane is also stored on the property along with a few flatbed trailers. Mr. Lyon asked if the petitioner has had any issues with neighboring property owners, and Mr. Sloat responded no. He went on to explain the property lines are in the process of changing. He pointed out a piece of property that he is purchasing from his father, and he is waiting for a survey. Mr. Lyon clarified the property has not been surveyed yet, and Mr. Sloat responded it should be completed next week. He then pointed out his closest neighbor on the aerial. Mr. Campanello clarified the petitioner does not plan to expand his operation towards the neighboring property, and Mr. Sloat responded no. He stated it would be a nice location for a large building, but he has no plan to construct one there. He continued saying he is looking for a location in town, but he has not found one yet. He

explained it did not make sense to leave a section of property between him and the neighbors'. Attorney Kolbus pointed out the site plan shows a buffer along the driveway, and a building could not be constructed on the property being purchased without approval from the Board. Mr. Hesser noted the new section is not on the aerial, and he assumes it was also not included in the legal description that was advertised. Mr. Lyon stated the petitioner is in the process of purchasing that section, and Attorney Kolbus clarified the strip of land between the subject property and the neighboring property to the west was not included in this petition. Mr. Lyon stressed any additional buildings would require Board approval.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he is concerned that this request is coupled with the next request for a home workshop/business. He explained he sees the need for semi storage in the county, and he does not have a problem with this request by itself. However, he continued he is concerned, because a home workshop/business does not allow outside storage. He explained he would not have a problem with the request if everything was included in one, but he is opposed to separating part of it as a home workshop/business without following the rules imposed with one. Mr. Atha agreed, but he added outside storage of tractor trailers makes sense for this property. He went on to say the storage area is a distance off of the road, and he noted the Board typically limits the number of vehicles allowed outside for a home workshop. He agreed it is confusing that this request is for storage of trailers, and the next one is for a home workshop. Mr. Hesser mentioned the warehousing and storage request includes the entire parcel, but only a north portion of the parcel is included in the home workshop/business. Mr. Miller asked if the home workshop Special Use should be approved before this one. Mr. Hesser stressed he does not believe the Board typically approves home workshop/businesses with this amount of storage, and he asked if the Board can waive the requirement limiting outside storage. Attorney Kolbus responded a Use Variance could vary the requirements of a home workshop without a warehousing and storage request. Mr. Atha pointed out the home workshop/business and warehousing/storage requests are on separate parcels. Mr. Hesser explained he believes the current request applies to both parcels. Mr. Auvil stated the warehousing and storage request should only be on a north section not the entire property. Mr. Hesser noted the site plans for the requests should be switched. Mr. Miller mentioned the Board typically limits outside storage for a home workshop/business. However, he continued this property is in the middle of nowhere, and no remonstrators were present. Mr. Atha asked if the home workshop/business should be approved first, and Mr. Campanello responded he believes this request can be approved first. Mr. Hesser stated he is not opposed to the overall use, and it is a clear need in the county. However, he believes separate requests is a way of getting around the rules that is not appropriate.

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 warehousing and storage of trucks, trailers, and tractors 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 8/30/19) and as represented in the Special Use application.

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

Yes: Joe Atha, Tony Campanello, Denny Lyon.

No: Roger Miller, Randy Hesser.

14. The application of *Tyler A. Sloat & Nicole J. Sloat, Husband & Wife* for a Special Use for a home workshop/business for vehicle and equipment repair 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 North side of CR 30, 1,025 ft. East of CR 9, common address of 25821 CR 30 in Harrison Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0628-2019*.

There were four neighboring property owners notified of this request.

Tyler Sloat, 25821 CR 30, was present for this request. Mr. Hesser noted the site plan for this request and the previous request were switched. Mr. Miller pointed out one of staff's findings states that the Developmental Variance will eliminate the need for outside storage, and Attorney Kolbus mentioned this request does not include the north portion of the property. Mr. Miller clarified all outside storage is on the adjoining parcel. Mr. Atha clarified no sign will be installed. He then questioned the number of outside employees, and Mr. Sloat responded two.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser noted he has the same concern with this request as the previous one.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for vehicle and equipment repair 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 8/30/19) and as represented in the Special Use 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 8/30/19) and as represented in the Developmental Variance application.

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

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

No: Randy Hesser.

Mr. Hesser wished Mr. Sloat success in his business despite his vote, because he believes it is needed in this area.

15. The application of *Sycamore Hill School District 64-1 Clinton (Buyer) & Ralph O. Bontrager & Dorothy Bontrager, Husband & Wife (Sellers)* for a Special Use for a school, for a 7:1 depth-to-width-ratio Developmental Variance and for a 50 ft. lot-width Developmental Variance (Ordinance requires 100 ft.) to allow for the construction of a school on property located on the West side of CR 37, 1,300 ft. South of CR 38, in Clinton Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0678-2019*.

There were four neighboring property owners notified of this request.

Larry Miller, 66601 CR 37, Millersburg, was present for this request representing the school. He stated the request is to allow for a school on property with only 50 ft. of road frontage as instead of the required 100 ft. to accommodate the proposed school and playground locations. Mr. Hesser questioned how 50 ft. versus 100 ft. of road frontage affects the playground. Mr. Larry Miller responded it would be difficult to fit a playground on the property, because creating a parcel with three acres and 100 ft. road frontage would put more property closer to the road. He explained the property layout they typically use for a school and pointed out the proposed septic location. He continued saying the Developmental Variance would allow for more property in the back. Mr. Hesser asked if the adjoining properties are owned by the seller of the subject property. Mr. Larry Miller responded no, and he noted the owners of the surrounding properties. He went on to say they would rather purchase three acres than four for financial reasons. Mr. Hesser pointed out the submitted site plan shows Ralph & Dorothy Bontrager own the surrounding properties. Mr. Larry Miller stated the school is purchasing property from Ralph & Dorothy Bontrager, but Larry Hochstetler just purchased the adjoining property to the north. He explained Ron Justice completed the survey/site plan, and he is not sure why the incorrect property owner is shown. Mr. Campanello suggested the deed may not have been recorded when the site plan was submitted. Mr. Hesser noted the owner of the adjoining north property is incorrect on the submitted site plan. Mr. Lyon asked what material will be used for the proposed driveway. Mr. Larry Miller responded the drive is existing from an old calf barn, and they will use gravel for the drive. Mr. Lyon then questioned the amount of traffic to/from the property. Mr. Larry Miller explained they typically have 35 to 40 students that mostly use ponies to get to school.

Michael Rink, 65164 CR 37 was present with some concerns about the request. Mr. Rink stressed he has no problems with the school house, and he would much rather have that on the neighboring property than a hog barn. However, he stated he is concerned with the amount of noise the fans on his grain bins produce. He went on to say standing in front of the fan feels like being in a jet engine. He stressed October is the main time the fans are used, and they run for two to three weeks. He added he guarantees the school windows will rattle, but the school said they

have no problem with it. He stated he wants assurance that he will not be forced to move his existing grain bins, due to the noise they cause even across the road. Mr. Hesser stated Mr. Rink's property is zoned agricultural and in compliance as far as the Board is aware. Mr. Rink stressed anything is better than a hog barn, and there is a rumor going around that one will be constructed on the property behind the proposed school. Mr. Miller stressed the law guarantees that those in an agricultural area can keep their equipment. Mr. Rink also mentioned school children and the traffic on their road cause a safety concern. He stressed CR 37 is heavily travelled when the children go home from school, and the RV industry utilizes this road. He suggested the children read a bicycle safety book and learn the signals. He again stressed his concern is the noise produced by the fans, and he would prefer the school house to a hog barn.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser request the last sentence in Finding #3 for both Developmental Variances be removed, because it states previous land splits caused the need for the Developmental Variance. He explained he was originally opposed to the variances, because he believed it was a choice the petitioner made. However, he continued saying Mr. Larry Miller explained their reason for obtaining only three acres to have a buildable lot, but it was not caused by previous land splits.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a school be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 9/13/19) and as represented in the Special Use application.

Further, the motion also included that a 7:1 depth-to-width-ratio Developmental Variance and for a 50 ft. lot-width Developmental Variance (Ordinance requires 100 ft.) to allow for the construction of a school be approved based on the following findings and conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals, or general welfare. Schools are allowed in an A-1 zone, and sight distance will not be hindered.
2. Approval of the request will not cause substantial adverse effect on neighboring property. This is a 3-acre parcel in a low-density residential and agricultural area, and the area will remain residential and agricultural in character.
3. Strict application of the terms of the Zoning Ordinance would result in an unnecessary hardship in the use of the property.

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).

2. The requests are approved in accordance with the site plan submitted (dated 9/13/19) and as represented in the Developmental Variance application.

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

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

16. The application of *Carlyle Martin & Barbara Martin, Husband & Wife* for a Special Use for a home workshop/business for a woodworking business 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 West side of CR 9, 1,440 ft. South of CR 40, common address of 66227 CR 9 in Harrison Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0661-2019*.

There were seven neighboring property owners notified of this request.

Carlyle Martin, 66227 CR 9, Goshen, was present for this request along with his wife Barbara. He explained he is requesting a Special Use to add a 2,760 sq. ft. addition onto the back of his shop. Mr. Martin then pointed out the proposed location for the addition and buildings to be removed. He explained he has operated this business since 1987, but staff could not find any record of a Special Use permit. He continued saying he remembers he came into the office when he was 25 years old, and a woman told him he needed a home workshop. He stressed it is a quiet business, and he does not varnish anything on the property. He went on to say he has three employees who help him, and he pointed out his residence on the property. Mr. Martin added he does not work for the public, and 98% of his work is for one company. He mentioned a trailer comes to the property once a week with raw materials. He stressed he does not have any problems with the neighbors, and he is friends with them all. He added he does not believe anyone is present in opposition. He pointed out he does not varnish on the property, and the Elkhart County Health Department inspects his operation every three years. He continued saying he has never had a violation, and he is well under the limit of varnish allowed. He noted he only has a few gallons of varnish for personal use. He stated he would like to construct the addition without needing approval from state, because it is mostly storage with some equipment. He also request approval be permanent.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Lyon stated he has no concerns.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a woodworking 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 9/9/19) and as represented in the Special Use 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 9/9/19) and as represented in the Developmental Variance application.

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

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

17. The application of *Coleman E. Foley & Marilyn Foley, Husband & Wife* for a Special Use for a home workshop/business for a massage therapy business, for a 4 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing accessory structure 1 ft. from the west side property line, 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 Southeast corner of CR 2, 4,500 ft. East of CR 37, common address of 11748 CR 2 in York Township, zoned A-1, came on to be heard.

Mr. Powers presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0677-2019*.

There were four neighboring property owners notified of this request.

Marilyn Foley, 11748 CR 2, Middlebury, was present for this request. She stated they recently purchased the property, and it is no longer a bed and breakfast or wedding venue. She continued saying they have five children that fill up the entire building. She explained they would like to convert a former bed and breakfast room in an outbuilding to a massage studio. She stressed she is the only employee and will only have one client at a time. Mr. Hesser questioned which building the massage parlor will occupy. Mrs. Foley pointed out the house, barn, and outbuilding/workshop on the aerial. She explained one room in the workshop was used for the bed and breakfast, and it will be converted into a massage studio. Mr. Campanello clarified that room was used as the bridal suite for the wedding venue. Mr. Atha reiterated the property is no longer a bed and breakfast, and Mrs. Foley stressed it is now simply a residence.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if the Board should take action to terminate the bed and breakfast request. Attorney Kolbus responded he does not believe that is before the Board, and Mr. Hesser pointed out it was part of the submitted materials. He then read the included letter requesting the termination of previous requests. Attorney Kolbus agreed the Board should act to rescind all previous requests.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that all previous Special Use/Developmental Variance requests for this property be rescinded at the request of the petitioner.

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

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a massage therapy 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 9/13/19) and as represented in the Special Use application.

Further, the motion also included that a 4 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing accessory structure 1 ft. from the west side property line, and for 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. Variances from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).
2. The requests are approved in accordance with the site plan submitted (dated 9/13/19) and as represented in the Developmental Variance application.

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

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

18. The application of *Andrew W. Martin & Bonita M. Martin, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for a woodworking shop and retail sales showroom to allow for the construction of an addition to the woodworking shop 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 North side of CR 32, 2,000 ft. East of CR 7, common address of 26589 CR 32 in Harrison 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-0687-2019*.

There were nine neighboring property owners notified of this request.

Andrew Martin, 26589 CR 32, was present for this request and stated he would like to construct an addition onto the existing shop building. He continued saying the addition will be used for agricultural and shop storage. Mr. Hesser noted the site plan is detailed, and Mr. Miller mentioned this request eliminates outdoor storage. Mr. Campanello added this company become a pretty big. Mr. Hesser clarified he only has two outside employees.

Rocky Rigsby, 26572 CR 32, came on in favor of this request. He stated Mr. Martin is very successful, and he can see crops growing, a lush garden, kids playing, and Mr. Martin very busy. He stressed this business is flourishing, and it is called Indiana Heritage. He continued

saying he is in favor of supporting local people and businesses. He added Mr. Martin is doing a great job.

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 an Amendment to an existing Special Use for a home workshop/business for a woodworking shop and retail sales showroom to allow for the construction of an addition to the woodworking 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 8/30/19) and as represented in the Special Use Amendment application.

Further, the motion 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. Variances from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 8/30/19) and as represented in the Developmental Variance application.

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

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

19. The application of *Yawell Properties LLC* for a Use Variance to allow for a second dwelling on a zoning lot and for a 120 sq. ft. gross floor area Developmental Variance (Ordinance requires 900 sq. ft.) to allow for an existing dwelling on property located on the Northwest corner of Hill Top Dr. & Pine Cone Dr., 1,000 ft. West of CR 39, 2,000 ft. South of SR 120, common address of 53287 Hill Top Dr. in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0601-2019*.

There were five neighboring property owners notified of this request.

Brian Templeton, 18532 CR 14, Bristol, was present for this request and submitted a packet to the Board [Attached to file as *Petitioner Exhibit #1*]. Attorney Kolbus asked when the petitioner purchased the property. Mr. Templeton responded about two months ago, but he is unsure of the exact date. He explained they purchased the property as a two dwelling parcel, and it was listed as such on the MLS. He continued saying they came in to pull a permit to split the utilities for the buildings after closing on the property, because the previous owner had never split them. He stressed they

felt it would be better for the tenants to pay for their own utilities rather than setting a price for them. He went on to say they then discovered that the county did not show two dwellings, and a permit could not be found allowing both dwellings. He stated he filed for a Use Variance at that time. Mr. Templeton noted after he filed for the Use Variance they found a copy of the permit pulled for a studio apartment. He explained the family of the owner who constructed the second dwelling assured them he received a permit and constructed it legally. He continued saying they found the original permit and receipt, which he submitted in his packet. He added three inspection requests, and two inspection results are also included in the packet. He explained they investigated to see what taxes had been paid on this building, and it has been taxed as a residence since 2009. The documentation for the taxes was also attached to the packet. He went on to say the packet also includes documents from the assessor that show the building as both a detached garage/boathouse and 780 sq. ft. of living quarters when the correct box is clicked. Mr. Templeton again addressed the submitted building permit, and he stressed the property was permitted and legally constructed. He continued saying they do not feel the property was sold to them in error, because the seller went off of the information they had available to them. He stressed the building is not an illegal structure, because it was permitted and used that way since construction in 1998. He pointed out the property has always been a rental property, and the original owner resided in the trailer and rented out the studio apartment. He continued saying the previous owner's daughter then purchased the property and continued renting out the apartment. He mentioned taxes have been paid on the building as a rental, and the studio apartment is in great condition. He explained Ezra Roth constructed the apartment, and he remembered it being permitted and constructed correctly. Mr. Hesser asked if the mobile home was existing when the apartment was constructed. Mr. Templeton responded no, and he submitted permits in the packet for both the mobile home and apartment that show they were constructed at the same time. He stressed both buildings were constructed/placed at the same time. Mr. Hesser reiterated the mobile home was placed on the property at the same time the apartment was constructed. Mr. Templeton explained $\frac{1}{4}$ of the mobile home sits on a storm shelter that houses the utilities, and the rest is on a concrete foundation. He added the studio apartment/garage is next to it. Mr. Miller request staff clarify this situation. Mr. Auvil stressed a permit does not necessarily mean a legal land use. He suggested the apartment may have been permitted as an accessory living area to the mobile home, because the word studio does not necessarily mean a separate living area. He stated the structures are currently used as two rental units by two different families. He noted the property has always been one parcel. He mentioned the Planning Assistant who issued the building permit was Deb Johnson, and he believes she was part of the Elkhart County Highway staff. He went on to say he is unsure why she signed off on the permit, because he believes she was reviewing driveways at the time. He again stressed issuing a permit in error does not justify or create a legal standing for a use/structure. Mr. Templeton responded he believes the county should stand behind the permits they have issued, and the submitted permit shows it was issued by Patsy Pippinger. Mrs. Britton clarified Patsy Pippinger was a previous Planning Assistant, and Deb Johnson also worked as a Planning Assistant prior to working for the Highway Department. Mr. Lyon and Mr. Miller also agreed that Deb Johnson worked as a planning assistant. Mr. Templeton added staff was not aware of the building permit for the apartment, but he brought it to their attention a week ago. He continued saying the Staff Report refers to the building as an illegal structure, but it was not constructed illegally as shown by the submitted building permit. He noted a few inspection reports were also submitted,

but he was unable to obtain them all. He went on to say all inspections were completed. He stressed he has no legal standing to go back on the seller of the property for advertising it as two residences, because they can provide the building permit. He stressed the sellers have documentation to prove that it was legally sold as a two residence parcel. Mr. Auvil pointed out this situation was not allowed in the previous Zoning Ordinance. He explained two primary residential structures are not allowed on a single parcel in either the new or old Zoning Ordinance. He suggested information was either conveyed incorrectly, not conveyed, or lost in translation. Mr. Miller noted the property owners did nothing malicious or out of line. Mr. Campanello questioned the square footage of the apartment, and Mr. Templeton responded 780 sq. ft. of living area. Mr. Lyon asked if the apartment is two stories. Mr. Templeton explained it is a single story of living area above a two stall garage, and a portion of the garage is used for utilities and stairs to the apartment. Mr. Campanello pointed out the residence is under the 1,000 sq. ft. cap for an accessory dwelling. Mr. Hesser mentioned the minimum square footage for a dwelling is 900 sq. ft. Attorney Kolbus noted the request includes a Developmental Variance for the square footage of the residence. Mr. Hesser stated he believes the second residence also does not meet other requirements for an accessory dwelling. Mr. Auvil clarified the property is less than an acre, and one acre is required for an accessory dwelling in an A-1 zone. Mr. Templeton asked if the Board would like to see pictures of the apartment, and Mr. Campanello responded the Board acts only on land use. Mr. Lyon asked if any of the neighbors have a problem with this request, and Mr. Templeton responded no. He continued saying they spoke to a neighbor who remembers the apartment being used as a residence since construction. He added the manager of Pine Hills planned to send a letter in favor of the request. However, he does not have it yet, because corporate needed to approve it for legal reasons. He pointed out Pine Hills owns the majority of the subdivision, but he owns one of the largest lots at around .75 acres. He added plenty of parking is available to accommodate both tenants, and the garage is utilized by the studio tenants. He stressed that structure will not be used by the tenant of the mobile home. Mr. Miller again stated no malicious intent was not a factor in this situation, and he asked how the Board can rectify this situation. Attorney Kolbus responded the Board can grant the petitions. Mr. Campanello suggested granting the petition, but requiring this use be corrected at the next sale. Mr. Miller pointed out eliminating the second dwelling would diminish the petitioner's property value, and he does not believe that is right. Mr. Atha noted two dwellings on a parcel are not typically approved, but it was not done with malicious intent. Attorney Kolbus stressed he is not sure denial of this request would hold up in court. Mr. Hesser stated that was also his concern, and this property has openly been used as two residences for 20 years. He continued he understands Mr. Campanello's concerns, but he is unsure how to rectify that. Mr. Auvil stressed the permit lists the use as a detached garage, domestic storage, and studio loft, and he believes the loft was to be associated with the mobile home. He reiterated the accessory structure had a residential component that was associated with the mobile home. He went on to say the petitioner is suggesting the structures are two primary residences, which he does not believe was the intent of the permit. He mentioned the permit does not specifically state that separate families can live in both the mobile home and studio apartment. Mr. Campanello responded he believes it would be difficult to determine the intent behind the permit, and the Board should not make that determination. Mr. Miller stated he is in favor of approving the request, and he would not want to deal with the legalities involved. Mr. Campanello added he believes the property should be

cleaned up with the next sale. He continued saying there should be some way to accommodate the current owner, but not continue to allow this situation when the property changes hands. Mr. Miller question how Mr. Campanello's position could be defended but not denial of the request. Mr. Auvil asked if the property has two septic systems, and Mr. Templeton responded no. Mr. Auvil stated he does not believe the property meets current septic system standards. Mr. Hesser mentioned he understands staff's position. He continued saying he could justify looking into the intent behind the permit, if it was issued 5 years ago and the staff member was present to state the assumption/intent. However, he stressed 20 years is a long time. Mr. Auvil pointed out staff became aware of the situation, because the petitioner tried to obtain a permit to separate the electric meters. He noted the property only had one meter. Mr. Templeton noted the property has two mail boxes. Mr. Hesser stated the Board has been diligently denying two residences on one property, and he believes it should remain that way unless the Commissioners change the Zoning Ordinance. He continued saying he also does not like approving request due to the property being used that way for several years. However, he does not feel comfortable defending denial of this request due to the time that has passed. He went on to say he does not like approving this request due to the small size, but he is unsure how to resolve the issue. He explained he is leaning towards approval of this request with the hope that it sorts itself out in the future. He noted he has not heard any other solutions to the problem. Mr. Auvil clarified approval of this request will establish two primary residences less than 6 ft. from each other. Mr. Lyon added it is not a good situation. Mr. Hesser stressed he does not believe approval of the request establishes a precedent due to the very unique circumstances. Mr. Miller added the unique circumstances could be argued easier than denial of the request.

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 this request for a Use Variance to allow for a second dwelling on a zoning lot 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.
2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.
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 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 8/21/19) and as represented in the Use Variance application.

Further, the motion included that a 120 sq. ft. gross floor area Developmental Variance (Ordinance requires 900 sq. ft.) to allow for an existing dwelling be approved based on the findings and conclusions of the Board:

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

The following conditions were imposed:

1. A variance from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).
2. The requests are approved in accordance with the site plan submitted (dated 8/21/19) and as represented in the Developmental Variance application.

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

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

No: Tony Campanello.

20. The application of *Jesse Jay Graber & Luetta Graber, Husband & Wife* for a Use Variance to allow for two existing dwellings on a zoning lot on property located on the North side of SR 4, 1,555 ft. West of CR 37, common address of 13213 SR 4 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 #UV-0690-2019*.

There were 13 neighboring property owners notified of this request.

Jay Graber, 12865 CR 30, was present for this request and stated he purchased the property in March of 2017. He continued saying he came in to pull a permit for an agricultural storage building, and he was told a permit could not be issue due to the two residences on the parcel. Mr. Hesser noted the questionnaire states both residences were constructed prior to the Zoning Ordinance. Mr. Graber responded one was constructed in 1860 and the other in 1952. Mr. Hesser asked if the dates of construction make the buildings legal non-conforming. Attorney Kolbus noted the buildings would be considered legal non-conforming, but the property cannot be expanded without losing that status. Mr. Campanello clarified a new agricultural building will not be permitted on a property this size due to the legal non-conforming use. He then asked the square footage of the residences. Mr. Graber responded the accessory dwelling in question is 30'x 40' (1,200 sq. ft.), and he noted the attached garage is larger than the residence. He added they have lived in the area for 40+ years, and both residences have always been occupied. He stressed this situation was not started in the last 20 years. Mr. Hesser asked if the residence is rented out or lived in by a family member. Mr. Graber explained they live ½ mile down the road and rent out both of the residences. Mr. Campanello stressed the second dwelling was probably used as a

dowdy house when it was constructed, but it cannot be considered an accessory dwelling without the petitioner residing on the property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the residence in question does not meet the requirements for a dowdy house, but it will also be a challenge to subdivide the property due to the crowded nature of the area. However, he believes a Minor Subdivision would rectify the situation, and the possibility of a subdivision is cited as a reason for denial. Mr. Auvil responded the locations of the residences will make a subdivision difficult, and some Developmental Variances will be triggered. However, he continued saying a subdivision is possible. Mr. Hesser questioned the owner of the neighboring properties, and Mr. Graber pointed out a 2.7 acre parcel and residence that they also own. He went on to say they can complete a subdivision, if this request is a problem.

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

Motion: Action: Denied, Moved by Randy Hesser, Seconded by Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for two existing dwellings on a zoning lot be denied.

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

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

Mr. Hesser suggested Mr. Graber speak to staff about other possible solutions.

21. The application of **Jennifer H. Boehm** for a 38 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of a garage 12 ft. from the centerline of the right-of-way on property located on the East side of North Shore Dr., 300 ft. South of Bell Ave., East of SR 19, common address of 50938 North Shore Dr. in Osolo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0610-2019*.

There were five neighboring property owners notified of this request.

Mr. Auvil stated staff discovered that the proposed building would be in the right-of-way, and they attempted to call Jennifer Boehm at least three times to explain the disconnect between her property and the site plan. He continued saying they recommended she withdraw this petition, but she did not return any of staff's calls. He added the property has since changed hands. Mr. Miller noted Jennifer Boehm is no longer the petitioner.

Danny Books, 50938 North Shore Dr., the new owner of the subject property, came on in favor of the request. He stated Mrs. Boehm was to complete this request on their behalf, because the sale of the property was contingent on their ability to construct a garage in front of the residence. He continued saying the information she provided them is different from what staff just explained. He mentioned upon closing she provided them with a permit from 1990 for a garage in front of the residence as proof that one could be constructed there. He added they took that as proof that one could be constructed, and they did not realize it was from 1990. He stressed they would not have purchased the residence, if they had known that the permit no longer applied to

the property. He request some leniency and approval for a garage to provide safe storage for his vehicles. He explained his house flooded two weeks ago from the heavy rain. He noted the water was only an inch away from the electric box, and it almost electrocuted them in their sleep. He went on to say Michiana Construction is currently working to construct a field system. He added another contractor is repairing the structure, because the soil washed out from underneath the residence. He explained building a garage in the proposed location will remedy problems with the current parking situation, because the concrete needs to be removed anyways. He noted it will cost him an additional \$25,000 for concrete work to construct a garage behind the residence. Mr. Campanello questioned, if a garage will fit in the back with a septic system. Mr. Books responded the property does not have a septic system, because it is on sewer. Mr. Lyon asked if the neighboring property is still vacant. Mr. Books explained an older woman owns that lot, and she will not sell it. He went on to say their neighbors also approached her about the property, but she refused to sell it. He then submitted the permit from 1990 for an attached garage *[Attached to file as Petitioner Exhibit #1]*. Mr. Auvil explained staff assumes the attached garage on the submitted permit was constructed onto the residence and later converted into living area. Mr. Books stated Mrs. Boehm was under the impression that a permit would be issued for the proposed garage, since the submitted permit was issued. Attorney Kolbus asked if the petitioner has seen the aerial of his property, and he responded yes. Attorney Kolbus stressed the property line is farther from the road than depicted on the site plan. Mr. Books responded he understands the power lines follow the right-of-way, and Mr. Campanello stated it provides an area for utilities. Mr. Books pointed out the driveway does not even have room to park a car outside of the right-of-way. Mr. Campanello noted at least three existing structures are partially built into the right-of-way, and that is typical for a lake property. Mr. Books stressed it is normal for buildings to be close to the road on lake properties. He continued saying he understands most are older structures, but he knows of a few newer structures built that close. Mr. Campanello explained the Board has given permission in some cases for structures closer to the road than allowed. Mr. Books stated he shrunk the proposed garage to a 22'x24' to alleviate some of the Developmental Variance requested. Mr. Lyon asked if the south side of the property has room for a driveway back to a garage. Mr. Brooks pointed out he barely has enough space for a drive along the south side property line, and he only has ten feet before he is too close to the neighboring property. He also mentioned a concrete pad that needs to be removed to accommodate the water rushing onto his property.

Mr. Powers came on and submitted notes from a call he received from Norma Lockwood, 26259 Bell Ave. *[Attached to file as Staff Exhibit #1]*, and he pointed out the vacant parcel she owns on the aerial. He stated she suggested the subject property should be resurveyed, because she believes their fence is actually located on her property. He went on to say she also had concerns that the petitioner may drive on her property. He explained Mrs. Lockwood has some health issues, and she was unable to attend the hearing.

There were no remonstrators present.

The public hearing was closed at this time.

Attorney Kolbus stressed the most the BZA can grant is a zero lot-line Developmental Variance, and the Commissioners would need to approve anything in the right-of-way. Mr. Hesser stressed he does not believe it is even possible to fit even a smaller building on the property without partially being in the right-of-way, and Mr. Auvil agreed. Mr. Hesser continued saying he is not opposed to tabling the request and allowing the petitioner time to submit a revised site plan with

the building completely on the property, but he does not believe that is even possible. Mr. Auvil stated the petitioner could construct a small garage to fit a motorcycle. Mr. Campanello noted this situation involves a lot of money, and Mr. Hesser added he believes the petitioner was deceived by the seller. Mr. Books stressed it will cost him \$50,000 to construct a garage behind the residence. He continued saying a lot of other work is needed to make the residence safe for his family, and Michiana Construction is currently in the process of correcting it. He added a contractor is also coming out to investigate installing a tier system to help with the water, but he still needs to repair the concrete out front to alleviate run-off coming directly at his residence. Mr. Hesser questioned what the petitioner would need to ask the Commissioners, and Attorney Kolbus responded he needs permission from them to build in the right-of-way. He again stressed the Board can only grant a Developmental Variance up to the property line. Mr. Hesser added the subject property is on a corner, and he would be surprised, if the Commissioners approved it. Mr. Books responded he does not believe the proposed structure would block the right-of-way any more than his car parked there. Mr. Hesser pointed out parking in the right-of-way is different from constructing a building in it. Mr. Books stated he understands a building would block the line of site, but the overhead view does not accurately depict how the property appears from the road. Mr. Hesser stressed this is an unfortunate case, and some buildings on the neighboring properties have buildings that appear to be partially in the right-of-way. However, he noted the residence on the subject property is already very close to the right-of-way line. He continued the owners of lake properties have to choose between a long yard out to the lake or a garage in the back. He stressed he is not sure how the Board can approve this request. Mr. Campanello pointed out the neighbors will be against him constructing a garage behind his residence, because they would see it as too close to the lake and blocking their view. Mr. Lyon added the property is lower in the back. Mr. Miller expressed a concern that the new building will redirect water onto the neighboring properties. Mr. Books responded he contacted the Elkhart County Highway Department in regards to road drainage, and he was informed it is the property owners' responsibility. Mr. Campanello stressed he believes the county needs to make improvements to protect his property. Mr. Books explained someone from the Highway Department came out and assessed the situation when he was not home, and he has been unable to contact them. Mr. Hesser stressed what happened to the petitioner is a shame, but the Board cannot legally approve a building in the right-of-way.

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

Motion: **Action:** Denied, **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 38 ft. Developmental Variance (Ordinance requires 50 ft.) to allow for the construction of a garage 12 ft. from the centerline of the right-of-way be denied.

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

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

No: Tony Campanello.

22. The application of *Grace Point Apostolic Church, Inc.* for an Amendment to an existing Special Use for a place of worship to allow for an addition on property located on the Southeast corner of Ash Rd. & Charla Ln., 1,825 ft. South of CR 8, common address of 54662 Ash Rd. in Cleveland Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0692-2019*.

There were 17 neighboring property owners notified of this request.

Again, no petitioner was present. Mr. Hesser asked staff if they heard from the petitioner in regards to their absence, and they responded no. He noted the Board previously asked for those present, and no one responded in favor or opposition. He then asked if the petition should be tabled due to the absence of the petitioner. Attorney Kolbus explained that is an option, but the Board has also granted requests in the past with no one present when there were no concerns. Mr. Hesser pointed out the request is to double the size of the existing building, and he believes there may be some questions. Attorney Kolbus suggested tabling the request until the next meeting, and the Board can then act on the request, if the petitioner is still not present.

There were no remonstrators present.

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

Motion: Action: Table, **Moved by** Randy Hesser, **Seconded by** Roger Miller that this request for an Amendment to an existing Special Use for a place of worship to allow for an addition be tabled until the November 21, 2019, Elkhart County Advisory Board of Zoning Appeals meeting, due to the absence of the petitioner. If the petitioner fails to appear for the November 21, 2019, meeting, the Board will act on the petition in their absence.

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

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

23. The staff item for Stanley J. & Eldora A. Schrock (SUP-0634-2017) was previously heard as item #7 on page 3.

24. The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary