

MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15th DAY OF OCTOBER 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 Vice Chairman, Roger Miller. 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, Ron Norman, Randy Hesser.

2. A motion was made and seconded (*Campanello/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 17th day of September 2020 be approved as read. The motion was carried with a unanimous roll call vote.

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 ***Lisa L. Delp*** for a Special Use renewal for a home workshop/business for an aquatics store on property located on the northwest corner of Lake Dr. & CR 109, north of CR 4, common address of 25573 Lake Dr. in Osolo Township, zoned R-2, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0694-2020*.

There were 26 neighboring property owners notified of this request.

Lisa Weinley, previously Lisa Delp, and Randall Weinley, 25573 Lake Dr., Elkhart, came on for this request. Mrs. Weinley stated they received approval of their request in 2018 for two years. She explained their business expanded in 2019, but then slowed down when Covid hit. She went on to say they still plan to rent or purchase a building for their business, but they cannot afford it at this time. She stressed it is their long-term intention to moving into a commercial space, but she is unsure how long it will take to reach that point. She mentioned they employ five people and applied for the Paycheck Protection Program, which allowed them to keep their employees during the quarantine/pandemic. She stressed small businesses greatly impact the economy. She noted they frequently work with large pet stores, who refer customers to them for services the larger stores do not offer. She added they also work with a full-time DNR officer to ensure they follow all local rules/guidelines. She continued saying they work to prevent foreign fish from being introduced into the lake. She explained they live on the lake and operate as a fish rescue. She stated they believe their operation is a benefit to the economy and local community, and they would like the opportunity to continue to grow their business. Mr. Campanello clarified the petitioners are looking for a commercial building to lease in the future. Mrs. Weinley responded they continually look for a new location, but it is a hard decision. She stated they do not want to lease or buy a location that is not in a retail area where their business can grow. She added they want to be very fiscally responsible with their funds. Mr. Miller noted the business was last approved in 2018, and he questioned how much it has expanded since then. Mrs. Weinley

responded they had grown in 2019 from word of mouth, since drive-by customers are minimal in a residential area. She explained they advertise through Instagram and Facebook, but Covid 19 hurt their business. She stressed it did not grow to the point where they could afford to rent a space. Mr. Campanello clarified the subject property is where they received approval in 2018. Mr. Atha pointed out the Board imposed a two year time limit with the previous approval to allow the petitioners time to find a retail location. He went on to ask, if they believe approval for an additional two years is long enough to find a new location. He stressed this operation is located in a residential area that is not appropriate for a business use. He explained the Board sees a need for a retail location due to their growth. Mrs. Weinley responded on a slow day they typically have two to three customers and up to eight customers on a busy day. Mr. Atha clarified customers do not park on the road. Mrs. Weinley responded parking is available off of the road, and their operation does not cause any traffic problems. She added they have one semi that delivers to the property periodically, but all other deliveries are from straight trucks. She stated she is unsure, if they will be ready to rent a space in two years, and she would have been better prepared to answer that question last year. She stressed she is unsure how long it will take them to recover from the pandemic.

There were no remonstrators present.

The public hearing was closed at this time.

Mrs. Kratzer read a letter from Jack Herrli, 25609 Thelmadale Dr. in remonstrance. Mr. Hesser asked if the mentioned letter was a written comment, and Mrs. Kratzer responded yes. Mrs. Britton explained the letter was included in the Board's packets. Mr. Miller questioned if approval of the request is indefinite, and Mrs. Kratzer responded a time limit can be imposed on the request. She clarified staff did not recommend a time limit, but the Board can impose one. Mr. Campanello stated he believes every growing business should at some point move into a commercial/retail area. He went on to suggest adding a time limit, and Mr. Atha agreed. Mr. Norman added he does not believe it is unreasonable to require the petitioner request approval every two years. Mr. Atha pointed out this operation is located in a dense residential area. Mr. Norman mentioned a complaint about outside storage of fish tanks. Mrs. Weinley explained they receive fish tanks of various sizes for trade-ins that they clean outside before moving them inside. She stressed they do not store tanks outside.

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

Motion: Action: Approve, **Moved by** Roger Miller, **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 a Special Use renewal for a home workshop/business for an aquatics store 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 9/4/2020 and as represented in the Special Use application.
2. Approved for a period of two (2) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

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

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

5. The application of *EJE Industries, LLC (Buyer), & Christopher J. Mandell & Tracy L. Anglemeyer-Mandell, Trustees of Christopher J. Mandell & Tracy L. Anglemeyer-Mandell Trust (Sellers)* for a Special Use for outdoor recreation (soccer fields) on property located on the east side of CR 29, 2,235 ft. north of US 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-0717-2020*.

There were eight neighboring property owners notified of this request.

Mrs. Kratzer stated the petitioners have a few changes they would like to make to the site plan, and she recommended they speak to staff regarding the changes.

Norma Herrera and Hosea Rio, 2212 Cambridge Dr., was present for this request and stated they do have a revision to the submitted site plan. She explained they would like to add sand volleyball courts and an indoor soccer complex, because they recently discovered an indoor complex plans to close. Mr. Miller reiterated they would like to add an indoor soccer complex to the site plan. Mr. Atha asked if the mentioned complex would replace one of the outdoor fields on the submitted site plan. Mrs. Herrera responded the property is a total of 34 acres, and they would like to construct the building in the wooded area. Mr. Norman clarified they would like to construct a building on the property. Mr. Rio explained they would like to construct a multipurpose building that will be used for soccer in the winter. He went on to say it will also have sliding and retractable doors in order to use the building in the summer. He noted the building is their long-term goal, and it would have a turf field. He stated the Elkhart Sports Center will close soon. Attorney Kolbus stressed the request is for outdoor recreation, and a building does not fall into that classification. He went on to say the petitioners can ask for less than what is published in the legal advertisements, but the Board cannot approve more. He stressed the indoor facilities cannot be considered, but they can take into account the outdoor volleyball courts. Mr. Atha reiterated the indoor facility will need to be brought as a separate request, because it is beyond what was advertised. However, he continued the volleyball courts can be considered as part of this request, since it is an outdoor recreation. He then questioned the proposed location for the volleyball court. Mrs. Herrera responded the site plan reflects six soccer fields, and they now plan to have three soccer fields and three sand volleyball courts. Mr. Atha noted he is okay with staff approval of a revised site plan showing the volleyball courts. Mr. Miller questioned hours of operation. Mr. Rio responded they will operate all week long. He explained they will have practices during the week and games/tournaments on the weekends. Mr. Miller then asked if payment will be required to use the fields/courts. Mr. Rio responded they will likely charge a fee to use the courts, but their intention is to provide children something to do and support the community. He went on to say he wishes a facility like this existed when he was younger. Mr. Norman questioned the number of parking spaces. Mrs. Herrera stated they drew in fifty parking spaces at first, but they could clear off more land for future parking spaces.

Phil Byars, 21764 Lodgepole Ln., Bristol, was present speaking on behalf of Gavin & Amber Wilkinson, 56712 CR 29, just south of the subject property. He then proceeded to read and submit a letter from the Wilkinsons *[Attached to file as Remonstrator Exhibit #1]*. The letter included

concerns about traffic, safety, water/drainage, noise, portable toilets, trash, property value, and “Phase 2”.

James Byars, 13400 Wooded Knoll Trl., Middlebury was also present to speak on behalf of Gavin & Amber Wilkinson, 56712 CR 29. He stated he is the president of Fireside Homes, a local contractor in the area, and the general contractor of the Wilkinson’s residence. He explained their residence was constructed to face the corner, because they assumed the neighboring properties would continue to be used for residential/agricultural purposes. He noted the living area faces the subject property with several windows facing that direction. He then pointed out the approximate location of the clay soils in the area, and they discovered that some of the drainage tiles were installed improperly or damaged causing a large amount of run-off from the subject property to the remonstrator’s. He went on to note a portion of the road that was continually underwater for approximately six months, which the county had to rectify and fix the road. He pointed out the area where water would stand during construction of the residence. He stressed without proper drainage the amount of run-off onto the Wilkinson’s property will increase causing potential damage. Mr. Campanello clarified an area on the aerial which appears to be a tree line between the two properties. Mr. Byars responded it is not a significant tree line, and it consists of mostly brush. He added most of the trees are on the subject property.

Vincent Baltazar, Magic Soccer Club, 58685 CR 37, Middlebury, came on with a few concerns that the local soccer community has with the proposed setup. He stated he does not believe soccer fields or clubs are needed in the community, because Goshen, Middlebury, and Elkhart all have thriving clubs. He continued saying they offer recreational play to travel teams, and they have some of the most competitive teams in the state including both boys and girls teams. He explained their staff consists of professionally licensed coaches, and their club is culturally and economically diverse. He added their club is the most affordable in the region with an aggressive financial aid program offering 50% off for anyone with free/reduced lunches at schools. He noted they have partnered with the Ligonier Parks Department, West Noble High School, Goshen Stars, Northwood Pumas (Nappanees’s Club), Elkhart Flames, the Northern Indiana Hispanic Health Coalition, and Chicago Fire (a professional team). He stressed the Magic Soccer Club is a well-established/run club, and he reiterated this area already has several established clubs. He noted he does not believe another soccer club will fill a need in the community, and it will harm the established clubs. He explained their club is non-profit, and they rely on a large player pool to keep costs affordable and offer quality programing. He mentioned an expansive player pool is needed to field competitive teams, and another organization will make it more difficult. He pointed out girls soccer programs are already low causing the need to pair with the Goshen Stars to have a competitive team. He again stressed another soccer club in the community will dilute their player pool and inhibit their ability to field competitive teams. He noted their organization is a member of the Indiana Soccer Association who is a member of the OSU Soccer Association, who strongly encourages consolidated clubs as opposed to the expansion of clubs. He went on to say they would not allow another club in the area to affiliate with them without approval of the existing clubs. He explained the proposed club would not have the ability to affiliate with Indiana Soccer and compete at the higher levels. He pointed out their fields are owned by the Town of Middlebury and open for use by everyone. He continued saying they have 40 acres, Goshen Stars have 36 acres, and the Elkhart Flames have Nibco Fields, which are leasable by anyone in the community. He explained their organization is in the process of receiving approval from the Town of Middlebury to construct

indoor soccer fields, because Elkhart Sports Center closed. He added they have winter programming that they provide, and Goshen Soccer Academy has an indoor soccer complex in Goshen. He stressed he has never met the petitioners, and they have not reached out to him as the executive director of the main soccer club in the community. He went on to say they have not reached out regarding any partnerships, and he does not believe they have been good community partners from the start.

Zach Nickell, 56535 CR 29, the property immediately west of the subject property was present in remonstrance and pointed out his property on the aerial. He stated they found out about this request approximately a week and a half ago. He noted he counted 17 residences on CR 29 between US 20 and CR 14 with an additional one under construction. He then submitted a petition against this request containing signatures from 15 of the 18 residences *[Attached to file as Remonstrator Exhibit #2]*. He added he was unable to obtain the other three owners signatures, but they verbally indicated opposition to the request. He explained the reasons behind their opposition includes traffic and drainage, which were previously addressed. He stated he searched Loop Net for land of adequate size and more appropriate zoning for this use, and he found at least four other properties in the area. Mr. Miller request he address the subject property. Mr. Nickell stressed he believes it is relevant to know that alternative properties exist for this use. He stressed the neighboring property owners share in the concern previously mentioned regarding property values.

David Ganger, 56844 CR 29, came on opposed to this request and pointed out his residence on the aerial. He stated they constructed their residence approximately a year and a half ago, the same time as the Wilkinsons. He noted soccer fields are already located within 8 to 10 minutes of their location. He expressed a traffic concern due to the location of his driveway in reference to a hill that makes it difficult to see vehicles. He stressed an increase in traffic is very concerning, due to his sight lines. He added left turns from US 20 onto the surrounding county roads can be very hazardous, and it took six hours last night to clean up and restore their power after an accident. Mr. Granger then addressed the tile and water issues previously mentioned. He stressed for six months they were unable to use a section of CR 29 due to water, which then caused 2 ft. deep potholes. He added a concern about parking, because he was originally told they would have 100 parking spaces, but only 50 are shown on the site plan. However, he continued he always sees more than 100 cars at soccer games in Middlebury. He stressed he is very concerned that more cars will be on the property than accounted for on the submitted plan. He request the Board impose a restriction regarding lighting and two year time limit, if they do chose to approve the petition. He then submitted a copy of his letter along with a drone picture of the flooded road *[Attached to file as Remonstrator Exhibit #3]*.

Jason Brown, 56189 CR 29, a member of the MYSL, Middlebury Youth Soccer League for fourteen years, was present in remonstrance. He stated his concern is that adding an additional soccer club will negatively affect the existing ones. He explained he knows how dirty the property can become during a game, and he has picked up trash, including feminine products, condoms, drug paraphernalia, and beer/alcohol bottles, which is a concern. He noted he played for the Elkhart adult leagues and has been there during drug shootings. He stressed he loves soccer, but he does not want this operation in his area. He explained the Fairfield area has a need for a soccer club and would be a better location to start a new one. He stated the Middlebury Youth Soccer League operates three soccer fields on Saturdays, and they have approximately 150 cars during the games. However, he continued saying they need 300 spots for overlapping games, due to the number of people coming/going. He stressed the 50 proposed parking spaces will not be enough

for the proposed operation, and they will likely need closer to 400. He added the drive on the site plan is located close to the S curve, where they frequently have close calls. He went on to say the drive should be moved farther south to avoid accidents.

Cheryl Johnson, 56230 CR 29, was present against this request. She stated when accidents happen on US 20, traffic is typically diverted onto CR 29. She stressed it takes a while to turn off of their road onto US 20. She explained she loves the intent behind this request. However, she continued saying CR 29 is not a good location for this operation, because it is narrow and heavily traveled. She expressed concerns that additional traffic will cause backups at the intersection of CR 29 and US 20. She stated although the property is large enough for the proposed use, CR 29 is very narrow, and accident traffic is frequently redirected to their road. She noted she had to take CR 27 after the accident yesterday, and she had a hard time making it home. She again stressed CR 29 does not need the increased traffic caused by the proposed operation. She noted the intersection at US 20 & CR 29 does not have a traffic signal.

Mrs. Britton noted Randy Hesser expressed a concern that the site plan does not reflect 100 parking spaces. He also questioned if portable toilets and concessions will be present on the property.

Mrs. Herrera and Mr. Rio came back on to address the questions and concerns. Mrs. Britton on behalf of Mr. Hesser questioned plans for portable toilets, concessions, and parking. Mr. Rio responded parking appears to be an issue, but they have room to make more than 50 spaces. He stated a remonstrator mentioned approximately 400 parking spaces will be needed, and they have room for that many. He then addressed the portable toilets question, and he responded they would like to construct a permanent restroom facility. Mr. Norman asked if well and septic are located on the subject property. Mr. Rio responded they would install both a well and septic system. Mr. Atha noted a well and septic will be required for the building. Mr. Norman clarified the proposed volleyball courts will be sand courts. He then questioned the proposed parking lot surface, and Mr. Rio responded asphalt. Mr. Norman noted drainage is already an issue in the area, and he questioned if the parking surface should be more permeable. Mr. Campanello stressed the request is for a large scale operation, and a more detailed site plan is needed. He continued saying he believes this request should be brought as a GPUD, General Planned Unit Development, due to its scope and scale. He stated the idea is great, but the petitioners do not have a solid plan for drainage, parking, and expansion. Mr. Miller questioned lighting and night practices/games. Mr. Rio responded lighting is not currently part of their plan for the property, because it is a large expense.

The public hearing was closed at this time.

Mr. Miller stated he is not opposed to the proposed idea, but he does not believe this is the appropriate route for approval. He suggested a GPUD be filed showing drainage, water collection, lighting, etc. Mr. Campanello stressed the proposed operation is larger than just soccer fields, making it is a business. Mr. Atha questioned the property size for the fields in Middlebury, and it was found to be 40 acres. Mrs. Kratzer noted staff recommended approval on the submitted site plan, because no buildings or lights were included, which seemed to fit the area. She continued saying any further expansion would require the request be brought back to the Board. Mr. Miller stated a building would also require building permits. Mr. Campanello added a SWPPP, would be required to construct a building on the property. Mr. Miller reiterated more details are needed for lighting, drainage, restrooms, etc. Mr. Norman referenced the submitted picture of the flooded road, and he questioned what year it was taken. It was found that it was taken either at the end of

2018 or the beginning of 2019. Mr. Hesser stated he believes this request is premature. Mr. Atha asked if the petitioners could request approval for one soccer field. Mr. Miller suggested the request be brought as a GPUD, because he does not believe this is the proper channel for approval. Mr. Atha clarified approval from the Plan Commission requires a detailed plan for the site.

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

Motion: Action: Deny, Moved by Tony Campanello, **Seconded by** Ron Norman that this request for a Special Use for outdoor recreation (soccer fields) be denied based on the findings and conclusions of the Board:

1. The Special Use will be consistent with the spirit, purpose, and intent of the Zoning Ordinance. Special Uses for outdoor recreation are allowed in an A-1 zone.
2. The Special Use will cause substantial and permanent injury to the appropriate use of neighboring property. The extent of the proposed use appears to be commercial, and the residual effects from excavation/construction will not fit with the surrounding area.
3. The Special Use will substantially serve the public convenience and welfare by providing additional outdoor recreation opportunities.

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

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

Mr. Miller noted the subject property can be used for agricultural uses, and any questions can be directed to Planning & Development staff.

6. The application of *Duane Kuhns & Julie Kuhns, Husband & Wife* for a Special Use for a home workshop/business for the sales and service of skid steers 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 50, 2,020 ft. east of SR 19, common address of 27601 CR 50 in Union 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-0714-2020*.

There were five neighboring property owners notified of this request.

Duane Kuhns, 27601 CR 50, Nappanee, was present for this request. He explained he is renovating an existing building to allow him to sell and service skid steers and parts. Mr. Miller clarified the request is for a new operation. Mr. Kuhns noted he owns a skid steer. Mr. Atha asked if skid steers will be lined up out front for display. Mr. Kuhns responded he has a large driveway in front of the building, which he plans to use as a display area. Mr. Norman request he point out the building where he plans to operate his business. Mr. Kuhns then pointed out the building and his driveway on the aerial. Mr. Miller asked if deliveries will be made by truck and trailers. Mr. Kuhns responded most deliveries will be a pick-up truck and trailer with an occasional semi delivery. He went on to say he does have accommodations for a semi and trailer to back onto his property. He stated he spoke to a semi-driver who informed him he would prefer to back onto the property. Mr. Campanello stressed the Board does not want semis backing off of county roads. Mr. Kuhns responded the semi can drive onto his property and turn around, because he is able to pull a tour bus around his drive. He noted he has a large area. Mr. Miller reiterated semis should

not be backing in off of the road. Mr. Hesser questioned the number of outside employees, and Mr. Kuhns responded none.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller noted the property is large. He went on to say his only concern was semis, but he believes accommodations can be made for the semis to drive onto the property rather than backing in. He suggested adding a commitment prohibiting backing onto/off of the road. Mr. Norman noted the wrap-around porch extends 8 ft. from the building, and parking spaces will take up an additional 18' to 20'. He added the site plan shows 58 ft. from the front of the barn to a patch of grass. He continued saying subtracting the porch and parking that leaves approximately 30 ft. for a semi to maneuver around the area. He questioned if 30 ft. is enough room for a semi to turn-around. Mr. Kuhns responded he can convert some of the grass area into driveway if needed. Mr. Campanello stressed the commitment prohibits semis from backing off of the street, but it is up to the owner to determine how it make that work.

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 the sales and service of skid steers 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 9/11/2020 and as represented in the Special Use application.
2. Backing in or backing out of vehicles from/onto CR 50 is prohibited.

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. 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 9/11/2020 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, Ron Norman, Randy Hesser.

7. The application of *Joshua Alan Wilson* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres, for a 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing shed 0 ft. from the south side property line, and for a 2 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing

shed 8 ft. from the rear property line located on the west side of Fieldstone Ln., 230 ft. south of Spring Arbor Dr., west of Spring Valley Dr., common address of 605 Fieldstone Ln. in Middlebury Township, zoned PUD R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0710-2020*.

There were 31 neighboring property owners notified of this request.

Mrs. Kratzer noted staff received a letter from Mary Cripe, Town Manager of Middlebury, requesting the Board impose a condition requiring renewal of the petition every two years.

Joshua Wilson, 605 Fieldstone Ln., was present for this request. He stated he planned on obtaining a Special Use before the animal, which did not happen, so he understands why a complaint was filed against his property. He went on to say he would probably share the same concerns, if he was in their position. He stressed they did not mean to offend or harm their neighbors in any way. He noted he spoke to the majority of his surrounding neighbors, and he pointed out a residence on the aerial who he did not speak to. He continued saying the majority of the neighbors love their miniature horse, who acts like a dog. He added their miniature horse is not out of control. He explained he has three portable fire extinguishers, one in the shed, one in the back of his residence, and one in their basement that are frequently serviced. Mr. Campanello clarified the fire extinguishers are in case the dry straw catches on fire. Mr. Wilson added he has several motion detected, surveillance cameras around his property, which notify their phones about any activity. He stressed he wanted to have everything in place before applying for the Special Use, but unfortunately a complaint was filed before he had a chance. He mentioned their miniature horse is approximately 32" tall, and they take her on walks for exercise. He went on to say they also take her to his mother's property where she has room to run around. Mr. Wilson then explained the miniature horse is his wife's service animal for her anxiety along with other issues. He stressed she is very calming to his wife and does not make a lot of noise. He stated he believes the neighbors should understand their need for the miniature horse, and he reiterated she is not noisy. He went on to address waste and noted they feed her a very high quality grain/hay. He continued saying her waste is easy to clean and does not smell, due to the quality of her food. He added they clean her area daily, and they have kept down the smell and number of flies. Mr. Atha questioned waste disposal. Mr. Wilson responded they place the waste in barrels and transport it off of the property. Mr. Atha clarified the waste is not stored in a pile on the property. Mr. Wilson stated the previous owner took care to maintain the grass to the point where it is comparative to a golf course, and he plans to keep it that way. He then reiterated their miniature horse does not make any noise and eats a high quality grain. He noted they have a privacy fence that is double-layered to keep her contained. He pointed out a section where he added privacy panels to block the neighbor's view of his property. He again mentioned the security cameras were important to them, in case she would break out in the middle of the night. Mr. Wilson explained he has a mentally handicapped aunt who is 65 years old, and she benefits from their miniature horse. He went on to say he researched and discovered that miniature horses are good for the elderly and mentally disabled. He noted his wife has a history of raising, training, and racing horses in California, so she is very familiar with them. He continued saying the Northridge Equine Center is currently under construction, and his wife plans help out once it is completed with Maple, their horse. Mr. Wilson stressed a lot of dogs in the area cause noise, but their horse is very quiet. He mentioned the neighbor next to them has no problem with the horse, and she probably is more

opposed to their St. Bernard. Mr. Atha clarified the petitioners also have a St. Bernard, which is not much shorter than a miniature horse. Mr. Miller asked if the petitioner is opposed to a two year time restriction, and Mr. Wilson responded no. Mr. Campanello explained a two year renewal gives the Board an opportunity to see how it goes, and the neighbors a chance to express any concerns that arise.

Alexandria Wilson, Joshua Wilson's wife, 605 Fieldstone Ln., Middlebury, was also present for this request. She stated they believe their miniature horse may be in foal, which they did not know when they purchased her. She explained foals are typically weaned in six to eight months but can be weaned as early as five. She noted the staff report suggests approval of one horse, and she request approval be for two until the foal can be weaned and sold. Mr. Miller explained foals are allowed by right with an adult animal until it is weaned. Mr. Atha pointed out the proposed commitment is for one adult horse, and a foal is allowed until it becomes an adult.

Jeff Raymond, 605 Spring Arbor Drive, was present in remonstrance and stated he has lived in his residence for six years. He noted the horse was brought onto the property without approval. He stressed the subject property is inside the town limits, and they do not have room for a miniature horse. He mentioned the petitioners never spoke to the adjoining property owners regarding the horse. He went on to say a lot of urine from the horse is going into the grown, and soon it will begin to stink. Mr. Campanello noted the petitioners could have three Great Danes on the property, but Mr. Raymond responded he does not believe they will produce as much urine as the horse. He went on to question what animals approval of this request will set a precedence to allow. He questioned if he can have a cow with a doctor's note. He stressed the neighbors do not want a horse in the neighborhood. He reiterated the property is too small, and approval of this request will cause issues. He continued saying a second horse will likely be added to the property, and he believes the existing horse should be removed from the property ASAP.

Mr. Wilson came back on and stated he did not request permission before obtaining the horse, because he wanted to have a plan before filing. He continued saying the potential foal will not remain on the property, and their request is to keep only the adult horse. He then addressed the urine issue, and he noted he placed rubber barriers under the stray to absorb any urine. He stated they feed their miniature horse differently than they typically are fed. He pointed out a neighbor on the aerial that he admitted he should have spoken to regarding the horse. Mr. Atha confirmed the urine from the horse does not penetrate the ground.

Mrs. Wilson came back on to address the barrier. She noted they have rubber mats under the shavings, and she purchases two bags of shavings a week. She continued saying she cleans the area twice a day, because she is with the miniature horse all the time. Mr. Campanello stated the shavings absorb a lot. Mrs. Wilson explained she does not have the horse, because she is sad. She went on to say she has narcolepsy, which is an actual disorder.

Mr. Wilson stated he understands why the neighbors are concerned, and he would probably also be concerned in their position.

The public hearing was closed at this time.

Mr. Miller stated he does not believe the Board is setting a precedence by approving the request for two years. Mr. Campanello added Mary Cripe, Middlebury Town Manager, gave her permission for it. Mr. Atha noted the Board has approved pot belly pigs as pets. Mr. Norman noted allowing this miniature horse sets a precedent for allowing agricultural animals as service

animals. However, he continued he understands the need for service animals, and he mentioned the letter received from the Town Manager.

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

Motion: Action: Approve, **Moved by** Roger Miller, **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 a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted 9/11/2020 and as represented in the Special Use application.
2. The use is limited to a maximum of one (1) miniature horse at any one time.
3. Approved for a period of two (2) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

Further, the motion included that a 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing shed 0 ft. from the south side property line, and for a 2 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for an existing shed 8 ft. from the rear property line be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted 9/11/2020 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, Ron Norman, Randy Hesser.

8. The application of **Randall E. Yoder & Beth E. Yoder, Husband & Wife** for a Special Use for a home workshop/business for a construction business and for a Developmental Variance to allow for 18 outside employees (Ordinance allows 2) on property located on the north side of CR 150, 2,830 ft. east of SR 19, common address of 27453 CR 150 in Union 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-0721-2020*.

There were 26 neighboring property owners notified of this request.

Jason Yoder, 27453 CR 150, Nappanee, was present on behalf of this request. Mr. Yoder explained they would like to place a monument sign out by the road, which led to this request. Mr. Campanello questioned when the operation became a commercial business with 18 employees, and Mr. Yoder responded the early 90s. He explained his father, Randy, operated the business

when it began, but it has grown over the years. He stressed all eighteen employees do not stay on the property the entire day, and most of them leave the property on a daily basis. He continued saying they have eight full-time office staff. Mr. Miller noted this is a large home workshop, and Mr. Yoder added they have almost outgrown the property.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated his concern is that this operation is no longer a home workshop. Mr. Campanello agreed the operation has grown to a commercial construction company. Mr. Miller noted the eighteen employees are not onsite all day, and Mr. Atha added eight office staff is a significant amount. Mr. Campanello stressed the scale of this business is more than a home workshop, and previous requests were not granted that many outside employees. Mr. Hesser mentioned a previous petition the Board agreed was out growing a home workshop/business, and he believes this business is well past that point. He continued saying forty-two years is a long time to operate, and it has become a successful business with a good reputation. He noted no employees occupy the residence. He mentioned eighteen outside employees, when two are allowed, and a 32 sq. ft. sign, when 4 sq. ft. is allowed, are both large increases. He stressed this operation is no longer a home workshop/business. Mr. Campanello added approval of this request would set a precedence for allowing a large number of outside employees. He noted this operation has grown past the home workshop/business classification to a commercial business. He explained the Board has never allowed eighteen outside employees, and this business has been in operation for forty-two years. Mr. Auvil noted the majority of employees work off-site, and no remonstrators are present. Mrs. Kratzer added the business has been operating on-site for 42 years. Mr. Atha questioned if a GPUD, General Planned Unit Development would be more appropriate for this use. Mrs. Kratzer pointed out the request is not for an increase in the building size or employees from the existing. She went on to say they decided to place a sign on the property and then discovered the need for a Developmental Variance to approve their current employees. She added staff recommended that a DPUD, Detailed Planned Unit Development, be obtained for any further expansion. Mr. Miller reiterated the only addition is a large sign, and he is opposed to allowing a sign that size. Mr. Auvil noted the Board set a precedent by approving an almost 9,000 sq. ft. building under a warehousing and storing request. Mr. Miller asked what year the warehousing and storage Special Use was approved, and it was found to be 1998 before any of the current members served on the Board. Mr. Hesser stated the request is to recognize this operation as a home workshop/business, but he does not believe they qualify. He stressed they do not need to shut down immediately, but they should begin searching for a commercial property or rezone the subject property. Mr. Campanello suggested imposing a time restriction to allow the petitioners time to find a commercial property. Mr. Hesser reiterated he does not want the company to go out of business, but he believes they need to find an appropriate site for their operation. Mr. Miller noted a Special Use was previously approved for warehousing and storing on the property, and he explained denial of this request prohibits the number of employees from increasing and the larger sign. He went on to say he does not believe the Board can make a motion requiring the company move in two years. Mr. Atha explained denial of the request means the operation does not classify as a home workshop/business. Mr. Campanello then asked the petitioner their plans for when their operation grows, because he does not believe eighteen employees is enough with the construction business booming. Mr. Yoder responded the number of employees fluctuates, and he remembers

having more than eighteen employees but not onsite. He went on to say the majority of their employees disperse and do not remain on the property all day long. He noted their goal is to grow as a business, but they do not currently have a long term solution for that growth. He explained it is a family property/business which has operated there for 40+ years. He mentioned their intention is not to move locations, but they may reach a point in growth where they need to from lack of room. He stressed they can easily operate out of the current location at this time. Mr. Miller pointed out the Board is inclined to deny the request for additional employees and the sign. Mr. Campanello suggested approving the request with a time period to establish a business plan for their growth. Attorney Kolbus explained the Board can approve the request to allow the operation to continue, or they can include a time limit to allow them time to find a new location that can accommodate their growth. He continued saying the request can return to the Board in two to five years for renewal as previously approved, or the Board can decide at that time, if the use has increased. Mr. Norman questioned if Mr. Yoder resides in the residence onsite, and he responded his parents live onsite and own the property. He continued saying he purchased the business with his brothers from their parents last year, and they now rent the business aspect of the property. Mr. Hesser suggested the request be denied but defer code enforcement for a year to allow them time to find a more suitable location or rezone the property. He stressed he is opposed to approval of the request with a time limit. He noted no employees of the business reside onsite, and the number of outside employees is high. He went on to say he believes approval of the request will set a bad precedent. Mr. Campanello suggested a three to five year non-enforcement period, if this request is denied, because he believes they will grow enough in that time to need a commercial property. He stressed the Board is not opposed to the business. Mr. Yoder questioned if denial of the request means they can no longer operate off of the property. He request the Board approve the request, and deal with any expansion when the time comes. He stressed they have been operating off of the property. Mr. Campanello explained the Board believes his business will expand in the future. Mr. Yoder stressed the business is not currently expanding. Mr. Miller noted the number of outside employees is larger than what the Board typically approves for a home workshop/business. Mr. Godlewski reiterated the Board believes this operation is too large for the subject property, and they suggest the petitioners begin to look for a commercial location. Mr. Campanello questioned how many comparable construction companies are classified as home workshops, and he would assume none. Mr. Miller questioned the request for a sign and clarified the Board is against allowing one beyond the typical home workshop size. Mr. Yoder added they do not have an existing sign. Mr. Miller explained the Board typically allows a 4 sq. ft. double-sided sign for a home workshop/business.

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

Motion: Action: Approve, **Moved by** Roger Miller, **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 a Special Use for a home workshop/business for a construction 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 9/14/2020 and as represented in the Special Use application.
2. Any signage is limited to one (1) double-sided sign four (4) square feet per side.
3. Approved for a period of two (2) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

Further, the motion included that a Developmental Variance to allow for 18 outside employees (Ordinance allows 2) 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 9/14/2020 and as represented in the Developmental Variance application.
3. Approved for a period of two (2) years; any renewal shall be before the Elkhart County Advisory Board of Zoning Appeals.

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

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

No: Randy Hesser.

Mr. Miller explained the request will likely be denied in two years, if they still have 18 outside employees. He added the sign can only be 4 sq. ft., which is the typical home workshop/business size.

9. The application of *Jeff A. Hire & Cynthia A. Hire, Husband & Wife* for an Amendment to an existing Special Use for an overnight campground (1 unit) to allow for an agricultural/accessory structure and for a 33 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the construction of an agricultural/accessory structure 42 ft. from the centerline of the right-of-way on property located on the east side of CR 137, 1,450 ft. south of CR 148, common address of 70612 CR 137 in Benton Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0718-2020*.

There were seven neighboring property owners notified of this request.

Jeff Hire, 16069 Brunswick Dr., the owner of the property was present for this request. He explained the original Special Use was to allow for a tiny home on the property. He went on to say their tenant needed a place to live, and he was looking for someone to stay on the property. He stated their tenant keeps the property clean and mowed. He noted the request was limited to one unit. He continued saying he would now like approval to construct a pole barn to store his tractor, RV, and boat. He noted the tractor is already stored in an old building on the property for maintenance of the land. He added he also owns property to the west along with his sister, and the tractor is also use for upkeep of both properties. He then explained he would like to construct a residence on the property in the future, but the tiny home will be removed from the property at that time. Mr. Miller asked his time frame for constructing a residence, and Mr. Hire responded at

least five years. Mr. Miller noted the Board does not generally allow accessory structures on property where the owner does not reside, because they do not want a storage building on property without a residence. Mr. Hire pointed out an existing building on the aerial that is very old. He explained he needs room to store his tractor, and he also has family members who need a place to store their RV and boat. He then pointed out the location where they plan to construct a residence, but he cannot say for sure when construction would take place. He stressed they will not have a business. Mr. Miller reiterated the Board does not generally allow an accessory structure on property without a permanent residence. Mr. Hire stated the Board could approve his request for five years, but he is unsure what happens, if his residence is not constructed at that point. Mr. Miller explained the Board could be flexible, if he planned to construct a residence within the next six months. However, he would move for denial, since they do not have a solid plan for the residence. He expressed the Board is concerned that the property may be sold in the next few years with just a storage building on it. Mr. Hire responded he understands their concern, but he is unsure why he cannot construct a building to store the equipment he uses to maintain the property. He noted he is aware of multiple structures on parcels without a residence. Mr. Campanello request clarification on agricultural uses for the petitioner. Mrs. Kratzer explained a personal storage building is not allowed on property without a primary residence, but an agricultural building for a tractor, agricultural animals, etc. is permitted without a residence. She noted personal storage buildings without a residence are often denied by the Board, but agricultural buildings do not require Board action. Mr. Hire responded he would like to construct a building to store his tractor. He stated the property was agricultural prior to the Special Use for the tiny home, and he asked if the property is still agricultural. Mrs. Kratzer responded the property is still considered agricultural, and he can obtain a building permit for an agricultural building. She stressed the building is restricted to agricultural uses only, which would not allow for storage of a car, boat, or other personal equipment. She went on to say storage of a tractor is acceptable. Mr. Hire responded he needs the building for his tractor and other equipment to maintain the subject property and the neighboring 80 acres to the west.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the petitioner does not need approval for an agricultural building, and he suggested allowing the petitioner to withdraw the request rather than denial. Mr. Hire request the petition be withdrawn, so he can pull a permit for an agricultural building. Mr. Norman asked if the petitioner farms the property, and Mr. Hire responded he cash rents it. Mr. Norman clarified the mentioned tractor is used to maintain the property.

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

Motion: Action: Withdraw **Moved by** Roger Miller, **Seconded by** Joe Atha that this request for an Amendment to an existing Special Use for an overnight campground (1 unit) to allow for an agricultural/accessory structure and for a 33 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for the construction of an agricultural/accessory structure 42 ft. from the centerline of the right-of-way 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, Ron Norman, Randy Hesser.

10. The application of *Casilda Chenier & Thomas Chenier, Husband & Wife* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres and for a 33 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for an existing residence and attached garage addition 42 ft. from the centerline of the right-of-way on property located on the north side of CR 26, 2,520 ft. east of CR 11, common address of 24523 CR 26 in Concord 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-0722-2020*.

There were 15 neighboring property owners notified of this request.

Thomas Chenier, 24523 CR 26, Elkhart, was present for this request. He stated his wife also wanted to be present, but she is a healthcare provider and was unable to attend. He added his mother who resides with them was also unable to attend due to the recent increase in COVID cases, because she is in the high risk population. He explained they purchased the subject property three years ago, and it was completely overgrown at that time. Mr. Miller questioned how many chickens and ducks they would like to keep on the property. Mr. Chenier responded they were unaware of the need for a Special Use, since they own two acres. However, he was informed a Special Use was required when he came in to obtain a building permit for the coop. He stated they would like approval for 12 to 15 chickens and 6 ducks. Mr. Campanello asked how many animals are currently on the property. Mr. Chenier responded they currently have a dozen ducks, but their intention is to release them into their pond. He continued saying unfortunately three of the ducks will not be able to survive in the wild. Mr. Miller asked if the chickens and ducks are kept inside, and Mr. Chenier stated they stay in a coop. Mr. Atha questioned waste disposal, and Mr. Chenier responded they compost the waste. He then submitted a petition signed by his neighbors in favor of the request *[Attached to file as Petitioner Exhibit #1]*.

Peggy Harman, 70895 Sandstone Dr., Edwardsburg, was present as the owner of the property directly behind the subject property that has an existing access easement. She stated the petitioner blocked access to her property. Mr. Miller questioned how the access was granted. She responded her property and the subject property were one parcel, and she believe access utilized for over 25 years is considered permanent according to Indiana State Law. She added the petitioner has trespassed on her property and allowed others to do the same, while restricting access to her property. She noted he offered to purchase her property, but he only offered \$2,000 an acre. Mr. Miller stressed the Board is only concerned with the subject property. Mr. Atha questioned her concerns about the garage and chickens/ducks. Mrs. Harman pointed out where she believes she has access to her property though the subject property, and the proposed garage will interfere with that access. She went on to say she was also deeded ten feet of access, but it is a utility easement. She explained the petitioner parks cars and trucks to block her access. She noted part of the pond is on her property, and she questioned how she can check on her property without access. She stated ducks are messy, and she has seen piers destroyed them. She again asked how she can access her property to ensure the animals are not on her section of the pond. Mr. Miller explained the Board is not concerned with the legality of access to her property. He stressed the Board is hearing a request to allow animals on the subject property and an addition to his garage. Mrs. Harman responded allowing ducks on the property will impact her portion of the pond. Mr. Campanello suggested she install a fence. Mrs. Harman asked how she can install a fence without access to her property. Mr. Miller responded the Board cannot make a determination on her access,

and Mr. Campanello suggested she contact the sheriff, if she is refused access. Mrs. Harman stressed the petitioner stated he will fight her on access, and she believes the Special Use is the petitioners way of avoiding purchasing her property. She added she does not want ducks and chickens on her property. Mr. Atha questioned how she plans to keep wild ducks off of her pond. Mrs. Harman responded she cannot prevent wild ducks from using the pond, but the petitioner has tame ducks. Mr. Campanello suggested she file a complaint with staff, if the animals end up on her property. However, he continued the Board is only discussing the subject property. Mrs. Harman stated the proposed building will be closer to the access for her property.

Mr. Chenier came back on and noted no easement of record exists across his property for Mrs. Harman. He stated they have discussed the easement and should be able to work it out between themselves. He then addressed the setback for the garage addition, and he noted his existing garage is approximately 118 ft. from the east property line. He continued saying the new addition will be approximately 90 ft. from the east property line, and it will not be any closer to the road than the existing garage. Mr. Chenier explained the chickens are enclosed in a pen, and the ducks were purchased with the intent for them to be wild.

The public hearing was closed at this time.

Mrs. Harman asked if the request can be revisited in two years. Mrs. Kratzer noted the public hearing is closed. Mr. Hesser stated he does not see a reason to approve beyond the standard twelve chickens, no roosters. He suggested allowing six ducks instead of the twelve chickens, or a combination with one duck counting as two chickens. He gave an example of having six chickens and three ducks, because the ducks smell significantly more than chickens. Mr. Miller noted the request is for six ducks and fifteen chickens, no roosters, and he is inclined to approve it. Mr. Atha stated he would prefer to only allow the standard twelve chickens, but he is not opposed to allowing ducks too.

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

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted 9/14/2020 and as represented in the Special Use application.
2. The use is limited to a maximum of six (6) ducks and twelve (12) chickens at any one time, no roosters.

Further, the motion also included that a 33 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for an existing residence and attached garage addition 42 ft. from the centerline of the right-of-way 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 9/14/2020 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, Ron Norman, Randy Hesser.

11. The application of *AMMF Trustee Corporation (Land Contract Holder) & Merle D. Helmuth & Rosanna L. Helmuth, Husband & Wife (Land Contract Purchasers)* for a Special Use for a home workshop/business for a tool sharpening & router bit milling business and for a Developmental Variance to allow for 5 outside employees (Ordinance allows 2) on property located on the south side of CR 54, 600 ft. west of CR 11, common address of 25198 CR 54 in Union 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-0726-2020*.

There were six neighboring property owners notified of this request.

Charlie Zercher, Kindig & Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioner and submitted a petition in support of the request signed by four neighboring property owners *[Attached to file as Petitioner Exhibit #1]*. He stated Mr. Helmuth has a Special Use for a home workshop/business on a neighboring property, but he traded properties with his aunt. He explained he would like permission to operate his home workshop/business on the subject property in a 2,400 sq. ft. building to be constructed. He noted the petitioner's aunt sold off an acre to the neighboring property during the transaction, so the Zoning Ordinance now requires the subject property go through a Minor Subdivision. He continued saying Mr. Helmuth hired Progressive Engineering to complete the Minor Subdivision. He added they were unaware of the need for a Minor Subdivision until the Special Use application was filed. Mr. Zercher explained the petitioner sharpens and produces router bits, and FedEx/UPS trucks make all of the deliveries. He mentioned the existing driveway allows vehicles to enter and exit the property without backing into/off of the road. He added the petitioner operated off of his previous property without any complaints from the neighbors, and he pointed out the neighbors who signed the petition in support of the request. He addressed the Developmental Variance and explained home workshops typically expand and need more employees than allowed by the Special Use requirements. He stressed six employees is Mr. Helmuth's max, and he has no intention to have any more than six. He stated he has two smaller machines currently, but he would need a few additional employees to expand from two to four machines. He noted the request is to be prepared for future expansion. He explained the petitioner plans to move from his existing building to the new property once his proposed building is completed. He questioned if a time frame needs to be set for moving the business. Mr. Miller noted five of the six employees do not live on the property. Mr. Zercher responded the petitioner currently only has one outside employee.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated he believes five is the maximum number of outside employees that should be allowed for a home workshop/business. Mr. Norman noted water was mentioned as part

of the milling process, and he questioned disposal of that water. He also questioned disposal of the metal by-product produced during the milling process.

Merle Helmuth, 25198 CR 54, came on to address Mr. Norman's questions. He explained he uses an oil coolant for the milling, and it is re-circulated. He added it is filtered through multiple filters, and he then changes the filters.

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 a tool sharpening & router bit milling business 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 minor subdivision is required.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 9/14/2020 and as represented in the Special Use application.

Further, the motion included that a Developmental Variance to allow for 5 outside employees (Ordinance allows 2) 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 9/14/2020 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, Ron Norman, Randy Hesser.

12. Mrs. Kratzer presented the staff item for *Orva M. Lehman & Mary Lehman, Husband & Wife* (SUP-0125-2016). She explained the request is for a minor change to amend the site plan for Crystal Hope Workshop, a social service establishment. She continued saying they would like to add a 1,200 sq. ft. addition to the north side of the existing structure. She added the minor change letter, original site plan, and revised site plan were included in the Board's packets. She noted staff recommends approval of the minor change.

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 request as a minor change.

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

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

13. The meeting was adjourned at 11:07 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary