

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 17th DAY OF SEPTEMBER 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; 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 (*Miller/Atha*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 20th day of August 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 **LEJN, LLC** for a Special Use for a ground-mounted solar array on property located on the northwest corner of CR 12 & SR 13 (Main St.), common address of 11751 CR 12 in York Township, zoned M-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0636-2020*.

There were 11 neighboring property owners notified of this request.




Rebecca Mitschelen, Solar Energy Systems, 8015 W 1350 N, Nappanee, was present representing the petitioners. She explained they plan to install solar arrays on the northern part of the property meeting the required setbacks. She added the arrays will be located over 400 ft. from the front of the property, making them hard to see from the street. She noted one solar array will offset their office utility costs, and the other arrays will be used for FIT Programs, which last 15 years. She explained the FIT Program allows the utility company to purchase power from the array, and they can renegotiate the contract after fifteen years.




Clara Mores-Fry, 54895 SR 13, came on opposed to this request and pointed out her property on the aerial. Mr. Campanello clarified they own the property just west of the subject parcel. She stated the petitioners have gradually changed their property from the A-1 zoning. She went on to say the petitioners also own the property on the southwest corner of SR 13 & CR 12 and the residence just south of her property. She added LEJN, LLC also goes by Bright Star Realty & Actions and Showcase Equipment listed as the owners. Mr. Campanello request she express her concerns specifically regarding the ground-mounted solar arrays. Mrs. Mores-Fry responded everything the petitioners do to the property makes it worse. She stated her husband farms the neighboring property, and they sponsor little league. She stressed a large amount of junk is stored on the subject property, and people have asked her why it has been allowed. She went on to say the subject property is an eyesore. She mentioned the junk and a large burn pile is visible from

their property. She explained she believes the subject property was rezoned to M-1, and their property to the south received a Special Use for large equipment and pre-built shed storage. She noted the use approved on the southern piece has also spread to the northern property. Mrs. Mores-Fry stressed the petitioner informed her that their main office would be located in Three Rivers Michigan, but she could not find evidence of an office there. Mr. Campanello reiterated Mrs. Mores-Fry is not happy with the situation, but he again request she address only the ground-mounted solar arrays. Mrs. Mores-Fry responded she is unaware of what effect he arrays will have on the property, because the ascetics of the property have affected their farming. She added burning is detrimental to the air, and all trees have been removed from the property. She then questioned the proposed location of the solar arrays, and Mr. Atha pointed it out on the aerial. She responded the arrays will be located close to her property, and the petitioners already own one array. Mr. Miller noted her objection is the location of the arrays close to her property. Mrs. Mores-Fry stated people frequently walk their dogs on her property and have noted that it looks terrible. She stressed they strive to keep the area looking nice and agricultural, but it now appears junky. She stated her main concern is the appearance of the subject property. Mr. Hesser clarified what property Mrs. Mores-Fry owns. She then noted that the letter stated the petition was for the northwest corner of SR 13 & CR 12, but she believes that property is owned by Bright Star Realty & Actions and Showcase Equipment not LEJN, LLC.

 Loren Beachy, 54911 SR 13, Middlebury, was present as part owner of the property and pointed out his residence just north of the subject property. He noted LEJN, LLC does own the subject property in addition to the southern parcel. He pointed out the proposed location of the solar arrays and his existing, personal array on the parcel to the north. He pointed out the only location where the arrays will be close to the neighboring property, and Mr. Miller noted 80 ft. of property will separate the array from the neighbors. He then addressed the concerns about the property being messy. He stressed they try to line up the equipment in straight rows and as attractive as possible.

Mrs. Mitschelen came back on to address the solar array. She stressed it will be approximately 80 ft. from the property line. She explained the solar arrays are supported by a post structure. She added the array will actually block the neighbor's view of the subject property, because it will be 13 ft. tall. She continued saying the neighbors will only see the black part of the panels and a small amount of wiring. She stressed they keep the arrays as clean as possible and tack up the wires. She stated she believes the arrays will add to the ascetics of the property in addition to helping the environment.

 The public hearing was closed at this time.

Mr. Norman asked if the arrays' wiring will be buried. Mrs. Mitschelen responded they trench the wire to the meter, so it will all be buried except on the back side of the panels.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a 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 8/14/2020) 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, Ron Norman, Randy Hesser.



5. The application of *Samuel L. Sheets & Jack A. Sheets* for an Amendment to an existing Special Use for a ground-mounted solar array to allow for additional arrays on property located on the north side of CR 52, 2,000 ft. east of CR 9, common address of 25673 CR 52 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-0646-2020*.

There were 11 neighboring property owners notified of this request.



Rebecca Mitschelen, Solar Energy Systems, 8015 W. 1350 N., Nappanee, was present representing Jack Sheets. She stated the petitioner plans to add a few additional arrays that will likely be the last placed on this property. She then pointed out where the arrays will be located. She noted the petitioner's sister owns the neighboring property, and she is aware of their plans. She added they strived to keep her view intact. She mentioned the arrays will be located next to the building and on the roof. She went on to give the approximate setbacks listed on the site plan, which meet the required setbacks. She explained the extra energy will be part of the FIT program. Mr. Hesser questioned the use of the subject property. Mrs. Mitschelen responded the petitioner's residence and agricultural use. Mr. Hesser questioned the location of the mentioned residence. Mrs. Mitschelen explained it is located on the neighboring property, but the subject property is used for agriculture. She went on to say the petitioner has arrays on the roof that he uses for his barn, and he plans to use any power left after the FIT Program for his sister and his residences. Mr. Hesser questioned if the subject property has an accessory structure without a residence. Mrs. Kratzer pointed out the building is an agricultural use, which is allowed by right.

There were no remonstrators present. 

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a ground-mounted solar array to allow for additional arrays with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/17/2020) and as represented in the Special Use Amendment application.

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

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



6. The application of *The Board of Trustees of the United Christian School* for an Amendment to an existing Special Use for a school to allow for an addition on property located on the southwest corner of CR 52 & CR 101, common address of 29522 CR 52 in Locke 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-0642-2020.

There were 10 neighboring property owners notified of this request.



Darrell Burkholder, United Christian School, 29522 CR 52, Nappanee, was present for this request. He explained they currently have a small modular building on the property used for classrooms that they would like to replace with a new addition. He then pointed out the proposed location of the addition and noted it will be used for new classrooms. Mr. Hesser clarified the addition is very similar to the other side of the school. Mr. Burkholder noted the addition is 104 ft. long.



Douglas Graham, Graham Engineering Services, 28643 CR 50, Nappanee, was present as the engineer hired for the addition. He explained the worn out modular has been used as classrooms. He went on to say the new addition will be 76 ft. from the centerline of the right-of-way, meeting the required setback. He noted the building has been a school for at least 20 years, and it is an asset to the community. He continued saying the proposed addition will be a major improvement.

There were no remonstrators present.

The public hearing was closed at this time.



Mr. Hesser asked if staff is satisfied with the submitted site plan, which he does not believe matches what was described. Mrs. Kratzer pointed out staff requested a revised site plan in the Staff Report.

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

Moved by Tony Campanello, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a school to allow for an addition 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 showing west and rear setbacks, parking, and sign location for approval by staff.

The following commitment was imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use Amendment 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 *Abraham Que Lazaro* for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres located on the east side of Southgate, 200 ft. south of Blaine Ave., west of CR 1, common address of 56784 Southgate in Baugo Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0550-2020*.

There were 33 neighboring property owners notified of this request.

 Zuri Que, 56784 Southgate, Elkhart, was present for this request and requested permission to keep chickens on the property. She stated her mother lives with them and enjoys the chickens. Mr. Miller asked how long the chickens have been on the property, and she responded a few months. She went on to say they received a letter stating a Special Use permit was needed. Mr. Atha questioned waste disposal, and Mrs. Que responded they bag it and place it in their trash can.

 There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello noted the property is located in a dense residential area. Mr. Miller mentioned the chickens are kept in a coop and not allowed to roam, which he appreciates.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for an agricultural use for the keeping of animals on a tract of land containing less than 3 acres be approved with the following condition imposed:


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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 7/14/2020) and as represented in the Special Use application.
2. The agricultural use is limited to a maximum of ten (10) chickens at any one time, no roosters.

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


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

 8. The application of *Tri-County Land Trustee Corporation (Land Contract Holder) & Steven R. Miller & Inez Miller, Husband & Wife (Land Contract Purchasers)* for an Amendment to an existing Special Use for a commercial greenhouse to allow for a revised site plan on property located on the south side of CR 8, 3,400 ft. west of CR 35, common address of 14080 CR 8 in York 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-0614-2020*.

There were 11 neighboring property owners notified of this request.

Mr. Hesser mentioned a concern about the site plan.

 Harley Bontrager, 57342 CR 116, Middlebury, was present representing petitioners. He explained they would like to add onto the shop and move an existing greenhouse. Mr. Hesser stated the site plan does not distinguish the new buildings from what is existing. Mr. Bontrager added he believes another greenhouse is on the property that is not shown on the site plan. Mr. Miller pointed out the area where the greenhouses will be constructed, and Mr. Atha clarified a 42'x44' storage building will also be added. Mr. Hesser stated the 30'x48' greenhouse will be moved, and the 42'x44' storage building is new. Mr. Atha noted the commercial greenhouse was previously approved.

There were no remonstrators present.

 The public hearing was closed at this time.

Mr. Hesser suggested requiring a revised site plan showing the existing and new buildings for the record.

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

Motion: Action: Approve, **Moved by Joe Atha, Seconded by Roger Miller** that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a commercial greenhouse to allow for a revised site plan 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 showing the existing and proposed buildings for approval by staff.

The following commitment was imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use Amendment application.

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

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


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




9. The application of **Baugo Community Schools** for an Amendment to an existing Special Use for schools to allow for the addition of a parcel and use of an existing building on property located on the west side of CR 3, west end of CR 24, 1,770 ft. north of CR 22, common address of 58901 CR 3 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-0648-2020*.

There were 43 neighboring property owners notified of this request.

 David Wolford, Director of Technology & Operations for Baugo Community Schools, 29125 CR 22 W, was present for this request and pointed out the subject property. He explained they recently purchased it and demolished the residence. He stated this request is to add the property to their existing Special Use permit for the school and maintain the accessory structure. He went on to say they plan to use the structure for their maintenance facilities. Mr. Campanello noted they will clean up the property.

There were no remonstrators present.

The public hearing was closed at this time. 

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

Motion: Action: Approve, **Moved by** Joe Atha, **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 schools to allow for the addition of a parcel and use of an existing building with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/17/2020) and as represented in the Special Use Amendment application.

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

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

Excused: Randy Hesser.




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


10. The application of *Tri-County Land Trustee Corporation (Land Contract Holder) & Myron P. Miller & Janet A. Miller, Husband & Wife (Land Contract Purchasers)* for a Special Use for a home workshop/business for wholesale of crafts and furniture and for a Developmental Variance to allow for three outside employees (Ordinance allows two) on property located on the north side of CR 34, 465 ft. east of CR 43, common address of 10679 CR 34 in Clinton 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-0633-2020*.

There were nine neighboring property owners notified of this request.

 Marlin Bontrager, 59714 CR 43, Middlebury, was present representing the petitioners. He explained the front building burnt down, and they would like to rebuild it. He went on to say all but 80 ft. of the foundation is in decent shape. He stated the building is mostly a warehouse for the home workshop/business. Mr. Atha questioned the need for additional employees. Mr. Bontrager responded the additional employees are needed due to an increase in the work load. He then asked if he can pull a permit before the state release is received, and Mr. Atha responded staff can answer permit questions. Mr. Campanello noted the state releases the foundation before the full release. Mr. Hesser clarified the business is existing, and he asked how long it has been in business. Mr. Bontrager responded it was a business before Mr. Myron Miller purchased it, and he would guess 15 to 20 years. Mr. Atha noted no sign will be on the property.

There were no remonstrators present.

The public hearing was closed at this time. 

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

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

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/13/2020) and as represented in the Special Use application.

Further, the motion included that a Developmental Variance to allow for three outside employees (Ordinance allows two) be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 8/13/2020) 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 *Floyd Miller & Elsie Miller, Husband & Wife* for an Amendment to an existing Special Use for a home workshop/business for woodworking to allow for an addition to the shop and for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right on property located on the south side of CR 26, 1,515 ft. east of CR 43, common address of 10444 CR 26 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-0623-2020*.

There were five neighboring property owners notified of this request.



Marlin Bontrager, 59714 CR 43, Middlebury, was present representing the petitioners. He explained the petitioner would like approval for a warehousing addition. He went on to say the petitioner's son helps with the business, and the building is too tight to store the lumber. Mr. Atha clarified the location of the proposed addition.



Stephanie Floyd, Progressive Engineering, 58640 SR 15, Goshen, was also present for this request. She informed staff that the property owner has contracted them to complete the Minor Subdivision as recommended in the staff report.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser pointed out the site plan does not appear to match the aerial. Mr. Atha asked if a revised site plan should be submitted for staff approval, and Mr. Hesser responded yes. Mr. Campanello questioned if Progressive Engineering will compile a new site plan. Mrs. Floyd responded they will need to locate everything on the property in order to submit a Minor

Subdivision, so all existing and proposed buildings will be reflected on the primary submission. Mr. Atha suggested adding a condition that the revised site plan be approved by staff.

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 adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for an Amendment to an existing Special Use for a home workshop/business for woodworking to allow for an addition to the shop 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 showing the existing and proposed buildings for approval by staff.

The following commitment was imposed:

1. The request is approved in accordance with the revised site plan to be submitted for staff approval and as represented in the Special Use Amendment application.

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

1. 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 petitioner must provide a revised site plan showing the existing and proposed buildings for approval by staff.
3. The request is approved in accordance with the revised site plan to be submitted for staff approval 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. The application of *Gary A. Stutzman & Barbara R. Stutzman, 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 Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right located on the north side of CR 52, 1,600 ft. east of CR 1, common address of 29711 CR 52 in Locke 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-0645-2020*.


There were eight neighboring property owners notified of this request.



Charlie Zercher, Kindig & Sloat, 102 Heritage Parkway, Nappanee, was present representing the petitioners. He explained both the Special Use and Developmental Variance were needed, because the petitioner would like to add a 16'x56' lean-to onto his existing shop building. He noted the petitioners have owned the subject property since 1987, which they believed was

three acres. However, he continued they then discovered it is only 2.86 acres, prompting the need for a Special Use permit. He added the petitioners are Amish and use their horse for transportation. He stated the personal storage allowed is only 110% of the living area as opposed to 200%, since the property is less than three acres. He went on to say the Developmental Variance is needed to allow his proposed lean-to. He request the Board approved both the Special Use and Developmental Variance, but revise the condition to allow for two adult horses. He explained two horses would allow the petitioner to transition horses or add an additional one. He stressed the horse is used for transportation and has been on the property since 1987. Mr. Hesser clarified the property has room for two horses. Mr. Atha asked if the Board can approve more animals than requested, and Mr. Hesser asked if the request needs to be re-advertised. Mr. Zercher pointed out he did not specifically request one horse. Attorney Kolbus noted the publication reads, “keeping of animals”, so two horses can be approved.

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

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/17/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of two (2) adult horse at any one time.

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 (dated 8/17/2020) 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.




13. The application of *Wakarusa Produce Auction, Inc.* for an Amendment to an existing Special Use for the sale of produce and plant nursery products to allow for a storage building and for a 5 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for the construction of a

storage building 5 ft. from the rear property line located on the northeast corner of CR 9 & CR 138, common address of 65460 CR 9 in Harrison Township, zoned A-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0639-2020*.

There were four neighboring property owners notified of this request.

 Samuel Oberholtzer, 64590 CR 1, Wakarusa, was present for this request and pointed out the proposed building location on the aerial. He explained the Developmental Variance is needed for the 72'x120' building due to the large size and septic system location. He stated the building is needed for storage purposes. He went on to say everything is currently stored inside of their building, which takes away from the floor space they need to sell products. Mr. Atha noted there appear to be doors on both the north and south sides of the building. Mr. Oberholtzer responded the south door will be used the most. He went on to say they host two annual consignment shops, and the building will be used for that event. He added they have an agreement with the neighboring farmer to allow parking for the event on his property.

Matthew Weaver, 65312 CR 9, Wakarusa, the neighboring property owner was present in favor of this request. He explained this business is an asset to the community. Mr. Hesser clarified his property 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** 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 the sale of produce and plant nursery products to allow for a storage building be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/17/2020) and as represented in the Special Use Amendment application.



Further, the motion included that a 5 ft. Developmental Variance (Ordinance requires 10 ft.) to allow for the construction of a storage building 5 ft. from the rear property line was approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 8/17/2020) and as represented in the Developmental Variance application.

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

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



14. The application of ***Victor O. Vida & Nancy A. Vida 2008 Revocable Trust Agreement*** for a Use Variance to allow for a kennel, for a Special Use for an agricultural use for the keeping of animals, and for a Developmental Variance to allow for an existing residence on property with no road frontage served by an access easement located on the south end of the easement, south of CR 16, 5,300 ft. west of CR 13, common address of 24418 CR 16 in Concord Township, zoned R-1, came on to be heard.

Mrs. Kratzer presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0649-2020*.

There were 17 neighboring property owners notified of this request.



Mr. Miller questioned if the number of dogs should be limited, since all of the other animals on the property were limited. Mrs. Kratzer explained the agricultural use requires a Special Use, but a dog kennel has a separate lists of standards in the Zoning Ordinance. She explained the Use Variance is for the kennel. Mr. Hesser asked the number of dogs allowed without requiring a kennel. Mrs. Kratzer noted any more than five dogs is considered a kennel. Mr. Hesser questioned if approval of a kennel allows for an unlimited number of dogs, and Mrs. Kratzer responded yes. She went on to say the Board can impose a limit on the number of dogs.


Victor Vida, 24418 CR 16, Elkhart, was present for this request in response to a complaint that was filed against his property. He stated he owns three horses, seven chickens, one goat, and a rooster. He added they would like approval of a Use Variance to allow for an existing kennel that houses rescue dogs, which is a not for profit. He went on to say they currently have five dogs in the kennel, which is their maximum. Mr. Hesser clarified they do not need approval for more than five dogs. Mr. Vida mentioned the dogs have their own exercise area. Mr. Hesser pointed out the staff report recommends no roosters be permitted. Mr. Vida request they approve for only the rooster he currently owns, and he will not add more or replace it. He stressed he has owned the rooster for a while, and it was almost killed by a raccoon trying to defend the chickens. He continued saying he is a survivor, and they have a large vet bill from him. Mr. Miller noted the Board does not typically approve roosters, but Mr. Campanello pointed out the subject property is over three acres. Mr. Vida then pointed out the kennel location on the aerial. He stated the area is semi-dense along one side of the property, but the other three sides are surrounded by wooded parcels. He added their closest neighbors love the animals and have no complaints. He noted they even signed a petition in support of this request. Mr. Miller questioned the need for a Use Variance, since they only have five dogs. Mr. Hesser responded he believes five or more dogs requires a kennel. Mr. Atha question disposal of animal waste. Mr. Vida explained the kennel has its own septic system.

Nancy Vida, 24418 CR 16, Elkhart, was also present for this request. She explained they plan to expand their kennel in the future to hold up to seven dogs, and she request approval for seven dogs. She stressed feral dogs have no place to go, and they receive calls from across the country. She went on to say they cannot care for more than seven due to the time involved in rehabbing the animals. She stated they currently only have five dogs with no plans to expand in the immediate future, but they would like to have seven in a few years.

Mr. Vida again spoke and mentioned the requests were given favorable recommendations from Planning & Development staff. He noted the mentioned complaint against his property was not the first, and Mr. Mock, a code enforcement officer, was actually called out for remodeling

without a permit, which was not taking place. He continued saying while the code enforcement officer was at his property he mentioned he was surprised anyone would know, if work was happening on the property. He noted deer, geese, swans, coyotes, fox, rabbits, raccoons, and other woodland creatures frequent their property despite it being zoned R-1. He stressed it is not a dense residential area. Mr. Hesser stated he assumes building permits were issued for the residence with no road frontage. Mrs. Kratzer responded the road frontage issue was never resolved, so they decided to include it with the request. Mr. Hesser clarified legitimate building permits were received. Mr. Miller noted the property is three acres. Mrs. Kratzer stressed the Special Use is needed due to the R-1 zoning. Mr. Campanello asked how long the petitioner believes Long Horn Leg Horn, the rooster, will live. Mr. Vida responded probably a few years. He then asked if he should address the Developmental Variance for no road frontage, and Mr. Hesser responded no.

There were no remonstrators present.

The public hearing was closed at this time. 

Mr. Campanello stated he is familiar with the area, which is sparse. Mr. Hesser noted the subject property does border a subdivision, but Mr. Campanello stressed no neighbors are present in remonstrance. Mr. Hesser asked if anyone is opposed to approval of seven dogs, and no one had concerns. He then asked if anyone was against allowing the existing rooster to live out his life on the property, and no one was opposed to it. Mr. Atha noted the subject property is very secluded.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Roger Miller that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for a kennel be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/17/2020) and as represented in the Use Variance application.
2. The use is limited to a maximum of seven (7) dogs at any one time.

Further, the motion included that a Special Use for an agricultural use for the keeping of animals be approved with the following condition imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/17/2020) and as represented in the Special Use application.
2. The use is limited to a maximum of one (1) mule, two (2) horses, two (2) goats, seven (7) chickens, at any one time and one (1) existing rooster.

The motion also included that a Developmental Variance to allow for an existing residence on property with no road frontage served by an access easement be approved with the following conditions imposed:

1. A variance from the developmental standards of the Zoning Ordinance is void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted (dated 8/13/2020) 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.



15. The application of *Steve Dale Walter & Esther M. Walter, Husband & Wife* for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the east side of Horseshoe Ct., 200 ft. north of CR 18, west of CR 117, 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 #UV-0606-2020*.


There were 18 neighboring property owners notified of this request.

Steve Dale Walter, 21679 CR 18, Goshen, was present for this request. He stated he would like to place a 40'x48' storage building without any mechanicals or plumbing on the subject property. He then pointed out its proposed location on the aerial, and he noted some trees that will partially hide the structure. He went on to say the new structure will match his residence. He added the proposed building will eliminate two existing storage buildings on his property. He also pointed out his residence on the aerial, which is located on the adjoining parcel. Mr. Atha clarified the location of the two existing storage buildings. Mr. Walter noted an old trailer currently on the property will be stored out of sight under the new building's overhang. He added the dirt pile on his property will also be eliminated. He stressed this new building will help improve the aesthetics of his property. He went on to explain that his parents passed away, and the family farm was sold. He noted he owns two John Deere tractors and a plow that will be kept in the proposed building. He stated he owns the subject property and resides on the adjoining one to the south. He again mentioned the storage building will be 40'x48', and he pointed out what direction the doors and lean-to will face. He explained his trailer and lawn tractor will be stored under the lean-to, and the trees located in that area will block people's view from the road. Mr. Hesser asked if the petitioner plans to move from his residence, and Mr. Walter responded only when they can no longer care for the property. Mr. Hesser then asked if he has any objection to combining both parcels on one recorded deed. Mr. Walter explained he has a mortgage on his residence, and the mortgage company will not allow him to combine the parcels. He also pointed out a drainage easement extends along property line, so he cannot cross it with the building. He then noted his septic and well location. He again stressed the new building will improve the ascetics of his property, because anything stored outside will be moved inside. He went on to point out multiple existing pole buildings and garages in the neighborhood. He added the subdivision is older with a lot of objects stored outside. He stressed he wants to move everything inside and improve the look of his property. Mr. Atha clarified he cares for both properties, and Mr. Walter responded yes. He then explained how he plans to run electric to the proposed building. Mr. Hesser asked if he is willing

to commit to not selling the parcels separately, and Mr. Walter responded yes. He continued saying the new building will considerably improve the value of his property. Mr. Hesser confirmed with Attorney Kolbus that the Board has previously imposed commitments requiring both properties be sold together. Mr. Miller asked how the commitment will be upheld. Mr. Hesser explained the Commitment Form is recorded and should be found in a title search when the property is sold. Attorney Kolbus noted both parcels will be referenced on the Commitment Form. Mr. Hesser explained the Board rarely permits an accessory structure on property without a residence, but they have approved them in the past with a commitment requiring both the parcels be sold together. Mr. Walter stated he is unsure why his two properties were deeded separately, but his neighbor's properties were deeded the same way. Mr. Hesser noted many properties in the county do not comply with the Zoning Ordinance. Mr. Miller pointed out both properties can be combined on one deed, once the mortgage is paid off. Mr. Walter responded he plans to pay off the mortgage in two to three years. He then submitted a petition signed by his surrounding neighbors in favor of his request *[Attached to file as Petitioner Exhibit #1]*.

Ron Humes, 21727 CR 18, a neighboring property owner was present in favor of this request. He stated Mr. Walter has always kept his property in great shape, and he does not believe he will even notice the new building after a few months. He added this request should be approved, and he reiterated Mr. Walter is a good neighbor.

There were no remonstrators present.

The public hearing was closed at this time. 

Mr. Atha questioned if having both parcels on the same deed would allow the building by right. Mr. Hesser responded yes, but the petitioner cannot combine them due to his mortgage. Mr. Miller asked if a condition/commitment can be added requiring the properties be combined once the mortgage is paid off. Mr. Hesser suggested adding a commitment requiring the properties be sold together.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Tony Campanello that this request for a Use Variance to allow for the construction of an accessory structure without a residence be approved based on the following findings and conclusions of the Board:

1. The request will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the subject property will not be affected in a substantially adverse manner.
3. A need for the Use Variance does arise from a condition that is peculiar to the property involved.
4. Strict enforcement of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the subject property.
5. The Use Variance does not interfere substantially with the Elkhart County Comprehensive Plan.

The following condition was imposed:

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

The following commitments were imposed:

1. The request is approved in accordance with the site plan submitted (dated 8/4/2020) and as represented in the Use Variance application.
2. The real estate and grantor's parcel, commonly known as 20-07-18-178-001.000-019 and 21679 CR 18, must not be sold separately.

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

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



16. The application of *Stephen & Marilyn Yoder* for a Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right and for a 31 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for existing silos 44 ft. from the centerline of the right-of-way on property located on the north side of CR 146, 360 ft. west of CR 25, in Jackson 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-0531-2020*.

There were three neighboring property owners notified of this request.



Mr. Miller clarified this request was approved by the Hearing Officer. Mr. Hesser questioned if the site plan submitted shows only the existing buildings, not the proposed residence.

Stephanie Floyd, Progressive Engineering, 58640 SR 15, Goshen, came on to answer Mr. Hesser's question. She explained they had not completed the Minor Subdivision when they filed for the Developmental Variance, so the proposed house location was unknown. She added they have since received primary approval for the Minor Subdivision. She then submitted a copy of the plat [Attached to file as *Petitioner Exhibit #1*]. Mr. Hesser then clarified the location of the proposed residence. Mrs. Floyd noted they needed room for a septic and reserve system. She explained the owners' grandson plans to construct a residence on the property. Mr. Hesser stated the appellant would typically speak first for an appeal, but he would like to hear the request first. Mrs. Floyd stated she represents the property owner for both the Developmental Variance and Minor Subdivision. She noted the developer was informed that the existing lot was not buildable when he attempted to pull a building permit. She continued saying the accessory structure and silos are nonconforming but have been on the property since the early 70s. She noted a 1-lot Minor Subdivision was also filed to make the property buildable, since it was not split in accordance with the Subdivision Control Ordinance. She explained the neighbor to the west does not feel that the property is buildable and objects to the request. Mr. Hesser pointed out the mentioned neighbor's property. He then asked if the subject property was part of the larger property, and Mrs. Floyd responded she believes it was split sometime after the 70s. Mr. Hesser clarified the subject property has been split for a while. Mr. Miller questioned the issue with the grain bins. Mrs. Floyd responded the grain bins are too close to the road. Mr. Hesser asked if the bins are still used, and she responded yes. She went on to say she believes the appellant uses the grain bins. Mr. Miller reiterated the grain bins were constructed prior to the setback changes. Mr. Campanello noted several trees between the road and the grain bins, and Mrs. Floyd stressed they do not plan to remove any of the trees. She added the petitioner simply wants to construct a residence. She mentioned they did not find any anomalies or changes that would affect either of the neighbors while completing their survey for the Minor Subdivision.



Don Moneyheffer, 18491 CR 146, the property owner west of the subject property was present as the appellant. He explained he is also representing Werner & Melody Kay Wegner and Joseph James Edward & Lindsay Nicole Johnson who are opposed to the request. He then proceeded to point out the remonstrators' residences on the aerial. He stressed all of the neighbors share the same feelings towards this request, and they submitted an appeal with their objections in writing on August 24, 2020. He verified the Board members received a copy of the submitted appeal. He then stressed the appellants do not agree with the statement in the staff report stating, "There will be no adverse effect on the neighboring properties." He continued saying allowing a small residence on the subject property will be a detriment to anyone who considers purchasing their property for a rural neighborhood. He added he believes the pictures included in the staff report are a poor representation of the subject property. He went on to say the Board members would likely agree that the subject property is not suitable for a residence, if they drove past it. He stressed a potential buyer for his property will view a residence smaller than the pole barn and close to their property line unattractive. Mr. Moneyheffer noted finding #3 in the staff report states, "strict application of the Zoning Ordinance would cause an unnecessary hardship." He stated the Yoders have owned the subject property for approximately 33 years and have used the barn for storage while leasing the grain bins to a relative. He stressed both the Johnsons and themselves have expressed interest in purchasing the subject property in the past, but the petitioners were not interested in selling it to them. He went on to say they do not understand how leaving the property as is would cause a hardship on the petitioners. He noted the zoning rules were written for a reason and meant to be followed. He stressed the adjoining property owners expect the zoning regulations to be enforced as written. He then expressed his concern about small children living close to their farmland. He stated their tenant, Mr. Justin Miller, raised his concerns about the request in a letter presented at the August 19, 2020 Hearing Officer meeting. Mr. Moneyheffer pointed out the 3,200 sq. ft. pole barn sits on the high point of the property, and the proposed residence will be down slope from it. He continued saying all of the run-off from the barn is absorbed by approximately 100 ft. of grass before it would reach his property. Mr. Hesser asked if the appellants have seen the proposed location for the residence, and Mr. Moneyheffer responded no. Mr. Hesser then showed him the submitted exhibit. Mr. Hesser questioned how many acres the residence just east of the subject property sits on. Mr. Moneyheffer responded approximately two acres. He stressed constructing a residence on the west side of the pole barn, will affect the absorption area for run-off from the barn. He added the residence could cause additional run-off to flow west onto their farmland, which could force them to install field tile to drain their property. He then request additional stipulations be attached to approval, and the first one mentioned was that the owners of the subject property not register any objections/complaints against any normal farming operations/practices occurring on any of their farmland, including dairy, swine, and poultry operations that do not require IDEM approval. He also asked the east and west property lines that have been observed for the past thirty-three years continue to be observed, including the board fence on the east which is maintained by the Johnsons and the pine trees on the west maintained by himself. Mr. Miller stated he is unsure of the proper term, but farmers have the right to practice farming on properly zoned property. Mrs. Kratzer noted any complaints against agricultural uses would be invalid on property where it is allowed by right. Mr. Hesser reiterated any complaints against Mr. Moneyheffer for agricultural use on properly zoned property would be invalid. Mr. Moneyheffer added he can see future owners of the subject

property being opposed to a hog barn on his property. Mr. Campanello pointed out a right to farm statement will be included on the Minor Subdivision plat.

Mrs. Floyd came back on to address the concerns raised. She stated the property lines will not change, because no anomalies were found. She noted the neighbors to the east were concerned about their existing fence, but nothing was found that would affect it. She added another mentioned concern was children, but one of the neighbors also has children. Mrs. Floyd then addressed the drainage concern and explained anyone who pulls a building permit is advised that drainage must remain on their property. She went on to say any drainage that leaves the site would require a Rule 5 Erosion Control Plan. She stressed drainage from the subject property is the owners' responsibility not the neighbors. She noted they do not expect any drainage issues with the proposed home construction, because the property is flat. She added the County Surveyor has reviewed their plans, so there should be no drainage problems. Mr. Hesser stated the submitted comments from the appellants mention unofficial easement issues with tiles running over or under the subject property. Mrs. Floyd responded Mr. Moneyheffer was concerned that the existing accessory structure may cause drainage issues. She stressed no drainage leaves the subject property now nor will that change with the new residence. Mr. Hesser clarified no easements need to be formalized. Mrs. Floyd responded no, and they would have dealt with any easement issues when submitting the Minor Subdivision. Mr. Atha then addressed the pesticide issue mentioned by the appellants, and he researched some common insecticides used. He explained the only buffers required was ten feet to a water source/shed. He added spraying in anything over 15 MPH winds is illegal. He stressed pesticides should not affect the subject property.

The public hearing was closed at this time.



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

Motion: Action: Deny, 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 Developmental Variance to allow for the total square footage of accessory structures to exceed that allowed by right and for a 31 ft. Developmental Variance (Ordinance requires 75 ft.) to allow for existing silos 44 ft. from the centerline of the right-of-way be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the Building Permit (where required).
2. The requests are approved in accordance with the site plan submitted (dated 7/13/2020) 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.

17. The meeting was adjourned at 10:32 a.m.

Respectfully submitted,

Laura Gilbert, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary