

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 20th DAY OF FEBRUARY 2020 AT 8:30 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

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

Roll Call.

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

2. A motion was made and seconded (*Miller/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 16th day of January 2020 be approved as read. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Campanello/Atha*) 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 ***John M. Miller & Luetta Fay Miller, Husband & Wife*** for a Special Use for a ground-mounted solar array on property located on the East side of CR 35, 1,025 ft. South of CR 20, common address of 59190 CR 35 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0031-2020*.

There were nine neighboring property owners notified of this request.

Betsy Salyer, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present for this request. She stated the petitioners would like to place a ground-mounted solar array just north of the chicken barn, and she pointed out its approximate 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** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a ground-mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 1/13/20) 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 *Kenny Stoltzfus (Buyer) & Marvin Stutzman & Saraetta Stutzman, Husband & Wife (Sellers)* for a Special Use for a home workshop/business for retail sales and repair of power tools on property located on the West side of SR 15 & West end of CR 14, common address of 55985 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-0034-2020*.

There were 11 neighboring property owners notified of this request.

Paul Hochstetler, Freedom Builders, 54824 CR 33, Middlebury, was present representing Kenny Stoltzfus. He explained the petitioner has an existing Special Use for a home workshop/business located on US 20 just east of CR 33, but their business will be taken for the road widening project. He continued saying they would like to move their business to the subject property. He stated they have a purchase agreement for the property pending approval of this request. He added their business is a small scale operation with the only employees being Mr. Stoltzfus and his father-in-law. He mentioned they currently have a 4'x4' sign that they would like to use at their new location. Mr. Hesser asked if the existing sign was approved as part of their previous Special Use, and Mr. Hochstetler was unsure. Mr. Lyon asked the sign size, and Mr. Hochstetler reiterated it is 4'x4'. Mr. Miller asked if the sign was included in the application, and Mr. Hesser pointed out it is mentioned in #18 of the questionnaire and the Staff Report. Mr. Miller noted the sign was not included on the site plan, and Mr. Hochstetler explained he probably missed it. Mr. Hesser asked the sign's proposed location, and Mr. Hochstetler responded he is not sure. He went on to say he assumes it will be located near the driveway, but he is not certain. Mr. Atha asked if staff can approve a revised site plan with the sign location, and Mr. Hesser responded yes. He then asked the need for a 4'x4' sign, and Mr. Hochstetler responded they want to use the existing sign, which they plan to move to their new location. Mr. Miller asked if the shop building is existing. Mr. Hochstetler explained the building towards the back of the property is agricultural, and the one closer to the residence will be added onto for their business. He noted the petitioners also plan to add onto their residence. Mr. Miller clarified the petitioners will live in the residence. Mr. Hochstetler explained the residential addition is not associated with the home workshop/business, but he included it on the site plan. Mr. Miller questioned stamping or grinding on the property. Mr. Hochstetler responded the petitioners will use a lathe and power tools, and he believes the loudest equipment will be an air compressor or generator.

Brent Dyer, 18023 CR 14, was present in favor of this request. He stated he wants the Stutzmans to be able to sell this property, and he is in favor of the new owners moving their business there. He went on to say he believes this operation will benefit the area, and he pointed out a nearby business on the aerial. He noted the mentioned business is a heavier operation than the proposed one. He added this area already has multiple signs on the road, so he does not see an issue with the proposed one. Mr. Atha questioned the size of the existing signs, and Mr. Dyer responded larger than 4'x4'. He again stressed the proposed sign will fit with the neighborhood. He then mentioned he would like a stop light installed at the corner of SR 15 & CR 14, because the high school students from North Ridge speed down the road. He continued saying he has almost been hit, and it is dangerous to pull onto the road.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser pointed out a home workshop/business allows a 4 sq. ft. sign. Mr. Campanello stated he is not opposed to allowing the proposed 4'x4' sign, since the petitioners are relocating an existing business. He then suggested a revised site plan showing the sign be approved by staff. Mr. Hesser questioned if the sign deviation requires a Developmental Variance or is included as part of the Special Use, since it was noted in the application. Attorney Kolbus responded the request is approved in accordance with the submitted site plan, and the Board needs to clarify, if they want the sign to be smaller than shown. Mr. Hesser noted the submitted site plan does not include a sign. Attorney Kolbus suggested the Board determine the sign size, and staff can then approve a revised site plan showing its location. He went on to say 4'x4' is a deviation from the allowed sign, and approval of the request as represented includes the sign. Mr. Hesser asked if anyone had a problem with the sign size, and no one did. He added he is in favor of staff approving the revised site plan. Mr. Miller clarified the Board is approving the size, and staff will approve the location.

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

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

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan to be submitted for staff approval and as represented in the Special Use application.
2. Limited to one (1) 4'x4' double-sided sign.

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

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

6. The application of **Bradley J. Jackson** for a Special Use for warehousing and storage of a semi-tractor on property located on the Southeast corner of Crimson Ave. & Tropicana Ave., 925 ft. South of CR 138, West of CR 31, common address of 16224 Crimson Ave. in Elkhart 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-0001-2020*.

There were 27 neighboring property owners notified of this request.

Brad Jackson & Courtney Grey, 16224 Crimson Ave., were present for this request. Mr. Jackson explained he would like approval to temporarily park his tractor-trailer on the corner of his property east of the driveway, and he pointed out the proposed parking area on the aerial. He stressed the semi will only be parked there for a couple of hours, when he is running short on time.

He went on to say it will only be parked there for about four hours at a time. Miss Grey explained the semi is typically only parked there between 4 p.m. and 11 p.m., but only for a two to four hour time frame. Mr. Jackson added the semi-trailer will always be empty when brought to the property, and he does not believe it will weigh any more than his personal trailer that he stores there. Miss Grey noted the semi will not harm their neighbors or roads, because it is comparable to buses and dump trucks, which frequent the area. Mr. Jackson stressed the semi will not damage the roads, because it is always empty and will only be there once or twice a week. Miss Grey added the semi-truck will not permanently be stored on the property. Mr. Miller asked if any similar vehicles are parked in the neighborhood. Miss Grey responded she is not aware of any semi-tractor and trailers, but some trucks are parked nearby. Mr. Jackson responded some box trucks, RVs, and similar vehicles are parked in the neighborhood. Mr. Miller questioned if a neighborhood association is in place for the subdivision, and Miss Grey responded they are not aware of one. Mr. Lyon asked how the neighbors feel about their request. Miss Grey responded one neighbor is against it, but two others do not care. Mr. Lyon asked about the neighbors just east of their property, and Mr. Jackson responded that neighbor is present in opposition. Mr. Lyon questioned if the semi could be turned and parked beside the garage, but Mr. Jackson had some concerns due to the septic system location. He went on to say he could possibly back it in to park between his fence and the property line. Miss Grey stressed they have concerns that pulling it farther onto the property would put it over their septic leach bed. He added he has also parked it on the road for brief amounts of time. Mr. Lyon clarified he does not leave it on the road for long periods of time. Miss Grey added they felt parking a semi on the road would be more of a hindrance than pulling it onto their property. Mr. Atha asked if he brings the semi home for lunch. Mr. Jackson explained it is parked there when he comes home in the evening to pick up supplies and paperwork for the next day, and he then leaves for his next trip. He continued saying it saves him a lot of time, because he does not have to drop the semi off where he typically leaves it. He stressed the semi is never parked on his property over the weekends, but he may clean just the semi-tractor there before a show. Mr. Atha asked if he could leave the trailer somewhere else and only park the semi-tractor on his property. Mr. Jackson responded he could fit just the semi-tractor in the driveway, and Mr. Atha pointed out it would not be parked on the grass then. Mr. Jackson mentioned he could put stone or concrete down along the one side of the driveway to extend it. Mr. Atha again clarified it would not be an inconvenience to leave the trailer somewhere else, and just park the semi-tractor at the subject property. Miss Grey responded some local truck stops would probably allow him to leave his trailer there. Mr. Hesser asked if the semi-tractor can turn around on the property. Mr. Jackson stated he backs in, and he explained how he typically backs in on the aerial. He stressed he wanted to move the semi off of the road, so it does not hinder anyone driving on the road. Mr. Miller questioned the size of the semi-tractor, and Mr. Jackson responded it is full size semi with a trailer. He continued saying it is at about 70 ft. long with the trailer. Mr. Atha clarified the semi-tractor has straight pipes, but Mr. Jackson stated it is not any louder than his diesel pick-up truck. Miss Grey stressed the semi will not run during the noise ordinance time frame, and it is no louder than some of the cars and motorcycles that come through the neighborhood. She explained he is unable to drive around the subdivision to park in the right direction without backing in, because the road is narrow in that area. Mr. Jackson added people park along that road, and he cannot even fit his pick-up and 8 ft. cargo trailer through there.

Mrs. Kratzer submitted a letter from Rachel & David Wise, 16212 Prairie Rose Ave., in support of the request *[Attached to file as Staff Exhibit #1]*. Attorney Kolbus pointed out that property on the aerial.

Angela Ferrell & Rob McKowski, 16192 Crimson Ave., were present in remonstrance. Miss Ferrell stated the fumes produced by the exhaust is their problem with the request. She stressed the semi sometimes runs for two hours at a time causing terrible fumes outside. She went on to say they will be unable to enjoy their backyard in the summertime, if it is allowed to stay and run there. She added it is loud, and the noise is constant the entire time it runs. She noted the semi can be heard running, inside their house with the TV on, which is a nuisance. She mentioned Mr. McKowski has asthma. Mr. McKowski stated he uses two inhalers, and he cannot handle the fumes. He pointed out their property is only 200 ft. from where the petitioner would like to park the semi.

Elizabeth Saldivar, 16173 Crimson Ave., was present opposed to this request and noted she is located 150 to 200 ft. from the subject property. She explained she works second shift and typically comes home from work between 11:30 p.m. to 1 a.m. She stressed she has almost hit the semi-trailer multiple times, because it is parked near where she turns into her driveway. She added the semi is loud when it warms up, and she can hear it inside her house. Mr. Hesser request she point out her residence on the aerial. She then pointed it out along with the area where the semi is typically parked. Mr. Miller clarified the trailer was parked in the road when she has almost hit it. She responded she has only seen it parked in the grass one time, because it is typically parked on the road. Mr. Miller asked if she would be okay with this request as long as the semi is not parked on the road. Mrs. Saldivar responded she does not believe the subdivision streets are made for semis. She added her brother also drives a semi, and he leaves it at the BP Gas Station about four minutes from her residence.

Jose Martinez, 16315 Daisy Ave., was present against this request and pointed out his residence on the aerial. He submitted a packet to the Board *[Attached to file as Remonstrator Exhibit #1]*. Mr. Martinez noted the subdivision only has two entrances and both end up at Tropicana Ave. He pointed out the subject property is located at the corner of Tropicana Ave. & Crimson Ave. He explained the petitioner stated he could not drive around the subdivision to park in the right direction due to people parking and children playing in the street. He stressed he does not want a big rig in his neighborhood. He pointed out the petitioner stated his semi may be parked there from 4 p.m. – 11 p.m., and that is the time when most kids are outside playing. He explained the second page of his submitted packet shows another view of the subject property, and the third shows two vehicles there that have not moved in a while along with a 28' trailer. He went on to say the petitioner has a total of four vehicles, and he is asking to add 18 more tires to that. He stated the last two pictures are of the semi, and he stressed it is large and bright green. He explained the pictures are from last week, since he received the letter and realized it would affect the neighborhood. He questioned if approval of this request will affect property values, because it is an eyesore. Mr. Miller asked what time the picture submitted of the semi was taken. Mr. Martinez checked his phone and found the picture was taken 2/18/20 at 6:26 p.m. He then went on to question if their streets are capable of handling an 80,000 lb. semi. He asked how long a road can sustain the added traffic. He stressed he has lived in his residence since 2008, and he loves his neighborhood. He stated he wishes no ill will towards his neighbors, and he hopes the Board takes his comments into consideration.

Mark Dilworth, 16172 Prairie Rose Ave., was also present in remonstrance and pointed out his residence on the aerial. He stated this is a residential neighborhood, and he would like it to remain that way. He stressed he does not want a truck stop in the subdivision.

Luis Lievano, 16153 Crimson Ave., was present opposed to this request and pointed out his residence next to Elizabeth Saldivar. He stressed their streets were not made for semis, and he is unsure how the petitioner can park it there. He went on to say he believes he would have to drive around the entire subdivision to park it facing west. He mentioned children play in this area, and there is not enough room for a semi. He also asked what will prevent someone else from parking a semi in the neighborhood, if this request is approved. He added he also believes a semi will decrease property values.

Mr. Jackson and Miss Grey came back on to address the raised concerns. Miss Grey addressed the fumes concern and stated the semi fumes are no different than those from a diesel pick-up. Mr. Miller request they address the concerns raised about the semi running for periods of time, fumes, and the dry weight of the semi. Mr. Jackson responded the dry weight anywhere from 30,000 to 32,000 lbs. which is between a trash truck and a school bus. He went on to address the fumes, and he stated any fumes should go straight up due to the build of the truck. He noted his diesel pick-up produces more fumes closer to the ground, where the semi fumes go straight up. Miss Grey stressed the truck does not run for 2+ hours at a time. Mr. Jackson noted he did have a maintenance issue with water, and he could not turn the semi off. He continued saying he understands their frustration with that situation, but he had it fixed and turned off as soon as possible. He explained since he installed a pro-heater, which heats the entire system, and it only needs to run 10 to 15 minutes to air up when he leaves. Mr. Atha clarified the semi will not run for extended periods of time. Miss Grey mentioned it may sound like the semi is running, because she can hear a slight hum from the heater. Mr. Jackson responded the salamander hooks up to the front of the truck to heat the system and produces a hum along with some fumes equivalent to a kerosene or diesel salamander. Mr. Atha questioned if the salamander blows into the engine bay, and Mr. Jackson clarified it blows straight down from the frame. Miss Grey mentioned they take precautions to be aware of the kids outside, and she watches from the window or outside for kids when he come home. She added a lot of the kids watch for his semi and are excited to see it. She then addressed the roads. She stressed the roads are capable of handling the semi, because garbage trucks and buses use it frequently. She added they will no longer park it on the road, because people have to maneuver around it. Mr. Jackson then pointed out where he parks it on the road when needed. He stressed it is never parked in front of anyone else's property. Mr. Miller noted a picture submitted by a remonstrator shows the semi parked on the road facing west, and he asked if it is backed in to face that direction. Mr. Jackson responded yes, and he spoke to an officer about it. He went on to say he understands it should be parked facing the other direction. Miss Grey explained the semi is bright green and hard to miss, since it also has reflectors in the lights. She stated the officer gave them his advice to pull it in rather than backing it in. Mr. Jackson pointed out some box trucks and cars park on the opposite side of the road, and he could probably flip it around to match them, if requested. Mr. Miller mentioned one of the submitted pictures shows a large trailer parked on the property, and he asked if it will remain there. Mr. Jackson responded it is used to store his pulling tractors for fairs. He continued saying it travels with him for events during the summer, which happen about every weekend. Miss Grey noted the mustang does not

currently move, because it is winter. She added the blue car is a secondary vehicle that has moved. She stressed it will leave the property once she sells it.

The public hearing was closed at this time.

Mr. Miller stated he understands why the petitioner wants to park his truck on the property, but it is difficult to have that large of a vehicle on the subdivision roads. Mr. Hesser pointed out the Board has denied these requests in most cases even in fairly rural areas. He continued saying he understands it is hard to find places to park them, but the Zoning Ordinance does not allow them in residential areas. He added this area is too dense for the proposed use. Mr. Atha explained he is against approval of both the semi-truck and trailer. He noted the Board typically denies request to park both, and Mr. Miller added they have also denied parking just the semi-tractor. Mr. Atha noted one problem is typically that the semi needs to warm up for an hour before leaving. Mr. Miller reiterated he understands their desire to park a semi on the property, but the Board typically denies these request.

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

Motion: Action: Deny, Moved by Roger Miller, **Seconded by** Denny Lyon that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for warehousing and storage of a semi-tractor be denied.

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

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

No: Tony Campanello.

7. The application of *Ijaz S. Habib & Kalsoom Ijaz Habib, Husband & Wife* for a Special Use for warehousing and storage of RVs and vehicles on property located on the South side of CR 26, 1,920 ft. East of CR 1, common address of 29650 CR 26 in Baugo 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-0936-2019*.

There were 13 neighboring property owners notified of this request.

Ijaz Habib, 29650 CR 26, was present for this request. Mr. Miller asked if the request is to park his personal vehicles on the property. Mr. Habib explained he would like to start a small RV and boat storage business for use by private individuals. Mr. Lyon asked how RVs will exit the property, and Mr. Habib submitted an updated site plan *[Attached to file as Petitioner Exhibit #1]*. Mr. Miller asked if the petitioner currently owns and resides on the property, and Mr. Habib responded yes to both. He went on to say he request a second driveway through the Highway Department, but they denied the request. He explained they told him he had to use his existing drive, because a second drive is not allowed on a residential lot. He stated he then changed his plan to what is shown on the submitted site plan. Mr. Lyon asked if the parking area will be paved, and Mr. Habib responded it will be gravel. Mr. Miller pointed out the application states the request is to store RVs and cars. Mr. Habib responded he would also like to store boats. Mr. Miller then asked if the petitioner will be transport the stored items to the property. Mr. Habib explained his plan is to have a space available for people to store their RV, boats, or vehicles that they cannot keep on their own property. Mr. Miller clarified this request is not for a transportation company but to store people's personal items during the winter. Mr. Habib stressed this operation will not significantly increase

traffic, because items will be stored for months at a time. Mr. Miller then questioned where gravel will be placed, and Mr. Habib pointed the proposed gravel areas out on the aerial, including a 40' wide gravel drive. Mr. Lyon reiterated a second drive will not be created off of CR 26, and Mr. Habib responded he will use his existing drive.

Mrs. Kratzer submitted three letters staff received in remonstrance to this request the first was from Robin McLaughlin, 29511 CR 26 *[Attached to file as Staff Exhibit #1]*. The next was from Marlyn Bleile, 29639 CR 26 *[Attached to file as Staff Exhibit #2]*. The last letter was from Keith & Tammy Bainter, 29303 CR 26 *[Attached to file as Staff Exhibit #3]*. She explained all of the letters mentioned concerns about traffic and the use of the neighborhood.

Frank Fisher, 29531 CR 26, was present against this request. He stressed CR 26 was not designed or built for commercial traffic, and it does not have any shoulders. He continued saying increased commercial traffic will lead to increased maintenance costs for the county. He added he believes this operation will decrease the surrounding properties' value. He then addressed light pollution, and he believes lights are necessary in this case for security reasons. He pointed out an existing storage lot located a mile east of the subject property on CR 26 is lit up like the county fair, and he does not want that in his neighborhood. He mentioned they also do not want noise pollution from frequent use of the road by diesel trucks. Mr. Miller pointed out this request is not for a transportation company, and the proposal is only for storage. Mr. Fisher responded the vehicles will still need to be hauled on and off of the property. He voiced some additional concerns about air pollution, trash accumulation, and children's safety.

William Wagoner, 29499 CR 26, was present against this request and he pointed out his property on the aerial. He stressed CR 26 is narrow and partially hilly with a solid double-yellow line. He noted it is only a short distance from the road to the front of the petitioners' house, and he questioned how the proposed gravel drive will fit. He mentioned most traffic in this area travels over the speed limit, and he is concerned accidents will happen. He pointed out vehicles sitting on a storage lot often leak oil or antifreeze and cause trash buildup.

Marjorie Krallman, 29565 CR 26, was present opposed to this request and agreed with the previous remonstrators. She voiced a concern about potential break-ins, because the residence closest to the bypass has been broken into several times. She stressed storage operations are a magnet for break-ins, because RVs and their factories are broken into frequently for their electronics, etc. She continued saying she is not sure how the petitioner could secure the property to prevent break-ins, but that may lead to more home break-ins. She noted most of the area's residents are older, and she would be unable to stop an intruder. She added she has grandchildren who stay with her during the day that like to visit the creek. She went on to say she is concerned about increased traffic around her grandchildren. She stressed she does not mind the petitioners as neighbors, because they keep their property well maintained. However, she is against a business on this property. She added this area is all single family housing without any businesses. She noted she does not want to live in an industrial area.

Mr. Habib came back on to address the mentioned concerns. He stated he moved to the subject property last year, and he keeps it very clean. He continued saying he plans to install some security cameras around his house, because he wants to operate his business correctly. He added he would like to also install a fence in the future for added security. Mr. Miller questioned lighting of the storage lot. Mr. Habib responded any lights on the property will be directed away from his neighbors. He noted the back of his property adjoins the bypass, and a pasture is located just west

of his property. He stated he understands lighting could be an issue for the neighbors across the street, but it will not be directed towards them. He again mentioned he plans to install a fence in the future for security, and he stressed he will do his best to keep the neighbors happy. Mr. Miller questioned the amount of traffic produced by this operation. Mr. Habib responded he does not want frequent traffic to/from the property, and it will only be used for individuals to store their items. He explained he anticipates items being stored on the property for about six months at a time. He noted there should be no oil or antifreeze leaking on the ground.

The public hearing was closed at this time.

Mr. Atha questioned if a Special Use would be required to store items inside a pole barn. Mr. Hesser clarified only personal RVs or boats could be stored in a building without needing approval. He continued saying constructing a building for storage of RVs, boats, or vehicles would require a Special Use. Mr. Miller stated he does not believe this operation will significantly increase traffic, but he is concerned parking recreational vehicles on the property could cause security problems. He stated the property appears to have room for this operation, but he would require fencing and lighting be installed immediately, if he was leaning towards approval. Mr. Atha mentioned he does not believe a storage lot fits in with the area.

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

Motion: , **Action:** Deny, **Moved by** Roger Miller, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for warehousing and storage of RVs and vehicles be denied.

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

Yes: Joe Atha, Roger Miller, Randy Hesser.

No: Tony Campanello, Denny Lyon.

8. The application of *Timothy B. Holmes* for a Special Use for a ground-mounted solar array on property located on the South side of CR 23, 2,370 ft. South of Industrial Dr., West of SR 15, common address of 18524 CR 23 in Washington 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-0025-2020*.

There were three neighboring property owners notified of this request.

No petitioner was present.

Mr. Hesser asked if staff heard from the petitioner, and Mrs. Kratzer responded no. Mr. Atha noted the request is very clear, and Mr. Miller suggested approving it without a petitioner present. Attorney Kolbus pointed out the Board has ruled on requests in the past without a petitioner present, when there were no questions or remonstrators. He went on to say the Board can act now or table the petition. Mr. Miller stated he is in favor of approving the request now. Mr. Campanello pointed out the subject property is in the middle of nowhere. Mr. Miller added it is located just south of the storage areas in Bristol.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a ground-mounted solar array be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 1/10/20) 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.

9. The application of *West Pine School (Buyer) & Diann K. Grise (Seller)* 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 31, 1,500 ft. South of CR 20, 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-0032-2020*.

There were six neighboring property owners notified of this request.

Mr. Hesser questioned the fire station mentioned in the Staff Report, and Mrs. Kratzer responded that was an error. She went on to say Finding #3 should state that a school could not be constructed on this property without a Developmental Variance. She added the next petition is for a fire station, and the sentence regarding it ended up in this Staff Report in error.

Harley D. Bontrager, 57342 CR 116, Middlebury, was present for this request as the contractor. He explained they would like to construct a school towards the back of the property, because it is higher ground. He went on to say the front part of the property is too low for a building or septic system. He stated they would like permission to only have 50 ft. of right-of-way rather than the required 100 ft. to give them a larger area towards the back of the property. Mr. Hesser mentioned part of the request is for a 7:1 depth-to-width ratio Developmental Variance, but the parcel has plenty of road frontage. Mrs. Kratzer pointed out the petitioner plans to subdivide the property causing a 7:1, and she explained the drive will start narrow at the road and open up towards the rear of the property. Mr. Miller noted the site plan shows the proposed property line, and Mr. Bontrager added the property line will be divided, if this request is approved. Mr. Hesser clarified the school will own 50 ft. of frontage, so an easement to the property is not necessary. Mr. Atha asked if a pond is located across the road from the subject property, and he pointed out the area in question on the aerial. Mr. Bontrager responded he is unsure, but he is not aware of a pond located there. Mr. Atha explained a body of water could be a safety concern, due to the number of children who will be on the property. Mr. Campanello pointed out a ditch runs along the back of the subject property.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 Special Use for a school be approved with the following conditions imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 2/6/20) 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 with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 2/6/20) and as represented in the Developmental Variance application.
3. A subdivision must be submitted and approved.

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

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

10. The application of *Jefferson Civil Township of Elkhart County* for an Amendment to an existing Special Use for a fire station to allow for a sign and to add property and for a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence on property located on the Southeast corner of SR 15 & CR 20, common address of 58518 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 #DV-0027-2020*.

There were 23 neighboring property owners notified of this request.

Todd Lehman, SignTech Sign Services, 1508 Bashor Rd., Goshen, was present for this request representing the petitioner. He explained Electronic Message Centers are most commonly used to promote businesses on site, but the fire department will utilize it as a community outreach tool for promoting area activities. He stressed the proposed sign will benefit the community. He noted a frequent concern with EMCs is their brightness, but the government mandates that they dim automatically. He went on to say all manufactures assemble them to dim automatically. He explained the sign goes from 10,000 nits during the day down to 750 nits at night, which is a drastic reduction. He stressed brightness is not typically an issue during the evening hours as long as the sign functions properly. Mr. Hesser asked if the fire station plans to utilize scrolling or changing

messages versus a stationary one. Mr. Lehman responded they follow whatever the ordinance mandates when programming the messages. He continued saying a static message is always recommended, because it has no benefit, if no one can read it. He mentioned they recommend at least a two second message. Mr. Hesser pointed out the subject property is across the street from a school, and the intersection is very busy throughout the day. Mr. Lehman responded the Board's concerns can be addressed, because the sign is programmable. He stressed the sign does not have to utilize any distracting features. Mr. Miller noted most schools have their own EMCs. Mr. Hesser explained his concern is the proposed location right next to an intersection, where he believes the current sign sits. Mr. Lehman added flashy messages are typically used to promote businesses not community activities.

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** Tony Campanello that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a fire station to allow for a sign and to add property 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 1/10/20) and as represented in the Special Use Amendment application.

Further, the motion also included that a Developmental Variance to allow for the placement of an electronic message board within 300 ft. of a residence 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 1/10/20) 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.

11. The application of *Mark A. Stoltzfus and Sueanna Stoltzfus, Husband & Wife* for a Special Use for a home workshop/business for a catering business, for a Special Use for warehousing and storage of a concession trailer, and for a 7:1 depth-to-width-ratio Developmental Variance to allow for an existing residence, accessory, and agricultural structures on property located on the North side of CR 20, 1,500 ft. East of SR 13, common address of 12165 CR 20 in Middlebury Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0028-2020*.

There were 10 neighboring property owners notified of this request.

Fay Schwartz, 103 N. Brown St., Middlebury, was present representing the petitioners who reside at 12165 CR 20, Middlebury. She submitted six consents signed by neighbors agreeing to the Developmental Variance and Special Use on this property *[Attached to file as Petitioner Exhibit #1]*. She then addressed the Developmental Variance and request the Board accept staff's recommendation. She explained the property owners planned to leave the parcel 175 ft. of road frontage, when a 9 acre tract was split from an 18 acre tract in 1994, but it instead ended up with 146 ft. of road frontage. She stated the Staff Report includes a condition requiring an Improvement Location Permit be acquired within 180 days, but no construction is planned for the property at this time. She asked that the condition be removed from the request. She mentioned if the Developmental Variance is denied then residential use of the property would not be permitted. She stressed the Stoltzfus family has lived on the property for close to 24 years, and they would like to remain there. She then went on to address the Special Use request. She explained the petitioners would like to operate a BBQ and ice cream business using an existing structure for supply storage. She continued saying they also plan to purchase a concession trailer that would be parked inside an existing structure. She added they will also add a prep. kitchen in the structure, and the Environmental Health Department is currently working with them on that. She noted they need to meet some additional septic requirements to accommodate grease produced by the BBQ. She stated they request the Board approve the Special Use. She stated the only thing they anticipate might emanate from the prep. kitchen is a BBQ smell, but the property is partially surrounded by M-1 zoning. She explained most delivery vehicles will come from SR 15, and the properties between them and SR 15 are zoned M-1. Mr. Miller clarified no retail sales will take place on site. Mrs. Schwartz responded no retail or restaurant sales will take place on site, because it will simply be a prep. kitchen. She added it is currently a family owned business, and family members will likely be the only employees. She noted they plan to cater, and most of the food will be prepared onsite and then transported to the location. She again mentioned they would like to have a concession trailer, that they would load onsite. Mr. Hesser clarified no new construction is planned for the property, and he request staff address the Improvement Location Permit condition. Mrs. Kratzer pointed out the condition states and Improvement Location Permit is needed within 180 days where required, which does not apply in this case. She explained it does not need to be removed since it states where required.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** 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 Special Use for a home workshop/business for a catering business, for a Special Use for warehousing and storage of a concession trailer 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 1/10/20) and as represented in the Special Use application.

Further, the motion also included that a 7:1 depth-to-width-ratio Developmental Variance to allow for an existing residence, accessory, and agricultural structures 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 1/10/20) 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.

12. Mr. Auvil presented a staff item for *Michael Wass & Juanita Wass, Husband & Wife* (SUP-0834-2019). He explained the request is to approve the amended site plan showing 6' screening around the solar array and the panels moved as far from property line as possible. He stated the petitioner and his neighbor cannot agree on the location of the solar array. He explained staff could not approve the revised site plan, because the neighbors did not agree to it. Mr. Hesser asked if anyone is present for the request, and Attorney Kolbus responded no. He noted site plan approval was brought back as a staff item. He then explained the Board's motion read in part as follows, "if the neighbors do not agree for BZA approval showing 6' screening around the solar array and the panels moved as far from the property line as possible." However, he pointed out the petitioner moved the solar array 10' closer to the property line on the revised site plan. Mr. Hesser mentioned the request was approved with a 3 to 2 vote. Attorney Kolbus stated the Board can require the petitioner submit a revised site plan with the array moved back to the original location at 21.8 ft. from the property line and the requested buffer. He noted the neighbor who was present in remonstrance is immediately north of the subject property, and they wanted the solar array moved as far south as possible in addition to the buffering. Mr. Miller stated the revised site plan shows a proposed buffer. Mr. Hesser pointed out the only site plan showing a buffer also has the array 10 ft. closer to the property line. He explained the petitioner may no longer install the solar array, if it cannot be located closer to the property line. He continued saying the majority of the Board request the array be moved farther from the property line, if possible. He mentioned he understands the effectiveness of the solar panels may be reduced at the 20 ft. setback, and they may not be able to move it farther from the property line than originally proposed. Attorney Kolbus clarified the petitioner stated the proposed location was optimal, but optimal is different than functional. Mr. Hesser responded he understands the efficiency of the array may be reduced, if it is moved, but he is inclined to deny the submitted site plan. He went on to say he believes the original location is reasonable, whether the neighbors agree or not. However, he does not believe

moving the solar array closer to the property line than the original is acceptable. He stressed he has no problem approving a site plan with the array in its original location and the proposed screening. Mr. Atha reiterated the Board agree with the location, but felt a buffer should be installed. Mr. Miller pointed out it appears that the neighbors and property owner cannot agree. He suggested the solar array be moved back to the original location, and he questioned if staff can approve screening at that location. Mr. Atha stressed the Board cannot approve a site plan showing the solar array closer to the neighboring property line. Mr. Campanello stated the petitioner could reapply to move the array closer. He went on to say solar arrays cost around \$100 a square foot, so the petitioner will want to optimize their investment. He noted he believes the solar array could be moved closer to the property line as long as better screening is put in place. Mr. Hesser asked if Board approval of the location and staff approval of the buffering would allow the petitioner the right to reapply immediately or require they wait six months. Attorney Kolbus responded the six month rule only applies to denied requests, and he believes a location change is significant. He clarified the petitioners can reapply immediately, if they do not agree with the Board's decision. Mr. Hesser stated the petitioner must provide an acceptable site plan for this request that meets the imposed condition. Attorney Kolbus explained the revised site plan must show the location as originally proposed and the required screening. He noted the original location was 21 ft. from the property line. Mr. Hesser stressed a revised site plan meeting the outlined criteria can be approved by staff. Mr. Campanello stated he believes the petitioner made a mistake placing the solar array at the 21 ft. setback, and he ensured they can reapply immediately to move the array closer to the property line. Attorney Kolbus reiterated this action will not affect the petitioners' ability to reapply for a solar array closer to the property line. Mr. Atha pointed out the Board only approved the original location of the array. Mr. Auvil stressed the Board determined moving the solar array closer to the property line to be a significant change that can be brought back before the Board without waiting six months. Attorney Kolbus added a new Special Use is required to move the array closer to the property line. Mr. Miller stated he finds it ironic that the neighbors did not want to see the solar array, but the petitioner is attempting to move it as far from his house as possible.

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

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board deny the revised site plan submitted 1/15/20. The petitioner must provide an acceptable site plan showing the solar array location as originally proposed along with the required screening. Any movement of the solar array closer to the property line is a significant change, and a new Special Use can be filed to move it without a six month waiting period.

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

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

13. The staff item for *David R. Kuhns & Marlene J. Miller Joint Tenants with Rights of Survivorship & Brian P. Stutzman & Alane D. Stutzman, Husband & Wife* (SUP-0837-2019) was presented by Mr. Auvil. He explained the request is to approve the amended site plan showing a 20' to 30' buffer between the pasture and any open water source. Mr. Atha stated he attempted to reach Jim Hess from Soil and Water to review the site plan, but he did not receive a response. He went on to say he believes the revised site plan is a significant improvement. Mr. Hesser clarified it addresses the Board's primary concern.

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

Motion: Action: Approve, **Moved by** Joe Atha, **Seconded by** Tony Campanello that the Board approve the revised site plan submitted 1/14/20.

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

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

14. As a staff item, Mr. Auvil presented a minor change request for *Andrew W. Martin & Bonita M. Martin, Husband & Wife* (SUP-0687-2019). He stated the request is to amend an approved site plan to allow for a change in the location of the proposed addition. He explained the addition is moving from one side of the building to another. Mr. Hesser questioned if the dimensions of the proposed addition will change, and Mr. Auvil responded he is not aware of a change. Mr. Atha stated he believes both additions are 60' x 60'. Mr. Auvil noted one addition appears square and the other rectangular to match the existing building. Mr. Hesser asked if the square footage will remain the same, and Mr. Auvil responded yes. He went on to say the new addition cannot be larger than what was originally proposed. Mr. Hesser stated he does not believe moving the addition will change the impact of the use, but additional square footage should not be approved. Mr. Campanello noted 40' x 140' is 5,600 sq. ft., and 60' x 60' is 3,600 sq. ft. He went on to say the proposed addition is smaller than what the Board originally approved. Mr. Auvil stressed the Board can approve smaller additions.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that the Board approve the 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.

15. Mr. Auvil noted the updated Zoning Ordinance is functioning. He went on to say the Planning and Development Department is striving to make processes easier and more efficient, so all petition applications/questionnaires are currently being reviewed/updated. He stressed staff feels the revised documents will flow smoother and answer questions better, benefitting everyone involved. He added drafts will be submitted to the Board for review/approved, because all forms are part of the Rules of Procedure.

Attorney Kolbus asked if the new Zoning Ordinance allows the Board to set the size of the sign for a home workshop/business at the hearing, and Mr. Auvil responded yes. He stressed deviation from the sign standard or number of employees is included as part of the Special Use, and no longer require a separate Developmental Variance.

16. The meeting was adjourned at 10:07 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary