

BZA MINUTES
ELKHART COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON THE 15th DAY OF APRIL 2021 AT 8:30 A.M.
MEETING ROOMS 104, 106, & 108 – ADMINISTRATION BUILDING
117 N. 2ND ST., GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Board of Zoning Appeals was called to order by the Chairperson, Randy Hesser. Staff members present were: Chris Godlewski, Plan Director; Jason Auvil, Zoning Administrator; Mae Kratzer, Planner; Danny Dean, Planner; Laura Gilbert, Administrative Manager; and James W. Kolbus, Attorney for the Board.

Roll Call.

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

Absent: Ron Norman.

2. A motion was made and seconded (*Miller/Campanello*) that the minutes of the regular meeting of the Board of Zoning Appeals held on the 18th day of March 2021 be approved as read. The motion was carried with a unanimous roll call vote. Mr. Hesser brought the minutes back up after the first petition was over. He noted on the last item for Maria Miranda that was continued for today, the minutes say the Board adopted the Staff Analysis and Findings of the Board, and the Board did not do that or take any action. Mr. Hesser made a motion to strike the provision from page 11 of the minutes. The motion was carried with a unanimous roll call vote.

3. A motion was made and seconded (*Atha/Miller*) 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 *Owen S. Yoder & Lorene Yoder, Husband & Wife* for a Special Use for a home workshop/business for a publishing business on property located on the East side of CR 43, 2,200 ft. North of CR 34, common address of 62598 CR 43 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0174-2021*.

There were seven neighboring property owners notified of this request.

Jerimiah Hochstetler, 54824 CR 33, Middlebury, with Freedom Builders was present for the petitioner. He stated that they have had the business for a little while now and want to make it legal for a home publishing business. He added there is no customer traffic at the subject property. The petitioner publishes, prints, and sends everything out in the mail. Mr. Hesser asked about employees. He responded there are 2 part time employees that work a couple days a week. Mr. Miller asked if there is any new construction, Mr. Hochstetler responded no, it's in an existing building.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** 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 publishing 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.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 3/4/2021 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, Randy Hesser.

*****It should be noted Ron Norman arrived at this time*****

5. The application of ***Timothy Roy Martin & Cheryl A. Martin, Husband & Wife*** for an Amendment to an existing Special Use for a home workshop/business for the sale of dairy products to allow for a revised site plan on property located on the Southeast corner of Ash Rd. & CR 26, common address of 60020 Ash Rd. in Baugo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0203-2021*.

There were 12 neighboring property owners notified of this request.

Mr. Hesser asked the staff if the previous request was approved with same amount of employees that they are requesting now, as they are requesting 4 full time and 8 part time employees. Mr. Auvil responded he wasn't exactly sure.

Tim Martin, 60020 Ash Rd., Osceola, was present for this request. Mr. Hesser asked when this was approved in 2017/2018, if it was for the same number of employees. Mr. Martin responded back then it was 10 full time, but he is not sure if it was recorded. He stated they need more cooler and storage space at this time.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Miller stated that this operation is getting fairly large but they are on a big piece of land. Mr. Atha stated that farms have a substantial amount of outside employees as well.

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 an Amendment to an existing Special Use for a home workshop/business for the sale of dairy products to allow for a revised the 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.

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 3/11/2021 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 *David Overholt & Lynda Overholt, Husband & Wife* for a Special Use for a mobile home park on property located on the West side of an unnamed right-of-way, 1,925 ft., South of State Line Rd., West of CR 17, common address of 21820 State Line Rd. in Washington Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0197-2021*.

There were five neighboring property owners notified of this request.

Mr. Hesser asked about a complaint from 2016 and if it had been resolved. Mr. Auvil stated he believes it was resolved and the buildings were used for storage and not for residential but the petitioner can clarify.

No petitioner was present

Dennis Amos, 21692 State Line Road, Lot A, Bristol, was present in remonstrance. He believes the Overholt's want to move the double wide to the back of property, but there isn't any room. He stated there are four or five existing mobile homes already back on the property with family members living in them. He added they only have one septic permit and no permits for wells, and he is not sure what is in use for septic system or a well. He noted there is a pole barn built and there are units brought in at night without permits from health or building departments. Mr. Miller asked about how the units are set up. Mr. Amos responded that people are living in these units. He stated the electricity is through Union, Michigan not in Elkhart County, and he is not sure what they are using for electricity at this time. He mentioned on the application Linda Overholt stated the property doesn't need a well or septic, and he isn't sure how they can continue to bring in units without permits, wells, or septic. He stated he filed a complaint for the code violations. He continued saying, if they are granted permission then the Overholt's will bring in 30 mobile homes before anyone knows it without permission or permits. Mr. Campanello asked if the Overholt's were present at this time. They weren't present. Mr. Amos stated he had another concern about the big semi-trucks that come in and out, because Mr. Overholt has a trucking business.

Cheserie Huston, 21600 State Line Rd., Bristol, was present in remonstrance. She stated she owns four parcels in the area and two of them butt up to the back of the Overholt's property. Mr. Miller asked for her to show where she lives on the aerial. She showed where she owns 2 strips of land up to State Line Rd. She stated that the easement is used like a road, but her husband maintains it with tractors, as multiple families share this easement road. She went on to say that there are two big liquid tanker trucks that go back to the Overholt's property on this road and there is storage of huge white plastic containers with 11 buildings on the property. She added she isn't sure what they are being used for. She explained people are living in mobile homes without permits already, and she is concerned about giving approval for a mobile home park with them already not caring about sanitation. She stated that all the neighbors don't want a mobile home park on the property. She added there are already 5 or 6 mobile homes on the property with people living in them on only one septic and well, and she doesn't feel that is very sanitary.

Mr. Miller asked if the petitioners were present in person or online, and they were not. Mr. Miller suggest to leave this open until the end of the meeting. Mr. Campanello asked if they

approved this if the health department will get involved. Mr. Auvil stated that was correct and the reason for this being brought was because they came in for a permit asking for another mobile home. Mr. Auvil continued saying the petitioner owns several parcels in this area, and the parcel in question has a residence and a mobile home. He noted they are asking for a second mobile home. Mr. Auvil pointed out if you look at the aerial their other parcels have structures on them. Mr. Hesser stated the site plan shows a modular house and barn. Mr. Godlewski advised that they not wait until the 10:30 A.M. meeting block to end for the Overholt's, so the remonstrators do not have to wait that entire time. He suggested they only wait until the end of the 9:00 A.M. meeting block. Mr. Atha stated that if they are out of compliance with anything else it should be caught in inspections. Mr. Auvil responded that is correct, because they would have to get building, well and septic permits. He noted they aren't aware of other mobile homes on the property, but they can investigate that.

Cheserie Huston came back on and she noted when they built their house the easement road kept them from being land locked. She asked how they can put a mobile home park in when she owns the easement road. She added she could put up a fence that would block access to the mobile home park. Mr. Auvil responded without a proper title search, they don't know who has access to the easement and that is a civil matter. Mr. Campanello reminded everyone that the use it is limited to 2 mobile homes.

The petitioner was not present; hearing continued to the end of the 9:00 A.M. time slot.
See item #8 on page 5.

7. The application of *Carol Anne Miller & Keith R. Miller* for a Special Use for for a beauty shop on property located on the Northwest corner of CR 133 & US 6, common address of 71965 CR 133 in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0204-2021*.

There were five neighboring property owners notified of this request.

Carol Miller, 71965 CR 133, Syracuse, was present for this request. Mr. Miller asked if the beauty shop is already established, Mrs. Miller responded it is not currently established. She added she will be the only one working in the shop.

There were no remonstrators present.

The public hearing was closed at this time.

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

Motion: Action: Approve, **Moved by** Roger Miller, **Seconded by** 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 for a beauty shop be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 3/11/2021 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.

8. The application of *David Overholt & Lynda Overholt, Husband & Wife* for a Special Use for a mobile home park on property located on the West side of an unnamed right-of-way, 1,925 ft., South of State Line Rd., West of CR 17, common address of 21820 State Line Rd. in Washington Township, zoned A-1, came on to be heard.

Again, no petitioner was present.

The public hearing was closed at this time.

Mr. Campanello stated he felt comfortable with county involvement with this situation, the septic system and water issues bother him but with the county health department involved it will be looked into. Mr. Atha and Mr. Miller both mentioned concerns about the easement usage. Mr. Hesser stated there are too many questions about this request, and he won't vote until he hears from the petitioners, and their responses to these questions. Mr. Hesser told the remonstrators that their concerns are on record, and they are welcome to come to the next meeting but not required. Mr. Atha stated the septic system needs approval by the health department so he believes all the checks and balances will be in place by the county. He believes it will be okay if it is limited to 2 mobile homes as neighbors have agreed to, but they are not okay with an entire mobile home park. He stated if they approve 2 mobile homes then all the other discrepancies will get cleaned up, because they will have jurisdiction over it.

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

Motion: Action: Table, **Moved by** Joe Atha, **Seconded by** Randy Hesser that this request for a Special Use for a mobile home park be tabled until the May 20, 2021 Advisory Board of Zoning Appeals Meeting due to the absence 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.

9. The application of *David R. Kuhns & Marlene J. Miller* 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 North side of CR 46, 2,380 ft. East of CR 127, common address of 16541 CR 46 in Jackson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0164-2021*.

There were eight neighboring property owners notified of this request.

David Kuhns, 16541 CR 46, New Paris, was present for this request. Mr. Atha asked if anything has changed from the 2019 request. Mr. Kuhns responded the only change is the neighboring property was on the Special Use and those neighbors moved so that's why the commitment wasn't signed. Mr. Atha stated the pasture decreased in size. He showed where the property line and pasture would be located on the aerial. Mr. Atha asked if he still wants a horse and cow, and Mr. Kuhns responded yes, if he could. Mr. Atha asked about manure, and Mr. Kuhns responded there isn't much so it goes on his garden.

Mr. Auvil read an email from Kenneth Jones *[Attached to file as staff Exhibit #17]*. The email stated that he and his wife are in support of the proposal for the horse, cow, and chickens as they live across the street, and they are involved in 4-H.

James Garber, 16355 CR 46, New Paris, was present in remonstrance and submitted a packet *[Attached to file as Remonstrator Exhibit #1]*. He stated he owns the land behind the subject property all the way to the Elkhart River. He went on to say that Elkhart County has started allowing animals on under 3 acres, and he has soil and water concerns with animals on a small tract of land. He believes the ordinance should be more closely followed with not as many Special Use approvals. He stated the original proposal was for more land and now it is barley over one acre. He pointed out in the exhibit the pictures of what was permitted last time and it shows the drop off to the wetlands that is in that area. He noted the subdivision was permitted in 2019 with larger land area and now is only 1.653 acres when the Zoning Ordinance requires 3 or more acres. He stated that the property is limited by a pond, 30 ft. grass filtration, and fence in addition to asphalt on the property that shouldn't be because it's a wetland area. He mentioned that the run off of the area goes directly to the ditch and into the Elkhart River where the manure would end up. He asked about a fence being built on a road right-of-way and how close it could be built. He asked what would happen if a new owner on the neighboring property wants animals on their lot, because then the number of animals in the subdivision will double. He stated he would like to see only 1 large animal and no more filling of wetlands. He added that David is a good guy but his space is too small.

David Kuhns came back up in response. He addressed the things that need to be cleaned up, including big stumps that need burnt, and are not going into the water hole. He stressed he is just trying to clean up all the metal and make the property better. Mr. Atha stated the key part to it being environmentally sound having a filter strip in place. Mr. Atha asked the status of the filter strip, and if there was grass growing in that area. Mr. Kuhns responded some grass is growing, but he will plant more and add a fence. Mr. Miller stated last time they permitted this, the property was going to be cleaned up, and the filter strip would be in place, and additional land was included with same number of animals. He stressed it was understood that this would be cleaned up. Mr. Miller stated that now he's back again asking with no filter strip and a smaller piece of land. Mr. Norman asked if the asphalt has been removed, and Mr. Kuhns responded no, not all of it has been removed yet. Mr. Campanello said IDEM is involved with the clean-up, and this is a land use matter. Mr. Miller mentioned they agreed to a larger space before. Mr. Norman asked if the steer is for 4-H; Mr. Kuhns responded it was not, that it was for meat. Mr. Hesser asked Mr. Kuhns to see a picture to clarify about asphalt and that not all has been removed. The public hearing was closed at this time.

Mr. Atha stated that the filter strip is key to making this happen, but he would limit the use to 1 large animal, 6 chickens, and no roosters.

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 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 3/1/2021 and as represented in the Special Use application.
2. The agricultural use is limited to 1 large animal, 6 chickens, and no roosters.

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

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

No: Roger Miller.

10. The application of *Wayne L. Bontrager & Elizabeth E. Bontrager, Husband & Wife* for a Special Use for a building supply business on property located on the Northeast corner of CR 43 & CR 28, common address of 60660 CR 43 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0194-2021*.

There were five neighboring property owners notified of this request.

Wayne Bontrager, 60660 CR 43, Middlebury, was present for this request. He stated this is a home finishing door and trim supply business with 2 employees, and there was a Special Use granted for the prior owner's business. Mr. Hesser questioned the name of the business and wanted to know what the difference was. Mr. Bontrager responded he wasn't sure about the difference in name, but he is doing the same work of finishing doors. Mr. Norman asked if he is just finishing wood with stain and if it was a spray. Mr. Bontrager responded yes, they are approved with IDEM.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated the Board used to approve a request for a specific person, they can't do that anymore. He's doing the same thing, it's already been approved, and there haven't been any complaints. Mr. Atha stated there would be neighbors present if this was a bad thing.

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 building supply business be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 3/9/2021 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.

11. The application of *Suleima J. Gonzalez Treto* for a Special Use for warehousing and storage of RVs and trailers on property located on the East side of Ash Rd., 210 ft. North of CR 28, common address of 60942 Ash Rd. in Baugo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0223-2021*.

There were eight neighboring property owners notified of this request.

Suleima Gonzalez Treto, 60942 Ash Rd., Osceola, was present for this request. She stated she owns the transportation company, and they pick up units from Jayco, Grand Design, and different manufacturing companies. She explained they bring them to the property for a day to 2 days while waiting on drivers to pick up units for delivery, no overnight pick-ups. She mentioned they have been in business for a month. Mr. Atha asked if she can see why this isn't the best fit for her neighborhood and property. Mrs. Gonzalez Treto responded yes, they are looking for a property closer to the by-pass but haven't been lucky to find one to rent or purchase. She added they can't afford the cost at this time. She stated they don't want to stay there as they have horses and want to keep the horses on the property. Mr. Miller mentioned the number of units wasn't put on the plan, and she responded 16-19 units at a time. Mr. Miller asked if they are kept just on the grass, and she responded yes. She showed on the aerial the area where they are kept on recycled concrete. Mr. Norman asked about how many parking spaces she has now. Mrs. Gonzalez Treto responded there are parking spaces up front, and she is the only employee, everyone else is a subcontractor. She added no RVs are parked up front. Mr. Norman clarified she is still only going to have 7 parking spaces. Mr. Hesser asked if the RVs are motorized or towable, and Mrs. Gonzalez Treto responded towable. Mr. Hesser clarified that the employees are not parking their vehicles on the property, because they come, get a trailer and leave. She responded that was correct.

Kelly Metzger, 30847 CR 28, Elkhart, was present in remonstrance and she submitted photos [Attached to file as *Petitioner Exhibit #1*]. She stated there have been class A vehicles, she has up to 30 units at a time, lined up to their property's fence line. She mentioned a problem with the sound of diesel engines all the time, and the fumes are getting bad. She added they put up a 6 ft. privacy fence, but the RVs tower over a 6 ft. fence so that's not going to help. She stated the hours of operation are 7 days a week, even on holidays. She continued saying security is in question, because people are out in the area. She added the property has no security lighting. She stated they are concerned this will bring down their property value. Mr. Atha pointed out they spoke of it being temporary for them, and asked how she felt about it being a temporary situation. She responded temporary is okay, but not temporary 2 years. She stressed the faster this goes away the better. She stated they wouldn't have bought their home, if this was here when they bought it. She request the RVs be removed in 60-90 days.

Karen Bake, 60872 Ash Rd, Osceola, was present in remonstrance. She stated that parking the trailers there has taken away the atmosphere of the whole area. She went on to say that the area is for 4-H and farming. She mentioned her concern is that this will have a negative impact as they are going from 2 trailers up to 30 trailers. She stressed this is not a good thing for the area. Suleima Gonzalez Treto came back up to respond to the concerns. She stated she completely understands the concerns and understands their thoughts. She restated they want to move the business off the property but doesn't know how long that will take. She explained that it takes up to 30 days for closing on a property and if the lot doesn't have fencing or anything that will take up more time before they can put trailers it. Mr. Atha stated she will have to go through the process

of getting the new property approved for trailers as well. She responded she knows and understands that.

The public hearing was closed at this time.

Mr. Campanello stated he doesn't know if the time period is good as to the discussion of putting up a fence, and he feels that they should be given 30 days to move. Mr. Atha stated unfortunately that's why we have these meetings so that things don't get out of hand within neighborhoods.

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

Motion: Action: Deny, 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 a Special Use for warehousing and storage of RV and trailers be denied with the following condition imposed:

1. All RVs must be removed from the property within thirty (30) days.

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*****

12. The application of *Fairfield Community Schools Building Corporation* for an Amendment to an existing Special Use for a school to allow for tennis courts, a softball field, and additional parking on property located on the Northeast corner of CR 31 & US 33, common address of 67240 CR 31 in Benton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0230-2021*.

There were 23 neighboring property owners notified of this request.

Andrew Beerman, Commonwealth Engineering Inc., 9604 Coldwater Rd., Fort Wayne, was present for the petitioner. He stated he is one of the civil engineers of the project that includes construction of new tennis courts with storage and observation building, softball fields with dugouts, and parking. He explained that the improvements will drain to the south to a new retention basin with existing pond. Mr. Atha asked if the natural pond on the aerial is the pond he was talking about. Mr. Beerman responded yes, and that the pond won't be affected with a slow release.

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 a school to allow for tennis courts, a softball field, and additional parking 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 3/15/2021 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.

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

13. The application of ***Voice Ministries, Inc.*** for an Amendment to an existing Special Use for a church ministry to allow for the addition of a pavilion on property located on the North end of Crossview Dr., 475 ft. North of Refuge Dr., common address of 58247 Crossview Ln. in Baugo Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0216-2021*.

There were 36 neighboring property owners notified of this request.

Robert Deering, 58247 Crossview Ln., was present for this request. He explained this is for a pavilion for picnics and is near the playground. He stated that it is in a flood plain, but they have contacted the Department of Natural Resources to ensure everything is done correctly. He added there will be no electricity. He explained there won't be a cement base; they will just put pea gravel down for picnic tables. Mr. Campanello asked about it just being a canopy with post, and Mr. Deering responded that is correct. He stated it is 8 ft. not 10 ft. tall with the poles set a little closer.

Karen Zeck, 58238 Ash Rd., was present in remonstrance. She stated she owns the adjoining property. She questioned item number 9 on the questionnaire, the days and hours of operations and wants to know why it says 24/7. She mentioned her concern is what they will be doing at 1 a.m. in the morning at the pavilion. She questioned lighting, because they don't want light coming onto their property at night. Mr. Campanello stated the petitioner will be asked those questions.

Hank Zeck, 58238 Ash Rd., was present in remonstrance. He stated his property is elevated from the Voice Ministries property and would appreciate it if they have deflectors for the lights in their parking lot. Mr. Campanello suggested he to talk to his neighbor about that, and they can most likely work it out as the Board is here about the pavilion.

Robert Deering came back up to respond to the concerns. Mr. Campanello asked him about operating 24/7. Mr. Deering responded the prayer room used to be open all the time, but the pavilion won't be a part of that. Mr. Campanello asked about lighting. Mr. Deering responded some battery powered LED lighting may be used, but the purpose will be day usage.

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 an Amendment to an existing Special Use for a church ministry to allow for the addition of a pavilion 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 3/18/2021 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.

14. The application of *Earl E. Miller & Dora J. Miller, Husband & Wife* for a Special Use for a home workshop/business for a wood finishing business on property located on the West side of CR 37, 2,660 ft. South of CR 26, common address of 60425 CR 37 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0206-2021*.

There were six neighboring property owners notified of this request.

Marlin Bontrager, 59714 CR 43, Middlebury, was present for this request. He stated this is for a home workshop for a wood finishing business. Mr. Norman asked if there will be air quality filtration, and Mr. Bontrager responded he can put it in if he doesn't have it already. Mr. Atha asked about the waste. Mr. Bontrager responded there isn't much waste just some over spray. Mr. Norman clarified it is a spray operation with finishes and lacquers. Mr. Bontrager responded it is just a spray operation, yes.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser asked if there is an issue with the size of the buildings exceeding the storage allowed. Mr. Auvil stated Staff does a good job with in-take of applications and the calculations. Mrs. Gilbert clarified they have 1,700 sq. ft. left of storage for the property.

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

Motion: Action: Approve, **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 a Special use for a home workshop/business for a wood finishing 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 revised site plan is required showing sign size and location.

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 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 **Darrell B. Duncan, Jr. (Land Contract Holder) & Larry D. Mote Jr. & Michelle Mote, Husband & Wife (Land Contract Purchaser)** 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 27th St., 645 ft. North of Old US 33, common address of 00000 27th St. in Baugo Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0143-2021*.

There were 25 neighboring property owners notified of this request.

Michelle Mote, P.O. Box 1177, Goshen, was present for this request. She stated that they moved their RV to the property as they are under a lease contract but do not live in the RV and never have. She believes the complaint was a squabble between two neighbors and somehow she got caught in the middle. She added she was under the impression county meant you can have agricultural animals. She explained they planned to buy and build on the property next to them but found out the properties aren't touching, and they need to vacate Pennsylvania Ave. to put the parcels together. She stated they can't build until the area is vacated and soil testing is done. She understands the steps are slightly backwards due to this. She went on to say they have been doing a lot of cleaning as this area was vacant for a long time people just dumped their garbage on the property, including a neighbor. She submitted pictures and survey quote to show they are trying to progress to get the parcels combined into one so they can build *[Attached to file as Petitioner Exhibit #1]*. Mr. Atha asked how many animals are on the property. She responded she lost all of her ducks and some hens to a weasel. She went on to say she has 26 hens, no ducks, on the land right now with 5 goats. Mr. Atha asked if she realizes she is starting a farm in a residential area. She stated she doesn't feel it is that way but understands where they are coming from. Mr. Atha explained if there are more than 12 chickens it's considered a farm not a hobby. She responded she can get rid of some of the hens, but the goal is to make this their home and to build. Mr. Miller asked about milking goats, she responded she loves goats and one goat is in milk. Mr. Miller then asked her reason for needing goats, she responded she wants the goats for milk and soap. Mr. Atha asked how many goats she has now, and she responded she has 5. Mr. Atha stated the issue is the fact she already has the farm before the home, and its residential not agricultural. She responded they didn't realize that until after the fact. She continued saying the property is on a dead end road with a dirt alley.

Bobby Humfleet, 28145 La Rue St., Elkhart, was present in support of this request. He stated they have no issues with the animals being on the property. He went on to say he was under the understanding that La Rue Street was classified M-2 on the other side. He stressed the animals are well cared for, and she won't let the property get bad.

Leanne Pettit, 28216 CR 16, Elkhart, was present in remonstrance. She then showed where her property was on aerial, and stated her concern is the smell of the chickens as she is an outside person. She stressed the smell of a farm isn't something she appreciates. Mr. Campanello stated it looked like her property is pretty far away, but she responded she isn't far enough. She mentioned her second concern is the fact that there is no house on the property with running water, and she asked how the animals are cared for without water. She stated she feels they are trying to change the rules just so they can have their farm animals.

Michelle Mote came back up to respond to the concerns. She stated concerning the water, her neighbor allows access to his hose and has 5 gallon jugs that are filled 2 times a day. She

explained up to about 20 gallons a day of water is getting to the animals. She added the smell shouldn't be a concern, because the goats weren't even there until November. She mentioned the waste will be put on a garden. She showed on the aerial where another neighbor has goats within a closer distance to the neighbor, so she isn't the only one who has animals. She stated as far as she is concerned there are other animals in the area, and she just didn't know about the rule.

The public hearing was closed at this time.

Mr. Atha stated if she had a residence on the property, it would be a typical request, but there are a lot of steps to get to that point. He stressed a lot of things have to fall into place, and approval should wait until after that. Mr. Atha added the house should be first and she can come back to try again after it is up. Mr. Miller stated he understands the different zoning, but Staff recommended approval for 6 chickens, horse, and cow on the same acreage. He stressed she should be given more time. Mr. Hesser stated the house is the issue with the staff. Mr. Miller mentioned he feels she's being punished for asking permission. Mr. Atha agreed with Mr. Miller, but does not believe more than 12 chickens should be approved. Mr. Atha pointed out it's in a residential area, so no more than a hobby, 12 chickens, no roosters, and 2 goats, should be approved. Mr. Hesser stated to him it's all speculative, because there's no house, when there's a house she can reapply and permission can be given for the animals. Mr. Atha asked if she gets denied can she apply again after a year waiting period. Mr. Hesser stated it's a different situation when the house goes up, so she can reapply again without a waiting period. Mr. Hesser explained they can only vote on what is presented today. Mr. Campanello suggested that she be given six months to remove the animals with a recommendation of denial, or have a house in the process of being built within the six months.

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

Motion Action: Deny, **Moved by** Tony Campanello, **Seconded by** Roger Miller that the Board adapt Staff Analysis as the Finding 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 denied with the following condition imposed:

1. All agricultural animals must be removed from the property within six (6) months.

Vote: 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 *Timothy Bailey* for a Special Use for a home workshop/business for a heating and cooling business and for a Developmental Variance to allow for 3 outside employees (Ordinance allows 2) on property located on the West side of CR 33, 635 ft. North of CR 18, common address of 57631 CR 33 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0211-2021*.

There were nine neighboring property owners notified of this request.

Timothy Bailey, 57631 CR 33, Middlebury, was present for this request. He stated he owns a heating and cooling business and would like to build a shop on the property. He explained where they are renting, the owner is going to sell the property, so they need a place to move his business. Mr. Hesser asked how much inventory is on hand, and he responded there isn't much just parts for furnaces. Mr. Hesser clarified when they get an order for a new furnace they take the parts to the

job site. He responded yes, and they mainly have filters. Mr. Hesser asked about where the employees work, and Mr. Bailey responded they come in the morning to get tickets then leave. Mr. Miller asked if units are being delivered to the property, and he responded yes, once a day on a straight truck.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello stated the nature of this is very little traffic, it's mostly employees coming in, picking up, and leaving. He added he has a nice site plan, so he doesn't see an issue with anything.

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

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

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 3/12/2021 and as represented in the Special Use application.

Further, the motion also included that a Developmental Variance to allow for 3 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 3/12/2021 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 application of *Marcus Lehman* 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 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing agricultural/storage building 0 ft. from the north side property line located on the West side of CR 33, 1,225 ft. North of CR 36, common address of 63637 CR 33 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0155-2021*.

There were 10 neighboring property owners notified of this request.

Mr. Hesser asked about the minor subdivision being in process. Mr. Auvil responded he wasn't sure if it was submitted, but it shouldn't be a commitment.

Eugene Lehman, 59832 CR 35, Middlebury, was present for the petitioner. He stated his son bought the property and would like to move on to it with his horses. Mr. Hesser asked where he lives, and Mr. Lehman responded about 3 miles away. Mr. Atha asked about manure and waste management. He responded there's a pasture, and he will have a couple horses and 2 dogs. Mr. Campanello stated that the application asks for cows, chickens, and horses. Mr. Lehman responded he was not aware of the cows. Mr. Campanello stated the petitioner put in the questionnaire that he will not exceed the number of animals the property can accommodate.

Kenon Langer, 19105 CR 40, Goshen, was present in support of this request. He stated he is in support of this, and it would be a good fit. He added the petitioner is a good neighbor.

Mr. Norman stated the property is zoned A-1; just it's just less than 3 acres.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he is concerned with lack of details on site plan due to the number of animals. Mr. Atha mentioned he needs to know where the pasture, water, and fencing are at. Mr. Atha stressed he has concerns with buffering between pasture and open water, and pasture and housing next door. He added the number the of animals is too high, and he feels there should be a rule of thumb of allowing 2 large animals on 2 or more acres and 1 large animal plus 12 chickens on less than 2 acres. Mr. Campanello asked if the horses are used as transportation, and Mr. Lehman responded yes. Mr. Campanello stated then that means one is a back-up horse. Mr. Atha stated the type of animal and property characteristics need to be taken into consideration.

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

Motion: Action: Approve, **Moved by** Randy Hesser, **Seconded by** Joe Atha that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for 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 3/18/2021 and as represented in the Special Use application.
2. The agricultural use is limited to maximum of three (3) horses or two (2) large animals (horse and cow/steer), ten (10) chickens, and no roosters.

Further, the motion also included that a 5 ft. Developmental Variance (Ordinance requires 5 ft.) to allow for an existing agricultural/storage building 0 ft. from the north side property line 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 3/18/2021 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.

18. The application of *Elva A. Bontrager & Carolyn Bontrager, Husband & Wife* for a Special Use for a home workshop/business for a welding, fabricating, and powder coating business, for a Developmental Variance to allow for 4 outside employees (Ordinance allows for 2), and for a Developmental Variance to allow for the total sq. ft. of accessory structures to exceed that allowed by right on property located on the East side of CR 37, 2,100 ft. North of CR 38, common address of 64640 CR 37 in Clinton Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0222-2021*.

There were six neighboring property owners notified of this request.

Elva Bontrager, 64640 CR 34, Goshen, was present for this request. He stated he needs a permit for a home workshop business for welding. Mr. Hesser asked if he was the home owner and working there as well. He clarified the request is for him and 4 additional employees, and Mr. Bontrager responded yes. Mr. Hesser explained the ordinance allows 2 employees and asked if he needs 4 right away. He responded no, he just put 4 to be on the safe side, if he would need more later on. Mr. Atha stated requesting more wasn't a bad idea. Mr. Campanello added it was a smart idea, so he wouldn't have to come back. Mr. Norman asked if aluminum products will be powder coated and about regulations. Mr. Bontrager responded he is new to this but will follow regulations. Mr. Miller stated everything has to be contained for powder coating. Mr. Bontrager added the building will be 8 ft. wide by 8 ft. high, 20 to 30 ft. long.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Campanello asked if the 4 employees will do anything else on the property with the farm. Mr. Bontrager responded 2 employees will be his children. Mr. Hesser stated his children do not count as outside employees. Mr. Hesser stressed there really isn't a need for 4 outside employees. Mr. Miller clarified 2 employees doesn't limit his family. Mr. Hesser stated no it doesn't and if he needed 4 outside employees later he could always come back in for that request. Mr. Atha asked Mr. Bontrager to clarify he doesn't need outside employees at this time, he responded no he doesn't.

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

Motion: Action: Approve, **Moved by** Ron Norman, **Seconded by** Randy Hesser that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Special Use for a home workshop/business for a welding, fabricating, and powder coating business be approved with the following condition imposed:

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

The following commitment was imposed:

1. The request is approved in accordance with the site plan submitted 3/15/2021 and as represented in the Special Use application.

The motion also included that for a Developmental Variance to allow for the total sq. ft. of accessory structures to exceed that allowed by right be approved with the following conditions imposed:

1. Variances from the developmental standards of the Zoning Ordinance are void unless an Improvement Location Permit is issued within 180 calendar days from the date of the grant and construction work completed within 1 year from the date of the issuance of the building permit (where required).
2. The request is approved in accordance with the site plan submitted 3/15/2021 and as represented in the Developmental Variance application.

Motion: Action: Deny, Moved by Ron Norman, Seconded by Randy Hesser that the request for a Developmental Variance to allow for 4 outside employees (Ordinance allows for 2) be denied based on the following findings and conclusions of the Board:

1. Approval of the request will not be injurious to public health, safety, morals, or general welfare.
2. Approval of the request will not cause substantial adverse effect on neighboring property.
3. Strict application of the terms of the Zoning Ordinance would not result in an unnecessary hardship in the use of the property. The petitioner currently does not have a need for four (4) outside employees.

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

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

19. The application of *Freeman J. Yoder & Susie H. Yoder, Husband & Wife* for a Use Variance to allow for a kennel and 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 CR 37, 2,550 ft. North of CR 10, common address of 54014 CR 37 in York Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0133-2021*.

There were six neighboring property owners notified of this request.

Mr. Hesser asked about the requirements for a kennel. Mr. Auvil stated a kennel is allowed by right if they meet criteria of 3 acres and required distance from the property line and neighboring house. Mr. Norman clarified this request is not within those requirements, so that's why it's here.

Marlin Bontrager, 59714 CR 33, Middlebury, was present for the petitioner. He stated the kennel will be in an existing building and house 10 females and 2 males. He added the petitioner does have a total of 38 acres in a few different parcels. Mr. Atha stated he was confused, because the request is for two large animals on less than an acre, which on paper it doesn't look good. However, he continued the aerial shows the pasture on the other property. Mr. Bontrager responded the petitioner owns over 38 acres all connected together. Mr. Hesser asked if any of the parcels are continuous to the subject property, and he responded he believes so. Mr. Atha stated the problem is that everything is being requested on 0.6 acres. He continued saying he sees the right amount of space for a horse, but he isn't sure the legality of all of this. Mr. Miller asked Mr. Auvil if both lots were included the request be needed. Mr. Auvil responded 3 acres is required for a kennel by right.

Mr. Miller stated he still doesn't have enough acreage for the kennel. Mr. Miller mentioned he is not in favor of approval on less than a half-acre for both horses and dogs.

Freeman Yoder, 54014 CR 43, Middlebury, was present for this request. He stated he owns the 38 acres attached to the property. He showed where the half acre subject property is located on the aerial. Mr. Miller pointed out he is asking for permission on a half-acre, and that's the issue. Mr. Yoder responded yes, he's asking for the variance on that half acre. Mr. Atha asked if there is reason why this can't be on a different parcel. He responded he wants to put it in the existing building, and the horses only come to the half-acre for feed and water then they go to the east. Mr. Hesser stated that if this is approved as is and the parcel gets sold, then the new owners would be allowed animals on the half acre. Mr. Norman suggested adding a commitment if the property sells. Mr. Hesser explained this is a Use Variance that is self-created. Mr. Norman asked if he keeps the horses on the large acreage. Mr. Yoder responded yes, they just come to be fed and watered on the half acre. Mr. Norman noted buildings on the other acreage, Mr. Yoder responded yes, but they aren't suitable for this purpose. Mr. Hesser asked if there are only two lots in the subdivision. He responded yes, he sold property to his son that created a depth-to-width ratio issue. He continued saying the surveyor took the property behind the barn and subdivided so he could get a permit to build on his acreage. The land splits caused this half acre lot. He his parcels were all combined into one parcel, but it is still subdivided. Mr. Miller stated it makes sense, but the issue is they are looking at a half acre.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he thinks they own enough property to make this work without a Use Variance. Mr. Godleski pointed out he would still need a variance for the kennel due to set backs. Mr. Atha added it would be a different request with additional parcels. Mr. Auvil explained the chart in the Zoning Ordinance and the explanation of kennel. He stressed the parcel can't meet the standards, so the Use Variance is required. He stressed he has applied for the Use Variance, and he doesn't believe the self-inflicted finding applies. Mr. Hesser stated the request is self-created, because if they moved the building to another location it wouldn't be an issue. He added the intensity of the use is another concern, because it is peculiar. Mr. Atha stressed if the Use Variance is approved on .6 acres and the property sold, it would be self-contained without access to that pasture. Mr. Campanello noted the Board would be approving 2 adult horses and dogs on .6 acres. Mr. Atha stated he is opposed to the horses in case the property is sold. Mr. Miller agreed because there is no pasture. Mr. Hesser pointed out they can't limit approval to the current owner, it runs with the land itself.

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

Motion: Action: Deny, Moved by Randy Hesser, **Seconded by** Roger Miller that this request for a Use Variance to allow for a kennel be denied based on findings and conclusions of the Board:

1. The use and value of the area adjacent to the subject property will be affected in a substantially adverse manner.
2. A need for the Use Variance does not arise from a condition that is peculiar to the property involved.
3. Strict enforcement of the terms of the Zoning Ordinance would not constitute an unnecessary hardship if applied to the subject property.

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

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

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Joe Atha 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 denied based on the findings and conclusions of the Board:

1. The Special Use will not be consistent with the spirit, purpose, and intent of the Zoning Ordinance.
2. The Special Use will not substantially serve the public convenience and welfare.

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

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

20. The application of *Clark Family Trust Agreement, c/o Mark Alan Clark and Sue Lynn Clark, Trustees* for a Use Variance to allow for the construction of an accessory structure without a residence on property located on the West side of E. County Line Rd., 1,050 ft. North of CR 4, common address of 00000 E County Line Rd. in York Township, zoned R-2, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #UV-0175-2021*.

There were 15 neighboring property owners notified of this request.

Mark Clark, 51705 East County Line Road, Middlebury, was present for this request. He stated the pole barn will be for storage of vehicles and boats, and he has submitted the requested deed restriction. Mr. Campanello asked if he lives across the street, and he responded yes. Mr. Campanello asked how many residences are on the side of the street where the accessory structure will be built. Mr. Clark responded that side of the street is all accessory structures and he is the only one without a garage. Mr. Hesser asked which lake, and Mr. Clark responded Stone Lake. Mr. Norman stated the right-of-way is just a gravel alley. Mr. Clark responded yes, it is just an alley. Mr. Hesser noted he already has the lots tied together. Mr. Clark responded yes, it was just filed this week by an attorney.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Hesser stated he wonders where the water is in this situation, and he has no issues with this. Mr. Atha added this fits with the neighborhood. Mr. Norman stated the petitioner is the last one to have an accessory structure put up. Mr. Miller stated the first house on that side is zoned R-3.

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

Motion: Action: Approve, **Moved by** Tony Campanello, **Seconded by** Ron Norman that the Board adopt the Staff Analysis as the Findings and Conclusions of the Board, and based upon these, further moved that this request for a Use Variance to allow for the construction of an accessory structure without a residence 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 3/5/2021 and as represented in the Use Variance application.
2. The real estate and the grantor's parcel, commonly known as 51705 E. County Line Rd., must be tied together with a deed restriction that prohibits said parcels from being sold separately.

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

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

21. The application of ***Bruce N. Stahly & Barbara Y. Stahly, Husband & Wife*** for a 1,000 sq. ft. Developmental Variance (Ordinance allows 1,000 sq. ft.) to allow for the construction of a 2,000 sq. ft. accessory dwelling on property located on the Northside of CR 28, 3,300 ft. West of CR 22, common address of 18489 CR 28 in Jefferson Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #DV-0229-2021*.

There were four neighboring property owners notified of this request.

Stephanie Flyod, Progressive Engineering, Inc., 58640 SR 15, Goshen, was present representing the petitioners. She mentioned that they already subdivided this land previously. She stated the lady living in the existing home is in her 90's and the home will be destroyed when she passes. She went on to say they will be taking the pole barn and converting/renovating it to be lived in. She explained the lady will likely have to leave the property in the next few years. Mr. Hesser asked why the property can't be subdivided. She responded the access easement would cause issues, and they wanted to take the existing structure and renovate it to be livable. Mr. Hesser asked the square footage of the farm house. She responded it is 1,200 square feet. Mr. Atha clarified they will tear down the home after she is moved out. Mrs. Flyod responded yes, because the trust has a commitment that she can't be forced out of her home. Mr. Miller asked about adding a condition tied to the person moving off the property. Mrs. Floyd stated the intent is demolish everything except the proposed building. Mr. Miller mentioned at one time a 5 year time limit was allowed before a home had to be torn down. Mr. Atha clarified they aren't building a new home, and Mrs. Floyd responded that is correct. Mr. Miller asked about the driveway that goes back and if it will be this property's driveway. Mrs. Floyd responded there is another plan for its own driveway if it is divided.

Bruce Stahly, 1515 Spring Brook, Goshen, was present for this request. He stated has talked with the lady in the home, and she can't go up and down the steps in her home. He stated he agrees with the Staff's finding #2, and they will continue to keep the property residential. He stated they already have started removing one of the other buildings on the property, and the barn is a cement block barn. Mr. Hesser asked if he is related to the resident of the current home, and Mr. Stahly responded no.

Mr. Auvil asked the Board that their approval allow the accessory dwelling to remain when the tenant leaves or moves and they demolish the existing house. Mr. Hesser stated what they are calling now the accessory dwelling sounds like it would become the sole dwelling. Mr. Norman asked Stephanie Floyd to come back up and asked about the structure being called a pole barn, but she said it is cinder block. Mr. Hesser noted a cinder block building would have to be sitting on a

foundation, and Mrs. Floyd responded that is correct. She stated they have a contractor, and they have started to work on making sure they meet code requirements.

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 this request for a 1,000 sq. ft. Developmental Variance (Ordinance allows 1,000 sq. ft.) to allow for the construction of a 2,000 sq. ft. accessory dwelling be approved based on the findings and conclusions of the Board:

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

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 03/16/2021 and as represented in the Developmental Variance.
2. The existing residence will be removed from the property when the current resident vacates the property and the accessory dwelling will then become the primary residence at that time.

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

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

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

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0063-2021*.

There were 12 neighboring property owners notified of this request.

Mr. Hesser stated this request was tabled from the last meeting, the petitioner failed to appear, and there was a remonstrance present. Mr. Atha noted vehicles were stored outside more. Mr. Hesser asked if Staff has heard from the petitioner since the last hearing. Mr. Auvil responded to his knowledge they have not heard from the petitioner. Mr. Hesser asked if they should dismiss or deny. Mr. Atha stated to him it seems like the petitioners don't care.

There were no remonstrators present.

The public hearing was closed at this time.

Mr. Atha mentioned a concern about the outside storage. Mr. Hesser suggested the request be dismissed, because they haven't heard from the petitioner at all. Mr. Campanello mentioned the

Staff Report and remonstrator. Mr. Hesser noted the Staff Report recommended approval. Mr. Atha stressed they were given a year and never returned the commitment. He added it came before the Board to see if it would work the first time, and neighbors say he is leaving equipment outside. Mr. Hesser stated he only needs one negative finding to deny.

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

Motion: Action: Deny, **Moved by** Randy Hesser, **Seconded by** Joe Atha that this request for a Special Use for a home workshop/business for a tire service business be denied based on the findings and conclusions of the Board:

1. The Special Use will not substantially serve the public convenience and welfare.
2. Approval of the request will cause substantial adverse effect on the neighboring properties.
3. Strict applications of the terms of the Zoning Ordinance would not result in unnecessary hardship in the use of the property.

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

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

23. The application of *Tri County Land Trustee Corporation (Land Contract Holder) & Wayne Miller (Land Contract Purchaser)* for a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals on property located on the South side of US 20, 2,230 ft. West of CR 35, common address of 14702 US 20 in Middlebury Township, zoned A-1, came on to be heard.

Mr. Auvil presented the Staff Report/Staff Analysis, which is attached for review as *Case #SUP-0176-2019*.

There were eight neighboring property owners notified of this request.

Mr. Miller asked what they failed to comply with. Mrs. Gilbert stated the commitment wasn't brought back. Mr. Hesser asked if communication has been made. Mr. Auvil stated no contact or communication could be made with the petitioner.

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: Rescind, **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 a requested rescission of a Special Use for failure to comply with condition(s) and/or commitment(s) imposed by the Board of Zoning Appeals be approved.

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

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

24. The meeting was adjourned at 11:42 A.M.

Respectfully submitted,

Danielle Richards, Recording Secretary

Randy Hesser, Chairman

Tony Campanello, Secretary